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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable J. C. Buddy Nicholson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID ALAN WHITE,

APPELLANT

APPELLATE CASE NO 2016-000616

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
 STATE'S EXHIBIT NO. 9 (Photograph of Moped), STATE'S EXHIBIT NOS. 10-13
 (Photographs of Yard), and STATE'S EXHIBIT NO. 16 (Photograph of Knife)¹**

¹ Pursuant to Rule 210(f), SCACR, transportation is being requested for these exhibits because they could not be accurately reproduced by copying into the Record on Appeal.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DAVID ALAN WHITE

Defendant

COURT OF GENERAL SESSIONS

DOCKET NO. 2014-GS-10-4864
2014-GS-10-5530

TRANSCRIPT OF RECORD

March 14, 2016
Charleston, South Carolina

Volume 1 (of 4)

B E F O R E:

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Proceedings
March 14, 2016

1 [Whereupon, the jury enters at 1:19 p.m.]

2 THE COURT: Ladies and gentlemen of the jury I've
3 got to hear some motions in this case before we can start
4 taking testimony, opening statements and then testimony,
5 so we're going to break for lunch at this time. It is
6 now 1:15 I want you to be back in the jury room at 3:30.
7 The bailiffs will show you where to come to. When you
8 come to the courthouse come straight to the jury room and
9 we'll try to get started at 3:30.

10 Now let me say this to you when I say electronic I
11 mean everything; computers, phones, Twitter, Facebook,
12 anything. I do not want you looking at anything
13 electronically about this case or anything concerning
14 this case. The reason I do that is I don't know what's
15 out there about this case on the Internet. It may not be
16 correct; it may be correct. I want you to base your
17 decision on what you hear in the courtroom not what you
18 find on some website.

19 So do not use any type of electronic information or
20 use electronic information, don't send any Facebook,
21 don't put anything on your Facebook about this case,
22 don't email anybody, don't twixt [phonetic] anybody,
23 don't do anything electronic about this case. Don't
24 watch television about it; don't listen to the radio
25 about it. Does everybody understand? If you don't

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1 understand raise your hand. See you at 3:30. Have a
2 good lunch.

3 [Whereupon, the jury exits at 1:21 p.m.]

4 THE COURT: Anything else from the State before we
5 recess for lunch?

6 MS. NEWMAN: No, Your Honor.

7 MS. FORD: No, Your Honor.

8 THE COURT: I originally said 3:15 but its 1:15 now
9 so I'll see y'all at 2:30.

10 MS. NEWMAN: Yes, Your Honor.

11 THE COURT: That will give us an extra 15 minutes
12 if we need it.

13 [Whereupon, court is in recess from 1:27 p.m. until
14 3:00 p.m.]

15 [Whereupon, State's exhibit numbers 1 through 17 are
16 marked by the court reporter]

17 [Whereupon, court's exhibit numbers 1 and 2 are
18 marked by the court reporter]

19 THE COURT: Please be seated.

20 [Whereupon, an off the record bench conference is
21 held]

22 THE COURT: All right we've got a motion in limine
23 right?

24 MS. NEWMAN: Yes, Your Honor.

25 THE COURT: Be glad to hear you.

State v David Alan White
Motion in Limine-Remarks by Ms. Newman
March 14, 2016

MOTION IN LIMINE

MS. NEWMAN: Thank you, Your Honor. The State filed a motion in limine pertaining to the victim Joseph Johnson's prior convictions. At this point, Your Honor as it relates to Mr. Johnson's 2006 conviction for assault on a police officer we believe this conviction should be precluded from mention due to its highly prejudicial effect.

Mr. Johnson is the victim of an attempted murder. There are multiple witnesses prepared to testify that the defendant cut his throat. The only purpose at this point for mentioning this conviction would be to unfairly prejudice Mr. Johnson and mislead the jury to think that he was the aggressor on the night in question. Your Honor State v Day this case dealt with the issue of self-defense in a murder case. The court found that evidence of other specific instances ---

THE COURT: --- that was a pointing of a shotgun on a factual basis, that wasn't a conviction was it? I don't think that was a conviction was it?

[Whereupon, Ms. Newman reviews documents]

MS. NEWMAN: The victim's act of violence.

THE COURT: Right. Pointing a shotgun four months ago was an act of violence. So my question to you is how does it change since it's within the ten years does it

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Motion in Limine-Remarks by Ms. Newman
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1 make a difference on whether it was a conviction or a non
2 conviction act of violence? How does that affect your
3 argument or does it?

4 MS. NEWMAN: Your Honor, we believe it's not
5 showing creditability but more of a propensity for
6 violence which is what that case talks about.
7 Additionally in State ---

8 THE COURT: --- the only reason it is not
9 admissible under 609 is its one year right? 609 says
10 more than one year.

11 MS. NEWMAN: That's correct, Your Honor.

12 THE COURT: So that's the only reason it's not
13 admissible under 609.

14 MS. NEWMAN: Your Honor, this conviction was from
15 2006. It carries more than a year so it's within the ten
16 years.

17 THE COURT: I'm sorry, 609 says more than one year
18 right?

19 MS. NEWMAN: That's correct, Your Honor.

20 THE COURT: But the charge assault on a police
21 officer while resisting arrest is up to a year right?

22 MS. NEWMAN: It's up to ten years.

23 THE COURT: It's up to ten years?

24 MS. NEWMAN: That's correct, Your Honor.

25 THE COURT: Okay. How about the one in 2011 just

State v David Alan White
Motion in Limine-Remarks by Ms. Newman
March 14, 2016

1 the straight resisting arrest?

2 MS. NEWMAN: That's one year.

3 THE COURT: That's one year, okay. So obviously
4 the one in 2006 would be admissible.

5 MS. NEWMAN: That's what we're arguing should not
6 be admissible, Your Honor.

7 THE COURT: What about the arrest in 2011?

8 MS. NEWMAN: The resisting arrest?

9 THE COURT: Yes, the resisting arrest.

10 MS. NEWMAN: That does not carry in excess of a
11 year, Your Honor.

12 THE COURT: So you're arguing about the 2006 ten
13 year right?

14 MS. NEWMAN: Yes, Your Honor.

15 THE COURT: Okay. Go ahead.

16 MS. NEWMAN: We would point the court as well to
17 State v Brown which found that the court did not abuse
18 its discretion in excluding from evidence the victim's
19 prior conviction for voluntary manslaughter which was 24
20 years prior to the incident.

21 In this case, Your Honor, the conviction was ten
22 years and we don't believe that's it is closely connected
23 at the point in time or occasion with the incident in
24 this case. Additionally, the facts of that conviction
25 from 2006 do not involve this defendant. Your Honor, as

State v David Alan White
Motion in Limine-Remarks by Ms. Newman
March 14, 2016

1 shown by State v Brown and State v Day the court does not
2 make a distinction between acts of violence or
3 convictions regarding violence.

4 THE COURT: Okay. So it doesn't make any
5 difference?

6 MS. NEWMAN: No, Your Honor.

7 THE COURT: Okay.

8 MS. NEWMAN: Your Honor, we feel that mentioning
9 this conviction, this 2006 assault on a police officer
10 would prejudice Mr. Johnson and would ultimately just
11 mislead the jury and confuse the issues.

12 THE COURT: Anything else?

13 MS. NEWMAN: No, Your Honor.

14 THE COURT: Okay. Thank you very much. Ms.
15 Ford?

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State v David Alan White
Motion in Limine-Remarks by Ms. Ford
March 14, 2016

1 MS. FORD: Thank you, Your Honor. May it please
2 the court? Rule 609, Your Honor provides for witnesses
3 other than the accused which Mr. Johnson is that if it
4 carries more than a year it doesn't matter if it's a
5 crime was dishonesty it comes in, Your Honor. This crime
6 was within the past ten years. I don't see any reason
7 why it should be excluded.

8 As I mentioned earlier he does have a lot of prior
9 incidents as well of violence and those aren't coming in
10 so it's not overboard that the jury is hearing of his
11 long history of violence. Your Honor, the cases that the
12 State references to manslaughter that was well over more
13 than ten years.

14 I haven't read those cases detailed over them in a
15 synopsis recently but I don't believe those cases
16 probably even reference conviction versus act of
17 violence. They are talking about acts of violence
18 similar to Lyle; a Lyle situation, Your Honor. If it's
19 a conviction the rule says they should come in because
20 they can go to creditability. It doesn't matter if it
21 goes to honesty.

22 In this case creditability is key. While there are
23 many witnesses that will testify that my client cut the
24 witness -- the victim, the victim actually gives
25 testimony that is contrary to everybody else's testimony.

State v David Alan White
Motion in Limine-Remarks by Ms. Ford
March 14, 2016

1 He says that my client came from behind him whereas no
2 other witness says that. And so I do think that goes to
3 intent and attempted murder intent does have to be
4 proven. So I do think that his creditability is crucial
5 Your Honor, and we believe we should be able to go into
6 that.

7 THE COURT: I guess I'm at a disadvantage not
8 having heard the testimony. Are you telling me the only
9 person that says the defendant came up behind the victim
10 from behind and cut his throat was the victim?

11 MS. FORD: Yes, sir.

12 THE COURT: The other State's witnesses what do
13 they say?

14 MS. FORD: They say my understanding is it's more
15 of like a swing or a push and they don't even see a knife
16 in my client's hand and then all of a sudden the victim
17 is like he cut me.

18 THE COURT: But did they say he approached him from
19 the back or the front?

20 MS. FORD: No one, and there are multiple
21 witnesses, no one to my understanding -- and the State
22 has provided me, she has been very good at keeping me
23 with updates of what they are saying, no one has said
24 that my client came from behind the victim and slit his
25 throat from behind.

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Motion in Limine-Remarks by Ms. Ford
March 14, 2016

1 THE COURT: Except for the victim?

2 MS. FORD: The victim is the only person who says
3 that.

4 THE COURT: Solicitor, is that correct?

5 MS. ELLIOTT: Can we approach?

6 THE COURT: Yes, ma'am.

7 [Whereupon, an off the record bench conference is
8 held]

9 THE COURT: I'm going to take it under advisement
10 and listen to the testimony from the victim at the
11 appropriate time. Solicitor, when you are getting into
12 the cutting whether it occurred in front or behind or the
13 approach from the front or the approach from behind let
14 me know and we'll go in camera and I'll listen to what
15 the victim Mr. Johnson has to say, okay. In the meantime
16 I'll take it under advisement -- the State's motion under
17 advisement.

18 MS. NEWMAN: Thank you, Your Honor.

19 THE COURT: What do you want to do first
20 identification or what?

21 MS. NEWMAN: Your Honor, we'd like to do the
22 Jackson v Denno first if that's okay.

23 THE COURT: That's fine.
24
25

State v David Alan White
Jackson v Denno Hearing-Ron Lacher-Direct Examination by Ms. Elliott
March 14, 2016

1 JACKSON V DENNO HEARING

2 MS. ELLIOTT: There are two separate statements
3 that the State will be submitting testimony to; the first
4 one would require Sergeant Ron Lacher's testimony.

5 [Whereupon, Mr. Lacher comes forward]

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: For the record if you could state
9 your first and last name and spell your last name please.

10 THE WITNESS: My first name is Ron and last name is
11 Lacher, L-A-C-H-E-R.

12 THE COURT: Before we get into asking questions Ms.
13 Ford, your objection to the admissibility of the
14 statement is because Miranda rights were not given or
15 it's not voluntary or what's your objection to the
16 statement?

17 MS. FORD: No, Your Honor. In this I'm actually not
18 a hundred percent sure what the statement is that they
19 are intending to get through Sergeant Lacher other than
20 my client made some comments I'm coming out, I took a
21 shower. But his report doesn't indicate that my client
22 made any comments.

23 THE COURT: Is it a written statement or an oral
24 statement?

25 MS. ELLIOTT: It's an oral statement, Your Honor.

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Jackson v Denno Hearing-Ron Lacher-Direct Examination by Ms. Elliott
March 14, 2016

1 What we would expect Sergeant Lacher to testify to is he
2 asked him one question -- the defendant did make the
3 spontaneous statement of I'm coming out. Officer Lacher
4 put him in handcuffs and Officer Lacher asked him are
5 these the clothes you were wearing tonight? He said no,
6 I took a shower.

7 THE COURT: So you got a spontaneous statement.
8 What other statement -- any other statement?

9 MS. ELLIOTT: Plus that subsequent statement. He
10 Mirandized him and then made the subsequent statement
11 after being asked the question are those the clothes that
12 you were wearing that night.

13 THE COURT: Were those oral also?

14 MS. ELLIOTT: Yes, Your Honor.

15 THE COURT: So there is no written statement?

16 MS. ELLIOTT: No written statement.

17 THE COURT: Okay. Go ahead.

18 - - - - -

19 RON LACHER,

20 Having been first duly sworn,

21 Was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. ELLIOTT:

24 Q. Sergeant Lacher where did you first meet David
25 White?

State v David Alan White
Jackson v Denno Hearing-Ron Lacher-Direct Examination by Ms. Elliott
March 14, 2016

1 A. I first came into contact with Mr. White at his
2 sister's residence at

3 Q. And why were you there?

4 A. Through the course of the detective investigation I
5 received a phone call from Sergeant Evans advising that
6 the individual was possibly staying at that residence so
7 we went over to look for him to see if he was there.

8 Q. What happened when you got to the residence?

9 A. Upon arrival I went up to the residence and knocked
10 on the door and was greeted by his sister, Dana. I asked
11 if David was there and she said that he was and was in
12 the back.

13 Almost simultaneously he called out from the back of
14 the house and said I'm back here I'm coming out. I
15 instructed to come out and make sure his hands were
16 visible where I could see them. He proceeded out from
17 the back of the residence.

18 When he came out he was holding a towel. I
19 immediately advised him he was under arrest for the
20 stabbing incident and put him in handcuffs and Mirandized
21 him.

22 Q. You said that he was holding a towel. Was he
23 clothed other than the towel?

24 A. He was clothed.

25 Q. And I'm sorry you said you put him under arrest.

State v David Alan White
Jackson v Denno Hearing-Ron Lacher-Direct Examination by Ms. Elliott
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1 Did you explain to him what he was under arrest for?

2 A. I told him for the stabbing incident of off
3 Hillandale.

4 Q. Was anyone else around when you were speaking with
5 him?

6 A. His sister would have been in the room and Officer
7 Stevens and Bridges.

8 Q. And which room in the house was it or was it in the
9 house?

10 A. I'm sorry?

11 Q. Which room of the house were you in?

12 A. We were in right when you go through the front door
13 it would have been the main room, the living room.

14 Q. And did you Mirandize him at that time?

15 A. I did.

16 Q. And how did you Mirandize him?

17 A. I recited his Miranda rights orally.

18 Q. Can you recite those Miranda warnings?

19 A. I can. You have the right to remain silent.

20 Anything you say can and will be used against you in a
21 court of law.

22 You have the right to speak to an attorney and have
23 an attorney present with you before you are questioned.
24 If you cannot afford to hire an attorney, one will be
25 appointed to represent you. And I asked him if he

State v David Alan White
Jackson v Denno Hearing-Ron Lacher-Direct Examination by Ms. Elliott
March 14, 2016

1 understood his rights.

2 Q. And what did he indicate to you when you asked him
3 if he understood his rights?

4 A. He acknowledged by shaking his head yes he
5 acknowledged. I told him I needed an audible response
6 and he said yes, sir.

7 Q. Did he appear to understand his rights?

8 A. He did.

9 Q. Why do you believe that?

10 A. He didn't make anything about him that would lead me
11 to believe that he didn't understand them. Over my
12 fifteen years I've dealt with many people that clearly
13 you can see they don't understand you and they give you
14 that blank gaze look or they smell of alcohol, which he
15 didn't.

16 Q. So he seemed to understand the English language?

17 A. Yes.

18 Q. Did he appear to have any mental or physical
19 disability that would inhibit his ability to answer your
20 questions?

21 A. No.

22 Q. Did he at any time indicate that he wasn't feeling
23 well or needed medical aid?

24 A. No.

25 Q. Did he appear to be under the influence of drugs or

State v David Alan White
Jackson v Denno Hearing-Ron Lacher-Direct Examination by Ms. Elliott
March 14, 2016

- 1 alcohol?
- 2 A. No.
- 3 Q. Could you spell an odor of alcohol coming from his
- 4 person?
- 5 A. Could not.
- 6 Q. Did you promise him anything?
- 7 A. No, ma'am.
- 8 Q. Did you or anyone with you threaten him in any way?
- 9 A. No.
- 10 Q. Did he ever ask for a lawyer?
- 11 A. No.
- 12 Q. Did he ever tell you he didn't want to talk to you?
- 13 A. No.
- 14 Q. Did you ask him any questions?
- 15 A. The only question that I asked him was if the
- 16 clothes that he was wearing when I made contact with him
- 17 if that's the clothes that he was wearing during the
- 18 incident.
- 19 Q. And did he answer that question?
- 20 A. He did. He stated that they were not. He took a
- 21 shower and then changed his clothes and they were in the
- 22 back room.
- 23 Q. To the best of your knowledge was the information
- 24 that he gave you freely and voluntarily made?
- 25 A. Yes.

State v David Alan White
Jackson v Denno Hearing-Ron Lacher-Direct Examination by Ms. Elliott
March 14, 2016

1 MS. ELLIOTT: Beg the court's indulgence.

2 THE COURT: Yes, ma'am.

3 [Whereupon, Ms. Elliott and Ms. Newman confer]

4 Q. [Ms. Elliott] After you asked him that question did
5 you ask anything else?

6 A. No.

7 Q. What happened to David White after that?

8 A. I helped Officer Bridges escort him out of the
9 residence and put him in the rear of a cruiser for
10 transport.

11 Q. Sergeant Lacher those are all the questions I have
12 for you at this time. Please answer any that Ms. Ford
13 may have.

14 THE COURT: Ms. Ford, cross-examination?

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State v David Alan White
Jackson v Denno Hearing-Ron Lacher-Cross-Examination by Ms. Ford
March 14, 2016

CROSS-EXAMINATION

1
2 BY MS. FORD:

3 Q. Officer Lacher?

4 A. Yes, ma'am?

5 Q. Did you ever reference the stabbing or anything or
6 just said the incident or did you and Mr. White ever
7 discuss anything about Mr. Johnson being stabbed that
8 evening or cut?

9 A. Those are a couple of questions with multiple
10 answers. I did advise him he was under arrest I said for
11 a stabbing incident off Hillandale. I didn't discuss the
12 case or the injuries or the victim's status with him if
13 that's what you are asking me.

14 Q. Right. You testified you asked him if those were
15 the clothes he was wearing during the incident.

16 A. Correct.

17 Q. And he just said I changed, I took a shower and my
18 clothes are in the bathroom?

19 A. Correct, the back room I believe he said.

20 Q. So he didn't make an admission of any kind about the
21 altercation for which you were there correct?

22 A. Correct.

23 MS. FORD: No further questions of this witness,
24 Your Honor.

25 THE COURT: Any redirect?

State v David Alan White
Jackson v Denno Hearing-Ron Lacher-Cross-Examination by Ms. Ford
March 14, 2016

1 MS. ELLIOTT: None, Your Honor.

2 THE COURT: Okay. You may step down. Thank you
3 very much.

4 THE WITNESS: Thank you.

5 [Whereupon, the witness is excused and exits the
6 witness stand]

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State v David Alan White
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1 MS. ELLIOTT: Your Honor, those would be all the
2 witnesses the State would offer for this portion of the
3 Denno for those few statements.

4 THE COURT: Okay. Ms. Ford?

5 MS. FORD: Your Honor, I don't think really an
6 admission was made or anything. It just sounds like
7 routine questions.

8 THE COURT: I agree with you that's why I was
9 wondering why we were having a hearing. He hadn't
10 admitted any culpability.

11 MS. FORD: Right, Your Honor, and part of the
12 Jackson v Denno hearing is just to put out there what is
13 going to be presented. I think the State has to just
14 prove, it's their burden to prove that it was voluntary
15 and that it meets all of the other requirements.

16 THE COURT: Well, I heard nothing to the contrary
17 where it wouldn't be voluntary as far as the
18 circumstances surrounding or his knowledge of it so I'm
19 going to allow it in and deny your motion to suppress.
20 I'm assuming you made a motion to suppress it, right?

21 MS. FORD: Well, not necessarily that statement
22 Your Honor. That's why I said I wasn't quite sure why
23 ---

24 THE COURT: --- I know. We're talking about this
25 statement right now. Are you going to make a motion to

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1 suppress it or not?

2 MS. FORD: No, Your Honor.

3 THE COURT: All right. Then call your next witness
4 on whatever the next statement was. We're not going to
5 try to suppress that statement.

6 MS. NEWMAN: Thank you, Your Honor.

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State v David Alan White
Jackson v Denno Hearing-Glen Kramer-Direct Examination by Ms. Newman
March 14, 2016

1 MS. NEWMAN: The State calls Officer Glen Kramer.

2 [Whereupon, Officer Kramer comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: State your first and last name and
6 spell out your last name please.

7 THE WITNESS: My first name is Glen, last name is
8 Kramer, K-R-A-M-E-R.

9 - - - - -

10 GLEN KRAMER,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. NEWMAN:

15 Q. Officer Kramer where do you work?

16 A. North Charleston Police Department.

17 Q. And what was your position back in November 2013?

18 A. I was assigned to the Detective's Bureau. I worked
19 in the Person's Unit.

20 Q. In your capacity as a detective did you assist in
21 the investigation of the attempted murder at

22 ?

23 A. I did.

24 Q. And when did that attempted murder occur?

25 A. It was on the 27th of November, 2013.

State v David Alan White
Jackson v Denno Hearing-Glen Kramer-Direct Examination by Ms. Newman
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- 1 Q. And how did you become involved in the case?
- 2 A. We were the call out team for that holiday weekend.
- 3 Sergeant Evans had called me and told me to respond to
- 4 Hillandale in reference to a stabbing that had occurred.
- 5 Q. And later on in your investigation did you conduct
- 6 an interview with the defendant?
- 7 A. I did.
- 8 Q. And was he in custody at the time?
- 9 A. I spoke to him actually twice. I spoke to him one
- 10 time on the phone and then I spoke to him once he was in
- 11 custody, yes.
- 12 Q. So when he was in custody where did that interview
- 13 take place?
- 14 A. That took place at North Charleston in the Detective
- 15 Bureau in one of the interview rooms.
- 16 Q. Okay. And what was he under arrest for when you
- 17 conducted the interview?
- 18 A. At that time it was for attempted murder.
- 19 Q. And when was the interview conducted?
- 20 A. That would have been after midnight so it was 12:30;
- 21 I'm not really sure without looking at it but somewhere
- 22 around that time. It was after midnight.
- 23 Q. And did you advise the defendant of his
- 24 constitutional rights?
- 25 A. I did ---

State v David Alan White
Jackson v Denno Hearing-Glen Kramer-Direct Examination by Ms. Newman
March 14, 2016

1 Q. --- pursuant to Miranda prior to the interview?

2 A. I did.

3 Q. How was the advisement of rights accomplished?

4 A. Verbal and written.

5 MS. NEWMAN: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes, ma'am.

8 Q. [Ms. Newman] Officer Kramer I'm now showing you what
9 has been marked as Court's exhibit number 1. Are you
10 familiar with that?

11 A. I am.

12 Q. And what is it?

13 A. It's the advisement of constitutional rights.

14 Q. Is that your signature on the bottom?

15 A. It is.

16 MS. NEWMAN: Your Honor, the State moves to admit
17 exhibit 1 as a court's exhibit.

18 THE COURT: Okay. Any objection to the court's
19 exhibit?

20 MS. FORD: Not as a court's exhibit, Your Honor.

21 THE COURT: Okay.

22 [Whereupon, court's exhibit number 1 is entered into
23 evidence for purposes of this hearing]

24 Q. [Ms. Newman] Officer Kramer how did you explain the
25 defendant's rights to him using this document?

State v David Alan White
Jackson v Denno Hearing-Glen Kramer-Direct Examination by Ms. Newman
March 14, 2016

- 1 A. What we do is we get the pertinent information his
2 name, his date of birth, his age. We ask questions you
3 know his highest level of education, whether that be high
4 school, G-E-D, college. His name is also put on there as
5 well as mine.
- 6 I read the questions aloud to him and ask him if he
7 understands and then when I'm finished he initials by
8 them but he also has the ability to read them himself and
9 also ask any questions.
- 10 Q. After you read and explained the rights did the
11 defendant indicate that he understood them?
- 12 A. He did.
- 13 Q. And how did he indicate that?
- 14 A. He initialed by each one of the rights and also
15 signed that he understood them.
- 16 Q. Did he indicate verbally?
- 17 A. He did.
- 18 Q. And how did he do that?
- 19 A. I asked him and he said that he understood.
- 20 Q. Did you witness his signature indicating that he
21 understood the rights?
- 22 A. I did.
- 23 Q. And did he appear to have any difficulty
24 understanding his rights?
- 25 A. No.

State v David Alan White
Jackson v Denno Hearing-Glen Kramer-Direct Examination by Ms. Newman
March 14, 2016

- 1 Q. Did you ask him his level of education before
2 conducting the interview?
- 3 A. I did.
- 4 Q. And what was that?
- 5 A. He has a G-E-D.
- 6 Q. Did he indicate at any time that he wanted an
7 attorney before speaking with you?
- 8 A. No, he did not.
- 9 Q. Who was present during the interview?
- 10 A. It was myself and him.
- 11 Q. At the time of the interview what was the
12 defendant's approximate age?
- 13 A. Twenty-seven.
- 14 Q. And what was his demeanor at the time?
- 15 A. He actually appeared very calm. He wanted -- he
16 obviously wanted to talk about it.
- 17 Q. Did he appear coherent?
- 18 A. Yes.
- 19 Q. Did he appear rational?
- 20 A. He did.
- 21 Q. Did he appear like he understood what was going on?
- 22 A. He did.
- 23 Q. Did he seem to have any physical problems or
24 defects?
- 25 A. I didn't notice any.

State v David Alan White
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March 14, 2016

1 Q. Did he seem to be under the influence of alcohol or
2 drugs?

3 A. Not that I could tell.

4 Q. Did you make any threats to the defendant?

5 A. No, I did not.

6 Q. Was he under duress in any way?

7 A. No.

8 Q. Did you make any promises or misrepresentations to
9 him?

10 A. No, I did not.

11 Q. What were the physical surroundings of the room in
12 which the interview took place?

13 A. It's just a room with a door; it has carpet on the
14 floor, four walls. There is a two-way mirror in there
15 but we don't use that; it's blocked off, and a camera in
16 the room, a table and three chairs.

17 Q. And how long did the interview take in its entirety?

18 A. Twenty five, thirty minutes.

19 Q. Did the defendant ask for any breaks during that
20 time?

21 A. No, he did not.

22 Q. Did you offer him any food or water prior to the
23 interview?

24 A. I did.

25 Q. How did he respond?

State v David Alan White
Jackson v Denno Hearing-Glen Kramer-Direct Examination by Ms. Newman
March 14, 2016

1 A. He said he didn't want anything.

2 Q. To the best of your knowledge was his statement
3 freely and voluntarily given?

4 A. Yes, it was.

5 Q. And was the statement recorded in any way?

6 A. It's audio and video.

7 MS. NEWMAN: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, ma'am.

10 Q. [Ms. Newman] I'm now showing you what has been
11 marked as I.D. only as State's exhibit 2.

12 [Whereupon, the witness is shown exhibit]

13 Q. Can you identify this?

14 A. That's the disk from the interview.

15 Q. And are your initials on that disk?

16 A. They are.

17 Q. Did you listen to this recording previously?

18 A. I have.

19 Q. And subsequent to that you placed your initials on
20 the disk?

21 A. Yes.

22 Q. Is it an accurate representation of the conversation
23 that took place between you and the defendant that we
24 have been speaking about?

25 A. It is.

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March 14, 2016

1 MS. NEWMAN: Your Honor, the State moves to admit
2 exhibit 2 as a court's exhibit.
3 THE COURT: Any objection?
4 MS. FORD: No, Your Honor.
5 THE COURT: Thank you very much.
6 [Whereupon, court's exhibit number 2 is entered into
7 evidence for purposes of this hearing]
8 MS. NEWMAN: May I publish the recording, Your
9 Honor?
10 THE COURT: Yes, ma'am.
11 [Whereupon, the Solicitor attempts to play the C.D.]
12 THE COURT: Y'all don't have it transcribed do you?
13 MS. NEWMAN: We do, Your Honor. Would you like a
14 copy?
15 THE COURT: Yes, why don't we just put the
16 transcription in since you're having trouble getting it
17 to play? Do you have any objection to substituting the
18 transcription for court's exhibit, Ms. Ford?
19 MS. FORD: No, Your Honor, not for purposes of this
20 hearing.
21 THE COURT: Okay.
22 [Whereupon, the transcription is substituted for the
23 C.D.]
24 MS. NEWMAN: May I approach, Your Honor?
25 THE COURT: Yes, ma'am.

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Jackson v Denno Hearing-Glen Kramer-Direct Examination by Ms. Newman
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1 [Whereupon, Ms. Newman provides documents to the
2 court]

3 [Whereupon, the court reviews documents]

4 MS. NEWMAN: Your Honor, we have the video loaded
5 if you'd like to hear it.

6 THE COURT: I just as soon read the transcript if
7 that's okay.

8 MS. NEWMAN: Absolutely, Your Honor.

9 THE COURT: Okay. You want to mark this as a
10 court's exhibit. Mark the transcript as a court's
11 exhibit. Ms. Ford, I assume you have a copy of it or
12 you've listened to the transcript -- the tape?

13 MS. FORD: Yes, I looked into the recording. The
14 State provided me a transcript.

15 THE COURT: What's your motion?

16 MS. FORD: I guess I haven't had an opportunity to
17 ask questions yet.

18 THE COURT: Okay. Go ahead and ask your cross.

19 MS. FORD: It's just a few, Your Honor.
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State v David Alan White
Jackson v Denno Hearing-Glen Kramer-Cross-Examination by Ms. Ford
March 14, 2016

CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. Detective Kramer, you testified that Mr. White
4 indicated he had a G-E-D?

5 A. Yes.

6 Q. Before that he just had an eighth grade education?

7 A. That's what he said.

8 Q. And he -- was he in handcuffs when you were talking
9 to him?

10 A. He had one handcuff on.

11 Q. One handcuff?

12 A. [Indicates affirmatively]

13 THE COURT REPORTER: Was that yes?

14 THE WITNESS: Yes.

15 Q. Obviously he was not free to leave, correct?

16 A. No, he was under arrest.

17 Q. Had he been told prior to speaking to him that he
18 was under arrest for attempted murder or was he told that
19 at the end?

20 A. I don't -- what was your question again?

21 Q. At what point was he told he was being arrested for
22 attempted murder before your conversation or at the end?

23 A. By myself?

24 Q. To your knowledge was he told he was being arrested
25 for attempted murder prior to a conversation?

State v David Alan White
Jackson v Denno Hearing-Glen Kramer-Cross-Examination by Ms. Ford
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1 A. I apologize; I'm really not understanding your
2 question. You're asking me to testify to something I...

3 Q. Did you tell him he was there for an attempted
4 murder charge?

5 A. We discussed the incident after he was given his
6 rights.

7 Q. Did you tell him he was under arrest for attempted
8 murder?

9 A. Did I tell him that?

10 Q. Yes?

11 A. No, I did not tell him that.

12 Q. And Mr. White did not have much of any criminal
13 history as far as convictions correct?

14 A. I'd have to go back and look. He had some things.
15 Off the top of my head I couldn't tell you what they
16 were.

17 Q. To your knowledge he didn't have an extensive
18 history with law enforcement correct?

19 A. To my knowledge he didn't.

20 Q. And there is no other statements Mr. White made to
21 you that you would try to testify to?

22 A. Just other than what took place in the interview
23 room.

24 MS. FORD: No further questions, Your Honor.

25 THE COURT: Redirect?

State v David Alan White
Jackson v Denno Hearing-Glen Kramer-Redirect Examination by Ms. Newman
March 14, 2016

REDIRECT EXAMINATION

BY MS. NEWMAN:

Q. Detective Kramer, are you aware of whether the
defendant was arrested prior to this incident at all?

A. Yes.

Q. Thank you.

THE COURT: Any recross?

MS. FORD: No, Your Honor.

THE COURT: You may step down. Thank you very
much.

[Whereupon, the witness is excused and exits the
witness stand]

THE COURT: Any motions?

State v David Alan White
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1 MS. FORD: Your Honor, my issue I guess just what I
2 wanted to make clear I'd asked the State if they intended
3 to put the recording into evidence and they indicated
4 that they did not know. And so I wasn't sure if they
5 were going to play the whole video or just have the
6 officer try to testify to certain things that was told to
7 him. So that was part of my concern.

8 I do think Mr. White was given his Miranda rights.
9 He doesn't have a long history with the law. Even though
10 he has a G-E-D he had a low education before that; an
11 eighth grade education. But I don't have any evidence to
12 support that it was not voluntary, Your Honor.

13 THE COURT: Thank you so very much. Anything else?

14 MS. NEWMAN: Nothing further from the State, Your
15 Honor.

16 THE COURT: Anything from the defense?

17 MS. FORD: No, Your Honor.

18 THE COURT: Do y'all need a few minutes before
19 you're ready for opening statements before we bring the
20 jury?

21 MS. NEWMAN: I'm ready, Your Honor.

22 MS. FORD: I'm ready, Your Honor.

23 MS. NEWMAN: Your Honor, we still have the Neil v
24 Biggers hearing.

25 THE COURT: Pardon?

State v David Alan White
Jackson v Denno Hearing
March 14, 2016

1 MS. NEWMAN: There was an identification made.
2 THE COURT: Okay. You want to do the Biggers now?
3 Okay.
4 MS. NEWMAN: Yes, Your Honor.
5 THE COURT: Okay.
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State v David Alan White
Neil v Biggers Hearing-Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

1 MS. NEWMAN: The State calls Spencer Washington.

2 [Whereupon, Mr. Washington comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: State your first and last name and
6 spell out your last name please?

7 THE WITNESS: Spencer Washington, W-A-S-H-I-N-G-T-
8 O-N.

9 - - - - -

10 SPENCER WASHINGTON,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. NEWMAN:

15 Q. Mr. Washington, can you please tell the court what
16 you witnessed on November 27th, of 2013?

17 A. Yes, ma'am. We was at my house having a good time
18 cooking out smoking some turkeys and everybody making
19 jokes, laughing, cooking; just having a good time.

20 Little Bear, that's what I call him Little Bear ---

21 Q. --- is that Joseph Johnson?

22 A. That's Joseph Johnson. Mr. Johnson he was out there
23 cutting everybody's hair making everybody look good. At
24 the end of the day everybody was still laughing and
25 joking. After he was done with everybody's hair he

State v David Alan White
Neil v Biggers Hearing-Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

1 packed up his clippers and put it in his Moped and
2 everybody was still making jokes. Next thing you know
3 him and David started making jokes and exchanging words
4 but it all was a joke.

5 Before you know it David came across and next thing
6 you know he swung his arm and before you know it he was
7 cut. So I looked at him and I said man, you cut him.
8 And he stood there like he really didn't mean to do it;
9 he was shocked.

10 So at that moment he dropped the knife and I picked
11 the knife up and Little Bear fell in my brother's hands
12 we got him over to the porch. My wife called 911. I got
13 on the phone with 911 and spoke with 911 until the
14 officer got there and I gave the officer the knife.

15 At the end of the day everybody was kind of talking
16 to Johnson to make sure he's all right because he's going
17 in and out passing in and out and my brother was holding
18 the towel on his neck because he was bleeding so much.
19 And that's pretty much it.

20 Q. Okay. And you mentioned someone was cut. Who was
21 cut?

22 A. Johnson.

23 Q. Is that Joseph Johnson?

24 A. Joseph Johnson.

25 Q. Okay. And that night did you get a good look at

State v David Alan White

Neil v Biggers Hearing-Spencer Washington-Direct Examination by Ms. Newman

March 14, 2016

1 the defendant?

2 A. Yes, ma'am.

3 Q. And how long have you known the defendant?

4 A. Just about all my life.

5 Q. How often were you seeing him when this incident
6 took place?

7 A. When this incident took place not too often but I
8 seen him pretty much.

9 Q. What time of day was this?

10 A. Daytime.

11 Q. When this incident took place what time of day was
12 it?

13 A. It was kind of like dark.

14 Q. Was it nighttime?

15 A. Nighttime.

16 Q. Could you still see?

17 A. Yes, because I had lights in my yard.

18 Q. Okay. What does the defendant look like?

19 A. Tall, skinny, dark skin.

20 Q. Do you remember what he was wearing that night?

21 A. I believe it was blue jeans and a brown jacket.

22 Q. And did you give that description to police?

23 A. Yes, ma'am.

24 Q. Okay. And when did you give that description to
25 them?

State v David Alan White
Neil v Biggers Hearing-Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

- 1 A. When they came to the house.
- 2 Q. Was it that same night?
- 3 A. That same night.
- 4 Q. Did you get a good look at the defendant when he was
- 5 in your yard?
- 6 A. Yes, ma'am.
- 7 Q. And for how long were you able to get a good look at
- 8 the defendant?
- 9 A. The whole time he was in my yard.
- 10 Q. Can you give me an approximate; a couple of hours, a
- 11 couple of minutes?
- 12 A. A couple of hours.
- 13 Q. Was the defendant wearing anything over his face?
- 14 A. No, ma'am.
- 15 Q. Do you feel like you could identify him in a public
- 16 place like a grocery store or on the street?
- 17 A. Yes, ma'am.
- 18 Q. Now at some point were you asked to make an
- 19 identification?
- 20 A. Yes, ma'am.
- 21 Q. And when did that occur?
- 22 A. When I was on the phone with the 911 young lady.
- 23 Q. Was that the same night?
- 24 A. Yes, ma'am.
- 25 Q. Okay. Did a police officer bring you a photo to

State v David Alan White
Neil v Biggers Hearing-Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

- 1 look at?
- 2 A. Yes, ma'am.
- 3 Q. And where were you when he showed you that photo?
- 4 A. I was I believe on the phone with the 911 but I was
- 5 standing right by Johnson when he showed up.
- 6 Q. So were you outside?
- 7 A. Outside by my porch.
- 8 Q. Okay. How many photos were shown to you?
- 9 A. I believe it was two. It was like a double shot.
- 10 Q. Were you able to identify the defendant?
- 11 A. Yes, ma'am.
- 12 Q. Was there any question in your mind that the person
- 13 you identified was in fact the person who cut Mr.
- 14 Johnson?
- 15 A. Yes, ma'am.
- 16 Q. Was there any question in your mind that the person
- 17 you identified was the person that cut?
- 18 A. Oh, no ma'am.
- 19 Q. Okay. How long did it take you to make that
- 20 identification?
- 21 A. Right there and then.
- 22 Q. Did any officer or any other person influence or
- 23 suggest to you to identify this picture as the defendant?
- 24 A. No, ma'am.
- 25 Q. Did officers tell you before the identification that

State v David Alan White
Neil v Biggers Hearing-Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

1 the photo was the person who cut Mr. Johnson?
2 A. No, ma'am.
3 MS. NEWMAN: May I approach the witness, Your
4 Honor?
5 THE COURT: Yes, ma'am.
6 Q. [Ms. Newman] Mr. Washington, I'm showing you what
7 has been marked for identification only as State's
8 exhibit 1. Do you recognize that?
9 [Whereupon, the witness is shown photograph]
10 A. Yes, ma'am.
11 Q. And what is that?
12 A. That's the defendant.
13 Q. Is that the photo that you were shown that night?
14 A. Yes, ma'am.
15 Q. Is your writing on that photo?
16 A. Yes, ma'am.
17 Q. And is your signature on that photo?
18 A. Yes, ma'am.
19 Q. Is the date on that photo?
20 A. Yes, ma'am.
21 Q. Is there any question in your mind that the person
22 you identified is the person who cut Mr. Johnson?
23 A. No, ma'am.
24 Q. Do you see the defendant in the courtroom today?
25 A. Yes, ma'am.

State v David Alan White

Neil v Biggers Hearing-Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

1 Q. Could you please point him out where he is sitting?

2 [Whereupon, the witness indicates]

3 Q. And what is he wearing?

4 A. All black.

5 MS. NEWMAN: Beg the court's indulgence.

6 [Whereupon, Ms. Newman and Ms. Elliott confer]

7 Q. [Ms. Newman] Mr. Washington, what did you write on
8 the photo?

9 A. This is David White. I know him all my life. A
10 hundred percent, Little Bear cut him across the neck.

11 MS. NEWMAN: Beg the court's indulgence.

12 [Whereupon, Ms. Newman and Ms. Elliott confer]

13 Q. No further questions.

14 THE COURT: Cross-examination?

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State v David Alan White
Neil v Biggers Hearing-Spencer Washington-Cross-Examination by Ms. Ford
March 14, 2016

1 CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. Mr. Washington, you testified about lights in your

4 yard?

5 A. Yes, ma'am.

6 Q. Can you give us some more detail about the lights in

7 your yard?

8 A. That's it; stand up lights.

9 Q. Just stand up lights?

10 A. Besides when the officers came.

11 Q. I'm sorry, beside the what?

12 A. Besides when the officers pulled up the car lights

13 from the outside in the front. That's the only light I

14 had in my backyard was my two stand up lights.

15 Q. Two stand up lights?

16 A. Right.

17 Q. These are just lights you buy...

18 A. These lights I got stand up. There are two lights

19 on the poles and they stand up so I hook it up to

20 electricity and it is light.

21 Q. So they are not lights on the house. They are

22 actually additional lights that you have in your yard?

23 A. Yes. I have lights on my house too but these are

24 the lights that were around the area when it happened.

25 Q. Okay. So there are two of them?

State v David Alan White
Neil v Biggers Hearing-Spencer Washington-Cross-Examination by Ms. Ford
March 14, 2016

- 1 A. Right.
- 2 Q. Okay. And about how many people were outside?
- 3 A. Offhand probably six or seven.
- 4 Q. And when you said -- you testified that you saw
- 5 David cut Joseph correct?
- 6 A. Correct.
- 7 Q. How close were you to them at this time?
- 8 A. Probably not even a foot.
- 9 Q. Was anyone closer to them than you were?
- 10 A. My brother.
- 11 Q. Your brother is that Henry Washington?
- 12 A. Yes, ma'am.
- 13 Q. So no one was in between you and them?
- 14 A. No, ma'am.
- 15 Q. Did you see a knife in David's hand?
- 16 A. No, ma'am.
- 17 Q. And had you been under the influence of anything
- 18 that night?
- 19 A. No, ma'am.
- 20 Q. So you weren't drinking at all?
- 21 A. Yes, I was drinking but I wasn't under the
- 22 influence.
- 23 Q. Okay. So you had been drinking but you were not
- 24 drunk?
- 25 A. Right.

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1 Q. Do you know how many drinks you had had?

2 A. No, ma'am.

3 Q. And how close were David and Joseph to the lights?

4 A. Probably about when the cut happened I would say
5 probably about two feet.

6 Q. Was it anyone else around you besides you and Henry
7 and David and Joseph?

8 A. The other guys.

9 Q. Were they as close up as you were or were they
10 farther away?

11 A. They were a little further away. They wasn't as
12 close as we were.

13 Q. And this all happened very sudden?

14 A. Yes, ma'am.

15 Q. Did you have idea it was coming?

16 A. No, ma'am.

17 Q. No further questions.

18 THE COURT: Redirect?

19 MS. NEWMAN: Beg the court's indulgence.

20 [Whereupon, Ms. Newman and Ms. Elliott confer]

21 MS. NEWMAN: No further questions, Your Honor.

22 THE COURT: You can step down. Thank you very
23 much.

24 [Whereupon, the witness is excused and exits the
25 witness stand]

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1 MS. NEWMAN: The State calls Officer Glen Kramer.

2 [Whereupon, Officer Kramer comes forward]

3 CLERK OF COURT: He's still under oath or do you
4 want me to swear him again?

5 THE COURT: I think you just swore him a while ago.
6 You're still under oath. Have a seat.

7 THE WITNESS: Yes, sir.

8 - - - - -

9 GLEN KRAMER,

10 Having been previously duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. NEWMAN:

14 Q. Officer Kramer did you participate in a photo
15 identification procedure with witness Spencer Washington?

16 A. I did.

17 Q. And what was your role in the identification
18 procedure?

19 A. I'm the one that actually showed him the photo.

20 Q. How did you obtain that photo?

21 A. It was brought to me through Jason Monroe who was at
22 City Hall and as we were giving him information he was
23 getting it. Then it was brought to me and handed to me
24 by Sergeant Evans.

25 Q. And when did the identification procedure take

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- 1 place?
- 2 A. Within I would say an hour of the actual incident;
3 minutes maybe.
- 4 Q. Was it the same night of the incident?
- 5 A. It was.
- 6 Q. And where did it take place?
- 7 A. I actually spoke to Mr. Washington in the house. We
8 were in the kitchen.
- 9 Q. Were any other officers present at the time?
- 10 A. There were other officers there. We had multiple
11 officers talking to people getting statements.
- 12 Q. What if anything was Mr. Washington told before
13 being shown the photo?
- 14 A. I explained to him that I was going to show him a
15 photo and asked him if he knew the individual.
- 16 Q. How many photos were shown to him?
- 17 A. It's one piece of paper but actually two photos on
18 it.
- 19 Q. And did you or anyone else influence or suggest to
20 Mr. Washington to select the photo?
- 21 A. No.
- 22 Q. Did you know who the defendant was at that point?
- 23 A. I knew a name but I did not know him.
- 24 Q. Did Mr. Washington identify the defendant from the
25 photo?

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1 A. He did.

2 MS. NEWMAN: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes, ma'am.

5 Q. [Ms. Newman] I'm showing you what has been marked as
6 I.D. only as State's exhibit 1. Do you recognize that?
7 [Whereupon, the witness is shown photograph]

8 A. I do.

9 Q. And what is that?

10 A. It's the photo of the defendant.

11 Q. Is that the photo that you showed to Mr. Washington?

12 A. It is.

13 Q. Did Mr. Washington indicate whether the person he
14 picked out was the one who cut Mr. Johnson?

15 A. He did.

16 Q. And how did he indicate that?

17 A. He told me that was him and then he also wrote on it
18 showing that he was 100 percent sure that's who he was.

19 Q. How long did it take for Mr. Washington to identify
20 that photo?

21 A. It was pretty quick.

22 Q. Was there any hesitation on his part?

23 A. No.

24 Q. Any doubt?

25 A. No.

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1 Q. Whose photo did he identify?
2 A. David Alan White.
3 MS. NEWMAN: Beg the court's indulgence.
4 [Whereupon, Ms. Newman and Ms. Elliott confer]
5 MS. NEWMAN: No further questions, Your Honor.
6 THE COURT: Cross-examination?
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CROSS-EXAMINATION

BY MS. FORD:

Q. You never showed him anyone else's photo correct?

A. No, I did not.

Q. Is that the only photo of David White that you were given or were you given anyone else's photo?

A. No, that's the only photo.

Q. No further questions.

THE COURT: Any redirect?

MS. NEWMAN: No, Your Honor.

THE COURT: You may step down. Thank you very much.

[Whereupon, the witness is excused and exits the witness stand]

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1 THE COURT: Ms. Ford?
2 MS. FORD: Well, I mean it is obviously ---
3 THE COURT: --- first of all are y'all planning on
4 introducing the photo?
5 MS. NEWMAN: Yes, Your Honor.
6 THE COURT: Okay.
7 MS. FORD: And I would object to the photo coming
8 in, Your Honor. I believe it is suggestive obviously the
9 one photo. But Mr. Washington knows my client quite well
10 and testified that he was very close to him so I don't
11 think I have anything to argue that wouldn't be reliable
12 otherwise. I would object to the photo coming in for two
13 reasons and for the actual photo coming in.
14 THE COURT: Right. I understand.
15 MS. FORD: Because first of all ---
16 THE COURT: --- anything else -- what about the
17 testimony you object to that?
18 MS. FORD: No, Your Honor.
19 THE COURT: Okay. Let me hear you on the
20 photograph. How could just showing him one photograph
21 not be unduly suggestive?
22 MS. NEWMAN: Well, Your Honor ---
23 THE COURT: --- I mean show him one photograph and
24 say is this the man? That's why it's suggestive isn't
25 it?

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1 MS. NEWMAN: It is suggestive, Your Honor, but ---

2 THE COURT: --- well then how do you admit the
3 picture then?

4 MS. NEWMAN: Well Your Honor, I think the fact that
5 Mr. Washington knows Mr. White and has known him ---

6 THE COURT: --- I'm not saying he can't testify to
7 it but you're talking about admitting the picture.

8 MS. NEWMAN: Yes, Your Honor. Your Honor, the
9 showing of the photo to Mr. Washington was to confirm
10 what he was telling the police rather than the police
11 suggesting to him who was it he was talking about.

12 THE COURT: I understand that but that's not sort
13 of the way the testimony was presented. So your position
14 is he just verified is this Mr. White that you know?

15 MS. NEWMAN: At that time yes, Your Honor. He saw
16 what happened; he knew that it was David White that cut
17 Mr. Johnson. So at that point he was just confirming
18 that was the same David White.

19 THE COURT: I'm going to agree with Ms. Ford as far
20 as a Biggers situation that it is unduly suggestive and
21 there is no way it would have a very strong substantial
22 likelihood of misidentification in that it's the only
23 photograph they showed him. I'm not going to suppress
24 the testimony about what transpired but I am going to
25 suppress introducing the picture itself, okay.

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1 MS. NEWMAN: Thank you, Your Honor.

2 THE COURT: Anything else? Y'all want a short
3 break before we start with the jury? The court reporter
4 needs one. We'll take about a ten minute break.

5 [Whereupon, court is in recess from 4:05 p.m. until
6 4:15 p.m.]

7 THE COURT: As far as the photo is concerned the
8 court's problem is the State v Tate on the introduction
9 of a mug shot. This is obviously a mug shot; that's why
10 I'm not going to let the picture itself come in, okay.

11 MS. NEWMAN: Your Honor, just to clarify may we go
12 into ---

13 THE COURT: --- I don't mind -- you can show him
14 the picture and say is this what they showed him? I'm
15 just not going to let this mug shot go in okay?

16 MS. NEWMAN: Yes, Your Honor.

17 THE COURT: That's what I'm trying to say. I
18 misquoted what I said earlier, okay? That's my problem;
19 the mug shot aspect, okay.

20 MS. NEWMAN: Yes, Your Honor.

21 THE COURT: And that's the reason I'm not letting
22 it go in. But again you can say is this the picture they
23 showed him and he can say yes or however you want to
24 handle it okay? I'm not trying to preclude the
25 testimony.

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1 MS. NEWMAN: Thank you, Your Honor.

2 THE COURT: It's really not a Biggers situation
3 because the guy knew him, he identified him and the
4 police were just trying to make sure is this same guy you
5 were calling White. He really wasn't doing a lineup per
6 se. It was part of their investigation but it is a mug
7 shot and I'm not going to let it in under State v Tate
8 case.

9 MS. NEWMAN: Thank you, Your Honor.

10 THE COURT: Anything else before we bring the jury?

11 MS. NEWMAN: Nothing from the State, Your Honor.

12 MS. FORD: Nothing from the defense, Your Honor.

13 THE COURT: Bring us the jury please.
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State v David Alan White
Proceedings
March 14, 2016

1 THE COURT: Solicitor, what I'm planning on doing
2 is we're going to have opening arguments and then we will
3 stop for the day and start back in the morning, okay.

4 [Whereupon, the jury enters at 4:17 p.m.]

5 MS. NEWMAN: May we approach, Your Honor?

6 THE COURT: Yes, ma'am.

7 [Whereupon, an off the record bench conference is
8 held]

9 THE COURT: Mr. Carroll?

10 MR. CARROLL: Yes, sir.

11 THE COURT: Would you swap seats with the gentleman
12 on this row [indicates]. I'm going to appoint you as
13 foreman of the jury, okay.

14 THE COURT: Madame Clerk, if you will swear the
15 jury.

16 CLERK OF COURT: Ladies and gentlemen, if you could
17 stand and raise your right hands.

18 [Whereupon, the jury is sworn by the Clerk of Court]

19 CLERK OF COURT: If you have accepted this oath
20 please have a seat, if not, please remain standing.

21 [Whereupon, the jury is seated]

22 CLERK OF COURT: Let the record reflect that
23 everybody took their seats.

24 THE COURT: Ladies and gentlemen of the jury we're
25 getting ready to start the trial. We're going to have

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1 opening statements. The attorneys are going to tell you
2 in their opening statements what they plan on presenting
3 during the course of the trial and then after that the
4 State will start calling their witnesses. The State will
5 have the witnesses on direct examination and then the
6 defense will have an opportunity to cross-examine that
7 witness.

8 The difference between direct and cross-examination
9 is on direct you cannot ask leading questions but on
10 cross-examination you can ask leading questions. And a
11 leading question is a question that suggests an answer.
12 After the State has presented all their testimony then
13 the defense may present witnesses or the defense may not
14 present witnesses; that will be up to the defense.

15 The defendant is never required to prove his
16 innocence in the courts of South Carolina. The burden
17 falls upon the State to prove the defendant guilty beyond
18 a reasonable doubt and that is to be the State's burden.
19 After all the testimony has been presented then we will
20 have closing arguments and after the closing arguments
21 I'll charge you on the law. My best estimate we will
22 finish this case probably late Wednesday afternoon or
23 maybe Thursday morning. Solicitor?

24 MS. NEWMAN: Thank you, Your Honor. May it please
25 the court? Ms. Ford?

OPENING STATEMENT

BY MS. NEWMAN:

On November 27, 2013 David White cut Joseph Johnson's throat with a knife. David White then fled the scene leaving Mr. Johnson holding his hands to his neck wondering what had just happened to him. Within minutes Mr. Johnson would find himself rushed to the hospital and lying on a operating room table with doctors quickly trying to stop the bleeding and exploring the large ten centimeter gash left in his neck left at the hands of that man [indicates] David White.

But first let me tell you a little bit about how we got to that point. It was the night before Thanksgiving; a cool fall evening. People were gathered at Spencer Washington's house on Hillandale Road. Now Spencer Washington is a mutual friend of both Mr. Johnson and the defendant, David White. And Hillandale Road is in a quiet residential area tucked away in North Charleston.

Now people were gathered at Mr. Washington's house to smoke some turkeys because Thanksgiving was the next day. So people were hanging out in the backyard having a beer. And in the backyard as well was a fire pit along with some chairs that were set out for people to just relax and have a good time. One of the people there that night was Joseph Johnson. First of all his friends and

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1 family refer to him as Little Bear or simply just Bear.
2 It was a nickname that his grandmother gave him when he
3 was born. And at the time Mr. Johnson was living nearby
4 Hillandale Road at his sister's house. He went over to
5 Mr. Washington's house that night not only to hang out
6 but also to cut hair because Mr. Johnson has been cutting
7 hair for years and that night he cut several people's
8 hair. He cut the defendant's hair. David White was his
9 last hair cut of the day.

10 And at first everything seemed to be going okay.
11 Mr. Johnson cut the defendant's hair and the defendant
12 paid him for the haircut. As far as the interactions
13 between the two men the people there that night described
14 horseplay between them and really between all of the men.
15 They remembered seeing the two laughing and joking. But
16 Mr. Johnson remembers something else. He remembers a
17 knife; a knife that the defendant kept pulling out and
18 playing with during the haircut.

19 Now at some point things came to a head. As Mr.
20 Johnson was gathering his belongings, his hair cutting
21 tools getting ready to leave Mr. Washington's house
22 that's when the defendant tried to kill him. You will
23 hear from witnesses that David White had no reason to cut
24 Joseph Johnson's throat that night. This is not a case
25 of who done it. We know who did this; David White did

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1 this. It's going to center around self-defense or really
2 the lack of self-defense. Several people remember seeing
3 the two men interacting that night and no one remembers
4 seeing Mr. Johnson ever hit the defendant. The State has
5 the burden to prove to you the defendant committed
6 attempted murder that he intended to kill Mr. Johnson
7 that night.

8 The defendant is also charged with possession of a
9 weapon during the commission of a violent crime. It is a
10 separate crime to be in possession of a weapon such as a
11 knife during the commission of a violent crime and in
12 South Carolina attempted murder is a violent crime. The
13 Judge will instruct you on the law that you are to apply
14 at the end of this case and I would ask you simply please
15 to listen closely to that.

16 Throughout the case you're going to hear from people
17 who were at Spencer Washington's house that night and
18 they will tell you what they saw. You're going to hear
19 from the paramedic who found Mr. Johnson laying in the
20 driveway covered in blood and he's going to tell you what
21 he did and what he saw.

22 The doctor who operated on Mr. Johnson will tell you
23 how they worked to save his life. And you will hear from
24 Mr. Johnson himself. Now Mr. Johnson lost almost a third
25 of the blood in his body that night. When EMS responded

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1 he was unconscious. He doesn't even remember identifying
2 -- he wasn't even able to identify Mr. White in a lineup
3 five days later at the hospital. He went through a lot.
4 And he's going to do his best to tell you what he
5 remembers.

6 But we don't just have Mr. Johnson's memory of the
7 events from that night because we have the memories of
8 all the other people who were there as well; the people
9 who gathered to hang out with friends and have a good
10 time and the people who ended up witnessing an attempted
11 murder instead.

12 There is no question who set the events in motion
13 the night of November 27th, 2013. He is sitting right
14 before you today, he is the defendant, David White and he
15 cut Mr. Johnson's throat. At the end of this trial you
16 will know beyond a reasonable doubt that the defendant is
17 guilty. Thank you.

18 THE COURT: Ms. Ford?

19 MS. FORD: May it please the court?
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State v David Alan White
Opening Statement-Remarks by Ms. Ford
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OPENING STATEMENT

BY MS. FORD:

What is missing? That is the question you're going to have to ask yourselves during the course of this trial. The State's witnesses are not going to present the whole story. They are leaving something out because otherwise none of this makes sense at all.

David White, he did cut Joseph Johnson that night. He felt threatened. He had his hand in his jacket pocket, he had a big heavy jacket on, he had a knife in his pocket from fishing that day and when he felt threatened he acted out he swung and Mr. Johnson's knife was cut -- or throat was cut with the knife. He lost a lot of blood, he had to go to the hospital; he was there for a while.

You're going to hear from Mr. Johnson himself. He's going to testify to tell you his side of what happened. And I'd ask you to consider as you're listening to his testimony and afterwards the things he's telling you that make himself look better and David look worse. And it may not even be evident when you're listening to him on the stand but when you hear from the other witnesses who were there that night you'll hear that things that they saw and didn't see they don't corroborate with what Joseph has claimed over the past couple of years. The

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1 things Joseph has claimed that he has tried to make
2 David's action look worse and he's tried to minimize his
3 actions that night. This night was the night before
4 Thanksgiving as the Solicitor told you a bunch of guys
5 were hanging out, they were drinking of course, and
6 talking of wrestling and things like that. And the
7 witnesses will tell you as the Solicitor mentioned that
8 David and Joseph they were horse playing but verbally
9 horse playing, they were very clear they were verbal
10 horse playing. Some people say they were joking.

11 So other people were around this evening and they
12 had different vantage points, different things they may
13 have seen or not seen but they didn't really see this
14 coming so there were different degrees of attention for
15 example. But what they did see they did see when Joseph
16 held up his hands and realized he had been cut and there
17 was a lot of blood so naturally they were concerned for
18 him, felt horribly for him, ran to his aid and called the
19 police.

20 Well David you'll hear was shaken up and he did
21 leave. But he met with the police that night and he gave
22 them his side of the story and cooperated with them.
23 None of the witnesses, and the State told you, will be
24 able to tell you why this happened. But why is a very
25 important question and the answer is going to lie is what

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1 Joseph Johnson is leaving out. The reason that why is so
2 important is because it goes to David's intent. Intent
3 is key in a criminal case because intent decides what
4 kind of crime, if any, was actually done.

5 Now attempted murder it doesn't mean that the State
6 has to prove that someone could have done it, it means
7 the State has to prove beyond a reasonable doubt that
8 David actually intended for Joseph Johnson to die. And
9 you'll have to look at the surrounding circumstances and
10 again what makes sense in order to come to that
11 conclusion or what conclusion you can come to.

12 The State will not be able to prove that David White
13 intended to kill Joseph Johnson. They won't be able to
14 prove that because he did not intend that. He did not
15 intend to hurt Joseph even in the manner that resulted.
16 He acted from a place of fear. And at the end of this
17 trial we're going to ask you to find David White not
18 guilty of attempted murder. Thank you.

19 THE COURT: Solicitor, if you will call your first
20 witness please, ma'am?

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State v David Alan White
Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

1 MS. NEWMAN: Thank you, Your Honor. The State
2 calls Spencer Washington.

3 [Whereupon, Mr. Washington comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: If you could state your first and
7 last name and then spell your last name please?

8 THE WITNESS: Spencer Washington, W-A-S-H-I-N-G-T-
9 O-N.

10 - - - - -

11 SPENCER WASHINGTON,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. NEWMAN:

16 Q. Mr. Washington, how old are you?

17 A. Forty-six.

18 Q. And where are you from?

19 A. North Charleston; originally from Mount Pleasant.

20 Q. Have you lived in Charleston your whole life?

21 A. Yes, ma'am.

22 Q. And do you work?

23 A. Yes, ma'am.

24 Q. And where do you work?

25 A. McGrews Flooring.

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- 1 Q. I'm sorry?
- 2 A. McGrews Flooring in Mount Pleasant for 13 years.
- 3 Q. And are you married?
- 4 A. Yes, ma'am.
- 5 Q. Do you have any kids?
- 6 A. Three.
- 7 Q. Now do you know Joseph Johnson?
- 8 A. Yes, ma'am.
- 9 Q. And what do you know him as?
- 10 A. Little Bear.
- 11 Q. How do you know Mr. Johnson?
- 12 A. Since we was young. He used to cut my hair since I
- 13 was probably like five or six years old and being around
- 14 the family.
- 15 Q. Do you know the defendant?
- 16 A. Yes, ma'am.
- 17 Q. And how long have you known him?
- 18 A. Just about all my life.
- 19 Q. Would you call him a friend?
- 20 A. Yes, ma'am.
- 21 Q. How often do you see him?
- 22 A. Now or all through my life? All the time.
- 23 Q. At the time this occurred?
- 24 A. Off and on; not too much.
- 25 Q. And how about Mr. Johnson? How often did you see

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- 1 him back then?
- 2 A. Not too much.
- 3 Q. Now do you recall the night of November 27, 2013?
- 4 A. Yes, ma'am.
- 5 Q. Where were you that night?
- 6 A. At my house.
- 7 Q. And where is your house?
- 8 A. , North Charleston.
- 9 Q. Is that Charleston County?
- 10 A. Yes, ma'am.
- 11 Q. Who all was at your house?
- 12 A. It was about six or seven of us, a bunch of friends.
- 13 Q. Do you remember their names?
- 14 A. It was Kyle, Henry, Dorset [phonetic] and Albert.
- 15 Q. Now were there any kids there?
- 16 A. Yes, ma'am.
- 17 Q. And whose kids were there?
- 18 A. David's and mine.
- 19 Q. The defendant's kids were there?
- 20 A. Yes, ma'am.
- 21 Q. And what were you doing at your house that night?
- 22 A. We was smoking a bunch of turkeys and having a good
- 23 time.
- 24 Q. You were having a little get together?
- 25 A. Yes, ma'am.

State v David Alan White
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- 1 Q. Now were people drinking?
- 2 A. Yes, ma'am.
- 3 Q. How many drinks did you have?
- 4 A. I couldn't recall but I did have some.
- 5 Q. Were you drunk?
- 6 A. No, ma'am.
- 7 Q. Was David White there?
- 8 A. Yes, ma'am.
- 9 Q. How about Mr. Johnson?
- 10 A. Yes, ma'am.
- 11 Q. What was Mr. Johnson doing while he was at your
- 12 house?
- 13 A. He was just cutting everybody's hair and making
- 14 jokes.
- 15 Q. And how long would you say he was cutting hair for?
- 16 A. At my house or just in life?
- 17 Q. At your house?
- 18 A. Probably I would say about an hour or two?
- 19 Q. Did you get your hair cut?
- 20 A. Yes, ma'am.
- 21 Q. Now at some point did Mr. Johnson cut the
- 22 defendant's hair?
- 23 A. Yes, ma'am.
- 24 Q. Were you around when that was going on?
- 25 A. Yes, ma'am.

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1 Q. Did you see them interacting when Mr. Johnson was
2 cutting the defendant's hair?

3 A. No, ma'am.

4 Q. Now after the haircut did you see Mr. Johnson and
5 the defendant interacting with each other?

6 A. No, ma'am.

7 Q. Did you see them interacting at any point together?

8 A. No, ma'am.

9 Q. Tell us what happened that night.

10 A. Well, we're all at the house having a good time and
11 we're grilling some turkeys, smoking some turkeys, Mr.
12 Johnson cutting everybody's hair and everybody just
13 shooting the jokes and everybody laughing and having a
14 good time.

15 After he cut everybody's hair he packed his stuff up
16 and put it in his little moped and stood by my brother.
17 And then him and David started making jokes and laughing
18 and nobody thinking nothing of it. Before you know it
19 David walked over towards Johnson and before you know it
20 he swung back and Johnson said he cut me. I looked at
21 David and I said you cut him.

22 So he kind of stood there for a couple of seconds
23 and I don't think he realized he cut him. He dropped the
24 knife and left out of the yard and Little Bear fell into
25 my brother's hands. I ran in the house -- ran to the

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1 house and my wife called 911 and I got the phone from my
2 wife and spoke to the people at 911 to EMS and the cops
3 came. When the cops came I handed them the knife but
4 everyone was still around trying to keep Little Bear
5 alive. He kept saying I don't want to die, I don't want
6 to die and that was pretty much it.

7 Q. Now before the incident happened did you hear the
8 defendant say anything to Mr. Johnson?

9 A. No, ma'am.

10 Q. Do you remember giving a written statement that
11 night?

12 A. Yes, ma'am.

13 MS. NEWMAN: May I approach the witness, Your
14 Honor?

15 THE COURT: Yes, ma'am.

16 Q. [Ms. Newman] Mr. Washington, would you please take a
17 look at this.

18 [Whereupon, the witness is shown document]

19 Q. Is that your written statement?

20 A. Yes, ma'am.

21 Q. And is that your signature at the bottom?

22 A. Yes, ma'am.

23 Q. Could you please read for us starting here
24 [indicates].

25 A. [Reading] David White to get this -- walked towards

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- 1 Little Bear and swung a knife and cut him.
2 Q. So starting here [indicates].
3 A. [Reading] David pulled out a knife and told Little
4 Bear you're about to get this and walked towards him and
5 swung and cut Little Bear.
6 Q. So the defendant did say something to Mr. Johnson
7 before this happened?
8 A. Right.
9 Q. And what did he say?
10 A. You're about to get this.
11 Q. Now did Mr. Johnson hit Mr. White that night?
12 A. No, ma'am.
13 Q. Did Mr. Johnson hit the defendant at any point that
14 night?
15 A. No, ma'am.
16 Q. Was Mr. Johnson acting aggressively towards anyone
17 that night?
18 A. No, ma'am.
19 Q. Was Mr. Johnson acting aggressively towards the
20 defendant that night?
21 A. No, ma'am.
22 Q. Now right before this incident happened where was
23 Mr. Johnson?
24 A. He was standing right in the yard.
25 Q. In the yard?

State v David Alan White
Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

- 1 A. Yes, ma'am.
- 2 Q. And how about the defendant?
- 3 A. He was in the yard.
- 4 Q. Okay. And right before this happened how were the
5 two positioned?
- 6 A. Well, Johnson was standing like you was and David
7 was like over on this side [indicates]. When David
8 walked across Johnson was still straight; they was never
9 face to face. Like I said all I saw was he swung and
10 that was that.
- 11 Q. And where were you when this happened?
- 12 A. Probably like a foot away from Johnson.
- 13 Q. Now was it nighttime? Was it dark out when this
14 happened?
- 15 A. It was kind of dark like I said I had lights.
- 16 Q. Okay. Describe the lights.
- 17 A. Well, I've got two standup lights that I normally
18 plug up in my backyard and had them faced to where we was
19 at besides the lights in the house.
- 20 Q. And who else was around when this occurred?
- 21 A. My brother ---
- 22 Q. --- when the incident occurred?
- 23 A. My brother and all the other guys.
- 24 Q. And what's your brother's name?
- 25 A. Henry.

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1 Q. What's his last name?

2 A. Washington.

3 Q. And who were the other guys?

4 A. Kyle, Albert, Dorset, [phonetic] there was one more
5 man. I'm used to calling everybody by their nick name.
6 Albert, Kyle, Dorset, Henry and I think that's it.

7 MS. NEWMAN: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, ma'am.

10 Q. [Ms. Newman] Mr. Washington, I'm now showing you
11 what has been premarked for I.D. only as State's exhibits
12 8 and 9. Could you please take a look at those?

13 [Whereupon, the witness is shown photographs]

14 Q. Do you recognize those photos?

15 A. Yes, ma'am.

16 Q. And what are they?

17 A. That's my chair, the coolers, and the smokers and
18 Little Bear's -- Mr. Johnson's moped.

19 Q. Is that your backyard?

20 A. Yes, ma'am.

21 Q. Is that where this incident occurred?

22 A. Yes, ma'am.

23 Q. Do those photos fairly and accurately depict the
24 scene as it was that night at your house?

25 A. Yes, ma'am.

State v David Alan White
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1 MS. NEWMAN: May I approach the witness, Your
2 Honor?
3 THE COURT: Yes, ma'am.
4 MS. NEWMAN: Your Honor, at this time the State
5 moves exhibits 8 and 9 into evidence.
6 THE COURT: What number; I'm sorry?
7 MS. NEWMAN: State's 8 and 9.
8 THE COURT: Any objection?
9 MS. FORD: No, Your Honor.
10 THE COURT: Admitted without objection.
11 [Whereupon, State's exhibit numbers 8 and 9 are
12 entered into evidence by the court]
13 Q. [Ms. Newman] Mr. Washington, could you please tell
14 us what we are seeing in this photo in State's 8?
15 A. Chairs, coolers and the smoker that I was smoking
16 the turkeys in and my backyard.
17 Q. And can you please point out using the screen in
18 front of you where those lights were in your backyard.
19 A. About in this area [indicates].
20 Q. You can mark on it, write on it.
21 [Whereupon, the witness complies]
22 Q. Is it in the top left?
23 A. It was at the front of the smoker right in this area
24 here [indicates].
25 Q. Okay. I'm showing you State's exhibit 9.

State v David Alan White
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March 14, 2016

- 1 [Whereupon, the witness is shown photograph]
2 Q. What are we seeing here?
3 A. The chairs, the cooler, and Johnson's moped in my
4 backyard.
5 Q. Whose moped?
6 A. Johnson.
7 Q. Joseph Johnson?
8 A. Yes, ma'am.
9 Q. Now do you remember what the defendant was wearing
10 that night?
11 A. A pair of blue jeans and brown jacket.
12 Q. Now after the defendant cut Mr. Johnson what
13 happened?
14 A. Well, he dropped the knife, I picked it up and he
15 left out of my yard.
16 Q. Who picked up the knife?
17 A. Me.
18 Q. At that time at the stabbing did you know what he
19 cut him with?
20 A. No, ma'am.
21 Q. So you picked up the knife correct?
22 A. Correct.
23 Q. And what did you do with the knife?
24 A. I held it until the officer came.
25 Q. Who had the knife after you?

State v David Alan White
Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

- 1 A. I don't believe nobody.
- 2 Q. Who did you give the knife to?
- 3 A. One of the officers; the police.
- 4 MS. NEWMAN: May I approach, Your Honor?
- 5 THE COURT: Yes, ma'am.
- 6 Q. [Ms. Newman] Mr. Washington, I'm showing you what
7 has been marked for I.D. only as State's exhibit 17. Can
8 you please take a look at this?
- 9 [Whereupon, the witness is shown exhibit]
- 10 Q. What is that?
- 11 A. That's the blade that he got cut with, Johnson got
12 cut with; the one that I handed to the officer.
- 13 Q. Do you recognize that?
- 14 A. Yes, ma'am.
- 15 Q. Does it appear to be in substantially the same
16 condition as when you last saw it?
- 17 A. Yes, ma'am.
- 18 Q. Now after this incident occurred where did the
19 defendant go?
- 20 A. I don't know; he just left out of the yard.
- 21 Q. Did he run?
- 22 A. He kind of walked out.
- 23 Q. After he left did his kids go with him?
- 24 A. No, ma'am.
- 25 Q. Where were the kids?

State v David Alan White
Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

- 1 A. With my wife and us.
- 2 Q. Were they inside the house?
- 3 A. Yes, ma'am.
- 4 Q. Now did you call 911?
- 5 A. My wife called it in and then she hands the phone
6 over to me.
- 7 MS. NEWMAN: May I approach the witness, Your
8 Honor?
- 9 THE COURT: Yes, ma'am.
- 10 Q. [Ms. Newman] Mr. Washington, I'm showing you what
11 has been marked as I.D. only as State's exhibit 3. Can
12 you please take a look at this?
- 13 [Whereupon, the witness is shown exhibit]
- 14 Q. Do you recognize that?
- 15 A. Yes, ma'am.
- 16 Q. And what is that?
- 17 A. That's the disk from 911 that I signed.
- 18 Q. Your initials are on that disk?
- 19 A. Yes, ma'am.
- 20 Q. Did you listen to the 911 call on that disk in our
21 office last week?
- 22 A. Yes, ma'am.
- 23 Q. And after you listened to it did you place your
24 initials on the disk?
- 25 A. Yes, ma'am.

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Spencer Washington-Direct Examination by Ms. Newman
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- 1 Q. Did you recognize your voice on the 911 call?
- 2 A. Yes, ma'am.
- 3 Q. Did you recognize any other voices on the disk?
- 4 A. My wife.
- 5 Q. Now while you were on the phone with 911 what was
- 6 going on?
- 7 A. Everybody was trying to keep Johnson alive and they
- 8 were pretty much asking me what happened and what was
- 9 going on. They made me stay on the phone until the
- 10 officer came and EMS came.
- 11 Q. Was Mr. Johnson bleeding?
- 12 A. Yes, ma'am.
- 13 Q. How would you describe the bleeding?
- 14 A. It was humungous. It was a towel of blood.
- 15 Q. You mentioned EMS. Did they eventually respond?
- 16 A. Yes, ma'am.
- 17 Q. What happened at that point?
- 18 A. They just rushed him on the stretcher and said
- 19 hopefully he will be all right time we get there.
- 20 Q. Now after Mr. Johnson was taken to the hospital did
- 21 you speak with police?
- 22 A. Yes, ma'am.
- 23 Q. When you spoke to them did you tell them what you
- 24 saw?
- 25 A. Yes, ma'am.

State v David Alan White
Spencer Washington-Direct Examination by Ms. Newman
March 14, 2016

- 1 Q. And did you tell them what the defendant looked
2 like?
- 3 A. Yes, ma'am.
- 4 Q. Based on information that you gave to police were
5 you asked to try to make an identification of the
6 defendant?
- 7 A. Yes, ma'am.
- 8 Q. And when did that happen?
- 9 A. As soon as they asked me to describe him.
- 10 Q. Was it that same night?
- 11 A. Same night; yes ma'am.
- 12 Q. Okay. Did a police officer bring you a photo to
13 look at?
- 14 A. Yes, ma'am.
- 15 Q. And where were you when you were shown the photo?
- 16 A. Still at the house.
- 17 Q. How many photos were shown to you?
- 18 A. One.
- 19 Q. And were you able to identify the defendant from the
20 photo?
- 21 A. Yes, ma'am.
- 22 Q. Was there any question in your mind that the person
23 you identified was the person who cut Mr. Johnson?
- 24 A. No, ma'am.
- 25 Q. How long did it take you to make that

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March 14, 2016

1 identification?

2 A. Right then.

3 Q. Did anyone influence you to identify the photo as
4 the defendant?

5 A. No, ma'am.

6 Q. Do you see the defendant in the courtroom today?

7 A. Yes, ma'am.

8 Q. Can you please point him out for the jury?

9 A. [Indicates]

10 Q. What is he wearing?

11 A. All black.

12 MS. NEWMAN: Beg the court's indulgence.

13 [Whereupon, Ms. Newman and Ms. Elliott confer]

14 Q. [Ms. Newman] Mr. Washington, who cut Mr. Johnson
15 that night?

16 A. David.

17 Q. David White?

18 A. Yes, ma'am.

19 Q. Thank you. No further questions.

20 THE COURT: Cross-examination?

21 MS. FORD: Yes, Your Honor. May it please the
22 court?

23

24

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State v David Alan White
Spencer Washington-Cross-Examination by Ms. Ford
March 14, 2016

CROSS-EXAMINATION

1
2 BY MS. FORD:

3 Q. Mr. Washington, you indicated that after Bear was
4 cut David looked like he was in a state of shock,
5 correct?

6 A. Yes, ma'am.

7 Q. To the point you thought it looked like he didn't
8 even mean to cut him?

9 A. Yes, ma'am.

10 Q. And so you were with them at the time this happened
11 when Bear was cut?

12 A. Yes, ma'am.

13 Q. And just to clarify I think you testified in your
14 direct that David walked past Bear?

15 A. Uh Huh, yes, ma'am.

16 Q. And so that's when this happened after David walked
17 past him?

18 A. Yes, ma'am.

19 Q. So he walked past him and then when he turned around
20 he swung?

21 A. He swung like that [indicates].

22 Q. So he walked past him turned around and swung?

23 A. Right.

24 Q. You testified that you saw Bear cut Joseph's [sic]
25 hair?

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Spencer Washington-Cross-Examination by Ms. Ford
March 14, 2016

- 1 A. Yes, ma'am.
- 2 Q. Where were you located during this time do you
3 remember?
- 4 A. Right in the backyard right by the smoker. It
5 wasn't too far from him cutting hair.
- 6 Q. So you could see them but you couldn't hear them
7 correct?
- 8 A. Correct.
- 9 Q. So you don't know what Joseph may have been saying
10 to David correct?
- 11 A. Right.
- 12 Q. Did you see Joseph with a knife while his hair was
13 being cut?
- 14 A. No, ma'am.
- 15 Q. Going back actually when David swung at Bear did you
16 even see a knife in David's hand at that point?
- 17 A. No, ma'am.
- 18 Q. So you never saw a knife that night at all until
19 after David dropped the knife correct?
- 20 A. Correct.
- 21 Q. So this all happened -- this is your home correct
22 with your wife?
- 23 A. Yes, ma'am.
- 24 Q. And both David and Joseph were invited guests to
25 your home correct?

State v David Alan White
Spencer Washington-Cross-Examination by Ms. Ford
March 14, 2016

- 1 A. Correct.
- 2 Q. And you were on good terms with both of them at the
3 time correct?
- 4 A. And still are, yes ma'am.
- 5 Q. You told us that Joseph has been cutting your hair
6 since you were five years old?
- 7 A. Since I was young; pretty much.
- 8 Q. And you testified you've known David almost all your
9 life correct?
- 10 A. Correct.
- 11 Q. You actually know David from washing cars correct?
- 12 A. Correct.
- 13 Q. So that was like 2004 is that fair to say?
- 14 A. No.
- 15 Q. Before then or?
- 16 A. Should have been before then; it's not 2004. I've
17 known him a long time.
- 18 Q. Okay. But old enough were y'all both working at
19 the car place?
- 20 A. No, I don't work at the car place. He just cleans
21 cars. I work at a carpet place.
- 22 Q. Okay. So you met David when he was old enough to
23 be working correct?
- 24 A. Right.
- 25 Q. And Joseph was actually kind of like a father figure

State v David Alan White
Spencer Washington-Cross-Examination by Ms. Ford
March 14, 2016

1 to you correct?

2 A. Somewhat. He's like a family member. He's
3 somewhere a family member down the line.

4 Q. He pretty much raised you didn't he?

5 A. Pretty much.

6 MS. FORD: Beg the court's indulgence.

7 [Whereupon, Ms. Ford and Mr. Mack confer]

8 MS. FORD: No further questions, Your Honor.

9 THE COURT: No more questions? Any redirect?

10 MS. NEWMAN: Briefly, Your Honor. May I approach
11 the witness, Your Honor?

12 THE COURT: Yes, ma'am.

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State v David Alan White
Spencer Washington-Redirect Examination by Ms. Newman
March 14, 2016

REDIRECT EXAMINATION

BY MS. NEWMAN:

Q. Mr. Washington, I'm showing you State's exhibit 8 again. Can you please point out on this photo and describe where the haircut was taking place when Mr. Johnson was cutting the defendant's hair?

[Whereupon, the witness is shown photograph]

A. It's actually not really on here.

Q. I'm showing you State's exhibit 9. Do you see it on here?

[Whereupon, the witness is shown photograph]

A. No, ma'am.

Q. Can you just describe where it was taking place in relation to that photo?

A. It was in the corner by my house where my oven was at; almost on the other side of my balcony here [indicates].

Q. And where were you standing when this was taking place?

A. About in this area right here [indicates]; which is a different direction.

Q. Could you just mark it with an X for us?

A. Around up in this area right up in here [indicates].

Q. And when the incident took place where did that occur?

State v David Alan White
Spencer Washington-Redirect Examination by Ms. Newman
March 14, 2016

1 A. It's on the other folder.
2 Q. I'm showing you State's exhibit 8.
3 [Whereupon, the witness is shown photograph]
4 A. Up in this area [indicates].
5 Q. By the fire pit?
6 A. By the smoker.
7 Q. By the smoker; I'm sorry.
8 A. Yes, ma'am.
9 Q. And where were you standing?
10 A. About the same area.
11 Q. Can you mark it for us on the screen?
12 [Whereupon, the witness complies]
13 Q. Near the smoker?
14 A. Yes, ma'am.
15 Q. Okay. Now before this incident occurred did you
16 hear the defendant tell Mr. Johnson you're about to get
17 this?
18 A. Yes, ma'am.
19 Q. Thank you. No further questions.
20 THE COURT: Any recross?
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State v David Alan White
Spencer Washington-Recross-Examination by Ms. Ford
March 14, 2016

1 RE CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. You told police in your written statement that David

4 made that comment correct?

5 A. Yes, ma'am.

6 Q. But you didn't even recall hearing that comment

7 until the Solicitor asked you about it today and showed

8 you your statement, correct?

9 A. No, ma'am.

10 Q. So when you spoke to the Solicitor recently, I think

11 she mentioned last week, you didn't remember it at that

12 time correct?

13 A. Correct.

14 Q. And you've spoken to my investigator Mr. Davis

15 before and you didn't remember it when you talked to him

16 correct?

17 A. Correct.

18 Q. So it didn't stand out in your mind correct?

19 A. Right.

20 Q. Is that fair?

21 A. Yes, ma'am.

22 Q. No further questions.

23 THE COURT: Any reason Mr. Washington can't be

24 excused?

25 MS. NEWMAN: No objection, Your Honor.

State v David Alan White
Spencer Washington-Recross-Examination by Ms. Ford
March 14, 2016

1 MS. FORD: None from the defense, Your Honor.

2 THE COURT: You may step down Mr. Washington.

3 Thank you very much.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

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State v David Alan White
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1 THE COURT: Mr. Foreman and members of the jury as
2 I told you earlier no electronic investigation of the
3 case or any charges against the defendant. I want you to
4 make your decision on what you hear in the courtroom.
5 See you in the morning at 9:30. When you come to the
6 courthouse come straight to the jury room. We don't have
7 any motions in the morning we can get started right at
8 9:30 so everybody get here at that time. Have a good
9 evening.

10 [Whereupon, the jury exits at 4:57 p.m.]

11 THE COURT: Anything from the State before we
12 adjourn?

13 MS. NEWMAN: No, Your Honor.

14 THE COURT: Anything from the defendant?

15 MS. FORD: No, Your Honor.

16 THE COURT: See you in the morning at 9:30. Thank
17 you.

18 [Whereupon, court is adjourned at 5:00 p.m.]
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NO. 2014-GS-10-4864
2014-GS-10-5530

STATE OF SOUTH CAROLINA

vs.

DAVID ALAN WHITE

Defendant

TRANSCRIPT OF RECORD

March 15, 2016
Charleston, South Carolina

Volume 2 (of 4)

B E F O R E:

THE HONORABLE J.C NICHOLSON, JR., JUDGE

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

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PROCEEDINGS

[Whereupon, State's exhibit number 18 is marked by
the court reporter]

THE COURT: Please be seated. We've got all our
jurors. Anything from the State before we bring the jury
in?

MS. ELLIOTT: Just briefly, Your Honor. I was
talking to Ms. Ford and in your pretrial ruling regarding
his prior convictions you had mentioned that really
without the context of his testimony you weren't sure
that you could rule on the admissibility ---

THE COURT: -- what now?

MS. ELLIOTT: You weren't sure about -- without
having the context of knowing what Mr. Johnson was going
to say you weren't sure that you could fully articulate
whether or not that conviction was relevant or not. And
you had mentioned doing it in camera. I talked to Ms.
Ford and she didn't have any objection to as opposed to
us sending the jury out in the middle of that and coming
back it necessarily won't affect his testimony as to what
happened that night.

So simply going through that testimony in front of
the jury as we normally would and just pausing after that
to give you time to analyze whether or not you think that
conviction comes in and then we'll decide whether we're

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1 going to -- the State has some questions without --
2 either go into it and Ms. Ford would have some time
3 before her cross to kind of strategize how it goes in and
4 I wanted to know if that was okay with you as well.

5 THE COURT: That's fine. Do you have any objection
6 to that Ms. Ford?

7 MS. FORD: No, Your Honor.

8 THE COURT: Okay. That's fine.

9 MS. ELLIOTT: Thank you, Judge.

10 THE COURT: Just let me know when you want to do it
11 all okay?

12 MS. ELLIOTT: Yes, Your Honor.

13 THE COURT: Anything else from the State?

14 MS. NEWMAN: No, Your Honor.

15 THE COURT: Anything from the defense?

16 MS. FORD: No, Your Honor.

17 THE COURT: Okay. Bring us the jury please.

18 [Whereupon, the jury enters at 9:47 a.m.]

19 THE COURT: Thank you very much. Call your next
20 witness please.

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State v David Alan White
Joseph Johnson-Direct Examination by Ms. Elliott
March 15, 2016

1 MS. ELLIOTT: Thank you, Your Honor. The State
2 would call Joseph Johnson.

3 [Whereupon, Mr. Johnson comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: If you could state your first and
7 last name and spell out your last name please?

8 THE WITNESS: Joseph Johnson, J-O-H-N-S-O-N.

9 - - - - -

10 JOSEPH JOHNSON,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. ELLIOTT:

15 Q. Good morning Mr. Johnson.

16 A. Good morning.

17 Q. How old are you?

18 A. Fifty-four.

19 Q. Where are you from originally?

20 A. I'm from Mount Pleasant.

21 Q. Where do you live now?

22 A. I live at

23 Q. And what part of Charleston is that in?

24 A. It's West Ashley.

25 Q. Can you speak up a little bit for me or maybe roll

State v David Alan White
Joseph Johnson-Direct Examination by Ms. Elliott
March 15, 2016

- 1 your chair a little closer to the mic.
2 [Whereupon, the witness complies]
3 Q. So I want to know a little bit about you. Where did
4 you go to school?
5 A. Wando High.
6 Q. And did you graduate from there?
7 A. Yes, ma'am.
8 Q. After graduation what did you do?
9 A. After graduation I worked at Roper Hospital.
10 Q. Did you have any other jobs in Charleston?
11 A. Excuse me?
12 Q. Did you have any other jobs in Charleston?
13 A. Yes, I worked at Channel 2.
14 Q. What did you do for them?
15 A. A porter.
16 Q. After that what did you do?
17 A. I worked at Venning's [phonetic] Mens Wear.
18 Q. Say that again?
19 A. Venning's, [phonetic] Mens Wear --
20 Q. At any point did you work outside of Charleston?
21 A. No.
22 Q. Were you ever in the Army?
23 A. Oh yes, I was in the Army.
24 Q. How long were you in the Army for?
25 A. Four years; three years and a couple of months.

State v David Alan White
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- 1 Q. Do you work now?
- 2 A. No.
- 3 Q. Why not?
- 4 A. I've got a back problem from the military.
- 5 Q. Do you do any side jobs for money?
- 6 A. Yes, I barber.
- 7 Q. How long you been cutting hair?
- 8 A. For about 35 years.
- 9 Q. And how do you get your clients?
- 10 A. Well, I get my clients by letting them know I cut
- 11 hair and give me a call and stuff like that.
- 12 Q. I think what I'm trying to ask you is do you have a
- 13 brick and mortar place somewhere or how do you get to
- 14 your clients and how do your clients get to you?
- 15 A. How do they come to me?
- 16 Q. Uh Huh.
- 17 A. They come to my house by driving to where I'm living
- 18 at.
- 19 Q. Do you ever go to them?
- 20 A. Sometimes.
- 21 Q. And do you have any nicknames?
- 22 A. Yes, they call me Little Bear.
- 23 Q. Why do they call you Little Bear?
- 24 A. My grandmother gave me that name.
- 25 Q. When did she give you that nickname?

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- 1 A. When I was born.
- 2 Q. I'm going to kind of direct you back to November
3 27th of 2013 okay. Do you remember that night?
- 4 A. Yes, ma'am.
- 5 Q. Why do you remember that night?
- 6 A. Because that's the night when I got injured.
- 7 Q. When you got injured? Where were you that evening?
- 8 A. At Spencer's house.
- 9 Q. Do you know Spencer's last name?
- 10 A. Washington.
- 11 Q. And how do you know Spencer?
- 12 A. I've known him since I was a kid.
- 13 Q. When he was a kid or you were a kid?
- 14 A. He was a kid.
- 15 Q. And why were you at Spencer's house?
- 16 A. We usually fry turkeys like the day before
17 Thanksgiving.
- 18 Q. And this was the day before Thanksgiving?
- 19 A. Yes.
- 20 Q. So you were out there helping out?
- 21 A. Yes.
- 22 Q. Back in 2013 how often would you go over to
23 Spencer's house?
- 24 A. Just about every day.
- 25 Q. Now other than smoking turkeys were you doing

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- 1 anything else out there?
- 2 A. I do landscape work for him sometimes.
- 3 Q. That night were you doing landscape work?
- 4 A. No, not that night. We usually play horseshoes and
- 5 sit down and crack jokes and cut hair.
- 6 Q. Did you cut hair that night?
- 7 A. That night.
- 8 Q. Do you remember how many people's hair you cut?
- 9 A. About six.
- 10 Q. Were you charging for it?
- 11 A. Yes, ma'am.
- 12 Q. The other people that were there what were they
- 13 doing at the house?
- 14 A. Just standing around by the fire and cracking jokes
- 15 and drinking.
- 16 Q. So basically everyone was just socializing that
- 17 night?
- 18 A. Yes.
- 19 Q. Did you cut David White's hair that night?
- 20 A. Yes, ma'am.
- 21 Q. Now do you remember having met David White before
- 22 that?
- 23 A. No.
- 24 Q. What were you using to do those haircuts?
- 25 A. Clippers, trimmers, scissors, brush and comb.

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1 Q. Do you remember if David White was the first person
2 whose hair you cut that night or the last person?

3 A. No, he was the last.

4 Q. While you were cutting his hair what was everybody
5 else doing?

6 A. Standing up watching me cut everybody else's hair.

7 Q. Mr. Johnson, I'm going to show you a picture.

8 MS. ELLIOTT: May I approach, Your Honor?

9 THE COURT: Yes, ma'am..

10 Q. [Ms. Elliott] I'm going to show you some pictures
11 from Spencer's yard. These have been marked previously
12 or admitted previously as State's exhibit 8.

13 [Whereupon, the witness is shown photograph]

14 Q. Can you tell us what is going on in that picture
15 where that is?

16 A. Excuse me?

17 Q. Do you know where that picture was taken?

18 A. Yes, in Spencer's backyard.

19 Q. Okay. And so can you kind of tell us where
20 everyone was hanging out that night by using that
21 picture?

22 A. Like about right here [indicates].

23 Q. Now if you touch that screen and kind of move your
24 hand around it will make a mark.

25 A. Okay. Everybody was standing right around in here

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- 1 [indicates] but Spencer was about right here [indicates].
2 Q. Okay. Can you see where you were cutting hair in
3 that picture?
4 A. Not really.
5 Q. Okay. Can you tell us whether it was to the -- and
6 I'm going to use my directions -- whether it was to the
7 left of the picture or to the right of that picture that
8 you were cutting hair?
9 A. It was to the left.
10 Q. To the left, all right. Thank you, Mr. Johnson. So
11 what was going on between you and David White while you
12 were cutting his hair?
13 A. He was playing around with a knife.
14 Q. With a knife? Had you seen him with a knife before
15 that?
16 A. Yes.
17 Q. Earlier that evening?
18 A. Yes, he was around by the trashcan where everybody
19 was sitting I mean where the fire was at.
20 Q. How were you acting towards David White that night?
21 A. I didn't know him.
22 Q. How were you acting with pretty much everyone at the
23 party?
24 A. Conversation, conversating about different things
25 but I didn't know him so I didn't have nothing to say to

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- 1 him.
- 2 Q. Would it be fair to say that everyone at the party
3 up until the time that you were finishing up cutting hair
4 were all just having a good time?
- 5 A. Yes.
- 6 Q. All friendly?
- 7 A. Yes, ma'am.
- 8 Q. What happened after you cut the hair; cut David
9 White's hair?
- 10 A. I was packing my stuff up putting it in the back of
11 the moped and then Spencer's brother called me and said
12 Bear, you getting to go home and I said yes.
- 13 Q. I want to stop you for one second. Do you know
14 Spencer's brother's name?
- 15 A. We call him Tony.
- 16 Q. Okay. Do you know if he has any other name?
- 17 A. His name is Henry Washington.
- 18 Q. So Henry was asking you if you were leaving and what
19 did you say?
- 20 A. I told him yes.
- 21 Q. And then what happened?
- 22 A. Then after a while we shook hands and all of a
23 sudden I got cut.
- 24 Q. Tell me how you got cut. How do you remember that?
- 25 A. He swung at me.

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- 1 Q. Who is he?
- 2 A. David White.
- 3 Q. David White? Where was he when he swung at you?
- 4 A. Like walking past.
- 5 Q. Where in the yard were you when that happened?
- 6 A. We was by the -- right after I cut him hair -- you
- 7 need to put the picture up.
- 8 Q. You want the same picture that I showed you before?
- 9 I'm going to put up State's exhibit 8.
- 10 [Whereupon, the witness is shown photograph]
- 11 Q. So this is State's exhibit 8 again.
- 12 A. He was around this area right here [indicates].
- 13 Q. Do that again for me.
- 14 A. He was around this area right here [indicates].
- 15 Q. That's where you and he were standing?
- 16 A. No, everybody was standing right there.
- 17 Q. Everybody was standing there?
- 18 A. Yes. Spencer was right here [indicates], his
- 19 brother was right over here [indicates].
- 20 Q. So you packed up your stuff and then what happened?
- 21 A. I packed my stuff and put it in the moped.
- 22 Spencer's brother called me and said you leaving and I
- 23 was like yeah. So he shook my hand so I turned around
- 24 and I looked at Spencer and told him I would see him
- 25 later. All of a sudden [indicates] --

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- 1 Q. You're going to have to say that a little louder.
2 A. He sliced my neck with a knife.
3 Q. Okay. And if this doesn't make sense then I can
4 try to explain it a different way. The person that cut
5 you where were they standing in relation to you? Were
6 they beside you, in front of you, or behind you?
7 A. He was walking past like from by the trashcan. I
8 was standing right here [indicates] and he walked this
9 way [indicates].
10 Q. So he was walking past you when he cut you?
11 A. Yes.
12 Q. Did he say anything to you at that time?
13 A. No.
14 Q. When he cut you what happened?
15 A. I told Spencer I said I got cut man; that dude cut
16 me. So Spencer said get a towel, Tony get a towel and
17 told Tony to hold the towel around my neck until the
18 ambulance came. He told Spencer to call the EMS so they
19 could get me some help because he was holding pressure on
20 my neck.
21 Q. Were you standing up this whole time or laying down
22 or something else?
23 A. Laying down.
24 Q. Do you remember what happened next?
25 A. No, not really.

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- 1 Q. Do you remember EMS coming?
- 2 A. Yes.
- 3 Q. After EMS came what's the next place you remember
- 4 being in?
- 5 A. At the hospital.
- 6 Q. Can you describe for us kind of the injury you
- 7 sustained that night?
- 8 A. I know when I went to put my hand on my neck to see
- 9 if I was cut I stuck my hand inside.
- 10 Q. Stuck in the hole a little bit?
- 11 A. I was looking at my hand and blood was on it and
- 12 that really made me feel like -- I felt like I was going
- 13 crazy.
- 14 Q. And you were in the hospital for a little while?
- 15 A. Yes.
- 16 Q. Do you remember what you were wearing that night?
- 17 A. I had on some black jeans, black boots, brown hat
- 18 and a brown coat.
- 19 MS. ELLIOTT: May I approach, Your Honor?
- 20 THE COURT: Yes, ma'am.
- 21 Q. [Ms. Elliott] I'm going to show you what has been
- 22 marked for identification purposes as State's exhibit 4
- 23 and 5. I'm going to show you that is State's exhibit 4.
- 24 Can you look in that bag -- don't take out what's in it
- 25 and tell me what you see?

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1 [Whereupon, the witness looks at the exhibit]
2 Q. Tell me what you see in there?
3 A. A brown hat.
4 Q. Is that the hat you were wearing that night?
5 A. Yes, ma'am.
6 Q. Okay. And then do you recognize those?
7 [Whereupon, the witness is shown exhibit]
8 A. Yes.
9 Q. What are those?
10 A. My black boots.
11 Q. And were those your boots you were wearing that
12 night?
13 A. Yes, ma'am.
14 THE COURT: What number?
15 MS. ELLIOTT: I'm sorry; that was for
16 identification purposes State's exhibit 5.
17 THE COURT: Thank you.
18 MS. ELLIOTT: Your Honor, at this time the State
19 would move into evidence State's exhibit 4 and 5.
20 THE COURT: Any objection to 4 and 5?
21 MS. FORD: Yes, Your Honor. May we approach?
22 THE COURT: Yes, ma'am.
23 [Whereupon, an off the record bench conference is
24 held]
25 Q. [Ms. Elliott] Mr. Johnson, do you remember ---

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1 THE COURT: --- State's exhibit 4 and 5 admitted
2 with objection. Ms. Ford, I'll give you an opportunity
3 to put your objection on the record at the appropriate
4 time okay.

5 MS. FORD: Thank you, Your Honor.

6 [Whereupon, State's exhibit numbers 4 and 5 are
7 entered into evidence by the court]

8 Q. [Ms. Elliott] Mr. Johnson, do you remember anything
9 about what David White was wearing that night?

10 A. Yes, a brown coat.

11 MS. ELLIOTT: Beg the court's indulgence.

12 THE COURT: Yes, ma'am.

13 [Whereupon, Ms. Newman and Ms. Elliott confer]

14 MS. ELLIOTT: Your Honor, at this time I think we
15 have a matter of law.

16 THE COURT: Okay. Mr. Foreman and ladies and
17 gentlemen of the jury I'm going to ask you to go to the
18 jury room. There is an issue of evidence that I have to
19 discuss and listen to some possible testimony. And the
20 reason I ask you to go to the jury room is during the
21 course of the trial I'm not permitted to comment on the
22 facts. So I ask you to leave the jury room [sic] so I'll
23 be free to comment on the facts, ask questions about the
24 facts while I'm making up my mind as to whether the
25 evidence is admissible under the rules of evidence. The

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1 rules of evidence has evolved over time in this country
2 and brought over basically from England. And they're
3 designed to hopefully give you the most trustworthy
4 testimony that we can bring into the courtroom. That's
5 another reason I've asked you not to look at outside
6 sources because a lot of the outside information may not
7 be relevant in this courtroom and I want you to base your
8 decision on the relevant testimony as presented in the
9 courtroom.

10 And that's the reason; I'm not trying to hide
11 anything from you. I just want the opportunity to fully
12 discuss it with the lawyers out of your presence. It's
13 not the lawyers trying to hide anything; it's my decision
14 so I have an opportunity to fully discuss it with the
15 lawyers out of your presence. Please don't discuss the
16 case amongst yourselves and I'll get you back very
17 shortly.

18 [Whereupon, the jury exits at 10:05 a.m.]
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1 MS. ELLIOTT: Thank you, Judge. I think as you
2 ruled in the pretrial that you wanted to hear how he was
3 going to describe the manner of the assault upon him. We
4 have gotten through all of the testimony that I intend to
5 elicit about how the defendant approached him and from
6 what direction. So with that in mind I don't know if you
7 want to hear further arguments on it or if that was
8 sufficient information for you to make a ruling at this
9 time.

10 THE COURT: Before we get into that Ms. Ford you
11 had an objection to the admissibility of the brown hat
12 and the boots.

13 MS. FORD: Yes, sir.

14 THE COURT: You made that objection at the bench.
15 I will give you an opportunity now to put that objection
16 on the record so it will be on the record.

17 MS. FORD: Yes, Your Honor. I just objected I
18 don't believe that what the victim was wearing I don't
19 see how it is relevant at all. There is nothing about
20 his clothing that is in dispute. The only reason it
21 seems like the State would want the evidence in or the
22 pieces of the clothing in is because there is some blood
23 on it. But since it is not in dispute that he was cut
24 just showing the jury these clothes with some blood on it
25 it just doesn't seem like it's relevant and it's more

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1 prejudicial than probative, Your Honor.

2 THE COURT: Okay. Thank you very much. Is there
3 anything that the State would like to put on the record?

4 MS. ELLIOTT: Your Honor, I would simply put that
5 the State does have the burden of proving how severe the
6 injuries were. The amount of blood or the fact that
7 there is blood on that I think would indicate to a degree
8 some of the injuries and since that is our duty to prove
9 that evidence is more probative of that than prejudicial.

10 THE COURT: Okay. Based upon the arguments at the
11 bench as well as the oral arguments presently made for
12 the record I'll overrule the objection. I had previously
13 allowed in State's exhibit number 4 and State's exhibit
14 number 5.

15 Now as to the issue I believe of the resisting
16 arrest issue. I want to hear the testimony I believe he
17 testified that the victim was walking by him and he
18 reached out and sliced him or cut his throat -- or cut
19 him -- I think he said he cut him previously. I think
20 there is controversy as to whether he was behind him or
21 in front of him. Now there is sworn testimony now that
22 he was walking by him. I believe it was your motion to
23 suppress, right.

24 MS. ELLIOTT: It is, Your Honor.

25 THE COURT: You made some arguments pretrial. Let

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1 me just ask you a couple of questions okay.

2 MS. ELLIOTT: Yes, Judge.

3 THE COURT: If I may and then I'll listen to
4 anything you want to tell me. I guess looking at 609(a)
5 I believe there are five factors that the court has to
6 look at the impeachment value of the prior crime, the
7 point in time of the conviction and the witness's
8 subsequent history, similarity between the past crime and
9 the charged crime and the importance of the defendant's
10 testimony, centrality of the creditability is number 5.

11 Now in this particular case he's not the defendant
12 and it's relevant as to the self-defense issue. And the
13 issues in the self-defense issue as you well know is the
14 defendant has got to be without fault and was in actual
15 and imminent danger, a reasonable person would believe he
16 was in imminent danger and he had no other means of
17 avoiding the danger. So I'll be glad to hear you in
18 light of what the court is required to look at okay?

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1 MS. ELLIOTT: Thank you, Judge. I think one of
2 the things that need to remain clear is I think this is a
3 two-fold argument. The courts allow in prior convictions
4 for impeachment for creditability purposes; but there is
5 still a balancing act between prejudicial versus
6 probative for every witness; not just defendants and
7 victims alike. And it is the State's understanding that
8 the defense wants to get into the fact that it was an
9 assault on a police officer to show the defendant -- to
10 show the victim's propensity for violence.

11 I think that felony convictions come in to attack
12 his creditability but to go into basically the name of
13 the charge assault on a police officer would be going to
14 his propensity for violence which under the case law is
15 inappropriate. As we stated State v Day and State v
16 Brown they are not admissible unless the violence was
17 directed against the defendant or directed against others
18 who were so closely connected at the point in time or
19 occurrence with the -- in this case it was a homicide but
20 I'll say with an assault -- as reasonably to indicate the
21 state of mind of the victim at the time of the homicide
22 or assault or to produce reasonable apprehension of great
23 bodily harm. I think for this to come in for the
24 purposes of showing the victim's violence it would have
25 to be a lot closer in time and it would have had to been

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1 directed at Mr. White and that's just flat out not the
2 case. It was ten years ago, it didn't involve the
3 defendant at all and we don't even have any knowledge
4 that he knew about that beforehand. So it would be
5 immensely prejudicial and not at all probative as to his
6 propensity for violence and the case law seems very clear
7 on that. The cases don't seem between Brown and Day they
8 don't seem to make distinctions between a prior act and a
9 prior conviction. The analysis seems similar and to ---

10 THE COURT: --- I think they combined the two; what
11 they wanted to say I'll agree with you.

12 MS. ELLIOTT: Yes, Your Honor. So for that reason
13 to go into the assault portion to bring out whether or
14 not he has a propensity for violence is completely
15 inappropriate. Now when we're talking about
16 creditability I think that you've got to make that
17 balancing act. And under the whether or not the victim
18 is violent we've already said that is too prejudicial and
19 that's not appropriate then you move to well what do we
20 do about his creditability on this.

21 She's getting into plenty of other crimes and
22 convictions against him so just to add on another one I
23 think would be backdooring in that argument about
24 violence; it would be inappropriate. To make an analogy
25 if this was Mr. White's conviction we'd never be allowed

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1 to stand up and say you've got a prior conviction for
2 assault on a police officer because it's an assault case.
3 And I think the same rule applies when it's the victim on
4 the stand.

5 THE COURT: Okay. Anything else?

6 MS. ELLIOTT: That's all, Your Honor.

7 THE COURT: Okay. Ms. Ford?

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1 MS. FORD: Thank you, Your Honor. Mr. Johnson's
2 creditability is at issue here, Your Honor even though he
3 testified on the stand consistent to what other witnesses
4 are testifying to. For two and a half years he has
5 maintained something completely different. In a way the
6 State started his testimony in a way ---

7 THE COURT: --- you can deal with that with his
8 prior statement can't you?

9 MS. FORD: Of course, Your Honor, but I'm saying
10 his creditability is an issue. The State began their
11 testimony by asking him about his background, showing his
12 work history, he graduated high school, that he was in
13 the military and they did that to try to make it sound
14 like he is a good, decent hardworking guy, Your Honor.
15 So I think his record is important to go into his
16 creditability. There are different standards for a
17 defendant versus other witnesses and other witness
18 includes the victim, Your Honor.

19 THE COURT: What do you mean there is a different
20 standard?

21 MS. FORD: In 609, Your Honor there when the
22 accused ---

23 THE COURT: --- how do you think the standard is
24 different?

25 MS. FORD: Because Rule 609, Your Honor it says a

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1 witness other than the accused has been convicted of a
2 crime shall be admitted subject to Rule 403 if the crime
3 is punishable by death or imprisonment ---

4 THE COURT: It says -- you're right.

5 MS. FORD: Yes, Your Honor. So they make a
6 distinction specifically in the rule between defendants
7 and other people testifying. This charge, Your Honor, it
8 was within the ten year period, he has plenty of
9 convictions outside of the ten year period that we're not
10 trying to get into including prior incidents of violence.

11 I want to get into it because it is a conviction and
12 I think that in fairness and due process to my client
13 that the jury deserves to know his whole history within
14 the past ten years and allowed by the law, Your Honor.
15 And again I think the State did to an extent put his
16 character into question to an extent by going into his
17 history and background.

18 THE COURT: Well, let me ask you this. I was just
19 reviewing some of the notes after 609 on the I believe it
20 was robbery and theft -- so my question to you is if
21 you're talking about creditability what does an assault
22 on a police officer have to do with whether he is
23 truthful or dishonest? What does that have to do with
24 dishonesty? Doesn't that fit in with the crimes that I
25 just mentioned? Assault to me it doesn't affect the

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1 dishonesty aspect of what we're looking at in
2 creditability.

3 MS. FORD: Your Honor, I agree that it doesn't go
4 to the honesty necessarily in of itself ---

5 THE COURT: --- if it doesn't go to the honesty and
6 creditability the only reason you're offering it is to
7 show his propensity towards violence.

8 MS. FORD: I think the Rule, Your Honor because the
9 rule actually distinguishes as well between crimes that
10 carry more than a year they say those come in but only if
11 it carries more than a year. But a crime of dishonesty
12 comes in even if it doesn't carry more than a year.

13 THE COURT: When we start talking about the
14 balancing act that's when the issue of the honesty comes
15 in or dishonesty; truthfulness comes in when we start
16 balancing correct?

17 MS. FORD: I think that could be argued, Your
18 Honor.

19 THE COURT: I mean isn't that basically what a
20 balancing act involves or a portion of it?

21 MS. FORD: Probably so, Your Honor.

22 THE COURT: Okay. So my question to you is how
23 else can you be offering it other than to show his
24 propensity to violence if the crime -- I understand the
25 crime is over a year but then we'll get into what we've

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1 been talking about. I've read the five elements to you,
2 I've talked about manslaughter. So the only reason you
3 could possibly be offering it could be to show his
4 propensity to violence as to your self-defense issue.
5 Now the question I really have that hasn't been addressed
6 is I don't think there is any way your client had the
7 knowledge at the time when he was convicted ten years ago
8 for resisting arrest I wouldn't assume. I assume that; I
9 don't know that. Maybe he had seen his rap sheet; I
10 don't know. So if in fact that is true how could that
11 even enter the fact of his propensity for violence.

12 MS. FORD: Your Honor, my argument would just be
13 that because of the way the rule is written it makes a
14 distinction between crimes of dishonesty and crimes that
15 carry more than a year. But it allows for crimes that
16 don't involve dishonesty to come in if they carry more
17 than a year. So I think the very reason that they wrote
18 this rule is basically ---

19 THE COURT: --- so we get into a 403 balancing act.
20 Even though it comes over a year you can still say the
21 probative value is not sufficient, the prejudicial value
22 is greater than the probative value. Yes or no?

23 MS. FORD: I agree that that balancing act it does
24 say subject to 403, Your Honor in the rule but I think
25 the fact that it allows for crimes that carry more than a

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1 year to come in even if they don't involve dishonesty the
2 rule is saying that the fact that someone has a record
3 does go to their creditability in general. And in this
4 case in particular again I think the State tried to build
5 up his character and so I think it's important for the
6 jury to know the truth ---

7 THE COURT: --- I haven't heard anything yet about
8 saying he's a good guy; I don't know. If they put in
9 that issue it may be a different ballgame okay.

10 MS. FORD: They didn't say he was a good guy but
11 ---

12 THE COURT: --- if they put his character at issue
13 but I haven't heard that yet. Maybe I missed it. Did I
14 miss it?

15 MS. FORD: No, they didn't say he's a good guy.
16 They said that you graduated from high school, they went
17 into all of his jobs, they went into the fact that he
18 went into the military ---

19 THE COURT: --- but they haven't put character in
20 issue to my knowledge. If I missed it tell me. Have
21 y'all put his character at issue?

22 MS. ELLIOTT: Your Honor, I don't believe we've
23 asked any questions that would put his character at
24 issue. We talked about ---

25 THE COURT: --- if I missed it please tell me.

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1 MS. FORD: Your Honor that's what I'm saying. They
2 didn't say quote he's a good guy or whatever but the fact
3 that they asked those questions and the way that they did
4 when a jury doesn't care about his record they're just
5 going to think he's just a veteran who got disabled in
6 the military who ---

7 THE COURT: --- that was introducing the guy for
8 who he was and what his background was. I don't think
9 they placed his character at issue, okay.

10 MS. FORD: Yes, Your Honor.

11 THE COURT: Anything else? I didn't mean to
12 interrupt you. Ask your questions. I just want to make
13 sure I understand your argument before I rule.

14 MS. FORD: That is my argument, Your Honor. I
15 think they did try to establish that he is this decent
16 guy by asking those questions and I think the jury
17 deserves to know under Rule 609 his complete history
18 within the past ten years. Again, there are many things
19 they're not going to hear from more than the ten years.
20 So I think limiting it to the ten years is giving him
21 that benefit, Your Honor.

22 THE COURT: Okay. Anything in rebuttal from the
23 State?
24
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1 MS. ELLIOTT: Your Honor, I think it has been
2 covered that under the balancing act that this one
3 conviction is just unduly prejudicial under that rule.
4 And it's not de facto that everything within ten years
5 gets to come in; we have to analyze that. And the jury
6 is going to hear about quite a lengthy record. They're
7 not just going to only hear -- they're not just going to
8 hear those few things.

9 They're going to hear about the two B and E motor
10 vehicles that you already said would be admissible, the
11 possession of cocaine base that you've already said would
12 be admissible, the property offense enhancement you've
13 already said is admissible, the 2011 B and E motor
14 vehicle and the 2015 B and E motor vehicle. And they're
15 getting into that. We're not painting a picture that he
16 is an angel and that will come out. And I think under
17 the balancing act I think it's just that one conviction
18 that is unduly prejudicial and under the rules should not
19 come in.

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State v David Alan White
Motion to Suppress-Ruling by the Court
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1 THE COURT: Looking at the five factors on the
2 balancing act the impeachment value of the prior crime
3 which is resisting arrest and at this court -- has very
4 limited impeachment value as to honesty or dishonesty.
5 The point in time and to which the subsequent history --
6 the point in time was ten years ago and the subsequent
7 history he did have another resisting arrest in 2011.
8 Similarities between the past crime and the charged crime
9 I don't think there is any similarity whatsoever.

10 There is no weapon used and to my knowledge all I
11 know is resisting arrest. I don't know the facts of that
12 situation so I don't think there is any similarity at all
13 between the past resisting arrest and this charge and the
14 importance of defendant's testimony. Obviously he's the
15 victim so testimony is important and centrality of the
16 creditability issue I don't think the creditability issue
17 is a bigger issue because you're going to put in his
18 other criminal history.

19 I think it goes maybe more primarily to the defense
20 position of self-defense and the fact that he was placed
21 in imminent danger in showing his propensity of possible
22 violence as to the self-defense issue and based upon that
23 the court grants the State's motion to suppress bringing
24 out the resisting arrest. Thank you very much. Is
25 there anything else while the jury is out that we need to

State v David Alan White
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1 take up?

2 MS. ELLIOTT: Nothing from the State, Your Honor.

3 THE COURT: Anything from the defendant?

4 MS. FORD: No, Your Honor.

5 THE COURT: Okay. Bring us the jury please.

6 Solicitor, do you need to talk to him about what we just
7 did?

8 MS. ELLIOTT: No, Your Honor because -- it probably
9 wouldn't be a bad idea.

10 THE COURT: Pardon?

11 MS. ELLIOTT: It probably wouldn't be a bad idea.

12 THE COURT: Why don't you go up and talk to him and
13 tell him what we just did if you don't mind please. Hold
14 the jury for just a second.

15 [Whereupon, Ms. Elliott confers with Mr. Johnson]

16 THE COURT: Bring us the jury please.

17 [Whereupon, the jury enters at 10:14 a.m.]

18 THE COURT: Solicitor, you may proceed.

19 MS. ELLIOTT: Thank you, Your Honor.

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State v David Alan White
Joseph Johnson-Direct Examination by Ms. Elliott (resumes)
March 15, 2016

1 DIRECT EXAMINATION (resumes)
2 BY MS. ELLIOTT:
3 Q. Now Mr. Johnson you've had some brushes with the law
4 in your life?
5 A. Yes, I have.
6 Q. And you have some criminal convictions?
7 A. Yes.
8 Q. In 2006 you were convicted of two counts of B and E
9 motor vehicle?
10 A. Yes, ma'am.
11 Q. 2010 you were convicted of possession of cocaine
12 base and a property offense enhancement?
13 A. Yes, ma'am.
14 Q. Which is a theft?
15 A. Yes, ma'am.
16 Q. 2011 you were convicted of a B and E motor vehicle?
17 A. Yes.
18 Q. And in 2015 you were convicted of a B and E motor
19 vehicle?
20 A. Yes.
21 Q. On this night that we're talking about November 27th
22 did you ever hit David White?
23 A. No.
24 Q. Other than cutting his hair did you touch him in any
25 way?

State v David Alan White
Joseph Johnson-Direct Examination by Ms. Elliott (resumes)
March 15, 2016

1 A. No, ma'am.

2 Q. Did you hit anyone at the party that night?

3 A. No, ma'am.

4 Q. Can you tell us a little bit about the physical
5 scars that you've suffered because of this?

6 A. Well, when he cut me on the neck I felt real bad.
7 But I didn't even know that he had done it, because he
8 done it so fast I didn't even feel nothing. But later on
9 after I went to the hospital I mean it felt like I was
10 going to die.

11 Q. You understood how serious the injury was once you
12 got to the hospital?

13 A. Yes.

14 MS. ELLIOTT: Your Honor, at this time I would have
15 the defendant [sic] step down and show his scar to the
16 jury.

17 THE COURT: Okay. You may step down.

18 [Whereupon, the witness steps down from the witness
19 stand]

20 MS. ELLIOTT: You can start right here [indicates].
21 You might want to unbutton that top button so they can
22 see it and show them the scar.

23 [Whereupon, the witness shows the scar to the jury]

24 [Whereupon, the witness returns to the witness
25 stand]

State v David Alan White
Joseph Johnson-Direct Examination by Ms. Elliott (resumes)
March 15, 2016

1 Q. [Ms. Elliott] Mr. Johnson, at this time that's all
2 the questions I have for you. Please answer any that Ms.
3 Ford might have for you okay?

4 A. Yes, ma'am.

5 THE COURT: Ms. Ford, cross-examination?

6 MS. FORD: Yes, Your Honor.

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State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

1 CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. Mr. Johnson, you were at Spencer Washington's house
4 that night?

5 A. Yes.

6 Q. And you told us at that time you had been going
7 there almost every day?

8 A. Yes.

9 Q. And you consider Spencer family correct?

10 A. Yes.

11 Q. You call him your cousin?

12 A. Yes.

13 Q. And you're telling us before that day you had never
14 met David White at Spencer's house?

15 A. Never met him.

16 Q. Today you told us how David cut you.

17 A. Yes.

18 Q. And you told us that when he walked past he kind of
19 I guess turned around and swung at you?

20 A. Yes.

21 Q. And this happened back in November of 2013 correct?

22 A. Yes.

23 Q. So nearly two and a half years ago?

24 A. Yes.

25 Q. You've talked to people about this case before today

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

- 1 correct?
- 2 A. Have I talked to anybody? Excuse me?
- 3 Q. You talked to the Solicitor about this case before
- 4 the trial correct?
- 5 A. Yes.
- 6 Q. And the Solicitors have asked you on multiple
- 7 occasions what happened.
- 8 A. Yes.
- 9 Q. And you told them what happened.
- 10 A. Yes.
- 11 Q. Up until yesterday afternoon you had always
- 12 maintained that David actually came up from behind you
- 13 and slit your throat isn't that true?
- 14 A. Yes.
- 15 Q. Okay. So only as of yesterday afternoon has this
- 16 been your story that he walked by you and then slit your
- 17 throat correct?
- 18 A. Yes.
- 19 Q. You actually met with -- talked to Ms. Elliott back
- 20 in 2014 correct? You've been talking to her since then?
- 21 A. 2013?
- 22 Q. '14?
- 23 A. No.
- 24 Q. You've met with the Solicitors before recently
- 25 right?

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

- 1 A. Ms. Elliott?
- 2 Q. Ms. Elliott?
- 3 A. I don't know.
- 4 Q. So you don't remember meeting with Ms. Elliott? Do
- 5 you remember meeting with anyone from the Solicitor's
- 6 office before this month?
- 7 A. Yes -- I don't know.
- 8 Q. This happened in 2013 right?
- 9 A. I know that it happened in 2013.
- 10 Q. You did speak to someone about this case in 2014.
- 11 A. I don't know.
- 12 Q. So you don't remember meeting with Ms. Elliott or
- 13 talking to her; I don't know if it was in person in 2014
- 14 and you told her that when you were getting on your moped
- 15 David came up from behind you and cut you? You told the
- 16 Solicitor's office that in 2014.
- 17 A. Yes. See I was on medication and stuff.
- 18 Q. Okay. Well, this was months after the incident.
- 19 So you don't remember what happened to you for months
- 20 after the incident? Is that what you're telling us
- 21 today?
- 22 A. Yes, I can remember some things.
- 23 Q. Are you denying that you told the Solicitor's office
- 24 that he came up from behind you and cut you while you
- 25 were on the moped?

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

- 1 A. Yes, I remember saying that.
- 2 Q. Okay. You also told her that he was arguing with
3 you and that's why you decided to leave.
- 4 A. No, I said he was messing around with the knife just
5 about all night.
- 6 Q. Okay. I'm not talking about now. I'm talking
7 about in 2014 you told the Solicitor's office that you
8 decided to leave because he was arguing with you.
- 9 A. He wasn't arguing with me.
- 10 Q. Right, I know. But you told the Solicitor that in
11 2014.
- 12 A. I don't remember.
- 13 Q. And do you remember a few weeks ago?
- 14 A. Yes.
- 15 Q. Okay. You spoke to Ms. Newman a few weeks ago
16 about this case correct?
- 17 A. Yes.
- 18 Q. And at that point you told her you had not been
19 having words with David correct?
- 20 A. Yes.
- 21 Q. You had not been arguing with him.
- 22 A. No, I wasn't arguing --
- 23 THE COURT REPORTER: --- I'm sorry I didn't hear
24 what you said. Repeat it again please?
- 25 A. No, I didn't have no argument with him.

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

- 1 Q. [Ms. Ford] But you did tell her that you were
2 getting your stuff together correct?
3 A. Yes.
4 Q. And you went to get on your moped to leave.
5 A. Yes.
6 Q. And you felt someone behind you.
7 A. Yes.
8 Q. And you thought it was Spencer joking around.
9 A. Yes.
10 Q. And you realized it was David though.
11 A. Right.
12 Q. And you said he cut you from behind and sliced your
13 throat.
14 A. Yes.
15 Q. But you didn't realize it until you saw blood.
16 A. Yes.
17 Q. Okay. So just a few weeks ago when you spoke to
18 Ms. Newman you told her again when you were getting on
19 your moped he came from behind you and slit your throat
20 correct?
21 A. Yes.
22 Q. And then you met with the Solicitor I believe it was
23 last Thursday. Do you remember last week?
24 A. Yes.
25 Q. Okay. And again you talked about this case

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

- 1 correct?
- 2 A. Yes.
- 3 Q. And your testimony.
- 4 A. Yes.
- 5 Q. And you told her that when again, that when you got
6 on your moped you felt someone behind you?
- 7 A. Yes.
- 8 Q. And you realized it was David because you saw his
9 brown coat?
- 10 A. Yes.
- 11 Q. And after he cut you from behind you turned around
12 and then you saw David.
- 13 A. Yes.
- 14 Q. And then you told them that you saw him running
15 away.
- 16 A. Yes.
- 17 Q. And so then we get to yesterday afternoon and that's
18 when you approached the Solicitor and told them oh yeah I
19 remember it happening from the front.
- 20 A. Yes.
- 21 Q. Okay. Just as of yesterday afternoon.
- 22 A. Because sometimes things come and go you know. I
23 can remember sometimes.
- 24 Q. So you don't remember everything about that evening
25 then?

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

1 A. Yes, I remember everything. At times it comes back.

2 Q. Okay. But you didn't remember everything about
3 that evening until yesterday afternoon then is that what
4 you're telling us?

5 A. No, I wanted to speak to them earlier to let them
6 know that that's what happened.

7 Q. Okay. But before yesterday you always specifically
8 told them your memory was him coming from behind you,
9 correct?

10 A. Correct.

11 Q. For more than two years that was what you maintained
12 correct?

13 A. Correct.

14 Q. So Mr. Johnson you took an oath today when
15 testifying in court correct?

16 A. Yes.

17 Q. But you've lied in court before haven't you?

18 A. No.

19 Q. In January 2014 there was a preliminary hearing for
20 this case and you attended correct?

21 A. Yes.

22 Q. In North Charleston there was a hearing at court by
23 the jail. Do you recall going to that?

24 A. I don't know.

25 Q. So you don't recall going to the preliminary hearing

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

1 court?

2 A. Yes.

3 Q. And I was there and you were there.

4 A. No, I don't think so.

5 Q. You just told us you remember going there.

6 A. No, I didn't say I remember. I said I remember us
7 having a preliminary hearing.

8 Q. Okay. You were there and Judge Gosnell asked you
9 your feelings on the bond. Are you denying you remember
10 that?

11 A. [Indicates negatively]

12 Q. So you're denying you told a judge in court that
13 David came from behind and cut you?

14 A. I don't remember.

15 Q. So you don't remember going to the preliminary
16 hearing?

17 A. No.

18 Q. So you're denying you went?

19 A. I don't remember going to no preliminary hearing.

20 Q. Okay. So you're denying you told a judge that
21 David cut you from behind.

22 A. I don't remember that.

23 Q. Okay. You were in the hospital for over a week
24 correct?

25 A. About two or three weeks.

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

- 1 Q. You're telling us two to three weeks?
2 A. That's all I can remember.
3 Q. So you don't remember how long you were in the
4 hospital just that it was a while?
5 A. Don't remember.
6 Q. It was more like ten days does that sound right?
7 A. Something like that.
8 Q. And after about a week the police came and spoke to
9 you at the jail? I'm sorry; spoke to you at the
10 hospital?
11 A. I don't remember that either.
12 Q. So you don't remember picking out someone in a
13 lineup?
14 A. No. I on medication and some things I can't
15 remember.
16 Q. So you don't remember writing out a statement by the
17 photo?
18 A. [Indicates negatively]
19 Q. So you don't remember anything a week after the
20 incident?
21 A. I'm telling you I was on medication.
22 Q. Okay. So that medication has made you forget
23 everything for how long?
24 A. I don't know. I was on medication.
25 Q. Do you remember speaking to Detective Kramer at all?

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

- 1 A. No, ma'am.
- 2 Q. You never actually -- you've spoken to the Solicitor
3 multiple times but you've never been into the police
4 station to give a formal statement correct?
- 5 A. No, ma'am.
- 6 Q. Just to be clear I had asked you a little while ago
7 at one point you told the Solicitor David was arguing
8 with someone else. Do you not remember that now?
- 9 A. Yes, yes I remember that.
- 10 Q. Who was he arguing with?
- 11 A. Him and Spencer.
- 12 Q. So you're saying he and Spencer were arguing?
- 13 A. You know how they crack jokes and stuff like that
14 and Spencer said bet he wouldn't do his hair -- it was
15 back and forth.
- 16 Q. So they were joking then?
- 17 A. Joking and arguing.
- 18 Q. But you're telling us you never argued with David at
19 all?
- 20 A. I didn't have no reason to.
- 21 Q. You cut David's hair though right?
- 22 A. Yes.
- 23 Q. And people were around.
- 24 A. Yes.
- 25 Q. And they were watching you as you were cutting

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

- 1 people's hair including David's correct?
- 2 A. Yes, ma'am.
- 3 Q. And you're saying at this point is when David pulled
- 4 out a knife?
- 5 A. He was playing around with the knife while I was
- 6 cutting his hair and while he was around the trashcan.
- 7 Q. Okay. You told me he kept pulling it out --
- 8 A. --- yes, playing around ---
- 9 Q. --- and you told him to put it up and he just kept
- 10 taking it out.
- 11 A. Yes.
- 12 Q. So he just had it out all night playing around with
- 13 it?
- 14 A. He had it out while I was watching him. He didn't
- 15 have it out all night.
- 16 Q. But he had it out then and he had it out earlier you
- 17 told us.
- 18 A. Yes, ma'am.
- 19 Q. Mr. Johnson that night you told us that everybody
- 20 was kind of joking around a lot and talking, drinking.
- 21 Were you drinking?
- 22 A. Yes, I had two beers.
- 23 Q. Did you have any moonshine?
- 24 A. No.
- 25 Q. And y'all were talking about wrestling?

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

- 1 A. Yes.
- 2 Q. And you actually wrestled in high school?
- 3 A. Yes.
- 4 Q. So you were talking about what a great wrestler you
5 were?
- 6 A. No, they were talking about it. Spencer brought it
7 up.
- 8 Q. So everybody else kept talking about what a great
9 wrestler you are?
- 10 A. Yes. Spencer and them were talking about it. I was
11 cutting hair at the time.
- 12 Q. And you told us about your criminal history correct?
- 13 A. Yes.
- 14 Q. So you've been in prison before?
- 15 A. Yes.
- 16 Q. And that night you never met David so you were
17 talking to him about where he was from and things like
18 that correct?
- 19 A. No, ma'am.
- 20 Q. You don't remember?
- 21 A. We never talked about where he's from or where I'm
22 from. He just saw that I was cutting everybody's hair
23 and he asked if I don't mind cutting his hair. I said
24 okay.
- 25 Q. You were talking -- when you were talking to David

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

1 y'all did talk during that time correct?

2 A. During that time about the haircut ---

3 Q. --- when you were cutting his hair?

4 A. No, we wasn't talking.

5 Q. So you just cut his hair and y'all didn't say a word
6 to each other?

7 A. That's it.

8 Q. Okay so no words.

9 A. No.

10 Q. So you never bragged about all the shanks you had
11 made when you were in prison.

12 MS. ELLIOTT: Objection, relevance.

13 THE COURT: Overruled. Go ahead.

14 Q. [Ms. Ford] So you never bragged about all the shanks
15 you had made in prison?

16 A. Shanks I made? I never made no -- I ain't do
17 nothing like that.

18 Q. But you've been to prison though correct?

19 A. Yes, I've been in prison but I didn't make no shanks
20 or nothing like that.

21 MS. FORD: Beg the court's indulgence.

22 THE COURT: Yes, ma'am.

23 [Whereupon, Ms. Ford and Mr. Mack confer]

24 MS. FORD: No further questions for this witness,
25 Your Honor.

State v David Alan White
Joseph Johnson-Cross-Examination by Ms. Ford
March 15, 2016

1 | THE COURT: Okay. Redirect?
2 | MS. ELLIOTT: Yes, Your Honor.

State v David Alan White
Joseph Johnson-Redirect Examination by Ms. Elliott
March 15, 2016

REDIRECT EXAMINATION

1
2 BY MS. ELLIOTT:

3 Q. Mr. Johnson, you were telling Ms. Ford that during
4 this time after you were cut that you were on a lot of
5 meds. Do you remember any of the meds that you were on?

6 A. No, I don't remember the name of the meds.

7 Q. Were you on pain meds?

8 A. Yes, ma'am.

9 Q. Was there a time when you were in the hospital that
10 you couldn't even speak?

11 A. Yes, ma'am.

12 Q. Do you remember the names of any of your doctors?

13 A. No, ma'am.

14 Q. Nurses?

15 A. No.

16 Q. Do you remember any of the people that came in to
17 visit you in those first few days in the hospital?

18 A. No, ma'am.

19 Q. That's all pretty foggy?

20 A. Yes, ma'am.

21 Q. Do you remember being in the ICU?

22 A. No, ma'am.

23 Q. Did you do anything to give David White a reason to
24 cut you that night?

25 A. No, ma'am.

State v David Alan White
Joseph Johnson-Redirect Examination by Ms. Elliott
March 15, 2016

1 MS. ELLIOTT: Beg the court's indulgence.
2 [Whereupon, Ms. Newman and Ms. Elliott confer]
3 MS. ELLIOTT: Nothing further Your Honor.
4 THE COURT: Any recross?
5 MS. FORD: No, Your Honor.
6 THE COURT: Mr. Johnson, you may step down. Thank
7 you very much.
8 [Whereupon, the witness is excused and exits the
9 witness stand]
10 THE COURT: Call your next witness please.
11 MS. NEWMAN: Thank you, Your Honor.
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State v David Alan White
Albert Jenkins-Direct Examination by Ms. Newman
March 15, 2016

1 MS. NEWMAN: The State calls Albert Jenkins.

2 [Whereupon, Mr. Jenkins comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: State your first and last name and
6 spell out your last name please.

7 THE WITNESS: Albert Jenkins, J-E-N-K-I-N-S.

8 - - - - -

9 ALBERT JENKINS,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. NEWMAN:

14 Q. Good morning Mr. Jenkins.

15 A. Good morning.

16 Q. How old are you?

17 A. I'm 50.

18 Q. And where are you from?

19 A. I'm from North Charleston.

20 Q. Have you lived in North Charleston your whole life?

21 A. North Charleston area all my life, yes ma'am.

22 Q. And what do you do for a living?

23 A. I'm a truck driver.

24 Q. Now in 2009 were you convicted of giving false
25 information to police?

State v David Alan White
Albert Jenkins-Direct Examination by Ms. Newman
March 15, 2016

- 1 A. Yes, ma'am.
- 2 Q. Okay. And do you know Joseph Johnson as Little
- 3 Bear?
- 4 A. Little Bear; that's what I know him by.
- 5 Q. And how do you know him?
- 6 A. I met him around to Spencer's house every now and
- 7 then when he comes around there.
- 8 Q. Back when this incident happened how long would you
- 9 say you had known Mr. Johnson?
- 10 A. Little Bear? Maybe eight or nine months; no more
- 11 than a year.
- 12 Q. How often did you see him?
- 13 A. Every now and then because he didn't live around
- 14 there. I'd just go over to Spencer's every now and then
- 15 because he's my neighbor.
- 16 Q. How about David White, how do you know him?
- 17 A. The same amount of time.
- 18 Q. When this happened how long would you say you'd
- 19 known the defendant?
- 20 A. About the same amount of time.
- 21 Q. Okay.
- 22 A. I really don't know either one of them personally.
- 23 All I know him by is Dave and Little Bear by Little Bear.
- 24 Q. Now do you recall the night of November 27, 2013?
- 25 A. Yes, ma'am.

State v David Alan White
Albert Jenkins-Direct Examination by Ms. Newman
March 15, 2016

1 Q. Okay. Where were you that night?

2 A. We were in the backyard. I got off work at 6
3 o'clock and I went over to Spencer's because he was
4 supposed to smoke me a turkey so that's I was there.
5 And then I brought my turkey over.

6 They were all there; all the guys were already back
7 there when I got there. So they had a fire going, little
8 barrel fire going and he had the smoker already lit up so
9 I went over to put my turkey in the smoker and we were in
10 the backyard.

11 Q. When you say all the guys were there who do you
12 remember being there?

13 A. The witnesses, Dave, Little Bear, Spencer, and his
14 wife and kids was in the house.

15 Q. So Mr. Johnson and the defendant were there as well?

16 A. Yes, they were there when I got there.

17 Q. Okay. And how long were you at Mr. Washington's
18 house before the incident happened?

19 A. Approximately I'll say two hours.

20 Q. And when you got there what was going on at the
21 house?

22 A. As I said we were smoking the turkey in the
23 backyard. We weren't inside the house; we were in the
24 backyard. We had the fire going, the smoker, and
25 everybody was just sitting back relaxing. We had a few

State v David Alan White
Albert Jenkins-Direct Examination by Ms. Newman
March 15, 2016

1 beers back there and they were just exchanging words like
2 cracking jokes. It was normal to me. I didn't know
3 anything was going to go off.

4 Q. Was Mr. Johnson cutting hair at any point?

5 A. He was cutting -- I think he cut two or three
6 people's hair over there. He was cutting hair when I got
7 there. I think it was Spencer's little nephew's hair if
8 I'm not mistaken.

9 Q. Did you ever see Mr. Johnson cutting the defendant's
10 hair?

11 A. I think he did cut his hair at one point.

12 Q. When he was cutting hair did you see them
13 interacting?

14 A. They was just cracking jokes. Like I said they were
15 just cracking jokes back and forth but he still finished
16 the hair.

17 Q. Did either of them seem upset at that time?

18 A. No, ma'am.

19 Q. Okay. At some point did things escalate?

20 A. It did as time went by.

21 Q. Okay. What happened?

22 A. Well, as time went by they were cracking the jokes
23 back and forth and the jokes got a little serious and so
24 Mr. Washington asked them to cut the joking out because
25 it was getting a little out of hand. And then he told

State v David Alan White
Albert Jenkins-Direct Examination by Ms. Newman
March 15, 2016

1 Mr. Dave to stop acting up in his yard or other than that
2 he would have to leave.

3 Q. So Mr. Washington told the defendant he would have
4 to leave?

5 A. Yes, if he didn't put up the knife because he was
6 playing with a knife.

7 Q. Now before the incident happened did you hear the
8 defendant say anything to Mr. Johnson?

9 A. No, ma'am.

10 Q. Did you hear Mr. Johnson say anything to the
11 defendant?

12 A. Other than just joking back and forth. Like I said
13 they were exchanging words back and forth but they were
14 nowhere near each other. They was talking from a
15 distance.

16 Q. Okay. And you mentioned things escalated at one
17 point correct?

18 A. Yes.

19 Q. And describe what you saw?

20 A. I saw them escalate with the words. Like I said I
21 was further away from there. Like I said he didn't put
22 the knife down at the time so Mr. Washington asked him
23 young man you got to leave my yard because you're
24 disrespecting my yard. So he gathered his things and I
25 thought he was about to leave. He gathered his things,

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1 his coat and he was about to walk out the yard and then
2 when he and Mr. Bear got close to each other they pushed
3 off and Mr. Bear grabbed his neck and said, oh man he cut
4 me. I was like what because I didn't see all that
5 transpire.

6 Q. Did you see a knife at that point when they pushed
7 off?

8 A. No, like I said the only time I saw it was when he
9 was over on the other end and Mr. Washington asked him to
10 leave because he wouldn't put it up. But I assumed he
11 put it up because he was grabbing all his stuff and he
12 was leaving.

13 But when he got close by and they got together the
14 two pushed off and when they parted Little Bear grabbed
15 his neck and then I saw the blood coming down. I got you
16 know frightened myself.

17 Q. And where were you in relation to where they were;
18 Mr. Johnson and the defendant?

19 A. I was on the other side of the yard.

20 Q. Okay. Was it dark out?

21 A. We had light back there. It was nighttime.

22 Q. So you could see?

23 A. Yes, you could see.

24 Q. Okay. So after the defendant cut Mr. Johnson what
25 happened next?

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1 A. Well Little Bear was holding his neck and I was like
2 man, he's bleeding for real. Then Spencer's older
3 brother he was standing by Little Bear and he grabbed
4 Little Bear because Little Bear started getting a
5 nauseated; he was going in and out.

6 I was like man, I don't believe this. He was really
7 just trying to keep him conscious because he was going in
8 and out of consciousness.

9 Q. Spencer's older brother is that Henry Washington?

10 A. I know him as Tony. Like I say I only go around
11 there when I go to visit Spencer and I meet everybody
12 there when I get there. I really don't know them.

13 Q. Now at any point did you see Mr. Johnson hit the
14 defendant?

15 A. Mr. Johnson, that's Little Bear? No, I saw when
16 they pushed off. I didn't -- no.

17 Q. Did you see Mr. Johnson bleeding?

18 A. Oh, yes.

19 Q. How would you describe that to the jury?

20 A. Well I didn't really look I saw the blood. I didn't
21 want to look at it but I stood there just calling his
22 name stay awake Little Bear, stay with us because he kept
23 saying man, y'all don't let me die.

24 So that really got me upset. I just kept calling
25 his name, stay awake man, stay awake. Then the ambulance

State v David Alan White
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1 came.

2 MS. NEWMAN: Beg the court's indulgence.

3 [Whereupon, Ms. Newman and Ms. Elliott confer]

4 Q. [Ms. Newman] Mr. Jenkins did you see the defendant
5 cut at all?

6 A. No, ma'am.

7 Q. What did he do when this incident happened? Where
8 did he go?

9 A. Which one?

10 Q. The defendant.

11 A. When I saw him do what?

12 Q. After the incident occurred where was Mr. Johnson?

13 A. Okay, see I don't know them by names.

14 Q. Where was Little Bear?

15 A. Little Bear we laid him down after he got cut and
16 like I said tried to keep him conscious.

17 Q. And where was David White?

18 A. He walked out the yard.

19 Q. Did you see him run out?

20 A. He walked out but I concentrated on Little Bear
21 because he was falling down and holding his neck and
22 saying don't let him die. I saw Dave walk off and I
23 didn't see him no more.

24 MS. NEWMAN: Beg the court's indulgence.

25 [Whereupon, Ms. Newman and Ms. Elliott confer]

State v David Alan White
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1 MS. NEWMAN: No further questions. Thank you.

2 THE COURT: Cross-examination?

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State v David Alan White
Albert Jenkins-Cross-Examination by Ms. Ford
March 15, 2016

CROSS-EXAMINATION

1
2 BY MS. FORD:

3 Q. Mr. Spencer -- I'm sorry Mr. Jenkins, you had met
4 David and Little Bear before at Spencer's house correct?

5 A. Right.

6 Q. So you had seen them both there at different times,
7 at the same time?

8 A. No ma'am, always at different times. Every now and
9 then they would be there together like show up around
10 there.

11 Q. But you've been there before when they have been
12 there together?

13 A. Yes.

14 Q. Okay. So you didn't actually see Bear get cut
15 correct?

16 A. No, I didn't see him get cut because I didn't see
17 the knife. I saw when they parted he was bleeding;
18 that's what I saw.

19 Q. Okay. You're telling us that David had a knife
20 earlier; you saw him with a knife earlier ---

21 A. --- yes. That's why Mr. Washington asked him to
22 leave the yard because he wouldn't stop playing with it.
23 And then he gathered his things, his coat and his
24 belongings and he said I'll leave your yard. Then when
25 he was fixing to leave him and Little Bear got close to

State v David Alan White
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1 each other and they pushed off and right after that
2 Little Bear backed up and grabbed his neck.

3 Q. You've given several statements to people before
4 today correct about this incident?

5 A. Other than you and -- I just got questioned a little
6 while ago.

7 Q. Right. But I mean you spoke to police correct?

8 A. Right.

9 Q. And you've spoken to the Solicitor before today?

10 A. Right.

11 Q. You didn't mention any of those times that you saw
12 David had a knife earlier?

13 A. They didn't ask that.

14 Q. Okay. But you never mentioned it correct?

15 A. No, they didn't ask that.

16 Q. And you had been there for a few hours.

17 A. I'd been there approximately two hours before the
18 incident happened because like I said I went over there
19 to have my turkey smoked.

20 Q. And right before Bear said he was cut you were
21 standing off to the side correct?

22 A. Right. I was by the fire barrel; I was by the fire
23 barrel.

24 Q. And you were drinking that night?

25 A. Yes ma'am, all of us were.

State v David Alan White
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March 15, 2016

1 MS. FORD: Beg the court's indulgence.
2 [Whereupon, Ms. Ford and Mr. Mack confer]
3 MS. FORD: No further questions for this witness.
4 THE COURT: Redirect?
5 MS. NEWMAN: No, Your Honor.
6 THE COURT: You may step down. Thank you very
7 much.
8 [Whereupon, the witness is excused and exits the
9 witness stand]
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State v David Alan White
Proceedings
March 15, 2016

1 THE COURT: Madame Forelady and ladies and
2 gentlemen of the jury we're going to take about a fifteen
3 or twenty minute break. If you need anything let the
4 bailiff know and if there are any smokers let them know
5 and they'll take you to the appropriate place for
6 smoking. Please don't discuss the case amongst
7 yourselves and we'll get you back in about fifteen or
8 twenty minutes.

9 [Whereupon, the jury exits at 10:56 a.m.]

10 THE COURT: Anything from the State before we take
11 a break?

12 MS. NEWMAN: No, Your Honor.

13 THE COURT: Anything from the defendant?

14 MS. FORD: No, Your Honor.

15 THE COURT: All right. We'll take about a fifteen
16 or twenty minute break.

17 [Whereupon, court is in recess from 10:56 a.m. until
18 11:17 a.m.]

19 THE COURT: Anything before we bring the jury in?

20 MS. NEWMAN: No, Your Honor.

21 THE COURT: For your planning purposes we're going
22 to break today at 12:30 for lunch rather than 1:00 okay.

23 MS. NEWMAN: Thank you, Judge.

24 THE COURT: Bring us the jury please.

25 [Whereupon, the jury enters at 11:18 a.m.]

State v David Alan White
Henry Washington-Direct Examination by Ms. Elliott
March 15, 2016

1 THE COURT: Call your next witness, please.

2 MS. ELLIOTT: Thank you, Your Honor. The State
3 calls Henry Washington.

4 [Whereupon, Mr. Washington comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

7 CLERK OF COURT: State your first and last name and
8 spell out your last name please.

9 THE WITNESS: Henry Washington, W-A-S-H-I-N-G-T-O-N.

10

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11

HENRY WASHINGTON,

12

Having been first duly sworn,

13

Was examined and testified as follows:

14

DIRECT EXAMINATION

15

BY MS. ELLIOTT:

16

Q. Good morning Mr. Washington. How old are you?

17

A. Forty six.

18

Q. And where are you from?

19

A. Mount Pleasant.

20

Q. And have you lived in Charleston your whole life?

21

A. Yes, ma'am.

22

Q. Are you related to Spencer Washington?

23

A. My brother.

24

Q. And what do you do for a living?

25

A. Operator at the State Ports --

State v David Alan White
Henry Washington-Direct Examination by Ms. Elliott
March 15, 2016

1 THE COURT REPORTER: I'm sorry; I didn't hear the
2 name of the company.
3 A. State Ports Authority.
4 Q. [Ms. Elliott] I'm sorry; you've been with them for
5 how long?
6 A. Twenty years.
7 Q. How do you know Joseph Johnson?
8 A. A friend of the family just years and years; that's
9 just it.
10 Q. And does he have any nicknames that you call him by?
11 A. Yes, Little Bear.
12 Q. And do you know David White?
13 A. Of course.
14 Q. How do you know him?
15 A. A friend of the family.
16 Q. How long have you known him?
17 A. Years.
18 Q. How would you describe your relationship with David
19 White?
20 A. Brother.
21 Q. How often do you see David White?
22 A. Every day.
23 Q. How often do you see Joseph Johnson?
24 A. Probably once a month maybe; maybe every other
25 month.

State v David Alan White
Henry Washington-Direct Examination by Ms. Elliott
March 15, 2016

- 1 Q. Do you recall the night of November 27th, 2013?
- 2 A. Yes, ma'am.
- 3 Q. Where were you that night?
- 4 A. At my brother's house.
- 5 Q. I'm going to need you to speak up a little bit more
- 6 and get a little closer to that mic okay?
- 7 A. At my brother's house.
- 8 Q. And why were you at your brother's house?
- 9 A. I got off work and he was cooking turkeys and I
- 10 stopped by.
- 11 Q. Do you remember some of the people that were there?
- 12 A. Not all of them. Some of them but not all of them.
- 13 Q. Just tell us who you remember.
- 14 A. Little Bear, Mr. White, Kyle, Doughty [phonetic].
- 15 Q. I'm sorry?
- 16 A. This guy we call Doughty [phonetic]. He's outside.
- 17 Q. And what was everyone doing when you got there?
- 18 A. Just hanging out. Just like gathered; just hanging
- 19 out laughing and joking.
- 20 Q. And were David White and Joseph Johnson already
- 21 there when you got there?
- 22 A. Yes.
- 23 Q. Do you remember what they were doing when you first
- 24 got there?
- 25 A. Like I said just hanging out by the fire; just

State v David Alan White
Henry Washington-Direct Examination by Ms. Elliott
March 15, 2016

1 hanging out, that's it.

2 Q. How were they interacting with each other when you
3 first got there?

4 A. Laughing, joking.

5 Q. Do you remember Joseph Johnson cutting anyone's hair
6 that night?

7 A. Yes, he cut mine, Eli, and my brother's hair.

8 Q. Do you remember if he cut David White's hair that
9 night?

10 A. I don't remember.

11 Q. After Joseph Johnson was done cutting everybody's
12 hair that night what happened?

13 A. We were still hanging out just laughing and joking.
14 Then we started talking wrestling and using the word tap
15 out and it just triggered from there.

16 Q. What do you mean it triggered from there?

17 A. Just talking about who is going to tap out first,
18 this that and the third and then he stopped.

19 Q. Who is he?

20 A. I said they stopped.

21 Q. And they stopped?

22 A. Yes.

23 Q. Who all was talking about wrestling?

24 A. Everybody. Me, my brother, Little Bear, David; most
25 all the guys that were there.

State v David Alan White
Henry Washington-Direct Examination by Ms. Elliott
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- 1 Q. Okay. What was David saying about tapping out?
- 2 A. Nothing, just saying tapping out and who would do it
- 3 first; that's all. It was nothing serious about it.
- 4 Q. So it was all still joking and laughing?
- 5 A. Exactly right.
- 6 Q. Did something happen between Joseph Johnson and
- 7 David White that night?
- 8 A. No, not at all to trigger what happened.
- 9 Q. Well, what happened?
- 10 A. That's what I'm saying. I don't -- what I'm saying
- 11 is what triggered for Mr. White to cut Little Bear I
- 12 didn't see that part you know what I'm saying.
- 13 Q. And what I want you to talk about is David White
- 14 cutting Little Bear. What do you remember happening
- 15 about that?
- 16 A. I didn't see when Mr. White cut Little Bear. I
- 17 didn't know he cut him until Little Bear told me when I
- 18 turned around because my back was turned.
- 19 Q. So your back was turned ---
- 20 A. --- exactly right ---
- 21 Q. --- to whom?
- 22 A. Both of them. I was leaning on the deck. Actually
- 23 I was leaning on the deck when it happened.
- 24 Q. Could you hear anything that they were saying?
- 25 A. No.

State v David Alan White
Henry Washington-Direct Examination by Ms. Elliott
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1 Q. And while you were leaning on the deck what got your
2 attention?

3 A. I turned around. And when I turned around Little
4 Bear had his hand right here [indicates] and he looked at
5 it and it was cut and I just went crazy then. I lost it.
6 I just reacted to save his life and that was it.

7 Q. And so what were you doing for Mr. Johnson?

8 A. I hold his two hands and lay him on the concrete and
9 took my shirt off to hold the pressure to the neck to
10 stop the bleeding.

11 Q. Did you see where David White went while you were
12 applying pressure to Joseph Johnson's wound?

13 A. No, ma'am.

14 Q. Do you remember giving a statement that night?

15 A. Yes, ma'am.

16 Q. When the police got there?

17 A. Yes.

18 [Whereupon, the witness is shown document]

19 Q. Is that your statement?

20 A. Yes, ma'am.

21 Q. And your signature?

22 A. Yes, ma'am.

23 Q. And in that did you say that David got upset and
24 walked up and pushed Little Bear?

25 A. Yes, he got upset and he pushed him but it was just

State v David Alan White
Henry Washington-Direct Examination by Ms. Elliott
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1 a playing push. It wasn't nothing like I'm going to do
2 this and I'm going to do that because I pushed my brother
3 earlier that night too.

4 Q. Okay. It was after that that Little Bear said he
5 cut me?

6 A. No, it wasn't after that. Everything was quiet
7 then. Like I said everything was quiet and then I don't
8 know what happened after that.

9 Q. Let me make sure I understand you. You remember
10 David pushing Little Bear?

11 A. Yes.

12 Q. And then after that Little Bear saying he got cut?

13 A. No, it wasn't after that. Everything got quiet like
14 we was still tripping. My back was turned at that point
15 and when I turned back around that's when he had got cut.

16 Q. Do you remember David saying that he could make
17 Little Bear tap out?

18 A. We all said that. Little Bear said it to David.
19 David said it to Little Bear; like I said it was just a
20 joke thing. It wasn't nothing serious.

21 Q. So this was really just a whole bunch of guys saying
22 that ---

23 A. --- exactly right ---

24 Q. --- they were going to be able to ---

25 A. --- it's like you had a basketball game and I say I

State v David Alan White
Henry Washington-Direct Examination by Ms. Elliott
March 15, 2016

1 can score more points than you. That's what he was
2 talking about. They were just using the word tap out.

3 Q. So once you realized that Little Bear was hurt you
4 started doing what?

5 A. I took my shirt off, laid him down on the concrete
6 and applied pressure to the neck to try to stop the
7 bleeding.

8 Q. And you did that until what time?

9 A. I can't remember the time. I hold it there until
10 the EMS got there, until the paramedics got there. I
11 can't give you the timeframe on it.

12 Q. And EMS took over at that point?

13 A. Yes, ma'am.

14 Q. What happened after that?

15 A. I was crying.

16 MS. ELLIOTT: Beg the court's indulgence.

17 [Whereupon, Ms. Newman and Ms. Elliott confer]

18 Q. [Ms. Elliott] Did you ever see Little Bear punch
19 David White?

20 A. No.

21 Q. Hit him in any way?

22 A. No.

23 Q. Mr. Washington, those are all the questions I have
24 for you at this time. Please answer any that Ms. Ford
25 might have.

State v David Alan White
Henry Washington-Cross-Examination by Ms. Ford
March 15, 2016

CROSS-EXAMINATION

- 1
2 BY MS. FORD:
3 Q. Mr. Washington?
4 A. Hey there. How are you?
5 Q. Mr. Washington, you didn't actually see Bear get cut
6 correct?
7 A. No, ma'am.
8 Q. And you did tell that to police the night they
9 talked to you as well as in your written statement,
10 correct?
11 A. Yes, ma'am.
12 Q. And you didn't see David with a knife?
13 A. No, I did not even know he had a knife.
14 Q. So you never saw him with a knife that night?
15 A. If I knew he had a knife I would have took it from
16 him. Trust me; and he would have given it to me too.
17 Q. And from your perspective neither one seemed upset
18 before the incident?
19 A. No, ma'am.
20 Q. So this was a complete shock?
21 A. Exactly right.
22 Q. You left the house at some point that night correct?
23 A. Yes.
24 Q. You went to the store?
25 A. Yes.

State v David Alan White
Henry Washington-Cross-Examination by Ms. Ford
March 15, 2016

- 1 Q. So you never saw Bear cut David's hair correct?
- 2 A. No.
- 3 Q. So you don't know what was going on during that
- 4 time?
- 5 A. No.
- 6 Q. And you don't know what was said during that time?
- 7 A. Right.
- 8 MS. FORD: Beg the court's indulgence.
- 9 [Whereupon, Ms. Ford and Mr. Mack confer]
- 10 Q. [Ms. Ford] Mr. Washington, do you remember where you
- 11 were right before you heard Bear talking about getting
- 12 cut? Where were you in relation to them?
- 13 A. How do you mean friend's wise?
- 14 Q. In distance?
- 15 A. I was standing -- I was at the bar, leaning on the
- 16 bar. My back was turned.
- 17 Q. But were you close to them though?
- 18 A. Yes.
- 19 Q. Okay. So was your brother there?
- 20 A. Yes.
- 21 Q. And there were other people there too?
- 22 A. Yes, ma'am.
- 23 Q. But you don't remember how many people were there?
- 24 A. No, ma'am.
- 25 Q. No further questions.

State v David Alan White
Henry Washington-Cross-Examination by Ms. Ford
March 15, 2016

1 THE COURT: Redirect?
2 MS. ELLIOTT: None, Your Honor.
3 THE COURT: You may step down. Thank you very
4 much.
5 [Whereupon, the witness is excused and exits the
6 witness stand]
7 THE COURT: Call your next witness.
8

State v David Alan White
Dwayne Forrest-Direct Examination by Ms. Newman
March 15, 2016

1 MS. NEWMAN: Thank you, Your Honor. The State
2 calls Dwayne Forrest.
3 [Whereupon, Mr. Forrest comes forward]
4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]
6 CLERK OF COURT: State your first and last name and
7 spell out your last name please.
8 THE WITNESS: Dwayne Forrest, F-O-R-R-E-S-T.
9 - - - - -
10 DWAYNE FORREST,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MS. NEWMAN:
15 Q. Good morning Mr. Forrest.
16 A. Good morning.
17 Q. How old are you?
18 A. Thirty eight.
19 Q. And where are you from?
20 A. North Charleston.
21 Q. Have you lived in Charleston your whole life?
22 A. Yes, ma'am.
23 Q. Where do you work?
24 A. At Capital Material --
25 THE COURT REPORTER: --- at where, sir? What's the

State v David Alan White
Dwayne Forrest-Direct Examination by Ms. Newman
March 15, 2016

- 1 name of the place?
- 2 A. At Capital Materials.
- 3 Q. [Ms. Newman] What do you do at Capital Materials?
- 4 A. I unload trains and trucks.
- 5 Q. Now do you know Joseph Johnson?
- 6 A. No.
- 7 Q. Do you know Joseph Johnson as Little Bear?
- 8 A. Yes, ma'am. I don't really know them at all.
- 9 Q. How about David White?
- 10 A. No, I don't know him either.
- 11 Q. At the time this incident happened how long had you
- 12 known Little Bear?
- 13 A. I seen him at Spencer Washington's house probably
- 14 like two times.
- 15 Q. How about David White?
- 16 A. I seen him just probably like two or three times
- 17 before.
- 18 Q. Now do you recall the night of November 27th, 2013?
- 19 A. Yes, ma'am.
- 20 Q. Where were you that night?
- 21 A. I was at Spencer's house. I just had pull up in the
- 22 yard there.
- 23 Q. Why were you at Spencer's house?
- 24 A. To see how he was doing over there. I always go
- 25 over there.

State v David Alan White
Dwayne Forrest-Direct Examination by Ms. Newman
March 15, 2016

- 1 Q. Were there a lot of people there?
- 2 A. There was a few guys out there.
- 3 Q. Who do you remember being there?
- 4 A. I remember David and Little Bear been there,
5 Spencer, Henry; that's all I remember.
- 6 Q. And were you inside or outside?
- 7 A. Outside.
- 8 Q. Where were you outside?
- 9 A. In the backyard.
- 10 Q. Did you ever see Little Bear cutting hair that
11 night?
- 12 A. No.
- 13 Q. What was going on when you got to the house?
- 14 A. When I got there it was dark and everybody was in
15 the backyard just talking or whatever. But when I get
16 there with Little Bear and the other guy was fussing.
17 That's when I get there.
- 18 Q. And what do you mean by fussing?
- 19 A. I'm talking like they ready to fight each other.
- 20 Q. And when you said the other guy who's the other guy?
- 21 A. Right there [indicates] him.
- 22 Q. David White?
- 23 A. Yes.
- 24 Q. Now at some point did anything happen between Little
25 Bear and David White?

State v David Alan White
Dwayne Forrest-Direct Examination by Ms. Newman
March 15, 2016

- 1 A. They was arguing over there and then David had swung
2 his arm and that's when Little Bear just grab his neck.
3 Q. What happened when Little Bear grabbed his neck?
4 A. He take a few steps and then he collapsed.
5 Q. And where were you when this happened?
6 A. In the backyard.
7 Q. How far away were you from this?
8 A. I probably was like four feet away from him.
9 Q. Did you hear David White say anything to Little Bear
10 before this happened?
11 A. When I walked in the yard they already was done
12 fussing or whatever. I can't remember what they was
13 saying to each other but they was fussing with each other
14 you know.
15 Q. And did you ever see Little Bear hit David White?
16 A. No, ma'am.
17 Q. Did you see him hit anyone that night?
18 A. No, ma'am.
19 Q. Now once Little Bear got cut what happened next?
20 A. That's when Henry had gone and put a towel around
21 his neck you know. And then we stand around until the
22 police come.
23 Q. Did you see any blood?
24 A. Yes.
25 Q. Can you describe that to the jury please?

State v David Alan White
Dwayne Forrest-Direct Examination by Ms. Newman
March 15, 2016

1 A. It was a big beach towel and the whole towel was
2 full of blood.

3 Q. Did you see where David White went after this
4 happened?

5 A. He wasn't in the yard. I didn't know where he went.

6 MS. NEWMAN: Beg the court's indulgence.

7 [Whereupon, Ms. Newman and Ms. Elliott confer]

8 Q. [Ms. Newman] Mr. Forrest, did you see a knife at any
9 point?

10 A. A what?

11 Q. A knife?

12 A. No, ma'am. I didn't see anything. I just had seen
13 like when David just swung at him and then Little Bear
14 just grab his neck. That's it. I didn't see any knife;
15 I didn't see no knife.

16 Q. After it happened did you see a knife?

17 A. It was like a little small weapon or whatever you
18 know what I'm saying. It was dark out there you know.

19 Q. No further questions. Thank you.

20 THE COURT: Cross-Examination?

21 MS. FORD: Yes, Your Honor.
22
23
24
25

State v David Alan White
Dwayne Forrest-Cross-Examination by Ms. Ford
March 15, 2016

CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. Mr. Forrest, you had just gotten to the house?

4 A. Yes, ma'am.

5 Q. Just a little before this all happened?

6 A. Yes, ma'am.

7 Q. So you have no clue what transpired before that time
8 correct?

9 A. No ma'am, I didn't know.

10 Q. And you don't know why the two men were arguing?

11 A. No, ma'am.

12 Q. And you never actually -- you weren't in a position
13 to be able to see a knife in David's hand correct?

14 A. I was like four feet away from him or whatever. You
15 know it was dark in the backyard.

16 Q. Okay. So from four feet away you couldn't see a
17 knife in his hand or a blade or anything?

18 A. It happened so fast ma'am, you know. Dave just I
19 mean just wave his hand and I was over there from him and
20 then our eyes was on him because he grabbed his neck and
21 said that he get cut, you know.

22 Q. Before David swung you had seen his hand in his
23 pocket though correct?

24 A. Yes, ma'am.

25 MS. FORD: Beg the court's indulgence.

State v David Alan White
Dwayne Forrest-Cross-Examination by Ms. Ford
March 15, 2016

1 [Whereupon, Ms. Ford and Mr. Mack confer]

2 Q. [Ms. Ford] Do you recall did you see David walking
3 by Bear and swinging or do you know what happened right
4 before the swing?

5 A. They was in each other's face like when I was in the
6 yard. I mean just in each other's face.

7 Q. How long were you there do you know before this
8 happened?

9 A. When I get there probably like three or four minutes
10 or something like that.

11 Q. Okay. So just a few minutes?

12 A. Yes.

13 Q. No further questions.

14 THE COURT: Any redirect?

15 MS. NEWMAN: Briefly, Your Honor.

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State v David Alan White
Dwayne Forrest-Redirect Examination by Ms. Newman
March 15, 2016

1 REDIRECT EXAMINATION

2 BY MS. NEWMAN:

3 Q. Mr. Forrest, do you remember giving a written

4 statement that night?

5 A. Yes, ma'am.

6 Q. Is this your statement?

7 [Whereupon, the witness is shown item]

8 A. Yes, ma'am.

9 Q. And is it your signature at the bottom?

10 A. Yes, ma'am.

11 Q. Can you please just read those two lines for us?

12 A. I put all I see is David pull out the knife and cut

13 the man.

14 Q. So you did see David pull out the knife?

15 A. I see his hand was in his pocket and then his hand

16 came out of his pocket and swung it at Little Dave -- I

17 mean Little Bear or whatever. And so Little Bear just

18 grabbed his neck.

19 MS. NEWMAN: Beg the court's indulgence.

20 [Whereupon, Ms. Newman and Ms. Elliott confer]

21 MS. NEWMAN: No further questions. Thank you.

22 THE COURT: Recross?

23

State v David Alan White
Dwayne Forrest-Recross Examination by Ms. Ford
March 15, 2016

RECROSS-EXAMINATION

BY MS. FORD:

Q. So Mr. Forrest, is it fair to say when you made that statement you just assumed that David took out a knife because he took out his hand from his pocket and then you saw ultimately that Bear was cut?

A. Yes ma'am, you could say that.

Q. No further questions.

THE COURT: You may step down. Thank you, very much.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Call your next witness please, ma'am.

State v David Alan White
Kyle Green-Direct Examination by Ms. Newman
March 15, 2016

1 MS. NEWMAN: Thank you, Your Honor. The State
2 calls Kyle Green.

3 [Whereupon, Mr. Green comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: State your first and last name and
7 spell out your last name.

8 THE WITNESS: Kyle Green, G-R-E-E-N.

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10 KYLE GREEN,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. NEWMAN:

15 Q. Good morning Mr. Green.

16 A. Good morning.

17 Q. How old are you?

18 A. Thirty three.

19 Q. And where are you from?

20 A. Charleston, South Carolina.

21 Q. Have you lived in Charleston your whole life?

22 A. Yes.

23 Q. And what do you do for a living?

24 A. A warehouse manager.

25 Q. Now do you know Joseph Johnson as Little Bear?

State v David Alan White
Kyle Green-Direct Examination by Ms. Newman
March 15, 2016

- 1 A. Yes.
- 2 Q. How do you know him?
- 3 A. Just an acquaintance from around where my Mom was
4 at.
- 5 Q. And where does your Mom live?
- 6 A. In Pepper Hill.
- 7 Q. What road does she live on?
- 8 A. Hillandale.
- 9 Q. And where is that in relation to Spencer
10 Washington's house?
- 11 A. Right next door.
- 12 Q. Now back when this incident happened how long had
13 you known Mr. Johnson?
- 14 A. Maybe two years.
- 15 Q. Did you see him often?
- 16 A. Pretty often.
- 17 Q. You said you would consider him an acquaintance?
- 18 A. Yes.
- 19 Q. Now do you know David White?
- 20 A. Yes.
- 21 Q. And how do you know Mr. White?
- 22 A. The same way; just being in Spencer's yard.
- 23 Q. When this happened how long had you known the
24 defendant?
- 25 A. Years; eight years maybe.

State v David Alan White
Kyle Green-Direct Examination by Ms. Newman
March 15, 2016

- 1 Q. How often would you say you saw him?
- 2 A. Every so often.
- 3 Q. Now do you recall the night of November 27, 2013?
- 4 A. Yes.
- 5 Q. Where were you that night?
- 6 A. At Spencer Washington's house.
- 7 Q. And what were you doing at Spencer's house?
- 8 A. We was just there smoking turkeys and drinking beers
- 9 and stuff like that.
- 10 Q. Do you remember who was there?
- 11 A. Somewhat; there was a lot of people.
- 12 Q. Who do you remember that was there?
- 13 A. Bear, David, Tony, Spencer, his wife; it blurry it's
- 14 two years ago you so.
- 15 Q. Now when you got there what was going on?
- 16 A. It was pretty calm, nothing much.
- 17 Q. Was Mr. Johnson cutting hair?
- 18 A. Yes.
- 19 Q. Did you see him cut the defendant's hair?
- 20 A. Yes.
- 21 Q. While Mr. Johnson was cutting the defendant's hair
- 22 did you see them interacting?
- 23 A. Yes.
- 24 Q. And what was going on then?
- 25 A. To me it was more like joking. I didn't see

State v David Alan White
Kyle Green-Direct Examination by Ms. Newman
March 15, 2016

- 1 anything out of the normal.
- 2 Q. Did either of them seem upset at that point?
- 3 A. Uh Uh.
- 4 Q. Now at some point did things escalate?
- 5 A. At some point it did but I was a distance away so
- 6 I'm not sure exactly what happened would make it that
- 7 way.
- 8 Q. Well what do you remember seeing?
- 9 A. I remember them being face to face and I remember
- 10 their hands going up so that's pretty much all I saw.
- 11 Q. Did you see whose hands went up first?
- 12 A. Yes, I think it might have been David's.
- 13 Q. David's hands went up first?
- 14 A. Yes.
- 15 Q. And then you saw Little Bear's hands go up?
- 16 A. Yes.
- 17 Q. And what happened after that?
- 18 A. Well I guess that's when he got cut; I'm not sure.
- 19 But at the same time I never saw a weapon or anything
- 20 like that. But there was commotion around that time.
- 21 Q. And after this happened did you see where the
- 22 defendant went?
- 23 A. I didn't see.
- 24 Q. Was he around?
- 25 A. No.

State v David Alan White
Kyle Green-Direct Examination by Ms. Newman
March 15, 2016

1 Q. How about Little Bear?

2 A. He was bleeding on the ground.

3 Q. How badly was he bleeding?

4 A. Pretty bad.

5 Q. And again where were you when this happened?

6 A. I'm in -- it's a big backyard maybe 30 or 40 feet in
7 the back; somewhere up in there. They were towards the
8 front of the backyard and I was toward the back because
9 like I said there was a lot of people there.

10 MS. NEWMAN: Beg the court's indulgence.

11 [Whereupon, Ms. Newman and Ms. Elliott confer]

12 MS. NEWMAN: No further questions. Thank you.

13 THE COURT: Cross-Examination?
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State v David Alan White
Kyle Green-Cross-Examination by Ms. Ford
March 15, 2016

CROSS-EXAMINATION

BY MS. FORD:

Q. Mr. Green, do you didn't actually see Bear get cut?

A. No.

Q. You saw both of their hands go up?

A. Yes.

Q. And you're saying today you think it was David's first?

A. I would think but it was more like this [indicates] right here. I saw this kind of motion [indicates]. It wasn't like this [indicates] like they were pointing at each other's faces.

Q. Okay. And at the time you gave a statement to the police correct?

A. Yes.

Q. And at that point you didn't indicate whose hands went up first?

A. I'm not sure. You know it was two years ago.

Q. And you had been there for several hours?

A. I was there for some hours.

Q. Okay. And you never saw a knife that night?

A. Uh Uh.

Q. So you never saw David with a knife?

A. I didn't see him with a knife, no..

Q. At any point in the night?

State v David Alan White
Kyle Green-Cross-Examination by Ms. Ford
March 15, 2016

1 A. Uh Uh.

2 THE COURT REPORTER: Is that no?

3 A. No.

4 MS. FORD: Beg the court's indulgence.

5 [Whereupon, Ms. Ford and Mr. Mack confer]

6 MS. FORD: No further questions for this witness.

7 MS. NEWMAN: No redirect, Your Honor.

8 THE COURT: Thank you, very much. You may step
9 down.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 THE COURT: Call your next witness.

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State v David Alan White
Amanda Swisher-Direct Examination by Ms. Newman
March 15, 2016

1 MS. NEWMAN: Thank you, Your Honor. The State
2 calls Amanda Swisher.

3 [Whereupon, Ms. Swisher comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: State your first and last name and
7 spell out your last name.

8 THE WITNESS: My name is Amanda Swisher; you spell
9 the last name S-W-I-S-H-E-R.

10 - - - - -

11 AMANDA SWISHER,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. NEWMAN:

16 Q. Good morning Ms. Swisher. Where do you work?

17 A. Charleston County Consolidated 911 Center.

18 Q. And how long have you been with them?

19 A. Four and a half years.

20 Q. What is your position?

21 A. Multifunctional telecommunicator.

22 Q. And what does that mean?

23 A. That means we do different positions depending on
24 the day, answer 911 calls, dispatch police, fire, and
25 EMS; it just depends on what position you're sitting for

State v David Alan White
Amanda Swisher-Direct Examination by Ms. Newman
March 15, 2016

1 the day.

2 Q. Were you in that same position in November of 2013?

3 A. At that time I was only answering 911 and
4 administrative lines.

5 Q. And were you answering calls from all of Charleston
6 County at that time?

7 A. Yes.

8 Q. Can you please explain to the jury how a 911 call
9 comes in and what happens after that?

10 A. When a 911 call rings into the center it is answered
11 by a dispatcher, a call taker and they take the basic
12 information, the location, the type of call and put it
13 into the computer and it dispatches with the CAD system.

14 At that point it gets shipped over to a dispatcher,
15 a separate person in the room who is talking to police,
16 fire, or EMS depending on the situation or simultaneously
17 all three at the same time. That person is then giving
18 their information out to the responders.

19 The person answering the phone is never actually
20 talking to the police, fire, or EMS responders; its
21 separate people doing those jobs. And so as that happens
22 simultaneously the call taker is putting additional
23 information into the call which is then sent out to all
24 the other dispatchers who update their responders.

25 Q. Now on November 27, 2013 were you working that

State v David Alan White
Amanda Swisher-Direct Examination by Ms. Newman
March 15, 2016

- 1 night?
- 2 A. Yes, ma'am.
- 3 Q. And did you answer a call related to an incident
- 4 that took place on Hillandale Road?
- 5 A. Yes, ma'am.
- 6 Q. When did the call come in?
- 7 A. I can't recall exactly; I'm sorry.
- 8 Q. If I showed you the CAD report would that refresh
- 9 your memory?
- 10 A. Yes.
- 11 [Whereupon, the witness is shown document]
- 12 A. It came in at 9:26 p.m.
- 13 Q. And 911 calls are recorded correct?
- 14 A. Yes.
- 15 Q. Is it in the regular practice for 911 calls to be
- 16 recorded?
- 17 A. Yes.
- 18 Q. And are 911 calls kept and stored in the ordinary
- 19 course of business?
- 20 A. Yes.
- 21 Q. Ms. Swisher, I'm showing you what has been marked as
- 22 State's exhibit 3 for I.D. only. Can you please take a
- 23 look at what is in there?
- 24 [Whereupon, the witness is shown exhibit]
- 25 Q. Do you recognize that?

State v David Alan White
Amanda Swisher-Direct Examination by Ms. Newman
March 15, 2016

1 A. I do.

2 Q. And what is it?

3 A. It is the recording for the 911 call for that night.

4 Q. And how do you know that?

5 A. I met with you last week and listened to it and my
6 initials are on it.

7 Q. And you said you listened to the C.D. containing the
8 call last week?

9 A. Yes.

10 Q. And does that C.D. fairly and accurately depict the
11 call you answered on November 27, 2013 regarding this
12 case?

13 A. Yes, ma'am.

14 Q. Were you able to identify your voice on the call?

15 A. I was.

16 MS. NEWMAN: Your Honor, at this time the State
17 would offer exhibit 3 into evidence.

18 MS. FORD: Yes, Your Honor, I object. May we
19 approach?

20 THE COURT: Pardon?

21 MS. FORD: May we approach?

22 THE COURT: Yes, ma'am.

23 [Whereupon, an off the record bench conference is
24 held]

25 [Whereupon, Ms. Newman provides documents to the

State v David Alan White
Amanda Swisher-Direct Examination by Ms. Newman
March 15, 2016

1 court]

2 [Whereupon, an off the record bench conference is
3 held]

4 MS. NEWMAN: Thank you. No further questions at
5 this time.

6 THE COURT: Any cross-examination?

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State v David Alan White
Amanda Swisher-Cross-Examination by Ms. Ford
March 15, 2016

1 CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. Ms. Swisher, you weren't actually at Hillandale
4 yourself, correct?

5 A. No, ma'am.

6 MS. FORD: No further questions.

7 THE COURT: All right. You may be excused. Thank
8 you very much.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

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State v David Alan White
Adam Galloway-Direct Examination by Ms. Newman
March 15, 2016

1 MS. NEWMAN: Thank you, Your Honor. The State
2 calls Officer Adam Galloway.

3 [Whereupon, Officer Galloway comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: State your first and last name and
7 then spell out your last name.

8 THE WITNESS: Adam Galloway. The spelling of my
9 last name is G-A-L-L-O-W-A-Y.

10 - - - - -

11 ADAM GALLOWAY,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. NEWMAN:

16 Q. Good morning Officer Galloway.

17 A. Good morning.

18 Q. Could you please tell the jury where you work?

19 A. I work at Medical University of South Carolina.

20 Q. And how long have you been at MUSC?

21 A. Seven and a half years almost.

22 Q. What's your current position?

23 A. Public safety officer.

24 Q. And were you in the same position in December of
25 2013?

State v David Alan White
Adam Galloway-Direct Examination by Ms. Newman
March 15, 2016

1 A. Yes, I was.

2 Q. Tell the jury a little bit about what you do as a
3 public safety officer does.

4 A. We're a full service law enforcement agency. We
5 also assist agencies like North Charleston and Charleston
6 County all the local area agencies with evidence
7 collection; things like the photo lineup that I'm here
8 for today and things of that nature. Anything that they
9 ask for help for we try to help them out.

10 Q. Now let's go back to December 2nd, of 2013. Did you
11 have occasion to show a photo lineup to Joseph Johnson?

12 A. Yes, I did.

13 Q. And what is a photo lineup?

14 A. Its where you show a person pictures to see if they
15 recognize someone in those photos.

16 Q. Do you remember when on December 2nd you showed Mr.
17 Johnson the lineup?

18 A. I actually do have my report with me. It was
19 approximately 5:48 p.m.

20 Q. And where was Mr. Johnson when you showed him the
21 lineup?

22 A. He was in the main hospital of MUSC. He was on the
23 6th floor, room 665 in his hospital bed.

24 Q. And at that time was he able to speak with you?

25 A. No, he was unable to speak at the time.

State v David Alan White
Adam Galloway-Direct Examination by Ms. Newman
March 15, 2016

1 Q. And why was that?

2 A. He had an injury to his neck.

3 Q. Now how did you conduct the lineup procedure?

4 A. He was laying in the bed and in the hospital rooms
5 they have trays that you can roll and slide over your
6 lap. I laid the photos out in front of him on that table
7 so he could see all the photos at one time and asked him
8 if he could identify anyone in the pictures.

9 He looked at the pictures. He ended up picking up
10 picture number one and picture number three and he kept
11 looking back and forth between picture one and picture
12 three like he was having a hard time determining which
13 one of the two photos that he recognized the most.

14 He ultimately said that the person in picture number
15 one was the person that assaulted him. And I believe he
16 signed the front of that picture. However, he started
17 having difficulty breathing so before we were able to get
18 any farther into it I stepped out to get his nurse and I
19 turned the photos over to Detective Kramer at that time.

20 MS. NEWMAN: Beg the court's indulgence.

21 [Whereupon, Ms. Newman and Ms. Elliott confer]

22 MS. NEWMAN: Nothing further. Thank you.

23 THE COURT: Cross-examination?
24
25

State v David Alan White
Adam Galloway-Cross-Examination by Ms. Ford
March 15, 2016

1 CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. So this was done on December 2nd?

4 A. Yes.

5 Q. And Mr. Johnson was in the main part of the

6 hospital?

7 A. Yes, he was in the main hospital, room 665. That

8 would be 6 west.

9 Q. So at this point he was not in ICU?

10 A. I'm not certain if that is an ICU room or if it

11 isn't. Hospital security does all the stuff inside the

12 hospital. We just respond when there is an actual law

13 enforcement need.

14 Q. And he identified one of the people in the photo

15 lineup correct?

16 A. Correct. He identified the person in picture number

17 one.

18 Q. He actually wrote out a statement by the photo

19 correct?

20 A. It's been so long I can't remember. I believe he

21 did write a statement on the front of the photo but I

22 can't remember what it said.

23 Q. So he was capable of writing at that point?

24 A. Yes, he was capable of writing at that point.

25 That's how he was able to let me know that he couldn't

State v David Alan White
Adam Galloway-Cross-Examination by Ms. Ford
March 15, 2016

1 continue the interview. He actually wrote on a pad that
2 he couldn't continue.

3 Q. Okay.

4 MS. FORD: No further questions.

5 THE COURT: Any redirect?

6 MS. NEWMAN: No redirect, Your Honor.

7 THE COURT: You may step down. Thank you very
8 much.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

11 THE COURT: Call your next witness.
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State v David Alan White
Joshua Sims-Direct Examination by Ms. Newman
March 15, 2016

1 MS. NEWMAN: The State calls Joshua Sims.
2 [Whereupon, Mr. Sims comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: State your first and last name and
6 spell out your last name please?

7 THE WITNESS: Joshua Sims, S-I-M-S.

8 - - - - -
9 JOSHUA SIMS,

10 Having been first duly sworn,
11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. NEWMAN:

14 Q. Mr. Sims, where do you work?

15 A. I'm a paramedic for Charleston County EMS.

16 Q. And how long have you been with Charleston County
17 EMS?

18 A. I've been with Charleston County for eight years at
19 this point.

20 Q. Do you have any prior experience with EMS?

21 A. Yes, ma'am. I've worked full time in EMS for the
22 past nearly 15 years.

23 Q. And I think you mentioned this but what is your
24 position with Charleston County EMS?

25 A. I'm the paramedic crew chief at this time.

State v David Alan White
Joshua Sims-Direct Examination by Ms. Newman
March 15, 2016

1 Q. And what is a paramedic crew chief?

2 A. It means that I'm the lead paramedic on the unit,
3 the one that is in charge of the unit and ultimately the
4 one who makes decisions for patient care.

5 Q. So what is an EMT?

6 A. An EMT is a lower level of certification offered.
7 There are EMTs and paramedics; they are separate
8 certifications.

9 Q. So would it be fair to say that paramedics have
10 additional training?

11 A. Paramedics have an extended amount of training in
12 comparison. An EMT is a 120 hour class and 24 hours of
13 clinical time whereas a paramedic is a minimum of 360
14 hours of class and 300 of clinical time.

15 Q. What are some of your duties as a paramedic?

16 A. It's going to be attending to the injuries and or
17 sicknesses of anyone who requests the ambulance. We're
18 also in charge of ensuring the units are stocked and
19 ready to respond to the emergencies.

20 Q. I'll turn your attention to November 27th, of 2013.
21 Were you working that night?

22 A. Yes ma'am, I was.

23 Q. Did you respond to a call at

?

24 A. Yes ma'am, I did.

25 Q. Is that Charleston County?

State v David Alan White
Joshua Sims-Direct Examination by Ms. Newman
March 15, 2016

- 1 A. Yes, it is.
- 2 Q. And why did you respond?
- 3 A. We were dispatched for a stabbing at that address.
- 4 Q. Now when you responded were lights and sirens
- 5 activated?
- 6 A. Yes ma'am, they were.
- 7 Q. And what kind of response was it?
- 8 A. We were dispatched for a Delta response. It's a
- 9 dispatch coding indicating that it would be an emergent
- 10 response based on the information that was given to the
- 11 call taker.
- 12 Q. And did fire trucks respond as well?
- 13 A. Yes ma'am, they were dispatched with us.
- 14 Q. And approximately what time did you arrive on scene?
- 15 A. Do you have a copy of the -- report that ---
- 16 Q. --- would it refresh your memory if I showed you the
- 17 report?
- 18 A. Yes, ma'am.
- 19 [Whereupon, the witness is shown document]
- 20 A. We arrived on scene at 21:34, which would be 9:34
- 21 p.m.
- 22 Q. And what happened when you arrived on scene?
- 23 A. We arrived to find a patient laying on the ground
- 24 with -- a male laying on the ground with his throat
- 25 slashed.

State v David Alan White
Joshua Sims-Direct Examination by Ms. Newman
March 15, 2016

- 1 Q. And was there any blood?
- 2 A. Yes, ma'am.
- 3 Q. Were there other people at the residence at the same
- 4 time?
- 5 A. Yes ma'am, there were.
- 6 Q. Okay. What kind of condition was Mr. Johnson in?
- 7 A. The patient was in critical condition at my initial
- 8 impression, my first.
- 9 Q. Why was that your initial impression?
- 10 A. He had damage to his neck, which would include major
- 11 vessels and his airway and with direct pressure we
- 12 weren't able to completely control or stop the bleeding
- 13 at the wound site.
- 14 Q. Was Mr. Johnson conscious?
- 15 A. He was responsive to painful stimuli. You could get
- 16 a moan from him by doing something that was painful.
- 17 Q. Were his eyes open?
- 18 A. No, ma'am.
- 19 Q. Was he communicating with you other than moaning ---
- 20 A. --- no.
- 21 Q. What did you observe physically?
- 22 A. A large gash to the left side of his throat that
- 23 appears to involve the external jugular vein and trachea.
- 24 Q. Now what was the first thing you did when caring for
- 25 him?

State v David Alan White
Joshua Sims-Direct Examination by Ms. Newman
March 15, 2016

1 A. First would be to apply direct pressure to the wound
2 and then immediately move to place him in full spinal
3 immobilization.

4 Q. And how about after that?

5 A. After that he would have been loaded for transport
6 and we paused before leaving the scene in order to R-S-I
7 the patient and then we would have transported to the
8 hospital.

9 Q. What does R-S-I mean?

10 A. Rapid sequence intubation. It's where medications
11 are administered to the patient in order to paralyze them
12 -- to sedate them and then to paralyze them and then to
13 place a breathing tube into the trachea and isolate the
14 trachea from all outside sources and allow us to breathe
15 for the patient.

16 Q. Now did you intubate him right away or did you try
17 anything else prior to that?

18 A. Initially when we were getting him loaded we placed
19 him on high flow tube by a non rebreather mask at 15
20 liters per minute. That proved to be insufficient to
21 help his oxygenation issues simply because his
22 respiratory drive was not sufficient.

23 So then we initiated bag valve mask respirations and
24 attempted to get him better oxygenated by manual
25 respiration with a bag valve mask.

State v David Alan White
Joshua Sims-Direct Examination by Ms. Newman
March 15, 2016

1 Q. And describe what that is a bag valve mask.

2 A. As it sounds it's a bag a reservoir of air and it's
3 attached to a mask that fits over the nose and mouth of
4 the subject in order to force air in by squeezing the bag
5 closed.

6 Q. So was using that mask helpful in this case?

7 A. It was helpful but insufficient because of the
8 bleeding and the damage to this area [indicates]. I was
9 concerned that we were going to be dealing with blood
10 leaking into the lungs from the injury itself and that
11 the trachea needed to be isolated so that that wasn't an
12 issue anymore.

13 Q. So did you administer IV's at any point?

14 A. The patient had a large pour IV started in his left
15 antecubital vein.

16 Q. What is that?

17 A. The big vein right here [indicates] that everybody
18 thinks of when you think of having blood drawn. That's
19 your antecubital vein and it would have been the one on
20 his left arm that we used to start the IV.

21 Q. And what kind of medications was he given through
22 that IV?

23 A. He would have had normal saline that was running
24 wide open during the entire time once the IV was
25 established and then we administered etomidate and --

State v David Alan White
Joshua Sims-Direct Examination by Ms. Newman
March 15, 2016

1 THE COURT REPORTER: --- say the names of the two
2 drugs again please.

3 A. Etomidate and succinylcholine.

4 Q. And can you please tell the jury what those drugs
5 are?

6 A. Etomidate is a sedative. It helps to make people
7 unconscious and unaware. In this setting it is given on
8 the off chance that there is any active memory because
9 when you administer succinylcholine it's a paralytic that
10 makes it so that all of your muscles are paralyzed.

11 You're unable to breathe on your own and that's a
12 sensation that no one wants to know, wants to remember so
13 we give the etomidate and then administer the
14 succinylcholine in order to facilitate the placement of
15 the ET tube.

16 THE COURT: Would you spell those for the court
17 reporter please?

18 THE WITNESS: Medications etomidate is E-T-O-M-I-D-
19 A-T-E and succinylcholine is S-U-C-C-I-N-Y-L-C-H-O-I-N-E
20 [sic] or ---

21 THE COURT: --- thank you so very much. Please
22 proceed.

23 MS. NEWMAN: Thank you, Your Honor.

24 Q. [Ms. Newman] You mentioned the ET tube?

25 A. Yes, ma'am. Endotracheal tube is the device which

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1 is placed through the mouth into the trachea in order to
2 secure the airway.

3 Q. And why was the ET tube used?

4 A. An ET tube was used because it isolates the airway
5 from all other outside influences; specifically in this
6 case the concern was that there was blood draining in
7 from the wound through the cricothyroid membrane and
8 would ultimately end up in the lungs, which would
9 interfere with cellular respiration.

10 Q. And by respiration do you mean breathing?

11 A. Cellular respiration is the act of oxygen exchange
12 between the lungs and the blood, yes.

13 Q. Now what did you observe about the injury itself?

14 A. It appeared as though the external jugular vein was
15 involved and that the cricothyroid membrane of the
16 trachea had been ruptured as well.

17 Q. And cricothyroid membrane what is that?

18 A. It's a small thin membrane in the trachea where it
19 is the spot -- give me just a second; I'm trying to think
20 of the best way to describe this.

21 Q. Sure.

22 A. When someone has to have tracheostomy placed, a spot
23 for them to breathe alternately rather than through their
24 nose or their mouth the cricothyroid membrane is the
25 place where it is cut open because it is a very thin

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1 membrane that allows for access into the trachea.

2 Q. Do you mind pointing out to the jury exactly where
3 that membrane is?

4 A. It's going to be the very soft spot here
5 [indicates]. If you feel down your neck you can feel
6 where it is very soft and it's not rigid anymore rather
7 than the rings of trachea which are rigid. That's the
8 spot that was damaged; the skin was cut and the membrane
9 itself was not intact as well.

10 Q. Do did you put a tube into that? Where did you put
11 the tube?

12 A. My tube went in through the mouth and into the
13 trachea and is secured just below the vocal cords by a
14 balloon that is inflated.

15 Q. Now did the tube stay in?

16 A. No, unfortunately because of the condition of the
17 patient we had a firefighter that was driving the
18 ambulance to the hospital. And they are not as familiar
19 with driving an ambulance as those of us that drive them
20 on a regular basis so the ride in was a little bit rough
21 and the tube was dislodged.

22 So rather than trying to place that tube again we
23 went to a backup airway device which is a king tube.
24 It's similar only rather than using direct laryngoscopy
25 this device is placed blind and allowed us to continue to

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- 1 breathe for him through that.
- 2 Q. So you mentioned a firefighter was driving?
- 3 A. Yes, ma'am.
- 4 Q. And why was a firefighter driving?
- 5 A. The condition of the patient was such that it
- 6 necessitated two sets of trained hands in the back of the
- 7 ambulance to care for him.
- 8 Q. Now which hospital was Mr. Johnson taken to?
- 9 A. He was transported to the Medical University.
- 10 Q. And why was he transported there?
- 11 A. Because his case was a traumatic injury and they are
- 12 the most appropriate facility for a traumatic injury.
- 13 Q. Now were you in the back of the ambulance with Mr.
- 14 Johnson the whole time?
- 15 A. Yes, ma'am.
- 16 Q. Okay. And after -- you mentioned you put in the
- 17 king airway?
- 18 A. Yes, ma'am.
- 19 Q. How did that affect Mr. Johnson's condition?
- 20 A. He struggled a little bit and then began to show
- 21 some signs of improvement towards the very end of the
- 22 transport.
- 23 Q. Okay. Was he in danger of dying?
- 24 A. Yes ma'am, he was actively dying ---
- 25 MS. FORD: --- objection.

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1 THE COURT: What's your legal objection?

2 MS. FORD: May we approach?

3 THE COURT: Just tell me what your legal objection
4 is.

5 MS. FORD: Well, if she is going into expert
6 testimony, Your Honor ---

7 THE COURT: --- tell me what your legal objection
8 is. Don't make an argument on the fact. What's your
9 legal objection?

10 MS. FORD: He's not an expert, Your Honor.

11 THE COURT: Pardon?

12 MS. FORD: He's not been qualified as an expert.

13 THE COURT: I'll sustain the objection as to that
14 question about was he dying, okay?

15 MS. NEWMAN: Yes, Your Honor.

16 THE COURT: Please proceed.

17 Q. [Ms. Newman] Now what happened when you got to the
18 hospital?

19 A. We brought the patient into the trauma bay and
20 transferred care from ourselves to the trauma team.

21 Q. And when you transfer care is that generally when
22 your involvement ends the case?

23 A. Yes, ma'am.

24 Q. And how many calls would you say you've responded to
25 in the eight years that you've been with Charleston

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1 County EMS?

2 A. Anywhere between eight to ten thousand.

3 Q. So having responded to eight to ten thousand calls
4 does this call stand out to you at all?

5 A. Yes ma'am, this one there were certain aspects that
6 caused this call to remain active in my memory.

7 Q. And what about this call?

8 A. It is the tear that existed in the cricothyroid
9 membrane when I went to intubate the patient initially
10 using a laryngoscope it's a device that has a light on
11 the end of it.

12 When it was placed into his oral pharynx and lifted
13 so that I could see the vocal cords and pass the ET tube
14 through you could physically see the light shining
15 through the hole in the cricothyroid membrane onto his
16 chest, which is not something that you see almost ever
17 so.

18 MS. NEWMAN: Beg the court's indulgence.

19 [Whereupon, Ms. Newman and Ms. Elliott confer]

20 MS. NEWMAN: No further questions. Thank you.

21 THE COURT: Cross-examination?

22 MS. FORD: Thank you, Your Honor.
23
24
25

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1 CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. Mr. Sims, you were not actually present when the

4 injury occurred correct?

5 A. No ma'am, I was not.

6 Q. So you don't know how it occurred?

7 A. I know what I was told by the people who were there

8 when I arrived on scene.

9 Q. But you did not interview these people; you were

10 busy obviously with Mr. Johnson correct?

11 A. They spoke to me while I was treating Mr. Johnson

12 and told me what had happened because one of the

13 questions I asked was what had happened to him.

14 Q. You weren't present yourself correct?

15 A. No ma'am, I was not.

16 Q. So you did not see what actually happened when the

17 injury took place?

18 A. No, I did not.

19 MS. FORD: Beg the court's indulgence.

20 [Whereupon, Ms. Ford and Mr. Mack confer]

21 MS. FORD: No further questions for this witness.

22 THE COURT: Any redirect?

23 MS. NEWMAN: No, Your Honor.

24 THE COURT: Mr. Foreman, ladies and gentlemen of

25 the jury on the question about when he gave an opinion as

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1 to whether the victim was dying or not please disregard
2 that. This witness hasn't been qualified as an expert.
3 And expert can give opinions. All he can testify as to
4 what he did, what he observed on the scene, and what
5 actions he took as an EMS; not give any opinion so please
6 disregard that. Do you have another short witness?

7 MS. ELLIOTT: We have another witness; I don't know
8 that it will be short, Your Honor.

9 THE COURT: Who are you going to call next?

10 MS. ELLIOTT: Sergeant Ron Lacher.

11 THE COURT: Can we at least get started with him?

12 MS. ELLIOTT: Sure.

13 THE COURT: Thank you very much. You may step
14 down. Thank you very much. Any reason he can't be
15 excused?

16 MS. FORD: No, Your Honor.

17 THE COURT: Thank you very much. We appreciate it.
18 Thank you.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

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1 [Whereupon, Mr. Lacher comes forward]
2 [Whereupon, the witness is duly sworn by the Clerk
3 of Court]
4 CLERK OF COURT: State your first and last name and
5 spell out your last name please?
6 THE WITNESS: Ron Lacher, L-A-C-H-E-R.
7 - - - - -
8 RON LACHER,
9 Having been first duly sworn,
10 Was examined and testified as follows:
11 DIRECT EXAMINATION
12 BY MS. ELLIOTT:
13 Q. Good afternoon Sergeant Lacher. Where do you work?
14 A. North Charleston Police.
15 Q. And how long have you worked for the North
16 Charleston Police Department?
17 A. I've been with the Department almost 12 years. I
18 have 15 years total in law enforcement.
19 Q. Where did you work prior to North Charleston Police
20 Department?
21 A. In the Pittsburgh area; the city of Pittsburgh.
22 Q. And what is your current position?
23 A. Currently I'm a sergeant assigned to the Vice unit.
24 Q. And what was your position in November of 2013?
25 A. I was a sergeant in charge of a team called PACE

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1 which is Police and Community Engagement.

2 Q. What's the purpose of Police and Community
3 Engagement?

4 A. Basically the city is broken up into three bureaus;
5 south, central, and north. Every two weeks the command
6 staff will monitor violent crimes and they will pick
7 three neighborhoods, one in each bureau, which they deem
8 to have the most problems for that two week period.

9 Once that area is deemed an issue then my teams
10 would go into those areas and do what we can to clean it
11 up; to stop the issues that are going on.

12 Q. So what are some of your duties as the sergeant over
13 the PACE team?

14 A. Really it varied. We did a lot of things. We would
15 assist patrol on calls if they were in need of
16 assistance, investigative issues.

17 Some of those areas if there were a lot of car
18 break-ins we would be assigned plain clothes or bait cars
19 to try and deter the vehicle break-ins; just a vast array
20 of things.

21 Q. You go where you're needed?

22 A. Pretty much, absolutely.

23 Q. So let's go back to the night of November 27, 2013.
24 Were you working on that night?

25 A. I was.

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1 Q. And did you have occasion to respond to the area of
2 Hillandale Drive?

3 A. I did.

4 Q. What were you responding to?

5 A. At 9:35 p.m. that night the call went out for the
6 stabbing off of Hillandale. Given the close proximity to
7 the Pepper Hill community my central PACE units work in
8 the Midland Park Stall Road area, which is right off
9 Ashley Phosphate and my north PACE units were around
10 Northwoods Mall area monitoring the hotels. Given the
11 nature of the call I myself and my central and my north
12 units responded to that area.

13 Q. Now where exactly did you respond?

14 A. We actually responded -- when we arrived in the
15 area, the actual community, I did not respond to
16 Hillandale. I instructed my guys because there was
17 already officers on scene to begin setting up a perimeter
18 in an attempt to locate Mr. White.

19 Q. Can you explain to us a little bit about what a
20 perimeter is and what its purpose is?

21 A. Basically the way the call came out an individual
22 was stabbed. He had his throat cut. Given that there
23 were officers on scene and paramedics already in route we
24 were told the individual fled on foot so basically when
25 we come into the area we try to saturate it as much as

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1 possible and basically set up a big square around that
2 area in hopes that we would contain him to where he
3 couldn't get outside that perimeter and obviously cause a
4 further threat to anyone else in the community.

5 Q. Now where exactly did you go in the neighborhood?

6 A. When I -- I actually responded to the back of the
7 community. There is -- I used to coach baseball and my
8 kid actually played back there; there are some ball
9 fields back there.

10 Given the direction of travel I felt it best to go
11 to the ballparks to check the wood line of the dugouts to
12 see if maybe he made it back that way and was lying down
13 in the woods or hiding in the dugouts.

14 Q. Were any of your PACE units or to your knowledge any
15 NCPD unit in that area able to find Mr. White in the
16 Pepper Hill community?

17 A. We were not.

18 Q. So how long was your team out there?

19 A. We cleared -- I cleared my team and myself from that
20 community at 10:10 so roughly about 35 minutes we were in
21 the area.

22 Q. What happened next?

23 A. About an hour and a half later around 11:40 I
24 received a phone call from Detective Sergeant Evans. He
25 advised that through the course of their investigation

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1 they had learned that Mr. White was possibly staying at a
2 residence on Marietta Street at

3 Q. Can you tell us kind of just roughly what's the
4 distance or what area of town is Marietta Street versus
5 Hillandale?

6 A. Marietta Street would be in the Charleston Farms
7 community, which would be off Remount Road. Given that
8 hour at night you could drive there in ten minutes; seven
9 to ten minutes.

10 Q. And I believe you said that the Hillandale address
11 is more off of Ashley Phosphate?

12 A. Correct.

13 Q. Can you tell me what time you responded to Marietta
14 Street?

15 A. We responded and actually arrived on scene at
16 Marietta Street at 11:50.

17 Q. What happened when you got there?

18 A. Upon arrival at Marietta Street myself, Officer
19 Stevens, and Officer Bridges went to the residence and
20 knocked on the door. I was greeted at the door by Ms.
21 Dana White.

22 I had asked Dana if David was there. She had stated
23 he was and he was in the back of the residence. Almost
24 simultaneously I heard Mr. White from the back of the
25 residence say I'm back here; I'm coming out. I gave a

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1 loud command when he comes out make sure that his hands
2 are visible and I can see them. He complied. He came
3 out from the back of the residence. When he walked out
4 he was holding a towel in his hand. I told him to turn
5 around and put his hands behind his back that he was
6 under arrest.

7 Q. Did you explain to him what he was under arrest for?

8 A. I advised him he was under arrest for the stabbing
9 incident on Hillandale, yes.

10 Q. Did you give him his Miranda rights?

11 A. I did.

12 Q. Did he waive those rights?

13 A. He acknowledged he understood them.

14 Q. How did he acknowledge that?

15 A. Initially when I Mirandized him I asked him if he
16 understood and he gave a head nod yes. I told him that I
17 needed an audible response and then he replied with the
18 verbal yes, sir.

19 Q. Did you ask him any questions that night?

20 A. The only thing I asked him was the clothes that he
21 was wearing I asked him if the clothes he had on were the
22 clothes that he was wearing from Hillandale. He stated
23 that they were not, that he took a shower and the clothes
24 that he had on were in the back room.

25 Q. And when you saw the defendant that night did he

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- 1 have any cuts or abrasions on him?
- 2 A. No, ma'am.
- 3 Q. Any appearance of any injuries?
- 4 A. No.
- 5 Q. Did you see any blood?
- 6 A. No.
- 7 Q. Face swollen?
- 8 A. No.
- 9 Q. Did he indicate that he was in any kind of medical
- 10 distress?
- 11 A. No, ma'am.
- 12 Q. Did he complain of any injuries or medical issues?
- 13 A. No.
- 14 Q. After he was under arrest what happened?
- 15 A. Once he was under arrest I had Officer Bridges
- 16 escort him out of the residence and place him in a
- 17 waiting cruiser to be transported to the detective bay
- 18 for questioning. And then I just held the scene, cleared
- 19 the house to make sure obviously there was no one else in
- 20 there hiding and just held the scene for detectives and
- 21 crime scene.
- 22 MS. ELLIOTT: Beg the court's indulgence.
- 23 [Whereupon, Ms. Newman and Ms. Elliott confer]
- 24 Q. [Ms. Elliott] Was that the end of your involvement
- 25 in this case?

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1 A. It was.

2 Q. Thank you Sergeant Lacher. Those are the questions
3 that I have for you. Please answer any that Ms. Ford
4 might have.

5 THE COURT: Cross-Examination?

6 MS. FORD: Yes, Your Honor, just a few.

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1 CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. Sergeant Lacher you said when you got in the house

4 you talked to David's sister?

5 A. Correct. I was greeted at the door by Ms. Dana

6 White, yes.

7 Q. So pretty much immediately he came out correct?

8 A. Correct.

9 Q. And he was arrested without incident.

10 A. Correct.

11 Q. And fully complied and cooperated at that time,

12 correct?

13 A. Yes, ma'am.

14 Q. Told you where his clothes were?

15 A. Correct.

16 MS. FORD: No further questions.

17 THE COURT: Any redirect?

18 MS. ELLIOTT: No, Your Honor.

19 THE COURT: Sergeant Lacher you may step down.

20 Thank you very much.

21 [Whereupon, the witness is excused and exits the

22 witness stand]

23

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1 THE COURT: Madame Forelady and ladies and
2 gentlemen of the jury we're going to stop for lunch at
3 this time. In seven more minutes it will be 12:30. If
4 you will be back in the jury room at 2 o'clock we'll get
5 started at that time. When you come to the courthouse
6 come straight to the jury room. Please don't discuss the
7 case with anyone. If someone tries to discuss it with
8 you please walk away. I want you to base your decision
9 on what you hear in the courtroom; not outside the
10 courtroom. I'll see you at 2 o'clock. Have a good
11 lunch.

12 [Whereupon, the jury exits at 12:28 p.m.]

13 THE COURT: Anything from the State before we
14 break?

15 MS. NEWMAN: Your Honor, just as to scheduling. We
16 have the State calling three additional witnesses today,
17 then we have a doctor; he's out of town but he is
18 available the first thing tomorrow morning. That would
19 be our only...

20 THE COURT: How long are the three going to be?
21 Solicitor Elliott said that one was long. It didn't take
22 but about ---

23 MS. ELLIOTT: --- that went a lot faster than I
24 expected ---

25 THE COURT: --- it didn't take but about ten

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1 minutes.

2 MS. ELLIOTT: In my defense I thought that was
3 going to go a lot longer.

4 MS. NEWMAN: Your Honor?

5 THE COURT: So if we start back at 2 when are you
6 going to finish time wise you think?

7 MS. NEWMAN: I'd say by 3:30 probably.

8 THE COURT: Three-thirty?

9 MS. NEWMAN: Yes, sir.

10 THE COURT: Ms. Ford, do you have anybody you can
11 call and we can call the doctor out of order?

12 MS. FORD: No Your Honor. I would object to doing
13 that.

14 THE COURT: Pardon?

15 MS. FORD: I would object to doing that. I don't
16 think that that...

17 THE COURT: Why?

18 MS. FORD: Because the doctor is probably going to
19 be very emotional testimony. I don't think its fair that

20 ---

21 THE COURT: --- be what now?

22 MS. FORD: Because it's going to be very I guess
23 emotional testimony to the extent that he is talking
24 about a lot of blood and things like that. I just don't
25 think it's fair that I have to start my case out of order

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1 for that kind of a witness especially.

2 THE COURT: I mean I don't know what the doctor is
3 going to testify about but I imagine he's going to
4 testify about the injuries I would assume; I don't know.
5 You have two witnesses; Matthew Davis and Devon Malloy?

6 MS. FORD: Yes, Your Honor.

7 THE COURT: I don't know what they're going to
8 testify about. One works in your office and Malloy I
9 don't know him or what he is going to testify to. How
10 would the doctor's testimony influence their testimony
11 one way or the other?

12 MS. FORD: It's not that they would influence. I
13 just don't think it's fair or appropriate. I mean
14 honestly I've never had to deal with this situation. I
15 can look to see if there are rules or case law. I just
16 especially with that nature of offense ---

17 THE COURT: --- you've never what? I'm sorry.

18 MS. FORD: I've never had it be an issue.

19 THE COURT: You've never had witnesses called out
20 of order in cases?

21 MS. FORD: Not after my case has started, Your
22 Honor.

23 THE COURT: Okay.

24 MS. FORD: This is not a minor witness; it's a
25 major witness. So in that situation -- Mr. Davis is just

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1 on the list like the Solicitor's investigator just in
2 case for impeachment purposes. Mr. Malloy, Your Honor,
3 that's the gentleman we talked about yesterday.

4 THE COURT: Is he coming or do you know?

5 MS. FORD: He's not going to come on his own. I've
6 asked my client if he wants ---

7 THE COURT: --- is Mr. Malloy going to be here
8 today or tomorrow or is he coming at all? Or do you know
9 yet?

10 MS. FORD: I don't think he's coming on his own,
11 Your Honor.

12 THE COURT: I understand.

13 MS. FORD: I had asked my client if he wants us to
14 send out ---

15 THE COURT: --- do you need our assistance in
16 getting him here?

17 MS. FORD: That's what I asked my client and I
18 discussed with him this morning and I told him I would
19 need an answer by lunchtime. I don't know if...

20 THE COURT: Let me know if you need our assistance
21 and we'll try to assist you in getting him here sometime
22 tomorrow.

23 MS. FORD: Yes, Your Honor.

24 THE COURT: Okay. I'll concede to your wishes and
25 not -- I understand. Whenever we finish this afternoon

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1 with State's case we'll rest for the day and start back
2 in the morning.

3 MS. FORD: Yes, sir.

4 THE COURT: Okay. Thank you very much for that
5 information. I understand your problems about starting
6 your case and interfering with that.

7 MS. FORD: Yes, Your Honor.

8 THE COURT: Thank y'all very much. We'll adjourn
9 until 2 o'clock.

10 MS. ELLIOTT: Thank you, Your Honor.

11 [Whereupon, court is in recess from 12:32 p.m. until
12 2:11 p.m.]

13 THE COURT: Anything from the State before we bring
14 the jury in?

15 MS. ELLIOTT: Yes, Judge.

16 THE COURT: Pardon? Anything from the State before
17 we bring the jury?

18 MS. ELLIOTT: Yes, Your Honor. I think Ms. Ford
19 and I both had an issue that we wanted to bring before
20 you. Our next witness is going to be Detective Glen
21 Kramer. It is our understand that the defense is going
22 to seek to try to bring in a statement made by the
23 defendant [sic] at the prelim through Detective Kramer as
24 a source of impeachment and I think it is a violation of
25 Rule 6(13). The victim on the stand had no recollection

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1 of the prelim; nothing that was said. I think Rule 6(13)
2 demands that the defendant -- I'm sorry; that the victim
3 either admit it and if they admit it there is no
4 extrinsic evidence or they deny it and then if they deny
5 it then Ms. Ford can go into the fact that she has a
6 transcript from the prelim.

7 I think it's her intention to ask Detective Kramer
8 does he remembers the prelim, does he remember the
9 defendant -- the victim being there, does he remember him
10 saying it. The detective doesn't have any independent
11 recollection of what the victim says. He's now been
12 shown a copy of the transcript but then at that point
13 he'd be saying what is in the transcript not what is his
14 independent recollection, which I think is also a
15 violation of ---

16 THE COURT: --- this is the next witness to
17 testify?

18 MS. ELLIOTT: Yes, Your Honor.

19 THE COURT: All right. Yes, Ms. Ford?

20 MS. FORD: Your Honor, the witness denied -- I
21 asked him if he made a statement to another court saying
22 that my client cut him from behind and he denied that.
23 And then when I asked him about being at prelim court he
24 denied going to prelim court. But he denied that he made
25 a statement to the Judge. It's my recollection he did

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1 deny that statement.

2 THE COURT: You're talking about the victim, Mr.
3 Johnson's testimony when he said he didn't remember?

4 MS. FORD: He denied he made the statement at
5 prelim -- he denied he ever made a statement to a judge
6 saying that my client ---

7 THE COURT: --- he said I don't remember being
8 there.

9 MS. FORD: Right; after he denied making the
10 statement. He denied making a statement to a judge and
11 then I asked him do you recall being in prelim court and
12 he said no, I don't recall being there. But he denied he
13 ever made a statement to a judge. The Rule just says
14 that if a witness does not admit that he has made a prior
15 inconsistent statement extrinsic evidence of such
16 statement is admissible.

17 THE COURT: I guess basically he denied it then
18 explained it right? I mean as far as contradicting each
19 other how can he deny if he doesn't remember being there.
20 It seems a contradictory statement. What do you have in
21 the transcript? What does it say?

22 MS. FORD: Your Honor, its nothing -- I showed it
23 in the abundance of caution I showed it to the detective
24 earlier. The actual portion I could show you; it's just
25 a few lines.

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1 THE COURT: Are you going to impeach the detective
2 with it or Mr. Johnson?

3 MS. FORD: I already asked the question of Mr.
4 Johnson. I showed it to Detective Kramer because I had
5 concerns if he would remember it and he said he wasn't
6 sure so I showed him the transcript and he was like okay,
7 yes.

8 So that's something I generally would have done on
9 the stand. I just did it because I thought I was being
10 -- thought it would be better and easier for everyone but
11 apparently not; I should have waited to show it to the
12 detective. You know I showed it to him beforehand. I
13 have the recording ---

14 THE COURT: --- I don't think it makes any
15 difference whether your showed it to the detective or
16 not. He's not the one who made the statement.

17 MS. FORD: No, but he was there, Your Honor and
18 he's a witness to the statement. I have a recording if
19 anyone doubts.

20 THE COURT: Do you have it transcribed?

21 MS. FORD: Yes, Your Honor.

22 THE COURT: My question is what was said in the
23 statement by Mr. Johnson?

24 MS. FORD: The statements? Okay.

25 THE COURT: Because that's what we're talking

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1 about.

2 MS. FORD: Yes, Your Honor.

3 THE COURT: I'm sorry; your client. What was said?

4 MS. FORD: Okay. Part of this is inaudible and
5 then you hear Judge Gosnell asking him so you're saying
6 he came from behind you it wasn't from the front and he
7 says yes, sir. But the part where he goes -- the victim
8 does go on and gives more detail that part is inaudible
9 because there is not a mic in the courtroom back there
10 but you definitely hear Judge Gosnell asking him so
11 you're saying he came from the front -- or the back and
12 he says yes.

13 THE COURT: Okay. What's your objection?

14 MS. ELLIOTT: As I recall what Mr. Johnson said he
15 -- I remember him not remembering -- him saying I don't
16 remember saying anything to a judge and I don't remember
17 being at a prelim. And she didn't give him the
18 opportunity to review anything or refresh his
19 recollection or anything like that.

20 THE COURT: I don't think she's got -- I think all
21 she's got to do is advise him of the substance, the time
22 and the place, and she did that.

23 MS. ELLIOTT: That's if he were to deny it ---

24 THE COURT: --- I mean she said time and place she
25 said at the prelim and did you tell a judge that he came

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1 from behind and she covered that two or three times with
2 him and first he said no and then later on he said I
3 don't remember. So why shouldn't she now be able to?

4 MS. ELLIOTT: Because he did not deny the
5 statement. He denied remembering the event ---

6 THE COURT: --- he initially denied it and then
7 later on he said I don't remember. Like I said both of
8 those contradict each other.

9 MS. ELLIOTT: And I think -- you're going to deny
10 ever saying -- I've never testified before Your Honor you
11 know. I've never testified. I've appeared in court in
12 front of you a lot of times. Maybe at some point in my
13 life that might have happened but if I don't ever
14 remember the event of being a witness on your stand then
15 of course I'm going to deny ever testifying to you. I
16 think that's a big difference from him not remembering
17 the event at all.

18 I don't think he denied giving the statement. I
19 think he said I don't remember telling a judge that and I
20 think he said I don't remember being there. So both of
21 them were I don't remembers as I recall them. But even
22 if that wasn't true, even if he had denied and said no, I
23 never said anything to a judge it makes sense that he
24 would say no I never said anything to the judge because
25 he doesn't remember being at the hearing. And without

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1 giving him the opportunity to remember being at the
2 hearing he can't in any knowledgeable way deny or confirm
3 the statement because he several times confirmed for her
4 you're right I did say that to other people, you're right
5 I did say that to other people because he remembers those
6 events ---

7 THE COURT: --- let me see the attorneys up here
8 just a second.

9 [Whereupon, an off the record bench conference is
10 held]

11 THE COURT: All right. Is Mr. Johnson here?

12 UNIDENTIFIED SPEAKER: I sent him out when you
13 called them up, Your Honor.

14 THE COURT: Bring him around.

15 [Whereupon, Mr. Johnson comes forward]

16 THE COURT: Mr. Johnson, if you will come around
17 and take the witness stand please.

18 [Whereupon, Mr. Johnson is seated on the witness
19 stand]

20 THE COURT: Bring us the jury please. For the
21 record I'm going to allow Ms. Ford to recall Mr. Johnson
22 for cross-examination of a prior statement and a
23 transcript that was taken at the preliminary hearing
24 pursuant to the State's objection which is overruled.

25 [Whereupon, the jury enters at 2:23 p.m.]

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1 THE COURT: Ladies and gentlemen of the jury the
2 court is going to allow the defense counsel Ms. Ford to
3 recall Mr. Johnson for some questions on cross-
4 examination. Ms. Ford?

5 MS. FORD: Thank you, Your Honor.

6 THE COURT: Before we do that I'm going to swear
7 the witness again please ma'am.

8 [Whereupon, the witness is duly sworn by the Clerk
9 of Court]

10 THE COURT: Thank you Mr. Johnson. Ms. Ford?

11 MS. FORD: Thank you, Your Honor.

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State v David Alan White
Joseph Johnson (recalled)-Cross-Examination by Ms. Ford
March 15, 2016

1 JOSEPH JOHNSON,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 CROSS-EXAMINATION
5 BY MS. FORD:
6 Q. Mr. Johnson, we just need to clarify something
7 quickly; just something that perhaps is unclear to
8 certain people in your testimony earlier today. I asked
9 you earlier about if you had ever lied to a court before
10 and your answer was no, correct?
11 A. That's right.
12 Q. And then I asked you if you ever testified -- not
13 testified but spoke at a hearing, preliminary hearing
14 with Judge Gosnell in January of 2014 indicating to the
15 judge at that point that Mr. White came up from behind
16 and slit your throat from behind, correct?
17 A. I don't remember because I told you I didn't know.
18 Q. Okay. Do you deny you made that statement or do
19 you not recall?
20 A. I don't recall being there.
21 [Whereupon, defendant's exhibit number 1 is marked
22 by the court reporter]
23 Q. Okay. If I show you a transcript of that hearing
24 do you think that would help refresh your memory?
25 A. Yes, ma'am.

State v David Alan White
Joseph Johnson (recalled)-Cross-Examination by Ms. Ford
March 15, 2016

- 1 [Whereupon, the witness is shown document]
- 2 Q. So I'm giving you what has been marked as
- 3 defendant's exhibit 1 and it reads Preliminary Hearing
- 4 January 8th, 2014 correct, at the top?
- 5 A. [No response]
- 6 Q. Is that what it says at the top?
- 7 A. Right.
- 8 Q. Okay. Now can you go to the last page please.
- 9 [Whereupon, the witness complies]
- 10 Q. On the last page can you see where Judge Gosnell is
- 11 talking to you?
- 12 THE COURT: Why don't you point out on the
- 13 transcript for him please if you would approach the
- 14 witness and show him where you're talking about please?
- 15 MS. FORD: Yes, Your Honor.
- 16 Q. [Ms. Ford] Do you see the last page [indicates]?
- 17 And it says that part of your statement is not picked up
- 18 by the recording, correct? Is that correct?
- 19 A. Yes.
- 20 THE COURT REPORTER: I need you to speak up sir.
- 21 A. Yes, yes.
- 22 Q. [Ms. Ford] And the Judge asked you he walked up
- 23 behind you and cut you from behind correct; that's the
- 24 statement the Judge makes.
- 25 A. Yes.

State v David Alan White
Joseph Johnson (recalled)-Cross-Examination by Ms. Ford
March 15, 2016

1 Q. And your answer can't be picked up by the recording,
2 correct? It says indecipherable speech.

3 A. Correct.

4 Q. But then the Judge says so it wasn't something that
5 was done frontally it was done from the back question
6 mark and your response was yes sir, correct?

7 A. Yes.

8 Q. Okay. So the preliminary hearing in front of Judge
9 Gosnell you indicated that David White came from behind,
10 correct?

11 A. Yes.

12 Q. Thank you. No further questions.

13 THE COURT: I'll let you ask any questions you'd
14 like to ask.

15 MS. ELLIOTT: Thank you, Judge; just briefly.

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State v David Alan White
Joseph Johnson (recalled)-Redirect Examination by Ms. Elliott
March 15, 2016

REDIRECT EXAMINATION

BY MS. ELLIOTT:

Q. Mr. Johnson, I know she just showed you a transcript
of that but do you have any independent recollection of
that event?

A. No, I don't. No.

Q. Nothing further.

THE COURT: Any recross?

MS. FORD: No, Your Honor.

THE COURT: Mr. Johnson, you may step down. Thank
you very much.

[Whereupon, the witness is excused and exits the
witness stand]

THE COURT: Solicitor, call your next witness.

State v David Alan White
Glen Kramer-Direct Examination by Ms. Newman
March 15, 2016

1 MS. NEWMAN: Thank you, Your Honor. The State
2 calls Detective Glen Kramer.

3 [Whereupon, Detective Kramer comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: State your first and last name and
7 spell out your last name please?

8 THE WITNESS: First name is Glen last name is
9 Kramer, K-R-A-M-E-R.

10 - - - - -

11 GLEN KRAMER,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. NEWMAN:

16 Q. Good afternoon. Where do you work detective?

17 A. City of North Charleston Police Department.

18 Q. And how long have you been with them?

19 A. Nine years.

20 Q. What is your current position?

21 A. I'm assigned to the SRO unit. I'm a school resource
22 officer.

23 Q. And where are you a school resource officer?

24 A. Pepper Hill Elementary.

25 Q. Were you in that same position in November of 2013?

State v David Alan White
Glen Kramer-Direct Examination by Ms. Newman
March 15, 2016

- 1 A. No, I was not.
- 2 Q. What position were you in then?
- 3 A. I was assigned to the Detective Bureau. I was in
4 the Person's unit.
- 5 Q. Tell the jury please about some of your duties in
6 that position.
- 7 A. Investigation. We also assist in other areas of
8 policing as far as like patrol if they need it, but
9 mostly just investigations.
- 10 Q. Okay. I'm taking you back to November 27, 2013
11 were you working that night?
- 12 A. We were on a call out. We were a call out team.
- 13 Q. Okay. And did you have occasion to respond to
14 ?
- 15 A. I did.
- 16 Q. And why did you respond?
- 17 A. I got a call from Sergeant Mark Evans and he
18 indicated to me that I needed to respond there due to a
19 stabbing.
- 20 Q. And approximately what time did you respond?
- 21 A. I want to say it was probably about 9:30.
- 22 Q. Now were you the first investigator on the scene?
- 23 A. No, I was not. I actually came the furthest.
- 24 Q. And you mentioned Sergeant Evans. Is he still with
25 the North Charleston Police Department?

State v David Alan White
Glen Kramer-Direct Examination by Ms. Newman
March 15, 2016

- 1 A. No, he's not.
- 2 Q. Where is he?
- 3 A. He's with the FBI now.
- 4 Q. Okay. Now when you got on scene what, if anything,
5 did you observe?
- 6 A. When I first got on scene I met with Sergeant Evans.
7 He briefed me on what we had. When I came up they had --
8 there was crime scene tape. I noticed in the backyard
9 area they had some grills set up. It looked like they
10 were getting ready for the holiday.
- 11 Q. Now when you arrived on scene was the defendant
12 present?
- 13 A. No, he was not.
- 14 Q. How about Mr. Johnson was he on the scene?
- 15 A. No, he was not.
- 16 Q. Now once Sergeant Evans briefed you what did you do
17 next?
- 18 A. He directed me to speak with Mr. Forrest and also
19 Mr. Washington, Spencer Washington.
- 20 Q. And did you interview them?
- 21 A. I did.
- 22 Q. Did you obtain written statements from them?
- 23 A. I did.
- 24 Q. And after speaking with them were you able to
25 develop a suspect?

State v David Alan White
Glen Kramer-Direct Examination by Ms. Newman
March 15, 2016

- 1 A. Yes, ma'am.
- 2 Q. And when you spoke with Mr. Washington did you show
3 him a photo?
- 4 A. I did.
- 5 Q. And why did you show him a photo?
- 6 A. I showed him a photo because by that time we had
7 already had a name. While speaking with him he indicated
8 that he knew the defendant all his life.
- 9 At that point then Jason Monroe, he's our
10 information detective, his job was to respond back to
11 City Hall and then as we got information we would feed it
12 to him and then he would pool whatever information that
13 we needed and that's how I came up with the photo.
- 14 Q. So you showed Mr. Washington a photo. Were you
15 doing that to make sure you were talking about the same
16 person?
- 17 A. Yes.
- 18 Q. The same David White?
- 19 A. Yes.
- 20 Q. And was Mr. Washington able to make an
21 identification of that photo?
- 22 A. He was.
- 23 Q. And who did he identify that photo as?
- 24 A. David White.
- 25 Q. And how quickly did he make that identification?

State v David Alan White
Glen Kramer-Direct Examination by Ms. Newman
March 15, 2016

1 A. Pretty quick.

2 Q. Now after you spoke with Mr. Washington what did you
3 do next?

4 A. After I spoke with him -- well actually I spoke with
5 Dwayne Forrest first, then I spoke to Mr. Washington.
6 After that -- I'll back up. I was talking to Sergeant
7 Evans and that's when the defendant's wife pulled up.

8 Q. What happened after that?

9 A. She appeared to not know exactly what had happened
10 and then figured out once she got there what happened.
11 We spoke with her very briefly. She actually got Mr.
12 White on the phone. I spoke to him very briefly. I
13 asked him if we could meet ---

14 MS. FORD: --- objection.

15 THE COURT: What's your legal objection?

16 MS. FORD: Your Honor, this was not presented in
17 Jackson v Denno.

18 THE COURT: Pardon?

19 MS. FORD: It was not presented in the Jackson v
20 Denno and also there are authentication issues.

21 THE COURT: Come up here. I'm not sure I
22 understand what you're saying to me, okay.

23 [Whereupon, an off the record bench conference is
24 held]

25 THE COURT: The objection is overruled.

State v David Alan White
Glen Kramer-Direct Examination by Ms. Newman
March 15, 2016

1 Q. [Ms. Newman] Now after you spoke to the defendant on
2 the phone what did you do after that?

3 A. After I spoke to the defendant on the phone I went
4 back to since I already had witnesses I.D. and stories
5 corroborated I went back and then started preparing
6 warrants for the defendant and also a photo lineup so we
7 could get that out to other units that were out looking
8 for him at the time.

9 Q. At some point were you contacted again by Sergeant
10 Evans?

11 A. I was.

12 Q. And what did you do as a result of that conversation
13 with him?

14 A. At that point I was informed that the defendant was
15 located on Marietta Street in Charleston Farms, which is
16 also in the City of North Charleston and that they had
17 him in custody and that they were transporting him back
18 to City Hall in order to be interviewed by myself.

19 Q. Now did you end up speaking with the defendant?

20 A. I did.

21 Q. And upon speaking with him did you notice any cuts
22 or bruises on him?

23 A. I did not.

24 Q. Did he appear to be in any medical distress?

25 A. No.

State v David Alan White
Glen Kramer-Direct Examination by Ms. Newman
March 15, 2016

- 1 Q. Did he have any blood on him?
- 2 A. No.
- 3 Q. Did he try to show you any injuries?
- 4 A. He did. He did show me -- he told me he was hit ---
- 5 Q. --- don't tell me what he said but did he try to
- 6 show you?
- 7 A. Yes.
- 8 Q. And did you see any injuries?
- 9 A. No.
- 10 Q. Now how far away from him would you have been
- 11 sitting during that interview?
- 12 A. The width of a table.
- 13 Q. And do you know how tall the defendant is?
- 14 A. He's roughly about 6-3.
- 15 Q. Now at some point in your investigation did you make
- 16 contact with Mr. Johnson?
- 17 A. I did.
- 18 Q. And where did you see Mr. Johnson?
- 19 A. At MUSC.
- 20 Q. When was that?
- 21 A. I think that was on the 2nd of December.
- 22 Q. And when you saw him where was he?
- 23 A. He was in his hospital room. I don't remember the
- 24 room number but he was still in the hospital.
- 25 Q. Were you able to speak with him at that time?

State v David Alan White
Glen Kramer-Direct Examination by Ms. Newman
March 15, 2016

1 A. He was unable to talk.

2 Q. Okay. And were you able to get a written statement
3 from him?

4 A. I attempted to get the written statement then he
5 started having difficulty breathing so then I left the
6 room.

7 MS. NEWMAN: Beg the court's indulgence.

8 [Whereupon, Ms. Newman and Ms. Elliott confer]

9 Q. No further questions. Thank you.

10 THE COURT: Cross-Examination?

State v David Alan White
Glen Kramer-Cross-Examination by Ms. Ford
March 15, 2016

1 CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. Detective Kramer or Officer Kramer you didn't

4 actually see the incident correct?

5 A. No, I did not.

6 Q. But you did speak to several people afterwards?

7 A. I did.

8 Q. Including you spoke to David correct?

9 A. Yes.

10 Q. And he was cooperative with you?

11 A. Yes.

12 Q. And he gave you his side of the story?

13 A. He did.

14 Q. And you testified that you didn't see any injuries

15 correct?

16 A. No.

17 Q. He did tell you a concern about a brain aneurism

18 though?

19 MS. NEWMAN: Objection, Your Honor ---

20 A. --- I don't recall a brain aneurism.

21 Q. [Ms. Ford] He mentioned that in his statement to you

22 ---

23 THE COURT: --- what's your legal objection?

24 MS. NEWMAN: Relevance and hearsay.

25 THE COURT: Pardon?

State v David Alan White
Glen Kramer-Cross-Examination by Ms. Ford
March 15, 2016

1 MS. NEWMAN: Hearsay.

2 MS. FORD: It's going to their question, Your
3 Honor. That's why I started out asking about injuries.

4 THE COURT: I'll overrule and you can bring
5 whatever you want to bring out on redirect okay.

6 MS. NEWMAN: Thank you, Your Honor.

7 THE COURT: Go ahead.

8 MS. FORD: Beg the court's indulgence.

9 [Whereupon, Ms. Ford reviews documents]

10 Q. [Ms. Ford] You didn't -- you did get a statement
11 from the defendant correct?

12 A. I did.

13 Q. And that's recorded?

14 A. Yes.

15 Q. Did you not review that before you came here?

16 A. I did.

17 Q. You did? When was that?

18 A. It was last week.

19 Q. So you don't recall David telling you about an
20 aneurism?

21 A. No, I do not.

22 Q. Let me ask this. You met with Mr. Johnson at the
23 hospital but you didn't get to talk to him is that fair
24 to say?

25 A. That's true.

State v David Alan White
Glen Kramer-Cross-Examination by Ms. Ford
March 15, 2016

- 1 Q. And someone else -- you had Officer Galloway with
2 MUSC ask the questions -- or show him some photos?
3 A. Yes.
4 Q. And he did not identify David White correct?
5 A. He --
6 THE COURT REPORTER: I didn't hear your answer.
7 A. He did not.
8 Q. [Ms. Ford] But he did identify someone else correct?
9 A. He did.
10 Q. And he wrote up something on that piece of paper as
11 well.
12 A. Yes, he did.
13 Q. And you spoke to his family?
14 A. Whose family?
15 Q. To David's family -- I mean to Joseph's family.
16 A. I did.
17 Q. And you were supposed to be reached when he was
18 ready to give a statement correct?
19 A. Yes.
20 Q. Did he ever get in contact with you?
21 A. No.
22 Q. Did you testify at a preliminary hearing for this
23 case in January of 2014?
24 A. I did.
25 Q. And do you recall Mr. Johnson being present?

State v David Alan White
Glen Kramer-Cross-Examination by Ms. Ford
March 15, 2016

1 A. I do.

2 Q. Did you have an opportunity to speak to him that
3 day?

4 A. Very briefly.

5 Q. And do you recall him actually -- he got a chance to
6 speak to the Judge.

7 A. I do remember him talking to the Judge.

8 Q. So this -- he had never at any time went to the
9 police station to gave a statement correct?

10 A. No, he did not.

11 MS. FORD: Beg the court's indulgence.

12 THE COURT: Ms. Ford, before you stop you
13 previously made an objection of going into what your
14 client said about any possible injuries. I sustained the
15 objection and you opened the door on cross. I'm going to
16 let them fully develop on redirect if you have any
17 questions or on recross okay -- redirect.

18 MS. FORD: Okay, Your Honor.

19 THE COURT: Any redirect? Obviously if you are
20 through with cross. Are you through with cross?

21 MS. FORD: Yes, Your Honor.

22 THE COURT: Okay.

23 [Whereupon, Ms. Newman and Ms. Elliott confer]

24 MS. NEWMAN: No, Your Honor.

25 THE COURT: No questions? Okay. You may step

State v David Alan White
Glen Kramer-Cross-Examination by Ms. Ford
March 15, 2016

1 down. Thank you very much.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: Call your next witness.
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State v David Alan White
Scott Wyant-Direct Examination by Ms. Elliott
March 15, 2016

1 MS. ELLIOTT: The State would call Scott Wyant.

2 [Whereupon, Mr. Wyant comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: If you could state your first and
6 last name and spell out your last name please.

7 THE WITNESS: Scott Wyant, W-Y-A-N-T.

8

- - - - -

9 SCOTT WYANT,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. ELLIOTT:

14 Q. Mr. Wyant, where are you currently employed?

15 A. AlliedBarton Security Company.

16 Q. And what's your position with them?

17 A. Security guard.

18 Q. And did you previously work for the North Charleston
19 Police Department?

20 A. That's correct I did.

21 Q. For how long?

22 A. For twenty one years and three months.

23 Q. For the majority of your time with the North
24 Charleston Police Department what was your job?

25 A. Forensic investigator.

State v David Alan White
Scott Wyant-Direct Examination by Ms. Elliott
March 15, 2016

1 Q. How long did you work in forensic investigation?

2 A. For 18 of the 21 years.

3 Q. What type of training did you receive to enable you
4 to do that job?

5 A. A lot of on the job training but mostly I went to
6 photography school, basic crime scene techniques,
7 chemical processing school, blood scene pattern analysis,
8 I went to some D-N-A collection schools, basic
9 fingerprint; a lot of schools.

10 Q. Were you in that position with forensic services in
11 November of 2013?

12 A. That's correct, I was.

13 Q. So what were your general duties in that role?

14 A. I was a sergeant over the unit. I was responsible
15 for five other members of the unit and on top of that I
16 responded to major crime scenes while I was working and
17 on call-out basis, respond to major crime scenes and
18 handle the crime scene.

19 Q. I'm going to turn your attention to the day of
20 November 27, 2013. Did you respond to
21 in North Charleston?

22 A. Yes, I did.

23 Q. And is that in Charleston County?

24 A. Yes, it is.

25 Q. Why did you respond to that location?

State v David Alan White
Scott Wyant-Direct Examination by Ms. Elliott
March 15, 2016

1 A. I responded there in reference to a stabbing.

2 Q. And when you first arrive at a crime scene what is
3 the typical procedure that you follow?

4 A. Well normally I grab my camera, I grab a pair of
5 gloves and I usually meet with the person who called me
6 out or the first officer that I run into to try to find
7 out what is going on with the scene. And then I begin
8 taking photographs and working the scene according to
9 what I have.

10 Q. And what does it mean to work the scene?

11 A. Well I document the scene through photography; go
12 ahead and take all my pictures and then collect evidence.
13 Like in this case I collected some blood, shell casings,
14 weapons; things like that, I process for fingerprints.

15 Q. And that's what you do in general when you arrive?

16 A. That's what I do in general, yes.

17 Q. Is that the procedure you followed when you arrived
18 at this scene?

19 A. Yes, when I arrived at this scene I met with
20 Sergeant Mark Evans.

21 Q. And Sergeant Evans is he with North Charleston
22 Police Department anymore?

23 A. No, he's no longer with North Charleston.

24 Q. Why is it important to meet with an officer that is
25 already on the scene?

State v David Alan White
Scott Wyant-Direct Examination by Ms. Elliott
March 15, 2016

1 A. Well of course they beat me there; they got there
2 before I did and they had a much better idea of what is
3 going on so it gives me an idea of what I'm looking for
4 and what I need to -- how I need to go about processing
5 the scene.

6 So if I meet with them they basically will give me
7 the rundown of what they know so far so I know whether I
8 need to -- if there is a weapon on scene or do I need to
9 collect it, is the victim on scene, is the victim alive
10 or deceased, is there blood on the scene that I need to
11 collect, are there shell casings, like I said do I need
12 to process for fingerprints or if there are two family
13 members in the same house when something happens you
14 don't necessarily process for fingerprints because their
15 fingerprints are going to be in the house; they both live
16 there so things like that. So you just get a rundown of
17 who the key players are and what transpired.

18 Q. So at this specific crime scene at Hillandale what
19 areas did you concentrate on?

20 A. Basically I was outside the residence because like I
21 said Sergeant Evans had pointed my attention to what had
22 happened; that an argument had ensured outside between
23 two parties and that one individual had cut the throat of
24 the other ---

25 Q. --- you were directed to the backyard?

State v David Alan White
Scott Wyant-Direct Examination by Ms. Elliott
March 15, 2016

1 A. Yes, thank you.

2 Q. So once you got to the scene what was the first
3 thing that you actually did to process the scene?

4 A. I started taking photographs after I met with Mark
5 Evans.

6 Q. And what are you trying to photograph in that
7 process? What are you looking for?

8 A. Evidence to the crime, evidence to the scene.

9 Q. I'm going to show you what has previously been
10 admitted as State's 8 and 9.

11 [Whereupon, the witness is shown exhibits]

12 Q. I'm also going to show you what has been marked for
13 identification purposes as State's 10, 11, 12, 13, 14,
14 15, and 16.

15 [Whereupon, the witness is shown photographs]

16 Q. Do you recognize those?

17 A. Yes ma'am, I do.

18 Q. Are those the photographs that you took that night
19 at ?

20 A. Yes, they are.

21 Q. And do those accurately represent the scene as you
22 saw them that night?

23 A. Yes, they do.

24 MS. ELLIOTT: Your Honor, at this time the State
25 would move in the remainder of the photographs which are

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1 State's 10 through 16.

2 THE COURT: Any objection to 10 through 16?

3 MS. FORD: No, Your Honor.

4 THE COURT: Okay. 10 through 16 admitted without
5 objection.

6 [Whereupon, State's exhibit numbers 10, 11, 12, 13,
7 14, 15, and 16 are entered into evidence by the court]

8 Q. [Ms. Elliott] Let's a minute and look at some of
9 these pictures. This is State's 9.

10 [Whereupon, the photograph is shown]

11 Q. Do you recall what that was you were trying to
12 capture?

13 A. This is a photograph of the backyard where the
14 incident occurred.

15 Q. So it's just an overall shot?

16 A. Yes, it's an overall shot.

17 Q. And then State's 8.

18 [Whereupon, the photograph is shown]

19 A. It's the same -- you know photograph of the same
20 backyard scene but a little closer, a little more zoomed
21 in.

22 Q. When you got to the scene was that crime tape
23 already there or did you put that up?

24 A. It was already there when I got there.

25 Q. Can you tell us the significance of State's 10?

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- 1 [Whereupon, the photograph is shown]
- 2 A. The significance is you can see these areas
- 3 [indicates] have blood on the leaves from the victim
- 4 bleeding.
- 5 Q. So is State's 11 just a zoom-in of that?
- 6 A. That's correct.
- 7 Q. What about State's 12?
- 8 [Whereupon, the photograph is shown]
- 9 A. That's just basically a photograph of the burn
- 10 barrel in the backyard and the area where this incident
- 11 happened and I believe there is blood like in this area
- 12 [indicates].
- 13 Q. Where you just indicated on there?
- 14 A. That's correct.
- 15 Q. I'm going to show you State's exhibit 14.
- 16 [Whereupon, the witness is shown photograph]
- 17 Q. What is that a picture of?
- 18 A. That's a picture of the front of the house when I
- 19 initially arrived.
- 20 Q. And then State's exhibit 13?
- 21 [Whereupon, the witness is shown photograph]
- 22 A. It's a picture of the driveway and there's blood in
- 23 the driveway and all these areas on the leaves and on the
- 24 driveway.
- 25 Q. And while you were on the scene did you find any

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1 weapons?

2 A. Yes, I was directed to a knife.

3 Q. This is State's exhibit 16.

4 [Whereupon, the witness is shown photograph]

5 Q. Is that a photograph of the knife?

6 A. That's a photograph of the knife, yes.

7 Q. Did you only photograph that knife?

8 A. I photographed it and collected it.

9 Q. Mr. Wyant, I'm showing you what has been marked for
10 identification purposes as State's exhibit 17. Do you
11 recognize that?

12 [Whereupon, the witness is shown exhibit]

13 A. Yes, this is the knife that you saw in the
14 photograph.

15 Q. And you collected it that night?

16 A. That's correct.

17 Q. How do you know that's the knife you collected?

18 A. Because I put it in this evidence box, it's got the
19 case number, it's got information about the knife and
20 where I recovered it from, and the knife box has been
21 sealed and it has my initials on it, which indicates that
22 I'm the one who put it in the box and the one who
23 collected it and then sealed it in there and initialed it
24 so it hadn't been tampered with.

25 MS. ELLIOTT: Your Honor, at this time we would

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1 move State's exhibit 17 into evidence?

2 THE COURT: Any objection?

3 MS. FORD: No, Your Honor.

4 THE COURT: State's 17 admitted without objection.

5 [Whereupon, State's exhibit number 17 is entered
6 into evidence by the court]

7 Q. [Ms. Elliott] Now once you collected the knife --
8 well, did you collect any other items from the Hillandale
9 address?

10 A. Yes, I collected a sample of blood from the
11 driveway, swabs, and collected some of the blood out of
12 the driveway.

13 Q. After the Hillandale address where did you go?

14 A. I then went to MUSC where I met with Detective
15 Wallace.

16 Q. Why were you at MUSC?

17 A. I went to MUSC so I could hopefully make contact
18 with the victim and take pictures of the victim's
19 injuries. I wasn't sure the extent of the injuries
20 but...

21 Q. Were you able to do that?

22 A. No, I was not.

23 Q. Why not?

24 A. I was told by Detective Wallace that the victim had
25 already been rushed into surgery and once that happens

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1 it's too late.

2 Q. After you left MUSC where did you go?

3 A. I then got called -- Mark Evans had called me to
4 for consent to search of a
5 residence.

6 Q. And I'm going to show you what has been marked as
7 State's exhibit 6.

8 [Whereupon, the witness is shown exhibit]

9 Q. Do you recognize this?

10 A. Yes, I do.

11 Q. Where did you collect that from?

12 A. From the bedroom at Marietta.

13 Q. And did you take that into evidence from that
14 residence?

15 A. Yes, I did.

16 Q. We talked about you taking several things into
17 evidence. Can you tell us a little bit about the process
18 that you go through once you take something into
19 evidence?

20 A. Once I collect it from the scene I secure it in the
21 appropriate kind of package whether it be a bag or a
22 knife box, gun box; what have you. Once it -- I put it
23 in my vehicle and once I've cleared the scene I go to the
24 station. If it requires drying then it's put in the
25 forensic dryer or what have you. But anyway, once it's

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1 ready, once it's ready to be put into evidence it is
2 taped up and sealed and of course the seals are
3 initialed. Then the crime scene office has these set of
4 lockers in the back of the crime scene office.

5 On the other side of the lockers is the evidence
6 room and we have doors on both sides of the lockers
7 almost like school lockers. So you open up the locker,
8 you put your evidence in there you close the locker and
9 the only other person who gets to it is the evidence
10 technician on the other side.

11 They check the lockers everyday when they come in
12 they open their side of the locker and they pull the
13 evidence out. Of course with the evidence is a chain of
14 custody saying where I recovered it from and who has it.

15 Once they verify what they have they sign the chain
16 of custody to keep the chain going then they secure it in
17 their evidence room until we need it whether for SLED or
18 for court or testing or whatever.

19 Q. So both what has been admitted as State's exhibit 17
20 and what you have in front of you for identification
21 purposes as State's exhibit 6 were both handled in that
22 manner?

23 A. That's correct, yes.

24 MS. ELLIOTT: Your Honor, at this time we would
25 move into evidence State's exhibit 6.

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1 THE COURT: Any objection?

2 MS. FORD: No, Your Honor.

3 THE COURT: State's 6 admitted without objection.

4 [Whereupon, State's exhibit number 6 is entered into
5 evidence by the court]

6 Q. [Ms. Elliott] I'm going to ask you to take State's
7 exhibit 6 out and publish it for the jury briefly please.

8 [Whereupon, the witness complies]

9 A. It's a Carhartt coat.

10 Q. And do you recall where you recovered that from?

11 A. It says the rear bedroom at the residence on
12 Marietta Street.

13 Q. On Marietta Street?

14 A. Yes, ma'am.

15 Q. Did you collect any other items at the rear of the
16 residence on Marietta Street?

17 A. Yes ma'am, I did.

18 Q. What were some of those items?

19 A. On Marietta Street I collected a pair of brown in
20 color boots, a grey t-shirt, a pair of jeans, another
21 pair of jeans, a Polo shirt, a pair of blue shorts; boxer
22 shorts, and white socks, brown in color Carhartt coat,
23 and one yellow in color wash cloth with a blood spot on
24 it.

25 Q. Now when you're collecting evidence from a location

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- 1 do you know necessarily what the evidentiary value of any
2 of that stuff is?
- 3 A. Not necessarily, no.
- 4 Q. Do you even know exactly what of those clothes the
5 defendant did or did not wear?
- 6 A. No, I did not.
- 7 Q. You said you collected a cloth?
- 8 A. Yes, I recovered a yellow in color washcloth.
- 9 Q. Can you tell us about kind of the nature of that
10 cloth when you collected it?
- 11 A. The yellow in color washcloth was found in the
12 bathroom. It was found in the bathroom and it had what
13 appeared to be blood on it but the washcloth was dry and
14 the blood on it was dry.
- 15 Q. So what if any significance would that have to you?
- 16 A. For this particular scene none really because the
17 washcloth was dry. If it had recently been used to wipe
18 blood off of something the washcloth would be wet and the
19 blood on it would be somewhat wet but in this case it was
20 completely dry.
- 21 Q. Once you gathered all of these items where did you
22 take them?
- 23 A. Once I collected them like I said I put them in
24 individual bags because you have to keep that separated
25 so you don't cross contaminate, secured my vehicle. Once

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1 I cleared that scene I went to the station and that
2 evidence was packaged up and logged into the property
3 room.

4 MS. ELLIOTT: Beg the court's indulgence.

5 [Whereupon, Ms. Newman and Ms. Elliott confer]

6 Q. Thank you Mr. Wyant. Those are all the questions I
7 have for you at this time.

8 THE COURT: Cross-Examination?

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State v David Alan White
Scott Wyant-Cross-Examination by Ms. Ford
March 15, 2016

1 CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. Mr. Wyant, you got to the Marietta address this
4 would have been hours after the incident correct?

5 A. I believe so, yes.

6 MS. FORD: Beg the court's indulgence.

7 [Whereupon, Ms. Ford and Mr. Mack confer]

8 MS. FORD: I have no further questions for this
9 witness.

10 THE COURT: Any redirect?

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Scott Wyant-Redirect Examination by Ms. Elliott
March 15, 2016

REDIRECT EXAMINATION

BY MS. ELLIOTT:

Q. Do you know what time you went to the address at Marietta Street?

A. I believe it was around somewhere around one o'clock in the morning. The reason I say that is because the evidence sticker on the Carhartt jacket that I got off Marietta indicates that I recovered it about 0100 hours, which is one o'clock in the morning.

Q. Did you do any processing of any evidence in this case?

A. Yes ma'am, I did.

Q. What did you process?

A. I processed the knife that I recovered.

Q. Can you explain to me what goes into that?

MS. FORD: Objection, Your Honor.

THE COURT: What's your legal objection?

MS. FORD: This is outside the scope ---

THE COURT: Pardon?

MS. FORD: It's outside the scope of my cross.

THE COURT: I'll sustain the objection. She asked one question on cross.

MS. ELLIOTT: Yes, Your Honor. We have no further questions for this witness.

THE COURT: You may step down. Thank you, very

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1 much.

2 [Whereupon, the witness is excused and exits the
3 witness stand].

4 THE COURT: Call your next witness please.

5 MS. NEWMAN: Your Honor, may be approach?

6 THE COURT: Yes, ma'am.

7 [Whereupon, an off the record bench conference is
8 held]

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1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury the State has gone through the witnesses they
3 had that were available today. Doctor Fakhry at MUSC is
4 out of town today and he will be here first thing in the
5 morning so we are going to adjourn this afternoon and
6 reconvene in the morning when the doctor can be here.
7 After that the defendant will have an opportunity to put
8 up testimony if they so choose.

9 Please don't discuss the case amongst yourselves or
10 with anyone at all, don't do any type of independent
11 research and that can be anything you see on TV or read
12 anything in the newspaper. I've got a hearing in the
13 morning at 9 o'clock on an entirely separate matter that
14 I scheduled in the morning so I'm going to give myself an
15 hour in that hearing from 9 to 10 so if you will be in
16 the jury room at 10 o'clock we'll get started at that
17 time. So I'll see you in the morning at 10 o'clock.
18 Have a good evening.

19 [Whereupon, the jury exits at 3:07 p.m.]

20 MS. FORD: Ms. Ford, at the bench conference a
21 while ago I asked you if it was all right with you and
22 your client if I went over his Fifth Amendment Rights
23 with him this afternoon and give him until tomorrow to
24 make a decision on his testimony or whether he is going
25 to testify or not testify rather than waiting to the end

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1 of the State's case and I understand that is all right
2 with you and your client is that correct?

3 MS. FORD: Yes, Your Honor.
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State v David Alan White
Fifth Amendment Rights
March 15, 2016

1 FIFTH AMENDMENT RIGHTS

2 THE COURT: Mr. White, if you'll stand and raise
3 your right hand please, sir.

4 [Whereupon, the witness is duly sworn by the court]

5 THE COURT: You are David Alan White is that
6 correct?

7 MR. WHITE: Yes, sir.

8 THE COURT: Mr. White, I'm going to ask you some
9 questions okay?

10 MR. WHITE: Yes, sir.

11 THE COURT: If you don't understand the question,
12 please tell me or if you want to discuss your answer with
13 your attorney before you answer I'll give you an
14 opportunity to do that do you understand?

15 MR. WHITE: Yes, sir.

16 THE COURT: You understand that under the United
17 States Constitution as well as the South Carolina
18 Constitution you have the right to remain silent.

19 MR. WHITE: Yes, sir.

20 THE COURT: No one can make you testify against
21 yourself you understand?

22 MR. WHITE: Yes, sir.

23 THE COURT: That's a personal privilege that you
24 have do you understand?

25 MR. WHITE: Yes, sir.

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1 THE COURT: Only you can waive that right to
2 testify, not your attorney but you do you understand?
3 MR. WHITE: Yes, sir.
4 THE COURT: Do you understand you have the right
5 not to testify but you also have the right to testify do
6 you understand?
7 MR. WHITE: Yes, sir.
8 THE COURT: And I'll grant you the right to consult
9 with your attorney before you make a decision which you
10 can do this afternoon or this evening if you so choose
11 you understand?
12 MR. WHITE: Yes, sir.
13 THE COURT: I'm not going to ask you to give me
14 your decision this afternoon do you understand?
15 MR. WHITE: Yes, sir.
16 THE COURT: Now do you understand if you decide not
17 to testify the jury cannot use it as an inference of
18 guilt against you and I will so instruct the jury do you
19 understand?
20 MR. WHITE: Yes, sir.
21 THE COURT: Now if you do elect to testify what
22 that means is you'll have to answer the questions that
23 are presented to you if they are admissible under the
24 rules of evidence or the rules of court do you
25 understand?

State v David Alan White
Fifth Amendment Rights
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1 MR. WHITE: Yes, sir.

2 THE COURT: Because it's not like you see on
3 television when they get on the witness stand and answer
4 what's your name and you tell them your name and they ask
5 you another question and you take the Fifth Amendment; it
6 doesn't work like that. If you decide to take the stand
7 and waive your Fifth Amendment rights you have to answer
8 the questions do you understand?

9 MR. WHITE: Yes, sir.

10 THE COURT: If they are appropriate under the rules
11 of evidence do you understand?

12 MR. WHITE: Yes, sir.

13 THE COURT: You don't get to pick and choose what
14 questions you're going to answer or not answer do you
15 understand?

16 MR. WHITE: Yes, sir.

17 THE COURT: As I told you earlier it's your
18 decision.

19 MR. WHITE: Yes, sir.

20 THE COURT: Has anybody put any pressure on you or
21 tried to persuade you to testify or not testify?

22 MR. WHITE: No, sir.

23 THE COURT: Do you have any questions from what I
24 have explained to you this afternoon about your right to
25 testify?

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Fifth Amendment Rights
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1 MR. WHITE: No, sir.

2 THE COURT: As I said earlier I'm going to give you
3 the opportunity to discuss it with your attorney if you
4 so choose. Tomorrow after the State rests their case; I
5 understand they have one more witness. At that time they
6 will rest their case and I will ask you at that time
7 whether or not you've had an opportunity to talk to your
8 attorney or if anybody has put any pressure on you and do
9 you wish to testify or not testify do you understand?

10 MR. WHITE: Yes, sir.

11 THE COURT: And I'll do that tomorrow.

12 MR. WHITE: Yes, sir.

13 THE COURT: Now I'll ask you again do you have any
14 questions you want to ask the court about anything I have
15 talked to you about this afternoon?

16 MR. WHITE: No, sir.

17 THE COURT: Okay. Thank you so very much. You
18 may have a seat.

19 [Whereupon, the witness complies]
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1 THE COURT: Anything from the State before we
2 adjourn until in the morning?

3 MS. ELLIOTT: I think this is probably the right
4 time to bring this up. Ms. Ford and the State were
5 discussing your previous ruling about the 911 call.

6 THE COURT: About the redaction?

7 MS. ELLIOTT: Yes, Your Honor. And I'm not sure
8 that she has specific lines that she wants to present to
9 the court or not because if we're going to do redactions
10 that is something that is going to take some time that we
11 prefer to do over tonight.

12 THE COURT: She can do that this evening unless
13 you're ready to do it now.

14 MS. FORD: I guess I need clarification from the
15 court. My argument was just that the 911 call itself
16 doesn't actually establish anything in and of itself.
17 There certainly isn't a dispute as to identity or that
18 the man was cut. It starts out with Ms. Washington and
19 she's not a witness to the incident; she's not one of the
20 State's witnesses. She just says I don't know what
21 happened but a man has been cut. We need help bad. And
22 then Spencer who has already testified got on the phone
23 and he basically just gives a few statements and details
24 both about a man being cut. But I just think that's
25 bolstering his testimony and there is nothing independent

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1 that the call supports. So I wasn't sure if you were
2 suggesting that I should pick out the parts that I think
3 are bolstering or...

4 THE COURT: That's what I was asking you to do; to
5 pick out the part that you think should be redacted and
6 I'll be happy to try to redact it.

7 MS. FORD: Yes, sir.

8 THE COURT: I'll read it tonight and revisit it. I
9 haven't made a decision but I will read it tonight and
10 look and see if I do think it's bolstering. But I just
11 wanted to give you an opportunity to take out anything
12 you think should be taken out.

13 MS. FORD: Yes, sir.

14 THE COURT: If you want to. If you don't that's
15 fine. I'm not trying to force you to do that okay?

16 MS. FORD: Yes, Your Honor.

17 THE COURT: If you don't want to do it that's fine.
18 I'll rule on the entirety of it one way or the other.

19 MS. FORD: I just think the parts that I would want
20 redacted probably the State would object. And I think if
21 you were to redact the parts I want redacted I think the
22 State probably would have no need to put in the tape at
23 all.

24 THE COURT: That may be, I don't know. We'll have
25 to see what you want redacted if you want to do it. Or I

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1 can rule on the whole issue; it doesn't matter to me.

2 MS. FORD: Yes, sir.

3 THE COURT: You tell me what you want me to do?

4 MS. FORD: I'll tell you the parts that I would
5 want redacted -- that I would like redacted.

6 THE COURT: Have y'all put in the tape itself or a
7 transcript of the tape because if we get into redaction
8 I'm going to let you put in the transcript of the tape,
9 not the tape itself because it will be a lot easier to
10 redact on a piece of paper than it would be with the
11 video.

12 MS. NEWMAN: Yes, Your Honor. So far we only moved
13 in the tape for identification only.

14 THE COURT: Right. Do we have a clean copy of the
15 transcript somewhere?

16 MS. NEWMAN: We do, Your Honor.

17 THE COURT: I've got mine. Tell me what you think
18 you would like to redact.

19 MS. FORD: Yes, sir. On the first page she calls
20 and just I would say to redact it from the part that says
21 dispatch, tell me exactly what happened.

22 THE COURT: Let me see.

23 [Whereupon, the Court reviews documents]

24 THE COURT: What is your address, what is the
25 address of the emergency. Tell me exactly what happened.

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1 Do you want to redact that?

2 MS. FORD: Yes, Your Honor, down to where Tameika
3 says I think so, ma'am.

4 THE COURT: Okay. You want to redact that whole
5 portion?

6 MS. FORD: Yes, sir, those six lines. And then on
7 the next page with Spencer when dispatch says hello can
8 you tell me what happened I'd move to have that redacted.
9 And Spencer's line yes he and a guy just got into an
10 argument and he pulled a knife and he sliced him. We
11 just need help here real fast.

12 THE COURT: Okay.

13 MS. FORD: So just those three lines right there,
14 Your Honor. And then on page three at the bottom where
15 Spencer says he's lying on the ground right here and
16 we're trying to comfort him so he stays awake I move to
17 have that redacted, probably until on page four --
18 actually page five.

19 THE COURT: Page five? Okay.

20 MS. FORD: Probably the rest of it, Your Honor.
21 The part at the end I don't mind coming in --

22 THE COURT: You're talking about all of page five?

23 MS. FORD: All of page four and five, Your Honor.

24 THE COURT: All of four and five?

25 MS. FORD: Well, I mean some parts I guess we could

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1 piecemeal it a little more. The part -- I object to the
2 paramedic, the conversation on there when the paramedic
3 is telling them what they need to do, Your Honor, to stop
4 the bleeding.

5 THE COURT: Where you're talking about the dispatch
6 they'll tell you exactly what to do to stop the bleeding?

7 MS. FORD: Yes, Your Honor. And so a lot of the
8 surrounding words are just part of that and quick
9 questions and everything so probably four and five.

10 THE COURT: Tell me what you want.

11 MS. FORD: I think all of four and five, Your Honor
12 and starting on page three on the very last few lines
13 he's lying on the ground right here and we're trying to
14 comfort him so he stays awake.

15 THE COURT: Okay.

16 MS. FORD: Just I think numerous people have
17 testified as to his condition including the EMS worker
18 and I just think it's bolstering. It doesn't establish
19 anything on its own.

20 THE COURT: Thank you, very much. Anything the
21 State would like to...

22 MS. ELLIOTT: Yes, Your Honor. The defense's
23 initial argument was it was bolstering. The definition
24 of bolstering is having another witness basically
25 vouching for the truthfulness of someone and that's not

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1 what this does. It sets the scene for the jury
2 understanding the emergency of this. We don't know how
3 much information they need to find that this was a
4 serious life threatening injury. And hearing the voices
5 and their response is very probative of that; the fact
6 that they were taking it seriously. I don't know that
7 that came across necessarily in their testimony on the
8 stand but it does very much come across in the 911 call.

9 Ms. Ford is right; with what she wants to remove
10 she's removed all of the substance. And it's not a
11 matter of bolstering. It's simply gives context to what
12 was going on the scene and recording it in a
13 contemporaneous manner.

14 THE COURT: Okay. Thank you very much. Give me a
15 chance to read it and I'll give you my decision in the
16 morning. Anything else?

17 MS. ELLIOTT: And just so I understand just so --
18 if you decide to do some redaction or any redaction your
19 preference is going to be that we are not playing the
20 tape; you're just going to ---

21 THE COURT: --- I just think it would be awfully
22 difficult for you to redact a tape at this late date.

23 MS. ELLIOTT: Yes, it would.

24 THE COURT: We'll just use the transcript and we'll
25 take a magic marker and mark through it.

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1 MS. ELLIOTT: Yes, sir.
2 THE COURT: And I'll explain that to the jury okay.
3 MS. ELLIOTT: Okay. Thank you, Judge.
4 THE COURT: All right. Thank y'all very much.
5 We'll see y'all in the morning at 9:00. I've got a
6 hearing at 9 so I'll see y'all at 10 o'clock, okay.
7 MS. NEWMAN: Thank you, Your Honor.
8 MS. FORD: Thank you, Your Honor.
9 [Whereupon, court adjourns at 3:20 p.m.]
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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)

vs.)

DAVID ALAN WHITE)

Defendant)

COURT OF GENERAL SESSIONS

DOCKET NO. 2014-GS-10-4864
2014-GS-10-5530

TRANSCRIPT OF RECORD

March 16, 2016
Charleston, South Carolina

Volume 3 (of 4)

B E F O R E:

THE HONORABLE J.C NICHOLSON, JR., JUDGE

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PROCEEDINGS

1
2 MS. FORD: Your Honor, I forgot to bring it up. I
3 would ask for the lesser included charges. And a part of
4 this will be my directed verdict I think there is
5 question even though the guy's neck was cut there's
6 questions whether he intended to kill. According to the
7 King case from last year there does need to be specific
8 intent to kill so I'd ask for that charge as well. So I
9 would ask for the lesser includeds and the statute allows
10 for them all being lesser includeds, I would ask for
11 ABHAN, Assault and Battery First and Assault and Battery
12 second.

13 THE COURT: You would ask -- I'm sorry, what were
14 you asking for?

15 MS. FORD: For ABHAN, Your Honor, Assault and
16 Battery first, and Assault and Battery second degree.

17 THE COURT: So you're asking for ABHAN, Assault and
18 Battery first and Assault and Battery second right?

19 MS. FORD: Yes, Your Honor. And a specific intent
20 charge on the attempted murder.

21 THE COURT: I think that's in there. Bring us the
22 jury, please sir.

23 [Whereupon, the jury enters at 10:18 a.m.]

24 THE COURT: You may call your next witness please.
25

State v David Alan White
Scott Wyant-Direct Examination by Ms. Elliott
March 16, 2016

1 MS. ELLIOTT: Thank you, Your Honor. The State
2 would call Scott Wyant.

3 [Whereupon, Mr. Wyant comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: For the record sir if you could
7 state your first and last name and spell out your last
8 name please.

9 THE WITNESS: Scott Wyant, W-Y-A-N-T.

10 - - - - -

11 SCOTT WYANT,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. ELLIOTT:

16 Q. Officer Wyant, I'm going to show you two pieces of
17 evidence. I'm going to show you what was previously
18 admitted as State's exhibit 17 and what has been marked
19 for identification purposes as State's exhibit 18.

20 [Whereupon, the witness is shown exhibits]

21 Q. Now you testified yesterday that State's exhibit 17
22 was a knife you recovered from the scene correct?

23 A. That's correct.

24 Q. Did you ever try to process that for fingerprints?

25 A. Yes, I did.

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1 Q. Can you describe for us a little bit about how you
2 go about trying to recover fingerprints from a knife?

3 A. Normally we fume it with like super glue. You put
4 it in a chamber and you put the super glue in a little
5 metal tin and put that on a coffee cup warmer and you
6 close the chamber.

7 The heated super glue creates fumes and the fumes
8 adhere to the object that you are trying to process.
9 Then you follow that up with black fingerprint powder,
10 dust it with black fingerprint powder and look for any
11 potential fingerprints on the item.

12 Q. Is there anything about the knife that would make it
13 easier to recover fingerprints from one section versus
14 the other or more difficult from one section versus the
15 other specifically that knife?

16 A. Yes. Specifically this knife and I'll show it to
17 you, as you can see the handle is very porous and when
18 you're lifting fingerprints you're looking for -- the
19 preferable surface is a smooth, flat surface; you know
20 something you can get fingerprints off of.

21 Anything porous is going to be a) be very difficult
22 to get fingerprints off of and b) if you do get a
23 fingerprint it is going to be distorted because of the
24 textured surface.

25 Q. Because of the textured surface?

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March 16, 2016

1 A. Yes.

2 Q. Did you make a lift off this knife?

3 A. Yes, I did.

4 Q. I direct you to what has been marked for
5 identification purposes as State's exhibit 18. Do you
6 recognize that?

7 [Whereupon, the witness is shown exhibit]

8 A. Yes, I do.

9 Q. What is that?

10 A. This is two lifts that I made from the blade of this
11 [indicates] knife.

12 Q. How do you know that's what that is?

13 A. Well, I can tell from the design. Also on the back
14 of the card I have it labeled with the case number, the
15 date; all the particulars, the address, my name, and
16 where I lifted the print from.

17 MS. ELLIOTT: Your Honor, at this time the State
18 would move State's exhibit 18 into evidence.

19 THE COURT: Any objection?

20 MS. FORD: No, Your Honor.

21 THE COURT: All right, 18 admitted without
22 objection.

23 [Whereupon, State's exhibit number 18 is entered
24 into evidence by the court]

25 Q. [Ms. Elliott] Mr. Wyant, did you actually do any

State v David Alan White
Scott Wyant-Direct Examination by Ms. Elliott
March 16, 2016

1 fingerprint comparison or did you just make the lifts?

2 A. I just made the lifts and I forward it to the
3 fingerprint examiners to look at it.

4 MS. ELLIOTT: Beg the court's indulgence.

5 [Whereupon, Ms. Newman and Ms. Elliott confer]

6 Q. Those are all the questions I have for you Mr.
7 Wyant. Please answer any that Ms. Ford might have.

8 THE COURT: Cross-Examination?

9 MS. FORD: I have no questions for this witness.

10 THE COURT: You may step down. Thank you very
11 much.

12 [Whereupon, the witness is excused and exits the
13 witness stand]

14 THE COURT: If you will, call your next witness
15 please.

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State v David Alan White
Anita Moore-Direct Examination by Ms. Newman
March 16, 2016

1 MS. NEWMAN: Thank you, Your Honor. The State
2 calls Anita Moore.

3 [Whereupon, Ms. Moore comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: State your first and last name and
7 spell out your last name please?

8 THE WITNESS: Anita Moore, M-O-O-R-E.

9 - - - - -

10 ANITA MOORE,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. NEWMAN:

15 Q. Good morning Ms. Moore.

16 A. Good morning.

17 Q. Would you please tell the jury where you work?

18 A. I work for the North Charleston Police Department.

19 Q. And how long have you been with them?

20 A. A little over three years.

21 Q. And were you employed with North Charleston Police
22 Department in November of 2013?

23 A. Yes, I was.

24 Q. What's your position?

25 A. I'm a crime scene investigator.

State v David Alan White
Anita Moore-Direct Examination by Ms. Newman
March 16, 2016

1 Q. How long you been in that position?

2 A. I've been doing crime scene investigations for over
3 twelve years; sixteen years total forensic science.

4 Q. Did you receive any training for your position?

5 A. Yes, ma'am.

6 Q. Can you tell us about that please?

7 A. I have a Bachelor's degree in science, chemistry.
8 I've also attended the National Forensic Academy. I also
9 have a certification from the I-A-I, which is the
10 International Association of Identification as a crime
11 scene analyst.

12 I've also been certified through the American Board
13 of Criminalistics. I've also done several training
14 classes in latent examination and comparisons including
15 latent prints and palm prints.

16 Q. Now what are some of your duties?

17 A. My primary duties are to go out to crime scenes and
18 process them, record them, document, collect any
19 plausible evidence and I also am responsible for
20 analyzing and examining latent prints that are brought
21 into the unit.

22 MS. NEWMAN: Your Honor, at this time the State
23 moves the witness to be declared as an expert in the
24 field of latent print analysis.

25 THE COURT: Any questions you would like to ask or

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Anita Moore-Direct Examination by Ms. Newman
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1 do you acknowledge she is an expert on latent print
2 analysis?

3 MS. FORD: I have no objection, Your Honor.

4 THE COURT: All right. The court so finds.

5 Q. [Ms. Newman] Did you gather any evidence in this
6 case?

7 A. Yes, I have.

8 Q. And what was that?

9 A. A latent print card was submitted for analysis.

10 Q. And once you received it what did you do with it?

11 A. We normally examine them to determine if they are
12 comparable or non-comparable.

13 Q. And so did you perform an analysis?

14 A. Yes ma'am, I did.

15 Q. And can you please tell us what that included?

16 A. We concluded that it was insufficient for
17 identification.

18 Q. And how did you perform the analysis?

19 A. We look at the card with a magnifier and we look to
20 see if there is any ridge detail. Once we determine if
21 there is any ridges then we can look at it even further
22 to determine if there is any detail that is there that
23 can make it comparable.

24 Q. And once you looked at the list what are the results
25 that you found?

State v David Alan White
Anita Moore-Direct Examination by Ms. Newman
March 16, 2016

1 A. There was no sufficient ridge detail to make any
2 comparisons.

3 Q. And can you tell us what that means?

4 A. Your fingerprints are left behind by oils and sweat
5 when you touch an item. And when we process them we
6 process them many different ways; mostly black powder.
7 Once we do that we lift it with a piece of tape and put
8 it on a contrasting backing card.

9 Once that gets submitted we use a magnifying glass
10 to be able to see a closer image of it. Those
11 fingerprints have lines and ridges and furrows. They
12 also have little minor minutia which are called
13 bifurcations and ridge endings.

14 Each one of those little points helps to make that
15 fingerprint unique and individual to each person. If
16 there is enough detail to make it unique to a person then
17 we can do a comparison.

18 Q. Now what would affect your ability to analyze prints
19 off of a knife for instance?

20 A. I'm sorry; I'm not quite sure...

21 Q. How would you analyze prints if they were lifted off
22 a knife?

23 A. The same process. We would look at the tape of the
24 print that was pulled off the knife on the card and we
25 would look at it through the magnifier and determine if

State v David Alan White
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March 16, 2016

1 there was any detail to it. Depending on what was lifted
2 as to what our analysis would be if there was anything on
3 there at all.

4 MS. NEWMAN: Beg the court's indulgence.

5 [Whereupon, Ms. Newman and Ms. Elliott confer]

6 Q. [Ms. Newman] Ms. Moore, what would some
7 circumstances be that would lead to lack of detail for a
8 fingerprint?

9 A. Ideally the best surface for a fingerprint to be
10 lifted from is a clean undisturbed surface. Depending on
11 what that surface is, where it has been used, how many
12 people have handled it to when we finally get it to be
13 processed can affect it.

14 Too much oils, too much sweat, powder; there are a
15 lot of things that go into account that can prevent you
16 from getting an identifiable print one from just nothing
17 being there at all to overlapping details that you can't
18 separate out to identify to just some ridges that are
19 there that there is no unique identifiers to be able to
20 identify.

21 Q. Thank you. No further questions.

22 MS. FORD: I have no questions for this witness,
23 Your Honor.

24 THE COURT: All right. Thank you very much. You
25 may step down.

State v David Alan White
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March 16, 2016

1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: Call your next witness.

4 MS. NEWMAN: Thank you, Your Honor.

State v David Alan White
Doctor Samir Fakhry-Direct Examination by Ms. Newman
March 16, 2016

1 MS. NEWMAN: The State calls Doctor Samir Fakhry.
2 [Whereupon, Doctor Fakhry comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: For our record if you could state
6 your first and last name and spell out your last name
7 please?

8 THE WITNESS: My name is Samir Fakhry and its
9 spelled F as in Frank, A-K-H-R-Y.

10 - - - - -

11 SAMIR FAKHRY,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. NEWMAN:

16 Q. Good morning Doctor Fakhry.

17 A. Good morning.

18 Q. Could you please tell the jury what your occupation
19 is?

20 A. I'm a professor of surgery at the Medical University
21 of South Carolina here in Charleston and I am the Chief
22 of the Division of General Surgery.

23 Q. And where do you work?

24 A. Right here downtown at MUSC hospital.

25 Q. And can you please describe your educational

State v David Alan White
Doctor Samir Fakhry-Direct Examination by Ms. Newman
March 16, 2016

1 background to the jury?

2 A. Sure. I completed medical school training at the
3 American University in Beirut, Lebanon. I did general
4 surgery training at Chapel Hill North Carolina at UNC,
5 and then did fellowship training in trauma and surgical
6 critical care at UNC Chapel Hill as well.

7 Q. And have you worked anywhere other than MUSC?

8 A. Yes, I have. George Washington University in
9 Washington, D.C. and then back to UNC Chapel Hill, then
10 Fairfax Hospital in northern Virginia, and now MUSC.

11 Q. You mentioned trauma surgery. How long have you
12 been working in the field of trauma surgery?

13 A. Pretty much my entire professional career so that's
14 nearly 30 years; since 1989.

15 MS. NEWMAN: Your Honor, the State asks that Doctor
16 Fakhry is qualified as an expert in the field of critical
17 care and trauma surgery based on his educational
18 background training and experience.

19 THE COURT: Any objection or any questions?

20 MS. FORD: No, Your Honor.

21 THE COURT: Okay. The court so finds.

22 Q. [Ms. Newman] Doctor Fakhry, did you have a chance to
23 treat Joseph Johnson on November 27th, 2013?

24 A. Yes, ma'am.

25 Q. And how did he arrive to the emergency room?

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March 16, 2016

1 A. He was brought as what we call a Trauma Level A
2 activation by the EMS team after sustaining an injury to
3 his neck with a sharp object.

4 Q. And what is Trauma Level A mean?

5 A. So trauma, Level One trauma centers like us set up a
6 system where we receive information from incoming EMS
7 teams about the condition of patients that they have
8 picked up.

9 Based on the information they give us we then try to
10 predict whether they are going to be extremely sick and
11 we call that a Level A or Level one activation,
12 moderately sick and we call that a Level two activation,
13 or not terribly sick in which case we don't assign an
14 activation.

15 By doing that it allows us to prepare the
16 appropriate team to respond to what is coming in to us.
17 Typically our Level A or Level one activations have
18 somewhere between 15 and 20 percent chance of dying
19 whereas our Level B has a less than one percent chance of
20 dying.

21 So it gives you an idea that we can pretty well
22 separate the extremely sick that need a very big response
23 on arrival from the moderately sick or injured that need
24 a lesser response than that.

25 Q. Now when you encountered Mr. Johnson what injuries

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Doctor Samir Fakhry-Direct Examination by Ms. Newman
March 16, 2016

1 did you find him to have?

2 A. So he had sustained an approximately 10 centimeter
3 laceration to the anterior of the neck, the front of the
4 neck and he had been apparently found by the EMS team in
5 distress and they had placed a breathing tube through his
6 mouth to try to help him breathe.

7 Because he was bleeding extensively they had to
8 apply pressure to his neck try to control that bleeding
9 and had only partially succeeded in doing so.

10 Q. Now when you first saw him was he conscious?

11 A. He was not responding to commands but he was moving
12 around somewhat. He would occasionally gag around the
13 tube as people often do but we were not able to get him
14 to communicate with us and we gage that by whether or not
15 he can respond to a command by saying show me two fingers
16 if he's not able to do that.

17 Q. When you saw him was he already intubated?

18 A. The EMS team had placed a breathing tube. Because
19 of his condition and our concern about whether or not he
20 was being adequately ventilated or getting enough air and
21 because of the amount of bleeding the emergency medicine
22 doctors who were helping us manage his airway decided to
23 exchange his tube and put in a better tube for him. So
24 during the course of those events they were having so
25 much difficulty with the amount of bleeding and

State v David Alan White
Doctor Samir Fakhry-Direct Examination by Ms. Newman
March 16, 2016

1 difficulty breathing that we decided to perform a
2 surgical -- for him ---

3 THE COURT REPORTER: --- I'm sorry, would you
4 repeat that.

5 THE WITNESS: Yes, ma'am. It's called a surgical
6 cricothyrotomy; it's C-R-I-C-O-T-H-Y-R-O-T-O-M-Y.

7 A. And then we proceeded to perform what is essentially
8 an emergency surgical airway for him at the time.

9 Q. Now when you first encountered him were you able to
10 control the bleeding with pressure alone?

11 A. I would say we were able to partially control the
12 bleeding. So the bleeding continued but it wasn't as
13 severe as it would have been if we were not applying
14 pressure but it wasn't satisfactory. We did not consider
15 it satisfactorily controlled bleeding.

16 Q. And bleeding such as Mr. Johnson experienced pose
17 any risks?

18 A. Yes. If you bleed and if you lose enough blood the
19 condition you will obtain is called shock which means
20 it's not enough blood inside your blood vessels to carry
21 the oxygen that you need to your tissues.

22 So at some point if you lose enough blood you go
23 into shock and then your organs begin to fail if you are
24 in shock long enough.

25 Q. So after you treated Mr. Johnson in the emergency

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March 16, 2016

1 room what happened after that?

2 A. So with the ongoing bleeding that he had and the
3 problems with his airway but most especially because of
4 the wound that he had and the nature of the wound we
5 decided the safe step, the appropriate step was to take
6 him to the operating room where we would be able to
7 manage the injury.

8 Q. And what did you do once you got to the operating
9 room?

10 A. So the standard approach for people who have neck
11 wounds is to do a procedure we call aspiration of the
12 neck. So we dissect out the different tissues that are
13 in there that cover the vital structures; that would be
14 the muscles and some of the soft tissues are dissected
15 away so we could look at the key structures that are in
16 the neck that represent the great risk to the patient in
17 case of injury.

18 Q. And what did you end up doing in the operating room?

19 A. So we were able to expose and look at and examine
20 the key structures so that would be the carotid artery
21 which takes blood up to the brain, the jugular vein which
22 brings blood back from the brain, some of the nerves.

23 And then the other really important structure is the
24 windpipe or trachea. And we determined that the bleeding
25 was coming from some of the smaller blood vessels which

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Doctor Samir Fakhry-Direct Examination by Ms. Newman
March 16, 2016

1 we then repaired and controlled. There was no direct
2 injury to the windpipe itself. We then -- because we had
3 done the airway access, the cricothyrotomy under very
4 difficult circumstances in the emergency department we
5 did what we call a revision of the airway procedure; so
6 we gave him a better cricothyrotomy.

7 Q. Now did Mr. Johnson have significant blood loss?

8 A. Yes. The blood loss that we were aware of -- I
9 can't quantitate what he lost before he arrived to us
10 particularly well but he lost somewhere in the
11 vicinity of 750 to 1000 milliliters so that would be
12 about two or three pints of blood in layman's
13 description.

14 Q. And how many pints of blood do we have in our body?

15 A. So the average adult person has about 5,000 ml of
16 blood and that's about 15 pints. So this would be
17 somewhere in the 20 percent blood loss range. And that's
18 where shock starts. Severe shock and death begins to
19 happen at about 35 to 40 percent blood loss.

20 Q. Now after the operating room where did Mr. Johnson
21 go?

22 A. So typically people who have been through this sort
23 of injury and things that we've done cannot be awakened
24 and have the breathing tube removed etcetera so they have
25 to have the breathing tube replaced and have to be put on

State v David Alan White
Doctor Samir Fakhry-Direct Examination by Ms. Newman
March 16, 2016

1 a breathing machine and they have to receive additional
2 blood and fluids for the shock so they always go to the
3 intensive care unit. We call it the surgery trauma
4 intensive care unit.

5 Q. Do you know how long Mr. Johnson remained there?

6 A. I believe it was three to four days altogether
7 counting the first day when he arrived.

8 Q. Now does being in an intensive care unit present
9 risks to a patient?

10 A. While no patients are placed in intensive care who
11 don't have risk of complications and death so almost by
12 definition the fact that you are in an ICU means that you
13 are at risk.

14 Also being in an ICU on a breathing machine carries
15 risks. Risks of pneumonia for example, developing blood
16 clots especially in your legs or pelvis because you're
17 laying still so much of the time.

18 We have to administer a lot of medications to keep
19 people calm when they have a breathing tube and they are
20 on a breathing machine. So by doing that that delays the
21 recovery, they can't breathe on their own, it's
22 frightening I'm sure to be in that position. So there
23 are lots of things that can happen.

24 Q. Now do you know if Mr. Johnson himself experienced
25 any complications in the intensive care unit?

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March 16, 2016

1 A. No major complications. At one point we were
2 concerned because of the blood possibly going down into
3 his windpipe and into his lungs to give him pneumonia.
4 He did not have a severe problem with that so we were
5 able to manage that without too much trouble.

6 Q. Can you please tell the jury the possible serious
7 injuries a person can sustain from a wound to the neck?

8 A. Yes. So there are really three sets of structures
9 that are worrisome when it comes to injury. The windpipe
10 what we call the trachea is what runs right in the
11 middle. You can actually feel it; it's the harder one.
12 That's where you breathe air into your lungs and bring in
13 oxygen and then you exhale carbon dioxide.

14 So injuries to that structure are very serious
15 because they would then allow blood to get into your
16 breathing passages and you would not be able to do that
17 exchange of oxygen and carbon dioxide so injuries to the
18 trachea are very serious.

19 On either side of the neck you have the carotid
20 artery which takes the blood up to the brain so you have
21 one on each side. That's a vessel where the blood is
22 moving very, very quickly. It brings a lot of blood so
23 it's a very high flow vessel so injuries to the carotid
24 artery are extremely serious and probably the most
25 lethal. And the blood loss that occurs from an injury to

State v David Alan White
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March 16, 2016

1 the carotid injury happens very quickly. Blood comes
2 back from the brain and the head through the jugular vein
3 so you have one large one coming down from each side.
4 Injuries to that vein also causes a lot of blood loss
5 although the blood flows a little bit more slowly it's a
6 bigger vessel.

7 So as you might guess the blood going up and the
8 blood coming down have to be equal so the carotid is
9 smaller but the blood flows more quickly, the jugular is
10 bigger and blood flows a bit more slowly. Injury to any
11 of those structures would be very, very serious and cause
12 the potential of loss of life.

13 There are also a number of very important nerves
14 that run in the neck that cause not necessarily life
15 threatening injuries but significant injuries to
16 function.

17 Q. Do you know how long Mr. Johnson was in the hospital
18 in total?

19 A. I believe it was 12 to 14 days total.

20 Q. And would follow up appointments have been
21 recommended for him?

22 A. Yes. We would always have people come back because
23 typically when we do a cricothyrotomy or a tracheostomy
24 we need to monitor that and eventually move it. Any
25 wounds have to heal and it takes time to heal and

State v David Alan White
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1 sometimes we have stitches or staples that we need to
2 remove. We also know that whenever people have these
3 sorts of things happening to them it might affect things
4 like the voice box which sits right about where all this
5 is happening.

6 They might also have a nerve injury that we had not
7 detected. So yes, there would be follow up appointments
8 and checkups and assessments of whether all these
9 different structures are working like they are supposed
10 to.

11 Q. In your expert opinion could Mr. Johnson have died
12 from his injuries?

13 A. Oh absolutely, yes.

14 MS. NEWMAN: Beg the court's indulgence.

15 [Whereupon, Ms. Newman and Ms. Elliott confer]

16 Q. No further questions. Thank you.

17 THE COURT: Cross-Examination?

18 MS. FORD: Yes, Your Honor.

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State v David Alan White
Doctor Samir Fakhry-Cross-Examination by Ms. Ford
March 16, 2016

1 CROSS-EXAMINATION

2 BY MS. FORD:

3 Q. Doctor Fakhry, you told us about the three most
4 serious places in the throat area, the three areas that
5 would be of the most concern to you and that would be
6 windpipe correct?

7 A. Yes, ma'am.

8 Q. And the carotid artery?

9 A. Correct.

10 Q. And then the jugular vein?

11 A. You're right.

12 Q. So Mr. Johnson did not have an injury to any of
13 those three places correct?

14 A. You're correct.

15 Q. And you had to do neck exploration surgery?

16 A. Yes, we did.

17 Q. And you were looking for injuries inside the neck
18 correct?

19 A. That's fair to say.

20 Q. There was no pharyngeal or esophageal injury
21 correct?

22 A. That's correct.

23 Q. You actually had to ultimately repair a muscle isn't
24 that correct?

25 A. That's correct. So the way the injury occurred and

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1 the way most injuries occur in the neck is you go through
2 the skin and then you go through the layer underneath the
3 skin, which we call the soft tissues but it's basically
4 fat, and then you go through muscle. And typically under
5 the muscle are these key blood vessels that I was
6 describing.

7 So although the windpipe is easily felt in the
8 middle and is not covered by much except skin and a
9 little bit of fat you have to go over here [indicates] to
10 get to the blood vessels and the blood vessels are
11 covered by varying layers of muscle.

12 So one of the muscles that was injured is called the
13 sternocleidomastoid S-T-E-R-N-O-C-L-E-I-D-O-M-S-T-O-I-D.
14 That the big muscle that runs this way [indicates] in
15 your neck so it covers the blood vessels. So one of them
16 was injured and we repaired it.

17 Q. And that is the muscle for rotating the head is that
18 fair to say and flexing the neck?

19 A. It participates in those functions, yes.

20 Q. Mr. Johnson you testified that you believed he was
21 in jail -- in the hospital about 12 to 14 days in that
22 correct?

23 A. I believe that's correct. I can check for the exact
24 dates if you would like.

25 Q. Would it help you to see...

State v David Alan White
Doctor Samir Fakhry-Cross-Examination by Ms. Ford
March 16, 2016

- 1 A. Yes, it would. It's been...
- 2 [Whereupon, defendant's exhibit number 2 is marked
3 by the court reporter]
- 4 Q. I'm handing you what has been marked as defendant's
5 exhibit 2.
- 6 [Whereupon, the witness is shown document]
- 7 Q. Does that look like a report from MUSC?
- 8 A. Yes, it does.
- 9 [Whereupon, the witness reviews document]
- 10 Q. Is it correct that he was admitted on November 27th
11 and was released December 6th?
- 12 A. That's correct.
- 13 Q. So more like ten days is that fair?
- 14 A. I trust your math, yes.
- 15 Q. And at that point before you released him of course
16 you checked him out correct?
- 17 A. That's correct.
- 18 Q. And you gave him some sort of trial to make sure he
19 was okay?
- 20 A. Yes.
- 21 Q. And at that time he was up and out of bed?
- 22 A. That's correct.
- 23 Q. And he was on a regular diet by that point?
- 24 A. That's correct.
- 25 Q. And no home care was ordered?

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1 A. Just general precautions and things like that.
2 Wound care we usually tell people what to do for the
3 wound and alert them in case there is an infection to
4 keep an eye on the wound and things like that.

5 Q. He didn't need assistance or anything at home?

6 A. No, he did not, correct.

7 Q. And you told us that he did have to go for a follow
8 up?

9 A. Yes. Once again, because he needed an emergency
10 surgical airway so he could breathe we always have people
11 come back for checkups to make sure that nothing has been
12 damaged in either their voice box, their swallowing
13 mechanism, any of the nerves I was talking about before.
14 Something of this gravity always requires a follow up.
15 We would never send somebody home after this and say
16 that's fine, take care, see you.

17 Q. And so Mr. Johnson did come to his follow up
18 correct?

19 A. He returned -- yes, he did. He returned for his
20 follow up. And one part of the follow up was evaluation
21 of the voice box by the ear, nose, and throat folks.
22 And they confirmed that everything was fine.

23 Q. He healed remarkably well actually?

24 A. I wouldn't know if it was remarkably well or not but
25 I have not seen him since that time. So I don't know if

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1 there have been any consequences. I can't speak to that.

2 Q. So you did not see him for the follow up then other
3 doctors did?

4 A. Yes, he went to the ENT clinic for his follow up
5 then. I have not seen him since those events so I can't
6 really comment on what has transpired since.

7 Q. But to your knowledge there haven't been any
8 complications?

9 A. Not that I'm aware of, yes ma'am.

10 Q. And obviously Doctor Fakhry you were not actually
11 present when the injury occurred correct?

12 A. No, I was not.

13 Q. So you cannot say what the circumstances were
14 surrounding the injury?

15 A. You're correct.

16 MS. FORD: Beg the court's indulgence.

17 [Whereupon, Ms. Ford and Mr. Mack confer]

18 MS. FORD: No further questions.

19 THE COURT: Any redirect?

20 MS. NEWMAN: Briefly, Your Honor. Thank you.

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State v David Alan White
Doctor Samir Fakhry-Redirect Examination by Ms. Newman
March 16, 2016

1 REDIRECT EXAMINATION
2 BY MS. NEWMAN:
3 Q. Doctor Fakhry just to be clear Mr. Johnson still
4 needed surgical intervention to stop the bleeding
5 correct?
6 A. Without a doubt.
7 Q. And you said he lost two to three pints of blood at
8 the hospital?
9 A. That's correct.
10 Q. Estimation?
11 A. Estimated.
12 Q. Can you estimate how much blood Mr. Johnson lost
13 before he arrived to the hospital?
14 A. My estimate would be a guess if that's okay.
15 Q. Sure.
16 A. I would ---
17 MS. FORD: --- I object to the speculation, Your
18 Honor.
19 THE COURT: I'll sustain the objection. Rephrase
20 your question.
21 MS. NEWMAN: Thank you. Beg the court's
22 indulgence.
23 [Whereupon, Ms. Newman and Ms. Elliott confer]
24 Q. [Ms. Newman] Doctor Fakhry you cannot say for sure
25 how much blood Mr. Johnson lost before he arrived at the

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1 hospital is that correct?
2 A. You're correct.
3 Q. Thank you.
4 THE COURT: Any recross?
5 MS. FORD: No, Your Honor.
6 THE COURT: Doctor, you may step down. Thank you
7 so very much. You may be excused.
8 [Whereupon, the witness is excused and exits the
9 witness stand]
10 THE COURT: Call your next witness.
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1 MS. NEWMAN: Your Honor, at this time the State
2 moves exhibit 3 into evidence.

3 THE COURT: Three or -- are you going to introduce
4 the disk or the transcription?

5 MS. NEWMAN: The disk.

6 THE COURT: The 911 call? Subject to your
7 objection of bolstering is that correct Ms. Ford? I
8 believe that was your objection.

9 MS. FORD: Yes, Your Honor, bolstering.

10 THE COURT: I'm going to overrule your objection
11 and admit the 911 call with objection.

12 [Whereupon, State's exhibit number 3 is entered into
13 evidence by the court]

14 MS. NEWMAN: May we publish the call, Your Honor?

15 THE COURT: Pardon?

16 MS. NEWMAN: May we publish the call?

17 THE COURT: Yes, ma'am.

18 MS. NEWMAN: Thank you.

19 [Whereupon, the 911 call plays]

20 [Whereupon, the 911 call stops]

21 MS. NEWMAN: Your Honor, at this time the State
22 rests.

23 THE COURT: Okay. Thank you, very much. Mr.
24 Foreman, ladies and gentlemen of the jury I'm going to
25 ask you to go to the jury room at this time. We'll take

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1 a morning break and I'll get you back in about 15 or 20
2 minutes. Please don't discuss the case amongst
3 yourselves. Follow the bailiff to the jury room please.

4 [Whereupon, the jury exits at 11:02 a.m.]

5 THE COURT: Any motions from the State?

6 MS. NEWMAN: No, Your Honor.

7 THE COURT: Any motions from the defendant?

8 MS. FORD: Yes, Your Honor.

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State v David Alan White
Motion for Directed Verdict-Remarks by Ms. Ford
March 16, 2016

1 MOTION FOR DIRECTED VERDICT

2 MS. FORD: At this time we would ask for -- we
3 would renew all our prior motions and objections but we
4 would also ask for a directed verdict. Mr. White has
5 been charged with attempted murder. The special thing
6 about attempted murder is that the law is very clear that
7 there has to be actual intent to kill, not that someone
8 could have died; that could be covered in other charges
9 but just that the person had intent to kill.

10 There has been no evidence that Mr. White intended
11 to kill Mr. Johnson. There has been no evidence to
12 suggest that he intended to cut him in the neck. None of
13 the witnesses really could even give an explanation so
14 there is no kind of ill will or bad blood so to speak
15 that would suggest that he was intending to kill Mr.
16 Johnson. We just don't -- while it could be a jury
17 question if someone could have died or how serious the
18 injury was we just don't feel that there has been any
19 evidence of intent to kill.

20 THE COURT: Okay. Thank you, very much. Yes,
21 ma'am?

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State v David Alan White
Motion for Directed Verdict-Remarks by Ms. Newman
March 16, 2016

1 MS. NEWMAN: Thank you, Your Honor. The State
2 would argue there has been plenty of evidence that would
3 present genuine issues of fact for the jury to consider.
4 We've heard testimony from the victim in this case,
5 Joseph Johnson. He told us that while he was cutting the
6 defendant's hair the defendant was playing with a knife
7 and that the defendant walked past him and swung at him
8 with the knife.

9 We heard testimony from Spencer Washington. He told
10 us the defendant had a knife in his hand and told the
11 victim you're going to get this which clearly could be
12 considered an intent to kill Mr. Johnson. Dwayne Forrest
13 testified that the defendant walked past the victim and
14 swung and the next thing he saw was the victim holding
15 his hands to his neck.

16 Henry Washington testified that he saw the defendant
17 push the victim at some point. And Albert Jenkins
18 testified that Spencer Washington told the defendant to
19 put the knife away and cool down earlier in the night or
20 that he would have to leave. The State argues that there
21 has been evidence presented that displays genuine issues
22 of fact for the jury to consider and we would ask the
23 court to deny the defendant's motion.

24 THE COURT: Anything very briefly on rebuttal?
25

State v David Alan White
Motion for Directed Verdict-Reply by Ms. Ford
March 16, 2016

1 MS. FORD: Just about when the victim said my
2 client was playing with the knife. He never said that my
3 client made threats towards him. And the comment you're
4 going to get this that doesn't again suggest he is going
5 to kill him or go for his throat; just that possibly he
6 intended to cut him but not kill him.

7 THE COURT: Okay. Thank you, very much. Motion
8 denied.

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State v David Alan White
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1 THE COURT: Mr. White, I had previously yesterday
2 gave you your Fifth Amendment Rights to remain silent and
3 told you I would ask you this morning as to whether or
4 not you would like to testify. But before I ask you that
5 have you had an opportunity to discuss your right to
6 testify with your attorney?
7 MR. WHITE: Yes, sir.
8 THE COURT: Have you understood your conversations
9 that you've had with your attorney?
10 MR. WHITE: Yes, sir.
11 THE COURT: Has anybody forced you or threatened
12 you to testify?
13 MR. WHITE: No, sir.
14 THE COURT: Has anybody forced you or threatened
15 you to not testify?
16 MR. WHITE: No, sir.
17 THE COURT: Have you understood all the questions
18 I've asked you this morning and yesterday?
19 MR. WHITE: Yes, sir.
20 THE COURT: Do you desire to testify?
21 MR. WHITE: Yes, sir.
22 THE COURT: Okay. Thank you so very much. How
23 much time do you need before we're ready to start on the
24 defense's case?
25 MS. FORD: Your Honor, I think what you indicated

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1 to the jury would be fine; about 15 minutes, Your Honor
2 would be fine.

3 THE COURT: Okay. We'll take about a 15 minute
4 break.

5 [Whereupon, court is in recess from 11:06 a.m. until
6 11:41 a.m.]

7 THE COURT: Anything before we bring in the jury?

8 MS. NEWMAN: Nothing from the State, Your Honor.

9 MS. FORD: No, Your Honor.

10 THE COURT: Bring us the jury please.

11 [Whereupon, the jury enters at 11:42 a.m.]

12 THE COURT: Call your first witness please, ma'am.
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State v David Alan White
David White-Direct Examination by Ms. Ford
March 16, 2016

1 MS. FORD: The defense calls David White.
2 [Whereupon, Mr. White comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 THE COURT: State your first and last name and
6 spell out your last name please?
7 THE WITNESS: David White, W-H-I-T-E.
8 - - - - -
9 DAVID WHITE,
10 Having been first duly sworn,
11 Was examined and testified as follows:
12 DIRECT EXAMINATION
13 BY MS. FORD:
14 Q. David?
15 A. Yes?
16 Q. Did you try to kill Joseph Johnson?
17 A. I did not.
18 Q. Did you end up cutting Joseph?
19 A. Yes, I did.
20 Q. Did you mean to cut him?
21 A. I did not.
22 Q. Did you aim for his throat?
23 A. I did not.
24 Q. I'm going to get into more details later but I want
25 to ask you just a few background questions. How old are

State v David Alan White
David White-Direct Examination by Ms. Ford
March 16, 2016

- 1 you David?
- 2 A. Thirty.
- 3 Q. And where are you from?
- 4 A. Mount Pleasant.
- 5 Q. Are you married?
- 6 A. Yes, I am.
- 7 Q. And do you have kids?
- 8 A. Three.
- 9 Q. How old are the kids?
- 10 A. Four, six, and eleven.
- 11 Q. Do you have a job?
- 12 A. I do.
- 13 Q. And where do you work?
- 14 A. McCombs Landscaping doing landscape and irrigation.
- 15 Q. How long have you been with them?
- 16 A. About since 1997 but constantly for about four years
- 17 now.
- 18 Q. Okay. So four years now but off and on before
- 19 that?
- 20 A. Yes.
- 21 Q. Sounds like since you were about the age to work
- 22 more or less?
- 23 A. I think I been a little underage but I was working.
- 24 Q. And do you do any other kind of work?
- 25 A. Yes, I do car detailing.

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David White-Direct Examination by Ms. Ford
March 16, 2016

- 1 Q. And have you always done that too?
- 2 A. Yes, ma'am.
- 3 Q. So do you currently do that type of work?
- 4 A. Yes.
- 5 Q. David, do you know Spencer Washington?
- 6 A. I do.
- 7 Q. And how do you know him?
- 8 A. I married into his family.
- 9 Q. Okay. You married into his family or...
- 10 A. That's my wife's cousin, yes.
- 11 Q. Your wife's cousin? About how long have you known
- 12 him?
- 13 A. Since 2004.
- 14 Q. Back in 2013 before this happened would you go to
- 15 his house?
- 16 A. Yes, ma'am.
- 17 Q. How often would you go?
- 18 A. Every day pretty much.
- 19 Q. And were you there the night before Thanksgiving
- 20 2013?
- 21 A. Yes.
- 22 Q. And what took you there that day?
- 23 A. Spencer picked me up from the Laundromat and wanted
- 24 me to help him rake up his yard so we could smoke some
- 25 turkeys.

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- 1 Q. So how long had you been there?
- 2 A. Since about 12:30, one o'clock that afternoon.
- 3 Q. And you told us you were helping him with yard work?
- 4 A. Yes.
- 5 Q. Had you met Joseph Johnson before that night?
- 6 A. Never.
- 7 Q. And did anyone introduce you to him that evening?
- 8 A. Spencer Washington did.
- 9 Q. When the two of you met was there tension or
10 anything like that?
- 11 A. No, ma'am.
- 12 Q. Did you call him Joseph or what did you call him
13 that night?
- 14 A. I didn't know his name then; Little Bear is all I
15 knew him by.
- 16 Q. Did Little Bear cut your hair that evening?
- 17 A. Yes, he did.
- 18 Q. Did you like your haircut?
- 19 A. Yes.
- 20 Q. Did you pay him?
- 21 A. Yes, I did.
- 22 Q. Was there a dispute over money or anything like
23 that?
- 24 A. No, ma'am.
- 25 Q. When Joseph was cutting your hair did the two of you

State v David Alan White
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1 talk?
2 A. Yes, we did.
3 Q. And what did you talk about?
4 A. How I wanted my hair cut ---
5 MS. ELLIOTT: --- objection. Hearsay.
6 MS. FORD: It's not going to the truth of the
7 matter and it goes to ultimately the intent ---
8 THE COURT: --- okay, overruled. Go ahead.
9 Q. [Ms. Ford] So going back what did y'all talk about
10 during that time?
11 A. He then asked me if I knew -- where I was from so I
12 said Mount Pleasant. So then he asked me if I know ---
13 MS. ELLIOTT: --- objection, hearsay.
14 THE COURT: I'll sustain that objection.
15 MS. FORD: Your Honor, may we approach?
16 THE COURT: Yes, ma'am.
17 [Whereupon, an off the record bench conference is
18 held]
19 THE COURT: Mr. Foreman, as I've done earlier I
20 believe yesterday I'm going to have to listen to some
21 testimony and see if I think it's admissible or not
22 admissible under our rules of evidence. I want to be
23 free to comment on the facts so I'm going to have to ask
24 you to go to the jury room. Please don't discuss the
25 case amongst yourselves.

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1 [Whereupon, the jury exits at 11:50 a.m.]

2 THE COURT: All right Ms. Ford, the objection was
3 hearsay on the conversation between the defendant and the
4 victim, Joseph Johnson, while Mr. Johnson was cutting the
5 defendant's hair is that correct?

6 MS. FORD: Yes, Your Honor.

7 THE COURT: And you want to go into that
8 conversation?

9 MS. FORD: Yes, Your Honor.

10 THE COURT: Let me hear it in camera and then I'll
11 listen to your arguments.

12 MS. FORD: Yes, Your Honor.

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State v David Alan White
David White-In Camera-Direct Examination by Ms. Ford
March 16, 2016

1 IN CAMERA DIRECT EXAMINATION

2 BY MS. FORD:

3 Q. David, what were the two of you talking about when

4 he was cutting your hair?

5 A. When he was cutting my hair he was talking about

6 back when he was in prison and the shanks he used to make

7 when he was in prison.

8 Q. Okay. How did that come up?

9 A. When he asked me if I know Big Jessie.

10 Q. Okay. Did he indicate if he had been in prison

11 with Big Jessie?

12 A. Yes, he was in prison with Big Jessie, yes.

13 MS. FORD: That's the extent of that part, Your

14 Honor. And then there is a little bit later.

15 THE COURT: Well, let's hear the little bit later

16 so we can do it all at one time.

17 MS. FORD: Yes, sir.

18 Q. [Ms. Ford] David, after your conversation with --

19 after you got your hair cut did Joseph continue to talk?

20 A. Yes, he was still talking about it. I told him

21 well, that's not what you asked me. Why did it get to

22 this point?

23 Q. Okay. I'm skipping a little just for purposes of

24 this hearing David. When he was leaving or when you were

25 done with your haircut did he make any other comments?

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David White-In Camera-Direct Examination by Ms. Ford
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1 A. Yes.

2 Q. About what?

3 A. He told me he had -- about his gun and knife he had
4 underneath his moped seat.

5 Q. Okay. Later that evening when the group -- you
6 heard testimony people were talking about wrestling.

7 A. Right.

8 Q. Did Joseph make any comments about wrestling?

9 A. How good a wrestler he was.

10 MS. FORD: That's the extent of it, Your Honor of
11 going into what the victim said.

12 THE COURT: The motion is hearsay. I'll be glad to
13 hear from the State.

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State v David Alan White
Motion as to Hearsay
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1 MS. ELLIOTT: Your Honor, I think it is very much
2 offered at least for the truth of the matter in saying
3 that the defendant [sic] was armed and the way he knew he
4 was armed is because the victim told him that which would
5 be -- he's offering them for the truth of the matter
6 asserted trying to establish that there were weapons
7 involved that's why I was scared. I don't think it falls
8 under any of the stated exceptions.

9 THE COURT: You don't it what; I'm sorry?

10 MS. ELLIOTT: I don't think it falls under any of
11 the stated exceptions. He's very much offering it for
12 the truth of the matter asserted trying to say that the
13 victim was armed at that time to up his argument that he
14 felt threatened which is for the truth of the matter
15 asserted.

16 MS. FORD: It is not, Your Honor. My client ---

17 THE COURT: --- well I think it's being offered to
18 show state of mind. What you're trying to argue is he
19 didn't necessarily have a shank on him.

20 MS. FORD: Right. But he actually said -- he just
21 talked about being ---

22 THE COURT: --- let me back up a minute. What's
23 the relevancy of all this stuff? What does this have to
24 do with the trial based upon what I've heard him say so
25 far? Now so far he said I didn't mean to cut him, I

State v David Alan White
Motion as to Hearsay
March 16, 2016

1 didn't aim for this throat, did not cut him on purpose.

2 MS. FORD: Yes, Your Honor.

3 THE COURT: So based upon that what is the
4 relevancy of the state of mind?

5 MS. FORD: Because, Your Honor I haven't gotten to
6 the actual incident. What he would say and ---

7 THE COURT: --- based upon what he has already said
8 how can you possibly raise self-defense because self-
9 defense is a purpose act you intentionally inflicted
10 physical harm on a person that you were in imminent fear
11 of. Well, he's already said he did not cut him on
12 purpose. He did not aim for this throat. He may not
13 have but he said I didn't cut him on purpose. Now where
14 is self-defense going to come into this?

15 I'm questioning the relevancy of this conversation
16 on self-defense versus accident.

17 MS. FORD: Yes, sir.

18 THE COURT: It appears to me you're trying to
19 establish accident; he's just out there waving a knife
20 around and accidentally cut him. That's not self-
21 defense. So none of this testimony he has said so far
22 has any relevancy at all unless there is a valid self-
23 defense case. That's my first question.

24 MS. FORD: Yes, Your Honor.

25 THE COURT: We haven't gotten to the State's

State v David Alan White
Motion as to Hearsay
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1 position yet.

2 MS. FORD: Yes. And I have an answer for that. My
3 client essentially, and a lot of this again is laid out
4 in his statement, Your Honor, what happened is that
5 Joseph hit him in the back of his head and so basically
6 from the conversations that night of Joseph basically
7 indicating that he had weapons and my client will say he
8 never saw a weapon, he doesn't know that he had a weapon,
9 he just talked about having weapons. He gave David
10 reason to believe that he could do him harm from talking
11 about making shanks in prison and talking about what a
12 great wrestler he was.

13 And so my client basically what I would argue
14 because accident you have to basically be lawful at that
15 point. So my client essentially armed himself in self-
16 defense and at that point is when he cut. And sometimes
17 with assault you go to -- I would argue he didn't intend
18 to but he did intend to swing him arm. So it's similar
19 to like a case where somebody shoots a gun. It may not
20 intend to shoot the person but they intend to shoot the
21 gun and so there could be a self-defense ---

22 THE COURT: --- but that's not -- we're talking
23 about self-defense.

24 MS. FORD: I am, Your Honor ---

25 THE COURT: --- he had to assert whatever force he

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1 felt was necessary to protect himself. The accident and
2 self-defense pretty well can't co-exist. Which is it you
3 want to do?

4 MS. FORD: Your Honor, I think -- what I'm saying
5 is that he armed -- to prove that he was lawful in his
6 act because it's an assault in and of itself to take a
7 knife essentially and show it to someone or it could be
8 considered an assault.

9 THE COURT: Right.

10 MS. FORD: My client I would argue armed himself in
11 self-defense so he was lawful. So it goes to the
12 lawfulness of him taking the knife out. And at that
13 point he cuts the guy and that's why I think it's more of
14 a combination but I do think he armed himself in self-
15 defense and it's similar to if he had shot a gun off but
16 he said I didn't intend to shoot him but he's saying I
17 shot it off only in self-defense.

18 But I don't believe it's hearsay because it goes to
19 the state of his mind at the time and why he acted the
20 way he did and it goes to his intent for how he acted
21 that night when he took out the knife. And again he
22 doesn't know if he had -- if Mr. Johnson had weapons;
23 he's just telling -- so it's not to the truth of the
24 matter.

25 THE COURT: I think it's relevant as to self-

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1 defense. I'm not buying into your argument hey its self-
2 defense and then all of a sudden it's an accident.
3 That's getting to the point of being absurd.

4 MS. FORD: I disagree, Your Honor. I think if
5 somebody -- again, it's similar to a gun. If somebody
6 arms themselves and acts and that gun goes off for
7 example that could be ---

8 THE COURT: --- a gun doesn't go off unless you
9 point it and pull the trigger. The knife doesn't cut
10 unless you swing, okay. Neither one of those acts are
11 accidents.

12 MS. FORD: He swung his arm; he admits to that.

13 THE COURT: Let me see. Accident; if it is shown
14 that the act was unintentional, that the defendant was
15 acting lawfully and that reasonable care was used by the
16 defendant in the handling of the weapon. Now swinging a
17 knife at an individual is not using reasonable care.
18 Pointing a gun and shooting it is not exercising
19 reasonable care. It's just no way that conduct would
20 apply to accident.

21 MS. FORD: Your Honor, I think like you said it
22 could be a jury question. But also and I think it would
23 be elaborated in my client's testimony and it's been
24 supported by the other people testifying that how it
25 happened is that David was walking past the guy and at

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1 that point the other people don't see it but David feels
2 that he has been hit. And so his hand was in his pocket,
3 the knife had been in there so his hand was right beside
4 the knife so he turned around and swung, Your Honor.

5 THE COURT: And that's an accident?

6 MS. FORD: I think it could be. But that's why I
7 say it also could be self-defense because he acted in
8 self-defense.

9 THE COURT: Okay.

10 MS. FORD: He didn't intend the harm but he still
11 acted in self-defense; that's why we believe that's
12 appropriate.

13 THE COURT: Okay. Solicitor let me hear you.

14 MS. ELLIOTT: Judge, I think we have to break these
15 statements apart.

16 THE COURT: I'm sorry, what?

17 MS. ELLIOTT: I think we have to break these into
18 two separate statements. I think especially as to the
19 first one the comments about the shanks it's completely
20 irrelevant as to whether Mr. Johnson has made a shank,
21 built a shank or done anything with shanks at any point
22 in this life because even by the defendant's own
23 assertion he made no comments that night I've got a shank
24 and/or I'm going to shank you. So that I think should be
25 completely -- it's just not relevant and should not be

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1 admissible under those circumstances. As to the second
2 comments about whether or not he had a gun when he's
3 talking about arming himself -- well, first of all I
4 think that's flatly against everything they have
5 presented so far in that he's always had this gun on him
6 -- I'm sorry; that's he's always had this knife on him.
7 I don't know that Ms. Ford assuming that he is going to
8 testify in line with his statement he said that he just
9 happened to have his knife on himself.

10 So this argument that he armed himself in self-
11 defense he always had the knife on him from the moment it
12 started because he had a knife on him. And so it can't
13 be both ways for both an accident and self-defense. And
14 so if it's an accident like you said then his state of
15 mind has nothing to do with it. And if its -- I just
16 think it's not -- it is being offered for the truth of
17 the matter asserted trying to establish that the victim
18 was armed when there is no other evidence that he is.
19 And it's just too prejudicial for that statement to come
20 in for the jury.

21 MS. FORD: Your Honor, if I may as far as the shank
22 it actually goes to the State's reasoning why they were
23 able to keep out the victim's conviction for assaulting
24 an officer because they indicated in your argument there
25 that acts of violence from the victim can't come out if

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1 the defendant is aware of them. So I would argue its
2 equivalent to that. Again my client didn't think he had
3 a shank but he was talking in general. He was being kind
4 of -- it was this weird thing for him to bring up and it
5 made my client feel threatened.

6 As far as arming himself in self-defense what I
7 meant by that was yes he had it in his pocket but the
8 reason he took it out, Your Honor is because he was
9 acting in self-defense. And as far as accident that's
10 important again because it goes to whether it was lawful,
11 whether he was acting lawfully.

12 MS. ELLIOTT: If I may?

13 THE COURT: Yes, ma'am.

14 MS. ELLIOTT: By that logic as to the shanks any
15 time that any person ever talked about their prior
16 history with weapons whether it's -- or something
17 exceptionally violent that would always give ---

18 THE COURT: --- let me say this about the shank. I
19 don't think it's relevant as to accident and/or self-
20 defense because that's a prior act. It doesn't have
21 anything to do with the present whether he had a shank or
22 didn't have a shank so I'm not going to allow that
23 testimony. Now as to -- what was the other statement he
24 made?

25 MS. FORD: He indicated that he had -- that he was

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1 carrying a knife and a gun on his moped.

2 THE COURT: On his moped?

3 MS. FORD: That he had there that night.

4 THE COURT: Okay. But not on his person?

5 MS. FORD: Not on his person.

6 THE COURT: What would that have to do with
7 anything? If he said he had it on his person I could
8 understand. But his moped -- was his moped sitting
9 beside him within reach?

10 MS. FORD: Yes, Your Honor. In the pictures it's
11 right there in the backyard, so yes. And that was
12 earlier in the evening when that happened and he made
13 that comment. So my client didn't know if he had --
14 because he admits that he had access and by access I mean
15 right there a few feet away from him. So I do think
16 that's relevant.

17 THE COURT: She says that he said he had a gun and
18 a knife in his moped and his moped was in close proximity
19 to where they were standing. I don't know how far; I
20 don't know what the picture shows but they said in the
21 general area where the two men were.

22 MS. ELLIOTT: There was a moped, Your Honor. I
23 think this is going to boil down to -- I just don't think
24 it's an appropriate -- I just don't think it falls under
25 the hearsay exception or the non hearsay rules.

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1 THE COURT: I'm sorry, what?

2 MS. ELLIOTT: I think it just does not fall under a
3 non-hearsay usage nor a hearsay exception because also I
4 don't believe there was any testimony that he threatened
5 to us it on the defendant.

6 THE COURT: I'm sorry, what?

7 MS. ELLIOTT: I don't believe there was any
8 testimony that he threatened to us it on the defendant so
9 therefore it would be irrelevant ---

10 MS. FORD: --- my client felt threatened by these
11 statements, Your Honor. That could go into a jury
12 question.

13 THE COURT: Hold on a second. I want to hear what
14 you have to say but I want to read something first.

15 MS. FORD: Yes, Your Honor.

16 [Whereupon, the Court reviews documents]

17 THE COURT: Go ahead. What were you going to say
18 Ms. Ford?

19 MS. FORD: Again, it absolutely is not hearsay
20 because it goes to my client did not know if he had
21 weapons on him. He said he did and it goes to his state
22 of mind. As far as the shanks Your Honor, that also
23 would be an impeachment issue. I asked the victim
24 directly if he made that comment. The State objected but
25 Your Honor allowed me to ask that question. The victim

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1 said no. So I am impeaching the victim with my client
2 because that testimony was already allowed in through the
3 victim. He said no. There was no written statement or
4 anything for me to show him so the recourse in
5 impeachment is for me to ask my client who is the only
6 other person who has heard that comment and so I would
7 argue that as well, Your Honor.

8 THE COURT: Well you haven't made that offer. You
9 were offering it as to self-defense but I'll allow it for
10 impeachment purposes.

11 MS. FORD: Yes, sir. But again my client he'll be
12 honest; he didn't know if the man had a weapon on him.
13 He just knows that he was hit from behind and this man
14 had been talking all night kind of weirdly in his mind
15 because he didn't know this man. This man was talking
16 about making shanks in prison, I'm a great wrestler, yes,
17 I have a gun and a knife on my moped.

18 So my client didn't know what to think of this man.
19 He was just talking about this and drinking as well. So
20 it all goes to my client's state of mind. It's not
21 hearsay and it's important for due process for my client
22 to express his state of mind, Your Honor.

23 THE COURT: He can express his state of mind. He
24 was trying to express the victim's state of mind.

25 MS. FORD: No, I don't ---

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1 THE COURT: --- that was his statement but that's
2 neither here nor there. I will allow the statement on
3 the shank for purposes of impeachment since the victim
4 did deny making that statement. I will so instruct the
5 jury it is for impeachment purposes only.

6 MS. ELLIOTT: Judge, if I may. I think that is
7 exceptionally prejudicially to the State for the pure
8 fact that when you're impeached ---

9 THE COURT: --- well I understand ---

10 MS. ELLIOTT: --- we object ---

11 THE COURT: --- she asked the question had he ever
12 had a shank I believe or made a statement that he had a
13 shank in prison I believe.

14 MS. FORD: That he had made shanks in prison.

15 THE COURT: And he said no. Now this gentleman is
16 going to say yes he did and I think they can do that for
17 that purpose.

18 MS. ELLIOTT: But it was irrelevant then and it's
19 irrelevant now.

20 THE COURT: Well maybe, maybe not.

21 MS. ELLIOTT: And this is a way to backdoor into
22 something that had we understood the context of because
23 he never mentioned that before today ---

24 THE COURT: --- I'm going to let her do that. I'm
25 not going into the other about the gun and the knife in

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1 the moped. I don't think that has any bearing on the
2 case and its hearsay. And I think it's being offered for
3 that purpose, okay.

4 MS. FORD: Your Honor, just for the record I
5 strongly object ---

6 THE COURT: --- you've already objected you don't
7 have to strongly object. You can say I extremely object
8 if you want to okay.

9 MS. FORD: Yes, Your Honor.

10 THE COURT: You objected and I appreciate your
11 thoughts and I appreciate your objections.

12 MS. FORD: Yes, Your Honor.

13 THE COURT: Anything else before we bring the jury
14 back?

15 MS. NEWMAN: Not from the State, Your Honor.

16 THE COURT: Do you understand Mr. White I'm not
17 going to allow you to go into any of those statements
18 that the victim made except for the one about what he
19 told you that he had a shank in prison I believe is that
20 correct ---

21 THE WITNESS: --- yes, sir ---

22 THE COURT: --- do you understand? Anything else
23 before we bring in the jury?

24 MS. NEWMAN: No, Your Honor.

25 MS. FORD: Can I go into his state of mind, Your

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1 Honor or how he felt as the result of ---

2 THE COURT: --- bring us the jury please ---

3 MS. FORD: --- the comments that Joseph made?

4 THE COURT: He can talk about his state of mind but
5 we're not going to specifically go into statements that
6 the victim made. He can testify to what he thought all
7 day long ---

8 MS. FORD: --- as a result of it. Okay.

9 THE COURT: As a result of it. I'm not trying to
10 prohibit that.

11 [Whereupon, the jury enters at 12:11 p.m.]

12 THE COURT: Mr. Foreman, ladies and gentlemen of
13 the jury I'm going to say something very briefly to you.
14 Under the rules of evidence it does not allow to offer
15 hearsay. Hearsay is a statement made by someone else
16 outside the courtroom.

17 There are certain exceptions to the hearsay. One
18 exception is to impeach a witness. That means that
19 testimony from what he said outside the courtroom is
20 contrary to what he has said previously. A statement
21 made by the victim Mr. Johnson is going to be offered for
22 the purpose of impeachment only. Please proceed.

23

24

25

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David White-Direct Examination by Ms. Ford (resumes)
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1 DIRECT EXAMINATION (resumes)
2 BY MS. FORD:
3 Q. David, when Joseph Johnson was cutting your hair
4 what did he -- what was your conversation?
5 A. My conversation was how I was getting my hair cut.
6 Q. Right. But what did y'all talk about during the
7 haircut?
8 A. He was talking -- asking me questions about who I
9 know. Do I know Big Jessie? I told him yes.
10 Q. And then did he tell you why he was asking you that?
11 A. He said because they was in prison together.
12 Q. Okay. And did he make a comment about shanks?
13 A. Yes, he said something about shanks.
14 Q. What about them?
15 A. He said ask Big Jessie about me and the shanks I
16 used to make when we was in prison.
17 Q. So what were you thinking when Joseph was telling
18 you this?
19 A. That I didn't know where that whole situation came
20 that we was talking about how you was cutting my hair.
21 Q. Okay. Did you find it odd?
22 A. It was but I brushed it off pretty much.
23 Q. And after he finished with your haircut did he make
24 any other comments?
25 A. He said something about gun and knife ---

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1 MS. ELLIOTT: --- objection, hearsay.

2 THE COURT: Overruled -- excuse me, sustained.
3 Don't comment about that. I instructed that to you
4 before the jury came in do you understand?

5 THE WITNESS: Right.

6 THE COURT: You said you understood. Do you
7 understand?

8 THE WITNESS: Yes, sir.

9 Q. [Ms. Ford] So without telling us what he said as a
10 result of what he said what was going through your mind?
11 How did you feel?

12 A. I just didn't pay no attention. I walked off and
13 went by the fire pit.

14 Q. What he said did it strike you as odd at that point?

15 A. Ma'am?

16 Q. What he said did it strike you as odd?

17 A. It was ---

18 MS. ELLIOTT: --- objection, leading.

19 Q. [Ms. Ford] After you walked away where did you go?

20 A. I walked by the fire pit.

21 Q. And did you ever leave the house at any point?

22 A. I did. I went to the store me and Kyle.

23 Q. Okay. And how long were you gone?

24 A. We were gone for about ten minutes.

25 Q. And what did you go to the store for?

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- 1 A. We went to the store to get some beer and came back.
2 Q. And what did you do with the beer?
3 A. I put it inside the little shed refrigerator, little
4 freezer to get cold. Then I went inside the house and
5 checked on my kids.
6 Q. After that what did you do?
7 A. I walked back out by the fire pit.
8 Q. And did you see Joseph at that point?
9 A. Yes, ma'am.
10 Q. And he was with other guys?
11 A. He was with other guys, yes.
12 Q. Did you join the group?
13 A. Yes, I did.
14 Q. What were the guys talking about?
15 A. They were just making a joke about wrestling back
16 when he used to wrestle and tapping out.
17 Q. Did you make any comments about tapping out?
18 A. Yes. First Tony mentioned his brother and he'll tap
19 out and I said yes, I would tap out too. We was just
20 joking about it, it wasn't...
21 Q. Did you hear Joseph make any comments about tapping
22 out?
23 A. No, he was saying what kind of good wrestler he was.
24 Q. And were the others talking about Joseph wrestling?
25 A. Yes.

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1 Q. What were they saying?

2 THE COURT: All right. Quit going into the
3 hearsay please, ma'am. I've told you what you can go
4 into. Move on to what he did, what he said, and his
5 conduct okay.

6 MS. FORD: Yes, Your Honor.

7 THE COURT: Not what somebody else said.

8 MS. FORD: Yes, sir.

9 Q. [Ms. Ford] After did you leave the group at any
10 point?

11 A. Yes.

12 Q. And what did you decide to do?

13 A. I decided to call my wife and tell her I was ready
14 to get picked up.

15 Q. And were you able to call her?

16 A. No, as I was walking off that's when I had a punch
17 on the side of my head and then I see a fingernail come
18 in front. It was him that cut me -- I mean that punched
19 me.

20 Q. Okay. And who do you mean by him?

21 A. Joseph Johnson.

22 Q. And so where was he again tell us?

23 A. He was standing by the fire pit.

24 Q. Okay. And how did you come across him at that
25 point?

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- 1 A. I walked in front of him and I started dialing my
2 phone and I have one hand in my pocket because I was
3 pulling out my phone he came behind me and knocked me and
4 I spin around on a quick reaction.
- 5 Q. Okay. You had one hand on the phone then?
- 6 A. Yes.
- 7 Q. Where is the other hand?
- 8 A. Beside my pocket.
- 9 Q. And was anything in your pocket?
- 10 A. Yes, there was a knife inside my pocket.
- 11 Q. What did you have the knife for David?
- 12 A. I was cutting the saran wrap off of some pallets.
13 We used a skill saw to cut them up and put them inside
14 the fire barrel.
- 15 Q. Okay. And when had you done that?
- 16 A. I did that before I walked past him while they was
17 talking about wrestling that's when I was cutting the
18 saran wrap off the pallets.
- 19 Q. So are you telling us it was right before then?
- 20 A. Yes, it was right before then.
- 21 Q. And after you cut the saran wrap what did you do
22 with the knife?
- 23 A. I just stick it in my pocket and walked away.
- 24 Q. Did you close the knife?
- 25 A. No, I just put it in my pocket; not thinking nothing

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- 1 of it.
- 2 Q. Okay. Is that the jacket you saw today
- 3 [indicates]?
- 4 A. Yes, ma'am.
- 5 Q. This is a pretty big jacket?
- 6 A. Yes.
- 7 Q. It's heavy. Would you say it's heavy?
- 8 A. Yes.
- 9 Q. Is that why you brought the knife to Spencer's house
- 10 to cut the saran wrap?
- 11 A. No ma'am, not at all.
- 12 Q. Why did you have the knife on you?
- 13 A. I was fishing earlier that day.
- 14 Q. Okay. And was that with Spencer?
- 15 A. No, I was by myself then.
- 16 Q. Okay. What time was that?
- 17 A. That was earlier that morning around about 9
- 18 somewhere around there; 9:30.
- 19 Q. So when Joseph hit you where did he hit you?
- 20 A. Right on the side of my head and his fingers
- 21 scratched in front of my face.
- 22 Q. And so when you got hit by Joseph what went through
- 23 your mind?
- 24 A. It was a quick reaction. I just spun around and he
- 25 was right there and I saw his neck was cut.

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- 1 Q. Okay. When he hit you did you feel threatened?
- 2 A. I didn't feel threatened but I knew I had a lot of
- 3 head injuries in my past that I thought could have
- 4 triggered something.
- 5 Q. Okay. What do you mean by that?
- 6 A. I got hit with a mug on the side of my head and I
- 7 had to get a bunch of stitches. And I had head injuries
- 8 with a water balloon being thrown through my bedroom
- 9 window with a shaky window pane during my birthday and
- 10 had to get stitches also.
- 11 Q. Did you have any other issues with your head?
- 12 A. And I had an aneurysm, a brain aneurysm.
- 13 Q. Okay. When you got hit why didn't you just run
- 14 away?
- 15 A. I was more scared than anything.
- 16 Q. Okay.
- 17 A. And I didn't run away. I mean it just wasn't --
- 18 reaction.
- 19 Q. Did you feel like you could get away?
- 20 A. I feel like I couldn't because I already had felt
- 21 threatened anyway.
- 22 Q. Okay. So you had felt threatened?
- 23 A. Yes.
- 24 Q. By what?
- 25 A. By the statements that was made.

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- 1 Q. Okay. Don't go into the statements. But you felt
2 threatened by the statements that were made?
- 3 A. Yes.
- 4 Q. Did you know if you could get away safely?
- 5 A. I did not know.
- 6 Q. What was your intent when you swung with your arm?
- 7 A. Protecting myself, self-defense; defending myself.
- 8 Q. Okay. When you swung around did you know where
9 Joseph was at that point?
- 10 A. I did not.
- 11 Q. Did you look where you swung?
- 12 A. No, I didn't.
- 13 Q. Did you see where the knife landed at first?
- 14 A. Yes, I dropped it.
- 15 Q. No, when you swung around?
- 16 A. No, I did not.
- 17 Q. Okay. At what point did you realize what happened
18 to Joseph?
- 19 A. When I saw the blood draining down.
- 20 Q. Where was your phone at this point?
- 21 A. It was still on the ground.
- 22 Q. And what happened to the knife?
- 23 A. I dropped it.
- 24 Q. Okay. And what was your reaction at this point?
- 25 A. My reaction was I mean I was more scared than

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- 1 anything. I just walked to the other side of the yard
2 and walked to the front.
- 3 Q. Okay. Did you stick around and talk to the police?
4 A. I did not.
- 5 Q. And why didn't you stay?
6 A. Because I didn't want any more commotion or whatever
7 like that to happen to trigger.
- 8 Q. Where did you go after you left? Where did you end
9 up that night?
10 A. .
- 11 Q. And who lives there?
12 A. My sister and my Mom.
- 13 Q. Were you going to go anyplace else that night?
14 A. I was going to go to the hospital.
- 15 Q. And for what reason?
16 A. For my head, to get my head checked.
- 17 Q. And did you make it to the hospital?
18 A. I did not.
- 19 Q. Why not?
20 A. My Mom told me I should wait.
- 21 Q. Do you remember when you were arrested David?
22 A. Yes.
- 23 Q. When the police got to your house did you go with
24 them willingly at that point?
25 A. I did.

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1 Q. And did they take you to the station?

2 A. They did.

3 Q. Did you give a statement at that point?

4 A. I did.

5 Q. And that's recorded?

6 A. Yes.

7 Q. David, why did you swing the knife that night?

8 A. Because I got hit; it was a reaction. I didn't
9 realize that I even had the knife like that in my hand in
10 my pocket. I just spin around real quick. I didn't know
11 it was him behind me that close or whatever when I swung
12 my arm.

13 Q. Did you know it was Joseph who had hit you?

14 A. Yes, I did know it was him that hit me.

15 Q. And based on everything that happened that night
16 were you fearful of Joseph?

17 A. Yes.

18 MS. FORD: Beg the court's indulgence.

19 [Whereupon, Ms. Ford and Mr. Mack confer]

20 MS. FORD: No further questions.

21 THE COURT: Cross-Examination?

22 MS. ELLIOTT: Yes, Your Honor.

23

24

25

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David White-Cross-Examination by Ms. Elliott
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1 CROSS-EXAMINATION
2 BY MS. ELLIOTT:
3 Q. Mr. White you have three kids?
4 A. Yes.
5 Q. And now they are four, six, and eleven?
6 A. Yes.
7 Q. But back when this would have happened they would
8 have been one, three, and seven is that right?
9 A. What did you say?
10 Q. How old would they have been that night?
11 A. That sounds about right. Two, three and -- no one,
12 two and seven; that sounds about right.
13 Q. One, two, and seven sounds about right? And they
14 were at Spencer Washington's house with you?
15 A. Yes.
16 Q. All three of them or just two of them?
17 A. Just two of them.
18 Q. Which ones?
19 A. It was Shania [phonetic] and Davion [phonetic].
20 Q. And how old were they?
21 A. They was about one and three. I would say one and
22 three.
23 Q. One and three? So your two youngest were there
24 hanging out in the house?
25 A. Yes.

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- 1 Q. With Spencer Washington's wife?
2 A. Yes, they were already sleeping.
3 Q. And you brought them over with you when you had gone
4 over at one o'clock that afternoon to help out?
5 A. No, ma'am.
6 Q. Your wife brought them over?
7 A. Yes.
8 Q. And Shania [phonetic] and Davion [phonetic] are a
9 girl and boy?
10 A. Yes.
11 Q. And you went over to Spencer Washington's house to
12 help out?
13 A. I did.
14 Q. Rake his yard?
15 A. Yes, we did.
16 Q. Smoke some turkeys?
17 A. We did. We didn't get to eat none but we did.
18 Q. Were you going to get one of those turkeys when that
19 was over?
20 A. Yes.
21 Q. Hang out with the guys?
22 A. Yes.
23 Q. Because lots of people go to Spencer Washington's
24 house to hang out?
25 A. Yes.

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- 1 Q. And you had done that -- you said you went over
2 there about every day?
- 3 A. I used to go there every day.
- 4 Q. And you knew a fair amount of the people that were
5 there that night?
- 6 A. Yes.
- 7 Q. And I think between all of the testimony that we've
8 heard it sounds like there was probably at least a dozen
9 people there right; coming and going?
- 10 A. No, ma'am. All together it was probably about six
11 of us all together was out there.
- 12 Q. Six all together? So you, Joseph Johnson, Spencer
13 Washington, his brother Henry Washington, Albert?
- 14 A. Yes.
- 15 Q. Dwayne and then Kyle.
- 16 A. And Joseph -- you already said that ---
- 17 Q. --- I said that. So seven? Seven men were out
18 there at least. We've actually now that you've taken the
19 stand we've heard from everyone.
- 20 A. Right.
- 21 Q. And then in the house was Spencer Washington's wife?
- 22 A. Yes.
- 23 Q. His children?
- 24 A. Yes.
- 25 Q. And your children?

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- 1 A. Yes.
- 2 Q. You were the first person at the party?
- 3 A. I was.
- 4 Q. And when Joseph Johnson arrived you had never met
- 5 him before?
- 6 A. Never.
- 7 Q. And you're a little shy around strangers?
- 8 A. I'm not.
- 9 Q. You remember when you talked to the police right?
- 10 A. I did.
- 11 Q. And you told them that you'd never met Joseph
- 12 Johnson before.
- 13 A. Right.
- 14 Q. And you mentioned to them that I believe your words
- 15 were ---
- 16 A. --- I said hi ---
- 17 Q. --- I said hi but I ain't going to shake your hand.
- 18 A. Right.
- 19 Q. So you're just averse to shaking hands?
- 20 A. I did not want to shake nobody's hand.
- 21 Q. And you let him cut your hair?
- 22 A. He did.
- 23 Q. He did a good job?
- 24 A. Yes.
- 25 Q. Went in the house to check on the kids?

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- 1 A. Yes.
- 2 Q. When you came back out the men were kind of bragging
3 about themselves and their talents?
- 4 A. Yes.
- 5 Q. Now you told the police that the victim snuck up on
6 you and boxed you?
- 7 A. He did.
- 8 Q. And you told the police that he hit you in the face?
- 9 A. His fingers grazed me on the side of the face;
10 that's what it was.
- 11 Q. Yes, but you told them he punched you in the face?
- 12 A. No, that must be the way it went down on that paper.
- 13 Q. Well, it's on video too. It's recorded.
- 14 A. Its recorded. I didn't say it the way I look at
15 that paper. A lot of stuff is missing out words so...
- 16 Q. Would you like to see the video of where you say?
- 17 A. I already see the video.
- 18 Q. And so the video is the best documentation of that.
19 And you remember showing Officer Kramer right here
20 [indicates] on your mouth.
- 21 A. Well when he swing down and hit me I guess the
22 little scratch I had must have drained blood in that area
23 I have no idea.
- 24 Q. So are you telling me that when you were talking to
25 Officer Kramer you did not -- when he asked where did he

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1 hit you at you did not say on my face right here

2 [indicates]?

3 A. I probably did say that but he hit me from the back
4 behind my head. His finger catch me in the front.

5 Q. Okay. You also said you aren't a man to allow
6 someone you don't know to hit you?

7 A. Exactly.

8 Q. And you think you did what any average man would do?

9 A. I mean I feel I did. I protected myself.

10 Q. You took a knife and you swung behind you.

11 A. I did not intentionally mean to swing out the knife
12 at him. I mean I just swung out the knife. I just swung
13 out.

14 Q. You were just swinging wild?

15 A. Pretty much.

16 Q. Joseph Johnson could have been behind you?

17 A. Spencer could have been behind me.

18 Q. Anyone could have been behind you?

19 A. Whoever hit me.

20 Q. Whoever hit you was going to get it?

21 A. Would that have been my reaction, yes.

22 Q. It didn't matter why?

23 A. No, it was a reason why.

24 Q. No, it didn't matter why that person had hit you.

25 Because they hit you they were going to get it if they

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- 1 were there?
- 2 A. I just turned back around; that's a reaction. If
3 someone hits you in the back of your head you're going to
4 jump; you're going to do something.
- 5 Q. With a knife?
- 6 A. No, it wasn't just with a knife. I wasn't thinking
7 about the knife when I had my hand inside my pocket to do
8 so. I didn't intend on killing this man or cutting him.
- 9 Q. But your hand was in your pocket?
- 10 A. Yes.
- 11 Q. Your hand was on your knife?
- 12 A. Yes.
- 13 Q. When your hand came out your pocket your knife was
14 in your hand?
- 15 A. Yes.
- 16 Q. And you swung?
- 17 A. Yes.
- 18 Q. And after you realized that he was hurt and bleeding
19 you left?
- 20 A. I walked off.
- 21 Q. You walked off. You headed out of Pepper Hill
22 community?
- 23 A. Yes.
- 24 Q. You caught a ride with some guy?
- 25 A. Yes.

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1 Q. And you went to your sister's house?

2 A. Yes.

3 Q. You left your two kids at the house?

4 A. They was there with Spencer's wife. She was
5 babysitting. Yes.

6 Q. But they were still in the house. You didn't call
7 911?

8 A. No, Spencer already went and did that.

9 Q. You didn't take off your shirt and apply pressure to
10 Joseph Johnson's wound?

11 A. I did not.

12 Q. You just left him there laying on the ground?

13 A. He wasn't laying on the ground then.

14 Q. He was standing up holding his neck?

15 A. Yes.

16 Q. Pouring blood?

17 A. Not pouring like that from the time I left. I don't
18 know how bad it was since I left.

19 MS. ELLIOTT: Beg the court's indulgence.

20 [Whereupon, Ms. Newman and Ms. Elliott confer]

21 MS. ELLIOTT: No further questions.

22 THE COURT: Redirect?
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David White-Redirect Examination by Ms. Ford
March 16, 2016

1 REDIRECT EXAMINATION

2 BY MS. FORD:

3 Q. David, was your wife supposed to come back that

4 night?

5 A. Yes.

6 Q. Was that already planned?

7 A. Yes.

8 Q. Again, the Solicitor asked you some questions.

9 Would it have made a difference -- the person who hit you

10 did you know it was Joseph?

11 A. At the time I didn't know who it was.

12 Q. Did you see Joseph?

13 A. If I saw him?

14 Q. Yes?

15 A. I know I walked past him.

16 Q. And was he right there when you hit him?

17 A. Yes.

18 Q. Was he right there when you walked past him?

19 A. He was standing and when I walked past him he came

20 behind me and --

21 Q. Okay. And had he been making threatening ---

22 MS. ELLIOTT: --- objection, leading.

23 THE COURT: I'll sustain the objection.

24 Q. [Ms. Ford] At any point did you feel ---

25 MS. ELLIOTT: --- objection, leading.

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1 THE COURT: I haven't heard the whole question yet.
2 Will you finish the question?
3 Q. [Ms. Ford] When you were hit did you feel
4 threatened?
5 A. Yes ---
6 MS. ELLIOTT: --- objection, leading.
7 THE COURT: Hold on a second. What's your
8 objection?
9 MS. ELLIOTT: Leading.
10 THE COURT: I'll sustain the objection.
11 Q. [Ms. Ford] How did you feel?
12 A. How did I feel? I felt that I was in the wrong spot
13 at the wrong time; time for me to go.
14 Q. Before you were hit or after you were hit?
15 A. After I was hit.
16 Q. And you left -- did you leave to pray?
17 MS. ELLIOTT: Objection, leading, relevance.
18 THE COURT: I'll sustain the objection ---
19 MS. FORD: --- it's in his statement.
20 THE COURT: I'll sustain the objection.
21 Q. [Ms. Ford] You talked to police correct?
22 A. Yes.
23 Q. And you told them why you ---
24 MS. ELLIOTT: --- objection, leading.
25 Q. [Ms. Ford] Did you tell them why you were leaving?

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1 THE COURT: Hold on a second. Your objection is
2 leading?
3 MS. ELLIOTT: It was, Your Honor, yes.
4 THE COURT: I'll sustain the objection. Don't lead
5 your witness please, ma'am.
6 Q. [Ms. Ford] Did the police ask you about you
7 leaving?
8 A. Yes.
9 Q. Okay. And what did you indicate?
10 A. I was more scared than anything. I mean I left. I
11 didn't want no more altercations to occur while I was
12 there.
13 Q. So you're telling us that you did indicate that to
14 the police?
15 A. Say that again?
16 Q. You did indicate that to the police correct?
17 A. No, it wasn't inside the statement or whatever, the
18 recording but one of the officer's that came yes.
19 Q. And did you tell him?
20 A. Yes.
21 Q. What did you tell him?
22 A. I told him I was more scared ---
23 MS. ELLIOTT: --- objection, hearsay.
24 THE COURT: I'm sorry, what's your objection?
25 MS. ELLIOTT: Hearsay.

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1 THE COURT: I'll sustain the objection.

2 Q. [Ms. Ford] Do you recall if you told them anything
3 different?

4 A. I told them I was more scared than anything ---

5 MS. ELLIOTT: --- objection, hearsay.

6 THE COURT: He can testify as to what he said. He
7 can testify to what he said.

8 MS. FORD: Just to what he said, Your Honor.

9 THE COURT: He's limited to that.

10 Q. [Ms. Ford] Do you remember what you said?

11 A. Yes, I told them I was more scared so I just walked
12 off and I left.

13 Q. Do you recall telling them that you wanted to ---

14 MS. ELLIOTT: --- objection, Your Honor. May we
15 approach?

16 A. I told them I wanted to go to the hospital ---

17 MS. ELLIOTT: --- objection.

18 THE COURT: Hold on a second please, sir.

19 [Whereupon, an off the record bench conference is
20 held]

21 Q. [Ms. Ford] David, do you remember everything that
22 you told the police that night?

23 A. Yes. When I left the house when I did meet up with
24 the police I told them that I was going to pray that
25 everything go well with him, with Mr. Johnson and after

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1 that I told them I was more scared than anything. I need
2 to -- had wanted to go to the hospital --

3 Q. Okay. So you remembered?

4 A. Telling them I wanted to go to the hospital, yes and
5 I pray that everything went well with him.

6 Q. And the Solicitor asked you a lot of questions about
7 your kids. Why did you think it was okay to leave
8 without them?

9 A. Why? Because Tameika was watching them.

10 Q. Okay. Who was watching them all night?

11 A. Tameika.

12 Q. Okay. And had your wife been there earlier in the
13 evening?

14 A. She was and she left. She had somewhere to go
15 apparently.

16 MS. FORD: Beg the court's indulgence.

17 [Whereupon, Ms. Ford and Mr. Mack confer]

18 Q. [Ms. Ford] David one more thing, why did you feel --
19 when you were hit were you leaving or what were you
20 doing?

21 A. I was about to walk off and go to the front and talk
22 to my wife and tell her why I was ready for her to come
23 pick me up.

24 Q. Okay. And why did you want to leave?

25 A. Because the ways things were going in that backyard

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1 like it was going to turn out worse -- it could have been
2 worse than what happened.

3 Q. Okay. And did you leave because -- why did you
4 leave?

5 A. Because I was already tired of being out there,
6 tired of what was going on and so didn't feel comfortable
7 anymore; ready to go.

8 Q. Okay. No further questions.

9 THE COURT: Recross?

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State v David Alan White
David White-Recross-Examination by Ms. Elliott
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RECROSS-EXAMINATION

BY MS. ELLIOTT:

Q. You were free to leave at anytime Mr. White right?

A. Yes.

Q. Nothing further.

THE COURT: You may step down please.

[Whereupon, the witness is excused and exits the
witness stand]

THE COURT: Call your next witness.

MS. FORD: At this point the defense rests, Your
Honor.

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1 THE COURT: Okay. Do you have any rebuttal
2 testimony or do you need time to discuss it? I'll be
3 happy to give you a few minutes to make a decision
4 whether you want to offer any rebuttal testimony.

5 MS. ELLIOTT: Judge, I don't believe we have any
6 rebuttal witnesses.

7 THE COURT: Pardon?

8 MS. ELLIOTT: I don't believe we have any rebuttal
9 witnesses.

10 THE COURT: All right. Let me see the attorneys
11 up here just a second.

12 [Whereupon, an off the record bench conference is
13 held]

14 THE COURT: Mr. Foreman and ladies and gentlemen of
15 the jury we've ordered lunch. Your lunch is not supposed
16 to be here until one o'clock; so I missed it by 25
17 minutes. I should have said 12:30; I apologize that's my
18 fault for not telling them 12:30 but I said 1:00 so
19 you're going to have to wait on your lunch but when it
20 gets here enjoy it.

21 We'll reconvene at 2 o'clock. Please don't discuss
22 the case with anyone else. The only thing left of the
23 case will be closing arguments and after closing
24 arguments I'll charge you on the law of the case and at
25 that time you can begin your deliberations. So please

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1 don't discuss the case until I instruct you to begin your
2 deliberations. If you will, follow the bailiff to the
3 jury room please.

4 [Whereupon, the jury exits at 12:43 p.m.]

5 THE COURT: All right. Any motions from the
6 State?

7 MS. NEWMAN: No, Your Honor.

8 THE COURT: Any motions from the defendant?

9 MS. FORD: No, Your Honor other than ---

10 THE COURT: --- yes, you do. Make your motions.

11 MS. FORD: Yes, Your Honor. I renew all my other
12 motions. The fact that I wasn't able to go into certain
13 things that Mr. Johnson said I believe that that hampered
14 my ability to get fully get my client's story across,
15 Your Honor and so it hampered our defense so we would ask
16 for a mistrial on that basis, Your Honor.

17 THE COURT: As far as your previous motions they
18 are denied and your mistrial is also denied.

19 MS. FORD: Yes, sir.

20 THE COURT: Let me see the attorneys up here just a
21 second.

22 [Whereupon, an off the record bench conference is
23 held]

24 THE COURT: Two o'clock. Thank you very much.

25 [Whereupon, court is in recess from 1:06 p.m. until

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1 2:10 p.m.]

2 THE COURT: Could I see the attorneys up here just a
3 second.

4 [Whereupon, an off the record bench conference is
5 held]

6 THE COURT: Anything from the State before we bring
7 the jury?

8 MS. NEWMAN: No, Your Honor.

9 THE COURT: You ready for closing arguments?

10 MS. NEWMAN: Yes, Your Honor.

11 THE COURT: Anything from the defense before we
12 bring the jury?

13 MS. FORD: No, Your Honor.

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

16 MS. FORD: Just about the instructions, Your Honor.
17 I had requested a self-defense charge.

18 THE COURT: After I give the charge you can bring
19 that up. You can take exception to the charge okay.

20 MS. FORD: Yes, Your Honor.

21 THE COURT: Bring us the jury please.

22 MS. ELLIOTT: Judge, just procedurally I would say
23 we are intending to open on the law.

24 THE COURT: I'm sorry, what?

25 MS. ELLIOTT: The State is intending to open on the

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1 law.

2 THE COURT: Are y'all going to bring the charge up
3 or you're not?

4 MS. ELLIOTT: We are going to bring the charge up.

5 THE COURT: All right.

6 [Whereupon, the jury enters at 2:33 p.m.]

7 THE COURT: Solicitor?

8 MS. ELLIOTT: Thank you, Your Honor.

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CLOSING ARGUMENTS

BY MS. ELLIOTT:

Ladies and gentlemen this is the State's opportunity to talk to you a little bit before closing to really get started about the law; it's called the opening of the law. And I know that you've paid great attention over the last couple of days to lots of facts. And this will give you a little framework to put those facts within.

The defendant, David White is charged with attempted murder and possession of a weapon during the commission of a violent crime. Attempted murder is defined as the defendant attempted to kill another person with malice aforethought and that malice can be either express or implied. Malice is defined as hatred, ill will, or hostility towards another person. It's the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury.

Malice does not -- it does not require that malice exist for any particular time before the act is committed but malice must exist in the mind of the defendant just before and at the time that the act is committed. Those are a lot of big fancy words for usually when we hear people talk about malice they think about premeditation is that someone has to think about it for a long time before they do the act. That's not the case. Malice can

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1 be formed in a second. It just means that they have to
2 know what they are about to do and they mean to do it.
3 This is also a specific intent crime. The Judge is going
4 to give you a far better and far more detailed
5 instruction of it but specific intent means that the
6 State has to prove to you that the defendant meant to try
7 to kill David White. That doesn't mean we have to prove
8 to you that he said I'm going to kill you or that he told
9 somebody later I was trying to kill him. You can infer
10 that from the character of the assault and from
11 circumstances surrounding it.

12 The defendant is also charged with possession of a
13 weapon during the commission of a violent crime. It's
14 pretty much what it sounds like; you have a weapon like a
15 knife during a violent crime, which attempted murder is
16 then he would be guilty of possession of a weapon during
17 a violent crime.

18 You are also going to be instructed ladies and
19 gentlemen on a defense in this case; the defense of
20 accident. What I would point you to is for the defense
21 of accident to be appropriate the defendant would have
22 had to have acted with reasonable care when he was
23 handling the weapon involved in the case. In other words
24 he couldn't have wildly been swinging it around. Lastly,
25 I would talk to you about reasonable doubt. This is

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1 probably something that we hear the most on television
2 and is explained the least. Some of you might have
3 served on a civil jury where the standard is
4 preponderance of the evidence, which means fifty fifty.
5 Whichever side is slightly tilted one way or the other is
6 the side that you go for.

7 But that's not the case in criminal law. It's
8 beyond a reasonable doubt. Proof beyond a reasonable
9 doubt is proof that leaves you firmly convinced of the
10 defendant's guilt; there is no number on it. But that
11 also doesn't mean that it has to be beyond all doubt.
12 There are few to no things in life that we know without
13 any doubt. It's really just being firmly convinced that
14 the facts that the State presented to you are the facts
15 as they actually happened.

16 Ladies and gentlemen I appreciate your attention
17 during this time when we talk about the law and I will be
18 back up in just a few moments after Ms. Ford has had the
19 opportunity to talk to you to give my closing. Thank
20 you.

21 MS. FORD: May it please the court?
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1 CLOSING ARGUMENTS

2 BY MS. FORD:

3 You've heard from the two most important people in
4 this trial; Joseph Johnson and David White. And their
5 testimonies were very different. Now yes some of the
6 content was different but the other way they were
7 different is that David White was brutally honest even
8 when it may have made him look bad. He put it all out
9 there to the extent that he was able.

10 Joseph Johnson on the other hand tried to hide
11 things and conceal things and make excuses. Even for
12 things that really made no difference at all to the case.
13 What's missing? That's the question I asked you to
14 consider at the beginning of this trial. Joseph Johnson
15 hasn't been straight forward and he's leaving out an
16 important part; the part that actually can make this
17 whole thing make sense.

18 Something terrible happened to Joseph. But just
19 because something bad happens to someone it doesn't
20 somehow make that person credible and trustworthy. Years
21 ago my friend's daddy was in a car accident and he was in
22 his work truck and the other guy was on a moped. Well no
23 surprise the truck is a lot bigger than a moped so the
24 guy on the moped got hurt. So after a car accident of
25 course the officer talks to the people involved and he

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1 talked to my friend's father and he was giving his side
2 of the story. Well it didn't match exactly the other
3 guy's. So the officer told him you know I tend to
4 believe the guy that's hurt. That story has always sat
5 with me because it makes literally zero sense. There is
6 no logic to that statement at all. However, it's pretty
7 much how the system works.

8 Just like the guy who was on the moped wasn't
9 necessarily telling the truth just because he was hurt
10 Joseph wasn't necessarily telling the truth. There are
11 many reasons we know that Joseph was leaving things out.
12 Now the State is likely going to say oh, he lost a lot of
13 blood. He went through something traumatic so that's why
14 he can't remember things or why his story has changed.

15 And you know what if he had said all along I can't
16 remember you know I lost a lot of blood I just don't
17 remember that would be fair enough. Okay maybe that
18 would make sense but that's not what he's done. For more
19 than two years he maintained that David came from behind
20 him when he was getting on his moped and slit his throat.

21 He came out with that at the preliminary hearing in
22 January of 2014. He told the Solicitor's office that
23 throughout the two years and then he told them that as
24 recently as last Thursday less than a week ago. But all
25 of a sudden Monday afternoon when the trial had started

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1 he says oh you know my bad it was actually from the
2 front; I remember correctly now. That's not the type of
3 thing that someone just incorrectly remembers because of
4 loss of blood. This isn't oh, I know I said black shirt
5 before but I think he was actually wearing a dark blue
6 shirt. That's something really major and that was an
7 intentional decision that Joseph made.

8 He made that decision to say that for over two years
9 because he was trying to make David look worse and he was
10 trying to make himself look better and to take away any
11 sense of wrongdoing on his part; when the truth of the
12 matter is that David is actually the one who was attacked
13 from behind; not Joseph and Joseph knew that and that's
14 why he changed his story.

15 And on the stand he admitted that he had changed his
16 story however he gave no explanation because Joseph
17 another thing you know about him he doesn't like to take
18 responsibility for things. He instead just says I don't
19 remember. One thing he said that on was the I.D., the
20 photo I.D.

21 Now identification is not even an issue in this
22 case. It is no big deal that he identified the wrong
23 person at the hospital. He actually took a minute to
24 look you know figuring out between two people and he
25 chose the wrong guy. But he was coherent, he took that

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1 time to make the decision and he wrote out something
2 several people told you. He wrote out something on that
3 piece of paper and yet today he's saying I just don't
4 remember that at all. Well, it was at least five days
5 after the incident he was at his ICU, you heard a doctor
6 testify he didn't testify that oh yes, his memory would
7 have been gone for weeks after the incident because of
8 loss of blood. There was no testimony about that; it
9 just doesn't make sense.

10 But even if you could buy oh he was still in the
11 hospital, it was five days later well what about a month
12 and a half later at the preliminary hearing in January of
13 2014. That's when Joseph first made the claim that David
14 came from behind and he made that claim in court to a
15 judge. But instead of just fessing up that he had done
16 that, that he had made a mistake he just said I don't
17 even remember going to the preliminary hearing at all.
18 He did that, he said that because he didn't want to take
19 responsibility for lying in court.

20 But you know he was there because he acknowledged
21 the transcript noting his presence. And Detective Kramer
22 admitted even though it was begrudgingly that he was
23 there and yes he did make comments to a judge. Now how
24 else do we know that Joseph is not trustworthy? You can
25 also consider his record. He has numerous breaking into

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1 motor vehicle charges, property crime enhancement, drug
2 conviction. He simply is not a credible person. There
3 are other witnesses that you heard from. You heard from
4 multiple people who were there. None of these witnesses
5 can really give a reason why any of this happened either.
6 None of them say they saw Joseph hit David.

7 But none of them really had a reason to pay
8 attention. They pretty much all said that they had no
9 idea this was going to happen. Some people said that
10 literally there was nothing, no altercation, no dispute,
11 no argument at any time between the two. Some people did
12 say they were fussing but nobody expected this, nobody
13 even really saw the knife when it was in David's hand so
14 nobody had a reason to be paying attention.

15 Some people were close up, some people had their
16 backs turned, some people were across the yard. Joseph
17 and Spencer they say that David walked past Joseph and
18 kind of turned around and swung consistent with David's
19 testimony. But the other people don't actually see that;
20 they just see when the two men are facing. I know Henry
21 says his back is turned at the time.

22 None of them know the whole story. They've all said
23 they don't know what the two men were talking about when
24 Joseph was cutting David's hair. Some people weren't
25 even present; like Henry wasn't there so nobody sees

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1 everything at that point. They're all in different
2 places. And Spencer did tell everyone that they were all
3 really close and it all happened really fast. I do want
4 to go in particular one by one the witnesses.

5 Spencer, he's close to both men. He's known both
6 men a long time. He said he's known David all his life
7 but really it's more since David was old enough to work
8 but Joseph is actually a father figure to him. But he's
9 close to both of them. And he supposedly heard David
10 made a statement that oh you're going to get this or
11 something along those lines.

12 However, it didn't stand out to him in any way. He
13 didn't remember it on the stand. He only remembered it
14 when the Solicitor showed him the statement but it was
15 nothing that stood out in his mind and its nothing that
16 no one else, including Joseph or including Henry who was
17 also standing right there heard. His story again is
18 consistent with David's that David walked past Joseph and
19 then turned around.

20 Then there is Albert Jenkins. Mr. Jenkins indicates
21 that Spencer was telling David to go. However, again no
22 one else says this. Spencer didn't say it. The
23 Solicitor didn't ask Spencer if he said it. Joseph
24 didn't say this. No one else said it including Albert
25 himself up until the trial. He never thought -- he says

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1 no one asked him but he was given the opportunity to
2 write a written statement and it just wasn't important
3 enough in his mind to even stand out to include in that
4 statement. He has a false info to police charge on his
5 record as a conviction. I don't know if he was
6 intentionally saying that, if he's just remembering
7 things incorrectly or if he is misunderstanding things
8 but it's not something was important enough two years ago
9 to notice --

10 Then there is Henry Washington. He's also close to
11 both and calls David a brother to him. He told y'all
12 that everybody was talking about wrestling; that it
13 seemed good natured. He didn't see that David was
14 aggressive or making threats towards Joseph or anything
15 like that. He says at the time the incident happened his
16 back was turned. He didn't see the cut. He says that at
17 the time to the police and he said it on the stand so
18 he's not sure what happened.

19 But what he was sure of is that he didn't see a
20 knife at all that night and if he had seen a knife he
21 would have taken it away and he said David would have
22 listened to him no question. So if he at any point had
23 felt like David was a threat or dangerous or had been
24 argumentative or on the verge of assaulting someone I
25 think it's safe to assume that he would have put a stop

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1 to it. He's a big guy, he seemed very self assured. We
2 have Dwayne Forrest. Again, he wasn't close enough when
3 it happened to even see a knife. He did see David's hand
4 in his pocket and that's consistent with David's story
5 when he says that before it happened he had one hand in
6 his pocket and the other hand on his phone. He also told
7 us that he had literally just got there so he didn't see
8 anything at all that had happened before. It seemed like
9 the two were fussing but he had no clue as to what. He
10 didn't hear anything really; he couldn't give any details
11 about what was going on.

12 And then finally there is Kyle Green. He actually
13 saw Joseph cut David's hair. He talked about that. At
14 no time does he mention a knife being taken out or seeing
15 a knife during that haircut as Joseph claims. He says
16 when it happened he was actually kind of far away. He
17 said he saw their hands; both of their hands go up. When
18 the Solicitor asked him whose hands went up first he said
19 I think David's. He never mentioned it before and he
20 said his memory was blurry so he wasn't 100 percent sure
21 but he just saw hands go up essentially.

22 So none of those witnesses saw all the interactions
23 between the two men. And none of those witnesses had a
24 particular reason to pay attention at the time it
25 happened and none of those witnesses can really give any

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1 kind of a reason for why this may have happened based on
2 Joseph's story that there is nothing that he did.

3 The Solicitor spoke to you a little about intent.
4 Intent is very important in a criminal case. The
5 Solicitor mentioned to you that a criminal case is
6 different than a civil case and it is different; it's
7 very different. This is not a lawsuit here. This case
8 is really important. You have to look into David's
9 intent when he acted and what he actually intended to
10 occur.

11 There has been no evidence to support that David
12 intended to kill Joseph Johnson; nothing. Joseph Johnson
13 was cut on the neck however no one has testified or given
14 any one any reason to believe that Joseph -- that David
15 aimed for the throat. Everyone who actually saw it it
16 seems to be consistent with David's story that it more
17 was like turning around swinging. No one said that David
18 ran after Joseph, that he charged at Joseph, that he said
19 I'm going to cut your throat.

20 No one -- everybody's testimony is completely
21 consistent that it was more of like just an arm swinging
22 rather than him aiming for the throat. If there were
23 words spoken again the only person who heard something
24 possibly at the time was Spencer of you're going to get
25 this basically. It's not you're to get this knife in the

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1 throat or I'm going to cut you, David turned around and
2 made a comment about how you're going to get this. But
3 again, there is no evidence and in fact Joseph says there
4 was no ill will between the two. There was no reason for
5 him to have ill will towards him.

6 We also know that Spencer testified that David
7 looked in shock after it happened and he testified that
8 it looked like David didn't intend to have done this.
9 There has been no indication that David is someone who
10 just randomly assaults people for no reason. No one, and
11 again I'll go back to Henry, was concerned that he was a
12 threat that evening. You've heard Joseph's record and
13 you've heard David's lack of a record.

14 Assaulting Joseph for no reason makes no sense and
15 certainly killing him for no reason makes even less
16 sense. David testified to his intent. He testified to
17 what actually what was going on to what Joseph was
18 leaving out. You heard he wasn't able to get everything
19 out. He was prevented from saying everything but he told
20 you his side of the story the best he could. Again, even
21 if it made him look bad he told you like it was.

22 Someone came behind him and he felt like his head
23 had been knocked. Now he told you his head is a
24 particularly sensitive area for him for multiple reasons.
25 He had been told he has a brain aneurysm before and he

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1 had been assaulted with a glass and he's indicating he
2 has a scar, then there was a window pane incident. He
3 kind of brushed over it but he had multiple head injuries
4 to make him particularly sensitive to his head. Also,
5 when someone attacks you from behind, it's worse.

6 Again, that's why Joseph tried to tell people for
7 over two years he was attacked from behind because he
8 knows it sounds worse. When somebody attacks you from
9 behind you don't know exactly what's going on. You can't
10 see; you don't have eyes in the back of your head. So
11 you don't know if there is a weapon, you don't know --
12 you may not know who it is. He testified he didn't know
13 for sure it was Joseph. He had just passed Joseph. He
14 had been feeling -- he told you that yes, he felt scared
15 and threatened throughout the night just because of
16 things that were said and actually he was leaving because
17 he felt that it was becoming more hostile.

18 He just knew that he was being attacked from behind
19 and he had to react. He couldn't have just run away
20 because again he didn't know what was going on. If he
21 had turned around to look it may have been too late. He
22 had his hand in his pocket again as one of the witnesses
23 testified. He had a knife in his pocket. He had a knife
24 not to hurt anyone, he had been fishing that day, and he
25 took it out right before this happened just to cut

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1 something, the saran wrap for the wood he said. So he
2 had put it in his heavy jacket not thinking about it.
3 It's a heavy thick jacket with lots of protection; he
4 just didn't think about it. And so he reacted by turning
5 around.

6 David is kind of an animated guy you saw for
7 yourselves and he just turned and swung his arm. He
8 didn't turn and charge for anyone. He didn't turn and
9 try to intentionally stab someone. And when he turned he
10 said his phone flew out and then he had the knife in his
11 hand, it was still in his hand and it basically landed on
12 Joseph. He told you he didn't even realize he had cut
13 Joseph at first. Again, go back to Spencer and he said
14 he looked shocked like he didn't know like he had
15 intended it.

16 So after he realized that -- there were a lot of
17 people there, a lot of people who were rushing to Joseph
18 taking care of him. Again, David was in shock like
19 Spencer told you. And he left, he was scared, he told
20 you he wanted to pray on it and he left and he went to
21 his sister's house and he talked to his family. That's a
22 normal reaction for someone to have. You want to talk to
23 your family and be with your family. He was going to go
24 to the hospital because again, he admits that he wasn't
25 injured necessarily by Joseph but that he was concerned

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1 about the aneurysm but his Mom said no, don't go, don't
2 bother doing that right now. So he went home and he
3 showered and then when the police came he was fully
4 cooperative. He came out like Sergeant Lacher said. I'm
5 coming out don't worry. He was arrested without
6 incident. He cooperated with police.

7 I want to go back to when it happened. David he
8 admitted he was upset when he was hit as well. Again, he
9 felt in danger because who wouldn't feel in danger if
10 they were attacked from behind but he was upset and again
11 I think most people would be upset if they were attacked
12 and they had no clue why they were being attacked so he
13 was upset. So when he turned around he had every
14 intention of confronting that person but he did not have
15 intention to cut someone or stab them or kill them or
16 cause great bodily injury. He told you from the get go
17 no, I never intended that.

18 Turning around was a reasonable thing for him to do.
19 And he wasn't just swinging violently as the Solicitor
20 kind of mentioned. He wasn't out there with a knife just
21 going around. It was in his hand and he turned around
22 and when he turned around his arm swung and it hit
23 Joseph. So he wasn't being unreasonable. He just
24 reacted and we can't always control everything in our
25 body completely especially when we're in a moment like

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1 that just reacting to being assaulted. He didn't intend
2 to swing his arm at Joseph. He intended to turn around
3 and confront the man.

4 All of this leads up to it being an accident that
5 night. Joseph, as I said he was hurt. Fortunately you
6 heard from the doctor and he said there are three areas
7 in the neck area where there is concern. Fortunately
8 Joseph was not cut in any of those places. Essentially
9 there was a muscle that had to be repaired and there was
10 just extensive bleeding and because of that that was the
11 danger of him possibly dying.

12 I think he testified that people in that situation
13 there is like a 15 to 20 percent chance of dying just
14 from the bleeding rather than actually what was cut in
15 the neck. But again, the neck is a vulnerable place.
16 I'm not trying to minimize that. But David didn't intend
17 to cut the neck; that's the point.

18 We're not here to prove or disprove Joseph was
19 injured because he was. But David is on trial here and
20 his intent is what's in question and what is going to be
21 left up to you. The Judge will read you the law as it
22 pertains to the charges and to intent. In intent he had
23 to act intending to cause the harm caused -- or intending
24 to inflict and cause harm. David didn't do that. And
25 again none of the witnesses have said he intended that.

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1 He reacted after he was assaulted in a vulnerable spot.
2 Ultimately David's story is the only thing that makes
3 sense because otherwise Joseph's story doesn't make sense
4 and the other witnesses just were not witnesses to
5 everything that occurred. So you're left -- because
6 things like this just don't happen; they happen for a
7 reason basically. David is the only one who gave a
8 reason of any kind about why this happened.

9 And his story it makes sense. He got up there
10 obviously it's a very scary thing to be up there on the
11 stand but he got up there and he told you it like it was.
12 It's that simple. He didn't try to make excuses; he
13 said what he did. And at the end after you hear
14 everything, after you hear from the Judge we'd ask you to
15 find David White not guilty. David did not intend to
16 kill anyone. He did not intend to hurt someone. And he
17 most especially did not intend to cut Joseph Johnson in
18 the neck. Thank you.

19 THE COURT: Solicitor?

20 MS. ELLIOTT: Thank you, Your Honor.

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CLOSING ARGUMENTS

BY MS. ELLIOTT:

Surrounded by a group of friends, some of those friends as close to any family that David White had, his first instinct is to wildly swing a knife; whoever was there was going to get it. This was no accident.

Remember what Albert Jenkins testified to. Spencer Washington saw the defendant his dear friend playing with a knife. He told him you need to leave if you're going to keep acting up. He finally told him to leave. He knew in his gut no good was going to come of him messing with that knife. And you heard from the defendant's own mouth whoever was behind him was going to get it.

Joseph Johnson went over to Spencer Washington's house on November 27th, 2013 to hang out with his friends to make a little money. He had no idea that by the end of the night he would be laying on operating room table fighting for his life; fighting for his life due to the intentional actions of David White.

David White couldn't keep his cool that night. Not unlike how he acted on the stand. Everyone talked about how much fun they were having at this party that everyone was joking and laughing and basically reliving their glory days about what they accomplished in high school and how good they were at this or good at that. It

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1 sounded like a great time. But David White started taking
2 it too far. He's got to show everybody how big he was
3 and he took it out on Joseph Johnson.

4 The defense has said that the State has to prove
5 intent and that's true and we prove it from the
6 circumstances of the events about what happened, about
7 what was surrounding it. But you know what we don't have
8 to prove? Motive. The only person who truly understands
9 why David White slit Joseph Johnson's throat is David
10 White and that's not a burden for the State.

11 We may never know what pushed him over the edge but
12 we do know from his own words what Spencer heard him say
13 when he pulled out the knife you're going to get this.
14 He didn't just say it generically you're going to get it.
15 He had the knife in his hand. He knew what he was going
16 to do. He was going to teach Joseph Johnson a lesson
17 with all the malice and all the intent to kill that any
18 person has ever had.

19 He didn't care if Joseph Johnson lived or died. You
20 heard him. He left the scene. He fled. All the other
21 witnesses told you how quickly Joseph Johnson went down.
22 You heard with your own ears the terror and panic on
23 those 911 calls when they are desperately trying to get
24 help there. But David White tried to make it sound like
25 that wasn't so obvious. David White didn't care. He

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1 tried to blame Joseph Johnson. No one who doesn't know
2 me is going to hit me. He couldn't let him get away with
3 that if that's what even happened. That statement
4 whether true or not on the stand gives you a peek into
5 the mind of David White and how little he cared for David
6 White -- for Joseph Johnson and the fact that he was not
7 going to let him disrespect him in any way in front of
8 his friends.

9 Let's talk about the story he tried to tell you on
10 the stand; the story that David White had three years to
11 cultivate and develop, how he did nothing wrong. He
12 didn't mean to do any of it. It just happened that the
13 knife was open in his pocket, this knife [indicates],
14 this sharp blade open in his pocket where his hand was.
15 He's not worried about getting his hand cut, not worried
16 about hurting himself?

17 And yet when he turned around just to confront the
18 person that knife happened to stay in his hand and he
19 just happened to be holding the handle and when he spun
20 he just happened to cut Joseph Johnson. Is that
21 believable? Ms. Ford kept saying what's missing? What's
22 missing? This is the first time in my entire career that
23 I have had every witness to ---

24 MS. FORD: --- objection, vouching.

25 THE COURT: Rephrase it please.

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1 MS. ELLIOTT: Seven men were at the party that
2 night per David White. You've heard from all seven.
3 None of those other men support the story that David
4 White told. You'll be charged by the Judge that you are
5 the sole judges of creditability but judging
6 creditability is something that we do every day. We all
7 become experts at it.

8 You do it when you determine whether or not you're
9 going to give the guy on the street who is asking for
10 some money some change, whether your five year old is
11 telling you the truth when they say they didn't eat that
12 last cookie, or whether you believe that little piece of
13 gossip your co-worker was telling you in the break room.
14 You have gathered a lifetime of experience that makes you
15 masters at judging someone's creditability and we expect
16 you to use all those skills while you deliberate.

17 Now let's talk about the elephant in the room;
18 Joseph Johnson's statement of the facts. I'm not going
19 to stand up here and pretend that they weren't scrambled.
20 I'm not going to pretend that he didn't get up there and
21 say for a very long time I've been saying from the back
22 and now I'm going to say from the front. If he was the
23 only witness we wouldn't be here today. But we have the
24 testimony of those five other men. They have no bias;
25 they have no motive to lie. Most of them have no closer

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1 connection to Joseph Johnson than to David White. In
2 fact some spoke as if they are more fond of David White.
3 If they were all close enough to see David White slash
4 and cut Joseph Johnson's throat wouldn't they have been
5 close enough to see if Joseph Johnson threw out a punch?
6 Of course they would have. They didn't see it because it
7 didn't happen.

8 Remember Kyle Green and Dwayne Forrest? Dwayne
9 Forrest said that he saw the defendant swing at Joseph
10 Johnson and the next thing he saw was Joseph Johnson
11 grabbing his throat. Kyle Green told you that he saw
12 hands go up, first the defendant's. But he demonstrated
13 for you on the stand what he saw. He never said he saw
14 fists. He said he saw pointing of fingers; pointing
15 fingers as if someone was arguing or starting a beef.
16 And the first person whose hand went up was David White
17 starting a beef with Joseph Johnson.

18 Joseph Johnson has nothing to gain by lying.
19 Spencer Washington has nothing to gain from lying. But
20 also be honest when you watched his demeanor did it
21 appear that he really wanted to be testifying for anyone
22 in this case. Did any of them? Albert Jenkins has
23 nothing to gain by lying. Kyle Green has nothing to gain
24 from lying. Henry Washington has nothing to gain from
25 lying. Now Ms. Ford pointed out that Mr. Washington had

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1 said had I seen a knife that night I would have taken it
2 away from David White. Why would he have felt the need
3 to take a knife away from a grown man if everything was
4 just fine? And finally Dwayne Forrest; nothing to gain
5 from lying.

6 David White wants you to believe this was an
7 accident and to be an accident the defendant would have
8 to show -- to be an accident it would have to be that the
9 defendant was handling the weapon with reasonable care.
10 This weapon [indicates]. That it would be reasonable to
11 keep an open knife in your pocket and when you swing
12 around to confront somebody have this in your hand open
13 and out. That's not reasonable. It's not an accident,
14 not legally and not factually.

15 When you slice someone's throat open you mean to
16 slice someone's throat open. The throat is not that big.
17 You all saw Mr. Johnson's scar ten centimeters across.
18 This was no accident. This was no lucky shot. You know
19 that because a ten centimeter cut by a man who is six
20 foot three isn't an accident. He would have had to aim.

21 When Mr. Johnson came in front of you to show you
22 his scar he was standing next to me. He was what five
23 four? For a man who is six foot three to slash him he's
24 going to have to aim low. He's going to have to go down.
25 He knew what he was doing. He had the intent. He was

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1 out to kill him. You can find the intent from the
2 circumstances surrounding the incident. Ms. Ford talked
3 about how Spencer said that David White looked surprised.
4 He wasn't surprised that he cut someone. He was
5 surprised at all the blood.

6 And his reaction to all that blood he walked away,
7 fled the scene leaving behind his kids, leaving behind
8 his friends that he saw every day and leaving behind a
9 dying Joseph Johnson. He didn't call 911; he didn't take
10 off his shirt and apply pressure. He fled to his
11 sister's house, took a shower and had hours to develop
12 his story that he would give police. He enjoyed a shower
13 while Joseph Johnson lay in intensive care.

14 And I'm not going to spend a lot of time rehashing
15 the paramedic and the doctor's testimony. They told you
16 about the injuries. The paramedic said the cut was so
17 deep that he could see the light visible through his
18 throat. How the doctor said at the hospital he lost at
19 least 20 percent of his blood. Well reason tells us he
20 lost a lot more on the way there. I'll remind you the
21 doctor said this injury could have caused death and
22 definitely needed surgical intervention.

23 That's all the proof of injury you need in this
24 case. On November 27th, 2013 David White intentionally
25 and maliciously pulled a knife on Joseph Johnson, told

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1 him you're going to get this and slit his throat. That's
2 attempted murder and because he used a knife in the
3 commission of that attempted murder that's possession of
4 a weapon in the commission of a violent crime. You all
5 know that beyond a reasonable doubt through all this
6 evidence and all this testimony there can be no other
7 verdict than guilty because Joseph Johnson didn't deserve
8 to have this happen to him. And David White doesn't
9 deserve to get away with it.

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JURY CHARGE

THE COURT: Mr. Foreman, ladies and gentlemen of the jury I'll give you a copy of these instructions in written form and during your deliberations you may refer to the instructions to guide your decision making. You must consider the instructions as a whole and not follow some and ignore others. Please return the instructions to the court after you've reached a verdict.

The defendant has pled not guilty to these indictments, which places the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you it is a vitally important rule of law that the defendant in a criminal trial no matter what the seriousness of the crime may be or the charge may be must always be presumed to be innocent until his guilt has been proven beyond a reasonable doubt.

This presumption of innocence remains with the defendant at all times from the moment he appears in the court throughout the trial until you, the jury, reach a verdict of guilty beyond a reasonable doubt based upon the testimony and evidence which has been presented. The presumption of innocence is a substantial right to which every defendant is entitled unless and until you reach a

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1 verdict of guilty beyond a reasonable doubt. If you the
2 jury cannot find the defendant guilty beyond a reasonable
3 doubt, it's your duty to acquit the defendant.

4 What is reasonable doubt? A reasonable doubt is the
5 kind of doubt that would cause a reasonable person to
6 hesitate to act. The State has the burden of proving the
7 defendant guilty beyond a reasonable doubt. Some of you
8 may have served on juries in civil cases where you were
9 told it's only necessary to prove that a fact is more
10 likely true than not such as the greater weight or
11 preponderance of the evidence.

12 In criminal cases the State's proof must be more
13 powerful than that. It must be beyond a reasonable
14 doubt. Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the defendant's guilt.
16 There are very few things in this world that we know with
17 absolute certainty and in criminal cases the law does not
18 require proof that overcomes every possible doubt. Based
19 on your consideration of the evidence you are firmly
20 convinced the defendant is guilty of the crime charged
21 you must find the defendant guilty.

22 On the other hand if you think there is a real
23 possibility the defendant is not guilty you must give the
24 defendant the benefit of the doubt and find the defendant
25 not guilty. The same Constitution and laws that

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1 designate and make you the finders of fact make me the
2 sole instructor of the law. It's my duty to charge you
3 the law applicable to the case and it's your duty as
4 jurors to accept and apply the law as I now state it to
5 you. The lawyers are not instructors of the law. You
6 must accept the law and apply the law exactly as I state
7 it to you and must not base your decision making on the
8 idea of what you think the law should be.

9 Under our Constitution and code of laws only you the
10 jury can make findings of facts. I'm not permitted to
11 indicate to you how I may feel about the testimony or
12 evidence that has been presented throughout the trial.
13 It has been my intention to be fair and impartial towards
14 each of the parties involved. Necessarily you must
15 determine the creditability of witnesses who have
16 testified in the case. Creditability simply means
17 believability. It's your duty as jurors to analyze and
18 evaluate the evidence and determine which evidence
19 convinces you of its truth.

20 If you decide whether or not to believe a witness's
21 testimony about a particular matter you may consider the
22 following: The manner and appearance of the witness
23 while on the witness stand -- excuse me, the manner and
24 appearance of the witness while on the witness stand
25 testifying, was he or she straight forward or hesitate in

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1 answering, the testimony of a witness was it consistent
2 or inconsistent, how the witness came to know the facts
3 that he or she testified to, was the witness present
4 during the incident or did the witness happen on the
5 scene afterwards, the reason the witness would want to
6 give testimony which would help or hurt one side or the
7 other, has the witness exhibited any interest, bias, or
8 prejudice, or other motive in the case.

9 You may consider whether a particular witness may
10 gain some reward, payment, personal advantage, or
11 vindication for his or her testimony, the strength of the
12 witness, the testimony of a witness, was the testimony of
13 the witness strengthened or weakened by other testimony,
14 the duration and length of time between the incident and
15 when they reported it, would the duration and length of
16 time weaken or strengthen the witness's memory.

17 Prior statements; were prior statements made by the
18 witness consistent or inconsistent with the witness's
19 testimony. When comparing the believability of the
20 witnesses who have testified in this case you may believe
21 one witness over several or several over one. You may
22 believe part of the testimony of a witness and reject the
23 remaining part of the witness; you may believe the
24 testimony of a witness in its entirety or reject the
25 testimony of a witness in its entirety. Of course you do

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1 not determine this truth by merely counting the number of
2 witnesses presented by each side. The rules of evidence
3 generally do not permit witnesses to testify to opinions
4 or conclusions. An exception to this rule exists for
5 witnesses we call expert witnesses; a witness who by
6 education and experience has become an expert in some
7 art, science, profession, or calling may state an opinion
8 as to relevant and material matter in which the witness
9 claims to be an expert and may also state the reason for
10 the opinion. You should consider any expert opinion
11 received into evidence in this case like any other
12 evidence; give it the weight you think it deserves.

13 If you decide that the opinion of an expert witness
14 is not based on sufficient education and experience or if
15 you conclude the reasons given in support of the opinion
16 are not sound or the opinion is outweighed by other
17 evidence you may disregard the opinion entirely. And
18 expert witness's testimony is to be given no greater
19 weight than that of other witnesses simply because the
20 witness is an expert.

21 Further you are not required -- the evidence or lack
22 of evidence for the jury to decide the facts include the
23 following: The sworn testimony of a witness both on
24 direct and cross-examination regardless of which side
25 called the witness, exhibits admitted and received into

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1 evidence by the court and any facts agreed to or
2 stipulated by the parties. The following things are not
3 evidence and you may not consider them in deciding the
4 facts: Arguments and statements made by the lawyers are
5 not evidence. The lawyers are not witnesses. Their
6 opening statement, closing arguments and other statements
7 are intended to help you interpret the evidence but are
8 not evidence. If the facts as you remember them are
9 different from the lawyer's statement your memory
10 controls.

11 Questions and objections by the lawyers are not
12 evidence. Lawyers have a duty to their client to make
13 objections when they believe a question is improper under
14 the rules of evidence. You should not allow any
15 objection or the court's ruling on the objections to
16 influence you. Testimony that has been stricken that you
17 have been instructed to disregard is not evidence and
18 must not be considered. Anything you may have seen on
19 the television, read in the newspaper or on the Internet
20 or heard from others while court is not in session is not
21 evidence. You should base your decisions solely on the
22 sworn testimony of the witnesses and exhibits received
23 into evidence by the court and any facts agreed to or
24 stipulated to by the attorneys. The fact that the
25 defendant was arrested, charged, and indicted in this

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1 case is not evidence and cannot be considered as evidence
2 of guilt, nor does it create any presumption or inference
3 of guilt. The indictment is simply the formal written
4 instrument that contains the charge made against the
5 defendant.)

6 There are two types of evidence which are generally
7 presented during the trial; direct evidence and
8 circumstantial evidence. Direct evidence directly proves
9 the existence of a fact and does not require deduction.
10 Circumstantial evidence is proof of a chain of facts and
11 circumstances indicating the existence of a fact. Crimes
12 may be proven by circumstantial evidence.

13 The law makes no distinction between the weight or
14 value to be given to either direct or circumstantial
15 evidence, however to the extent the State relies on
16 circumstantial evidence all the circumstances must be
17 consistent with each other and when taken together point
18 conclusively to the guilt of the accused beyond a
19 reasonable doubt.

20 If the circumstances merely portray the defendant's
21 behavior as suspicious the proof has failed. The State
22 has the burden of proving the defendant guilty beyond a
23 reasonable doubt. This burden rests with the State
24 regardless of whether the State relies on direct
25 evidence, circumstantial evidence, or some combination of

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1 the two. An attempt is an effort to accomplish a crime
2 which does not succeed. Attempt includes a specific
3 intent to do a particular criminal act along with the act
4 falling short of the act intended. The State must show
5 more than mere preparation and intent. It must be some
6 overt act committed with the effort to commit the crime.
7 Intent means intending the results which actually
8 occurred not accidentally or voluntarily. Intent may be
9 shown by acts and conduct of the defendant in other
10 circumstances which you may naturally and reasonably
11 interpret.

12 Attempted murder. A person with the intent to kill
13 attempts to kill another person with malice aforethought
14 either expressed or implied commits the offense of
15 attempted murder. Malice is hatred, ill will, or
16 hostility towards another person. It is the intentional
17 doing of a wrongful act without just cause or excuse with
18 the intent to inflict an injury under the circumstances
19 that the law may infer as evil intent.

20 Malice aforethought does not require that malice
21 exist at any particular time before the act was
22 committed. Malice must exist in the mind of the
23 defendant just before or at the time of the act
24 committed. Therefore, there must be a combination of
25 previously evil intent and the act. Malice aforethought

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1 may be expressed or inferred. These terms expressed and
2 inferred do not mean different kinds of malice but merely
3 the manner in which the malice may be shown to exist;
4 that is either by direct evidence or the inference of the
5 facts and circumstances which are proven. Expressed
6 malice is shown when a person speaks words which express
7 hatred or ill will to another or when the person prepared
8 beforehand to do the act which was later accomplished.

9 For example, lying in wait for a person or any other
10 acts of preparation going to show that the deed was
11 within the defendant's mind would be expressed malice.
12 Malice may be inferred from conduct showing a total
13 disregard for human life. If facts are proven beyond a
14 reasonable doubt sufficient to raise an inference of
15 malice to your satisfaction this inference would simply
16 be an evidentiary fact to be considered by you along with
17 all the evidence in the case. You may give it the weight
18 you decide it should receive.

19 Intent means intending the results which actually
20 occurs not accidentally or involuntarily. Intent may be
21 shown by acts of conduct of the defendant and other
22 circumstances in which you may naturally and reasonably
23 infer intent. Evidence of the character of the act, the
24 character of the instrument used, the manner in which it
25 was used, the purpose to be accomplished, the result of

State v David Alan White
Jury Charge
March 16, 2016

1 injuries may be considered in determining the intent in
2 which the act was committed. Intent may also be inferred
3 when it is demonstrated the defendant voluntarily and
4 willfully commits an act the natural tendency of which is
5 to destroy another's life.

6 In this particular case we have the attempted murder
7 and we have two lesser included charges which I am going
8 to charge you on. The first lesser included charge is
9 assault and battery of a high and aggravated nature. If
10 you find the defendant is not guilty of attempted murder
11 you can alternatively find the defendant is guilty of
12 assault and battery of a high and aggravated nature.

13 A person who commits the offense of assault and
14 battery of a high and aggravated nature is when a person
15 unlawfully injured another person and great bodily injury
16 to another person results or the act was accomplished by
17 means likely to produce death or great bodily injury.

18 Unlawful injury is any injury resulting from any
19 contact that is not legally justified. Great bodily
20 injury is bodily injury that causes a substantial risk of
21 death or which causes serious permanent disfigurement or
22 protracted loss or impairment of the function of a body
23 member or organ. Assault is a threat or use of force on
24 another that creates a reasonable apprehension of
25 imminent harm or offensive conduct. Battery is the

State v David Alan White
Jury Charge
March 16, 2016

1 application of force on another resulting in harmful or
2 offensive conduct.

3 Now the second lesser included is assault and
4 battery in the 1st degree. If you find the defendant is
5 not guilty of assault and battery of a high and
6 aggravated nature you can in the alternative find the
7 defendant is guilty of assault and battery in the 1st
8 degree.

9 A person commits the offense of assault and battery
10 in the 1st degree if the person unlawfully offers or
11 attempts to injure another person with the present
12 ability to do so and the act is accomplished by means
13 likely to produce death or great bodily injury. Again,
14 great bodily injury means bodily injury which causes a
15 substantial risk of death or which causes serious
16 permanent disfigurement or protracted loss or impairment
17 of the function of a body member or organ.

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

State v David Alan White
Jury Charge
March 16, 2016

1 weapon during the commission of a violent crime you must
2 first find the defendant guilty of attempting to commit a
3 violent crime. Attempted murder is a violent crime as
4 well as assault and battery of a high and aggravated
5 nature. The State must prove beyond a reasonable doubt
6 that the weapon further advanced or helped in the
7 commission of the attempted murder or the assault and
8 battery of a high and aggravated nature.

9 Accident. The defendant has raised the defense of
10 accident. An act may be excused on the ground of
11 accident if it was shown that the act was unintentional,
12 that the defendant was actually acting lawfully and that
13 reasonable care was used by the defendant in the handling
14 of a weapon. The burden is on the State to prove beyond
15 a reasonable doubt that the act was not an accident; it
16 was caused by the negligent or carelessness on the part
17 of the defendant in handling a dangerous instrument or by
18 the unlawful activity of the defendant.

19 To determine the guilt or innocence of the defendant
20 you cannot consider the possible penalty for any
21 particular crime. The punishment for the crime is a
22 matter for me to determine and should never be considered
23 by you in any way whatsoever in arriving at an impartial
24 verdict as to the guilt or innocence of the defendant.
25 You've been selected as fair and impartial jurors, sworn

State v David Alan White
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1 to impartiality to try and determine the facts of this
2 case. When you comply with your oath to do so no one
3 will have the right to criticize your verdict. You will
4 have fully discharged your duty as jurors to try this
5 case according to testimony you've heard and the sworn
6 witnesses along with the other evidence produced.

7 I charge you as jurors you must make your decision
8 in this case without bias or without prejudice to any
9 party and not allow yourself to be governed by empathy,
10 prejudice, passion, public opinion or any other arbitrary
11 fact. Both the State and the defendant have the right to
12 expect that each of you will carefully and impartially
13 consider all the evidence in the case and you will follow
14 the law as I explained it to you.

15 Nothing I may have said or done during the course of
16 this trial should be in any way indicate, express or
17 suggest a view of the case or an opinion as to the facts,
18 the weight of the evidence or the creditability of the
19 witnesses. If you believe any of my actions or words
20 have indicated otherwise you must disregard such and form
21 your own opinions of the case and your own opinions after
22 you have weighed the evidence and creditability of the
23 witnesses.

24 Now Mr. Foreman I have prepared a verdict form. It
25 has at the top the caption of the case with the case

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1 number beside it. It has four questions on it. If you
2 will follow it as it was written out it's sort of self-
3 explanatory but I'll go over it with you. On the charge
4 of attempted murder we, the jury, on the charge of
5 attempted murder by unanimous consent find the defendant
6 David Alan White guilty or not guilty.

7 If you find the defendant guilty of attempted murder
8 proceed to question four. Question four is the
9 possession of weapon during a violent crime. If you
10 find the defendant not guilty of attempted murder proceed
11 to question two.

12 Question two is on the assault and battery of a high
13 and aggravated nature. We, the jury, on the charge of
14 assault and battery of a high and aggravated nature by
15 unanimous consent find the defendant, David Alan White
16 guilty or not guilty. If you find the defendant guilty
17 to either question one or two then proceed to question
18 four, which is the possession of a weapon during the
19 commission of a crime.

20 If you find the defendant not guilty in question one
21 and two proceed to question three. On the charge of
22 assault and battery in the 1st degree we, the jury, on
23 the charge of assault and battery in the 1st degree by
24 unanimous consent find the defendant David Alan White
25 guilty or not guilty. Now if you find the defendant

State v David Alan White
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1 guilty of assault and battery in the 1st degree or not
2 guilty you stop because the law of the possession of a
3 weapon during a violent crime requires that you find the
4 defendant guilty of the violent crime and assault and
5 battery in the 1st degree is not a violent crime so if
6 you find him guilty of that you cannot find him guilty of
7 possession of a weapon during a violent crime. It's laid
8 out in black and white if you'll just follow through it,
9 it will be self-explanatory.

10 As I said in the verdict form your verdict has to be
11 unanimous. All twelve of you have to agree. I'll tell
12 you this it is a collective reasoning process on your
13 parts. I would ask you to listen to each other's opinion
14 and review the evidence and discuss the evidence, respect
15 each other's opinions and reach a collective decision on
16 your part.

17 I'm going to ask you to go to the jury room but
18 before you begin your deliberations I have to take the
19 charge up with the lawyers. I may have to bring you back
20 and take something away I said or add something I may
21 should have said. So I don't want you to begin your
22 deliberations until the bailiff brings you the verdict
23 form, the charge book, and all the evidence that has been
24 presented. At that time you may begin your
25 deliberations. The alternates, I believe Ms. Warford and

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Jury Charge
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1 Mr. Rocco if y'all would just keep your seat while the
2 other twelve members go to the jury room please. Mr.
3 Foreman, if you'll go to the jury room.

4 [Whereupon, the jury exits at 3:38 p.m.]

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State v David Alan White
Proceedings
March 16, 2016

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

3 MS. NEWMAN: No, Your Honor.

4 THE COURT: Any exception to the charge from the
5 defendant?

6 MS. FORD: Yes, Your Honor. I would object just to
7 what we talked beforehand. I had asked for charges on
8 assault and battery 2nd degree saying it was a jury
9 question whether it was a moderate bodily injury or
10 serious bodily injury and then in addition I had asked
11 for a self-defense charge based on my client's back was
12 turned, he was hit from the back.

13 When someone is hit from the back they can't see
14 what's going on so they don't know exactly how much
15 danger they are in so they have a reason to be -- to
16 think they are in danger. While my client may have
17 sometimes said no, I wasn't scared he did say he was at
18 other times. And he turned around to confront the person
19 which I think would be reasonable and because his back
20 had been turned if he had just run he would have put
21 himself in more danger so that's why we had asked for a
22 self-defense charge.

23 THE COURT: Okay. As far as the first one the
24 first one was?

25 MS. FORD: Assault and battery 2nd degree, Your

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1 Honor.

2 THE COURT: The second degree. The court finds as
3 a matter of law there was no moderate injury. It was a
4 severe injury based upon the medical testimony. As to
5 the second request for self-defense I'll be glad to hear
6 from the State if the State wants to put anything on the
7 record. If you don't that's fine; I'll give you the
8 opportunity.

9 MS. NEWMAN: Your Honor, we have nothing new. We
10 would just refer to our prior arguments.

11 THE COURT: Your prior arguments aren't on the
12 record. They were all at the bench.

13 MS. ELLIOTT: That is true. Judge, the defendant
14 said again and again that he didn't feel threatened.
15 Some of the evidence that he sought to support the fact
16 that he felt threatened statements that the victim had
17 supposedly made to him he said he just brushed those off.
18 He said that when he came around he was coming around
19 because whoever was behind him was going to get it. He
20 basically undid all of the elements of self-defense
21 during his direct testimony and again during cross and
22 therefore self-defense is no longer a feasible argument
23 under his own facts.

24 THE COURT: Okay. I did not charge the self-
25 defense primarily because I did not think the facts

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1 justify self-defense based upon the statements made. The
2 first statement made I believe by Spencer Washington he
3 said the defendant said he was going to get this.

4 But the major problem that the court had with self-
5 defense was the defendant's testimony itself. He said he
6 did not mean to cut him, did not cut him on purpose.
7 Then he also said when he pulled the knife out of his
8 pocket and swung it around whoever he hit -- whoever hit
9 him was going to get it. He said he did not know who hit
10 him; did not know it was Mr. Johnson. And I just don't
11 think the elements of self-defense are applicable under
12 the facts of this case. If you have a charge you want me
13 to mark as self-defense just for a standard court self-
14 defense charge?

15 MS. FORD: Yes, Your Honor.

16 THE COURT: You want to mark it as a court's
17 exhibit?

18 MS. FORD: No Your Honor, just the regular one.

19 THE COURT: Okay. What about the other one?

20 MS. FORD: Assault and battery 2nd degree?

21 THE COURT: The 2nd degree?

22 MS. FORD: No, again, that just ---

23 THE COURT: --- do you want to mark a court's
24 exhibit for that?

25 MS. FORD: No, Your Honor.

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March 16, 2016

1 THE COURT: Okay. That motion is denied.

2 Anything else?

3 MS. FORD: No, Your Honor.

4 THE COURT: Thank you very much. Would you gather
5 up the exhibits and here's the verdict form ---

6 MS. ELLIOTT: --- Judge I know there is stuff on
7 that table that was not been admitted into evidence ---

8 THE COURT: --- why don't you come up and let's put
9 on the record what is there and what's not there and make
10 sure all the exhibits are there and we don't take
11 anything back to the jury that has not been admitted.

12 [Whereupon, all counsel and the court reporter
13 review the exhibits]

14 [Whereupon, evidence out to the jury at 3:49 p.m.]

15 [Whereupon, court is in recess]

16 THE COURT: I'm going to go ahead and -- it's
17 almost -- it's 20 minutes after six. I'm going to send
18 the jury home and bring them back in the morning at 9:30.
19 Does anybody have an objection to that rather than
20 staying down here with them any longer? Any objection
21 from the State?

22 MS. NEWMAN: No, Your Honor.

23 THE COURT: Any from the defendant?

24 MS. FORD: No, Your Honor.

25 THE COURT: Okay. Do you want to bring the

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March 16, 2016

1 defendant out when we bring the jury in and tell him?

2 MS. FORD: Yes, Your Honor.

3 THE COURT: Pardon?

4 MS. FORD: Yes, Your Honor.

5 [Off the record momentarily]

6 THE COURT: Bring us the jury please.

7 [Whereupon, the jury enters at 6:29 p.m.]

8 THE COURT: Mr. Foreman and ladies and gentlemen of
9 the jury what I'm going to do is -- it's almost 6:30 so
10 I'm going to adjourn this afternoon and bring you back in
11 the morning. The problem in the morning is tomorrow is
12 Saint Patrick's Day and there is a parade starting at 10
13 o'clock at the corner of Radcliffe and King and there are
14 some activities at the Hibernian Hall also starting.

15 The big jury panel that was also here on Monday is
16 also coming in at 9:45. So what I'm going to propose is
17 if you'll be in the jury room at 9:00. Is there anybody
18 who cannot be here at 9 o'clock in the morning? If you
19 cannot for some personal reason please tell me now and I
20 can adjust it? Is there anybody that can't be here at 9
21 o'clock in the morning? If you can't, please raise your
22 hand.

23 [Whereupon, no one responds]

24 THE COURT: All right. Be here in the morning at
25 9 o'clock; that way you'll be ahead of hopefully the

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March 16, 2016

1 Hibernian crowd, the parade crowd, and the jury panel
2 that is coming in at 9:45. You will be ahead of all
3 those three groups. So if you will be in the jury room
4 at 9 o'clock in the morning. Please don't discuss the
5 case amongst yourselves or anyone else. Be in the jury
6 room at 9 o'clock and at that time you can continue your
7 deliberations. See you in the morning at 9:00.

8 [Whereupon, the jury exits at 6:32 p.m.]

9 THE COURT: Anything from the State before we
10 adjourn?

11 MS. NEWMAN: No, Your Honor.

12 THE COURT: Anything from the defense?

13 MS. FORD: No, Your Honor.

14 THE COURT: Thank you.

15 [Whereupon, court adjourns at 6:40 p.m.]

16 [Whereupon, court's exhibit number 3 is marked by
17 the court reporter]

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)

vs.)

DAVID ALAN WHITE)

Defendant)

COURT OF GENERAL SESSIONS

DOCKET NO. 2014-GS-10-4864
2014-GS-10-5530

TRANSCRIPT OF RECORD

March 17, 2016
Charleston, South Carolina

Volume 4 (of 4)

B E F O R E:

THE HONORABLE J.C NICHOLSON, JR., JUDGE

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

JENNA NEWMAN, ESQ.
SHANNON ELLIOTT, ESQ.
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Attorneys for the Defendant

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Circuit Court Reporter

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[All exhibits pre-marked prior to start of trial unless
otherwise indicated in transcript]

COURT

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Proceedings
March 17, 2016

1 PROCEEDINGS

2 [Whereupon, jury deliberations resumed at 9:40 a.m.]

3 THE COURT: Be seated. Let me see the attorneys up
4 here just a second.

5 [Whereupon, an off the record bench conference is
6 held]

7 [Whereupon, court's exhibit number 4 is marked by
8 the court reporter]

9 THE COURT: Anything from the State before we bring
10 the jury in?

11 MS. NEWMAN: No, Your Honor.

12 THE COURT: Anything from the defendant?

13 MS. FORD: No, Your Honor.

14 THE COURT: Bring us the jury please.

15 [Whereupon, the jury enters at 10:51 a.m.]

16 THE COURT: Mr. Foreman, I understand you've
17 reached a verdict is that correct?

18 FOREPERSON: Yes, sir.

19 THE COURT: Would you mind handing the verdict form
20 to the bailiff please.

21 FOREPERSON: Yes, Your Honor.

22 [Whereupon, the Foreperson complies]

23 THE COURT: Mr. Foreman, these are the indictments
24 that I had spoken to you about earlier. I have looked at
25 your verdict forms and filled out the indictments. And I

State v David Alan White
Proceedings
March 17, 2016

1 have a place for the Foreman to sign dated March 17th,
2 2016. If I could get the bailiff to get you to sign
3 where it says Foreperson's signature? If you would sign
4 that I would appreciate it and give it back to the court]

5 FOREPERSON: Yes, sir.

6 [Whereupon, the Foreperson complies]

7 THE COURT: Madame Clerk if you would, read the
8 verdict please?

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State v David Alan White
Verdict
March 17, 2016

VERDICT

CLERK OF COURT: In the State of South Carolina
County of Charleston Ninth Judicial Circuit case number
2014-GS-10-5530 State of South Carolina versus David Alan
White.

On the charge of attempted murder we, the jury,
unanimously find the defendant not guilty. On the charge
of assault and battery of a high and aggravated nature
we, the jury, unanimously find the defendant guilty. On
the charge of possession of a weapon during the
commission of a violent crime we, the jury, unanimously
find the defendant guilty. Signed Mr. Foreperson March
17, 2016.

Ladies and gentlemen of the jury if this is your
verdict please raise your right hand?

[Whereupon, all jurors comply]

CLERK OF COURT: Please let the record reflect that
all jurors raised their right hands.

THE COURT: Thank you. Anything for the jury from
the State?

MS. ELLIOTT: No, Your Honor.

THE COURT: Anything for the jury from the
defendant?

MS. FORD: Yes, Your Honor. We'd like the jury
polled.

State v David Alan White
Verdict
March 17, 2016

1 THE COURT: You'd like the jury polled? Madame
2 Clerk if you would poll the jury. Explain to the jury
3 what you're doing please, ma'am.

4 CLERK OF COURT: Yes, sir.

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State v David Alan White
Polling of the Jury
March 17, 2016

1 POLLING OF THE JURY
2 CLERK OF COURT: Ladies and gentlemen what is going
3 to happen is I'm going to call your juror name and
4 number. When I do please stand and then I'm going to ask
5 you two questions. One, is this your verdict, second, is
6 this still your verdict and please answer with yes or no.
7 Juror number 387 is this your verdict?
8 MR. WILLIAMSON: Yes.
9 CLERK OF COURT: Is this still your verdict?
10 MR. WILLIAMSON: Yes.
11 CLERK OF COURT: Thank you. Juror number 372, is
12 this your verdict??
13 MR. WASHINGTON: Yes.
14 CLERK OF COURT: Is this still your verdict??
15 MR. WASHINGTON: Yes.
16 CLERK OF COURT: Thank you. Juror number 284, is
17 this your verdict?
18 MR. RAINES: Yes.
19 CLERK OF COURT: Is this still your verdict?
20 MR. RAINES: Yes.
21 CLERK OF COURT: Thank you. Juror number 159, is
22 this your verdict?
23 MR. HERBERT: Yes.
24 CLERK OF COURT: Is this still your verdict?
25 MR. HERBERT: Yes.

State v David Alan White
Polling of the Jury
March 17, 2016

1 CLERK OF COURT: Thank you. Juror number 224, is
2 this your verdict?
3 MR. MCCARVER: Yes.
4 CLERK OF COURT: Is this still your verdict?
5 MR. MCCARVER: Yes.
6 CLERK OF COURT: Thank you. Juror number 213, is
7 this your verdict?
8 MS. MACK: Yes, it is.
9 CLERK OF COURT: Is this still your verdict?
10 MS. MACK: Yes.
11 CLERK OF COURT: Thank you. Juror number 4, is
12 this your verdict?
13 MR. ADAMS: Yes.
14 CLERK OF COURT: Is this still your verdict?
15 MR. ADAMS: Yes.
16 CLERK OF COURT: Thank you. Juror number 1, is
17 this your verdict?
18 MR. ABEL: Yes.
19 CLERK OF COURT: Is this still your verdict?
20 MR. ABEL: Yes.
21 CLERK OF COURT: Thank you. Juror number 80, is
22 this your verdict?
23 MS. CLARK: Yes.
24 CLERK OF COURT: Is this still your verdict?
25 MS. CLARK: Yes.

State v David Alan White
Polling of the Jury
March 17, 2016

1 CLERK OF COURT: Thank you. Juror number 211, is
2 this your verdict?
3 MR. LUKE: Yes.
4 CLERK OF COURT: Is this still your verdict?
5 MR. LUKE: Yes.
6 CLERK OF COURT: Thank you. Juror number 70, is
7 this your verdict?
8 MR. CARROLL: Yes.
9 CLERK OF COURT: Is this still your verdict?
10 MR. CARROLL: Yes.
11 CLERK OF COURT: Thank you. Juror number 51, is
12 this your verdict?
13 MR. BROWN: Yes.
14 CLERK OF COURT: Is this still your verdict?
15 MR. BROWN: Yes.
16 CLERK OF COURT: Thank you. Your Honor, the jury
17 has been polled and the verdict stands.
18 THE COURT: Thank you very much. Do you have a
19 sentencing sheet?
20 MS. NEWMAN: Your Honor, Ms. Elliott ran to the
21 office to grab one.
22 THE COURT: I'm sorry, what?
23 MS. NEWMAN: Ms. Elliott ran to the office to grab
24 one. She'll be back in just one moment.
25 THE COURT: Do you have one already prepared?

State v David Alan White
Polling of the Jury
March 17, 2016

1 MS. NEWMAN: Not yet, Your Honor.

2 THE COURT: On the attempted murder do you?

3 MS. NEWMAN: No, Your Honor.

4 THE COURT: Okay. In the meantime we'll go ahead
5 and proceed with the sentencing.

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State v David Alan White
Sentencing
March 17, 2016

1 SENTENCING

2 THE COURT: I'll be glad to hear from the State on

3 sentencing.

4 MS. NEWMAN: Your Honor ---

5 THE COURT: --- what's his prior criminal history

6 is the first thing I want to hear.

7 MS. NEWMAN: His prior convictions are just a

8 couple of minor traffic violations, 2008 driving without

9 a license and a seatbelt violation. Your Honor, you've

10 heard the facts and the testimony over the last few days.

11 We don't feel that we need to rehash them. But based on

12 Mr. White's own admissions on the stand we feel that he

13 absolutely is a danger to society and we would ask for

14 the maximum sentence in this case. Mr. Johnson would

15 like to address the court, Your Honor.

16 THE COURT: I'll be glad to hear from anybody you'd

17 like me to hear from; Mr. Johnson or his family, okay?

18 MS. NEWMAN: Thank you, Your Honor.

19 THE COURT: Who would you like for me to hear from?

20 Mr. Johnson?

21 MS. NEWMAN: Mr. Johnson, Your Honor.

22 THE COURT: Mr. Johnson if you will stand.

23 [Whereupon, Ms. Newman confers with Mr. Johnson]

24 MS. NEWMAN: Your Honor, Mr. Johnson does not wish

25 to address the court but ---

State v David Alan White
Sentencing
March 17, 2016

1 THE COURT: I'm sorry?

2 MS. NEWMAN: He does not wish to address the court
3 but I will speak on his behalf. He would just like me to
4 say that he would like Mr. White to receive the maximum
5 sentence as well.

6 THE COURT: Okay. Anybody else from your side
7 that you would like me to hear from?

8 MS. NEWMAN: No, Your Honor.

9 THE COURT: Either the victim or the victim's
10 family?

11 MS. NEWMAN: Mr. Johnson is the victim, Your Honor.

12 THE COURT: I understand that but does any of his
13 family want to speak?

14 MS. NEWMAN: No, Your Honor.

15 THE COURT: Anything else you want to tell me on
16 the sentencing?

17 MS. NEWMAN: No, Your Honor.

18 THE COURT: I'll be glad to hear from the
19 defendant.

20 MS. FORD: Yes, Your Honor. May it please the
21 court? David is 30 years old and as you've heard he has
22 no history; a couple of traffic tickets from nearly ten
23 years ago, Your Honor. It's not very often probably that
24 you see a 30 year old man before you without a history.
25 He certainly has no history of violence. I spoke -- he's

State v David Alan White
Sentencing
March 17, 2016

1 joined here today by his wife and his mother.

2 THE COURT: Hold on just a second. Do you have the
3 sentencing sheets?

4 MS. ELLIOTT: Yes, Judge. Ms. Newman is just
5 signing them now.

6 THE COURT: When you get it signed bring it to me
7 please. Next time bring it with you please.

8 MS. NEWMAN: Yes, Judge.

9 [Whereupon, Ms. Newman complies]

10 MS. FORD: Your Honor, he is joined here ---

11 THE COURT: --- would you get defense counsel to
12 sign it please?

13 [Whereupon, Ms. Ford complies]

14 THE COURT: Thank you, ma'am. Go ahead.

15 MS. FORD: He's joined here today by his wife, and
16 his mother and his uncle. Throughout this trial his
17 cousin and his sister-in-law have been here as well. His
18 mom and his sister when I spoke to them they said David
19 is not a violent guy as far as they are concerned. He's
20 not violent with them by any means. This night I think a
21 lot of people gave some inconsistent stories as far as
22 the whole complete picture ---

23 THE COURT: --- I'd like to know why did he cut
24 him.

25 MS. FORD: Yes, Your Honor. Well he maintains that

State v David Alan White
Sentencing
March 17, 2016

1 maybe he just thought he got hit. Mr. Malloy, the
2 witness we would have had if he had cooperated but he had
3 warrants, he actually -- was there as well. He's a
4 neighbor and he lives down the street and he was there
5 and he did say that he saw Joseph hit David. And so
6 perhaps they were all close and as Spencer testified they
7 were all really close. Perhaps David just thought he got
8 hit. But I maintain that's the only thing I think that
9 makes sense and perhaps David overreacted.

10 THE COURT: Well, what was the argument about?

11 MS. FORD: That's the thing; they weren't arguing
12 really. People were talking and as we brought up Spencer
13 -- Joseph had mentioned making shanks and talked about
14 having a gun and knife on his moped and talked about
15 wrestling. David said he just felt like it was feeling
16 like it was hostile and so he probably was on edge when
17 he was leaving thinking this is just not right. So
18 perhaps he overreacted but he thought that he got hit.

19 Your Honor, I think it's telling Spencer and Henry
20 they both testified they are very close to David.
21 They're close to Joseph as well too so they're not just
22 close to David. And Spencer said that he thought David
23 was shocked like he didn't really mean for that to
24 happen. And I think it's telling that both of these men
25 they've continued to be David's friends, see him everyday

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March 17, 2016

1 sometimes even though they also have a close relationship
2 with Joseph. I think that's telling because if these men
3 who know David best probably since they've known him for
4 so long if they thought David was truly this malicious
5 evil guy who had just sliced a guy for no reason at all I
6 seriously doubt they would be his friend and especially
7 to the extent they have been over the past two and half
8 years when there are other friends; a man who was like a
9 father figure to Spencer was cut in the way that he was,
10 Your Honor.

11 So I genuinely believe and David would maintain he
12 certainly did not intend obviously to cause that type of
13 harm. Spencer said he was shaken up and his sister said
14 he was ---

15 THE COURT: --- from my perspective it appears it's
16 just an act of violence swinging a knife and that is a
17 big knife.

18 MS. FORD: Yes, Your Honor.

19 THE COURT: It's just a random act of violence that
20 he's a violent person.

21 MS. FORD: Your Honor, I would ---

22 THE COURT: --- from my perspective of what has
23 transpired because I've heard no good reason as to why he
24 even pulled out the knife. So he got hit on the head
25 that doesn't justify slicing a man's throat.

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1 MS. FORD: Yes, Your Honor. And the thing about
2 jury verdicts I don't know what the jury believed ---

3 THE COURT: --- I'm not worried about the jury.
4 I'm talking about sentencing and my perspective ---

5 MS. FORD: --- yes sir ---

6 THE COURT: --- that's what we've got to worry
7 about is my perspective and what I'm going to do with
8 him. He's looking at 25 years total if I so choose.

9 MS. FORD: Yes, sir. And what I'm saying is I
10 think it could be reasonable to assume that David whether
11 he thought he got hit he turned around and I do think the
12 testimony -- and he was perhaps reckless, Your Honor ---

13 THE COURT: --- if somebody touches him and hits
14 him so he can just swing a knife at random and whoever is
15 there gets cut?

16 MS. FORD: It was in the heat of the moment, Your
17 Honor, and it was reckless and it was dangerous. I do
18 not believe and I don't know if Your Honor believes it or
19 I don't know if the jury believed that he intended to
20 actually slice this man or if he just completely
21 overreacted and the knife was in his pocket for
22 legitimate reasons and he swung out, Your Honor. But ---

23 THE COURT: --- who walks around with an open
24 knife? That knife must be at least seven or eight inches
25 long. Who walks around with a seven or eight inch knife

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Sentencing
March 17, 2016

1 open in their pocket?

2 MS. FORD: Yes, Your Honor. And ---

3 THE COURT: --- how many people do that?

4 MS. FORD: David testified that he had literally
5 just used it. And his jacket is really big and thick and
6 heavy and he just wasn't thinking. That's why I pointed
7 out Spencer and Henry these men who have known him for a
8 long time, the men who are friends, equally friends with
9 both of them I think if they really thought he was just
10 this horrible man who would do this for no reason I don't
11 think they would still be his friends seeing him every
12 day. And so that's why I pointed that out if you would
13 consider that and consider he has no history.

14 Your Honor, this trial probably would have been
15 avoided actually and David was seriously contemplating a
16 plea to ABHAN. The reason he didn't though is because
17 the victim always maintained that David came up from the
18 back and so those are the facts that would have been
19 presented to a judge. And naturally of course I advised
20 him that I believed that a judge would sentence him more
21 harshly if he believed that David walked up on a man on a
22 moped and slit his throat versus the man who sort of
23 swung -- I believe that --

24 THE COURT: --- I agree with that analogy.

25 MS. FORD: And so if the victim had not maintained

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1 that literally up until the trial I think David actually
2 would have pled. He was sorry for what happened, Your
3 Honor. Spencer said he was shaken up, a cop said the
4 sister said he was shaken up at the house when he got
5 there. In addition when he talked to the police he said
6 he was real sorry for what he had done for the man. So
7 he was sorry; he did not intend the extent of the injury.

8 Perhaps he was very reckless in what he did, acted
9 heat of the moment. He thought he was hit at least if he
10 wasn't but I do not think that his whole history
11 demonstrates -- I think his history in general
12 demonstrates that he is not a violent man who is just
13 randomly dangerous to anyone. And I think the way that
14 Spencer and Henry have reacted demonstrate that as well.

15 He's also -- not only does he have no any criminal
16 history Your Honor he has a great work history. He's
17 been working for the same landscaping company on and off
18 since he was a teenager. His boss actually is a
19 landscaper for another attorney in my office and he
20 called my co-worker and said hey, what's going on with
21 this guy because he knew about the charge. And he's
22 known David for a long time and he was concerned about
23 David and what was going on with his case. So he's a
24 hard worker, he also details cars; he does both of those.
25 He has three children like he testified to. He's

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1 married, Your Honor, and he's got a very supportive
2 family. I just -- the State originally was recommending
3 ten years on this charge, Your Honor. Again, the reason
4 he didn't plea I think primarily is because Joseph
5 maintained he came from the back. If Joseph had said
6 what he testified to on the stand I think likely David
7 would have pled.

8 So that is why we went to trial primarily, Your
9 Honor, because of that fact. So I would ask you to
10 consider that. I do think that 25 years is excessive
11 especially in light of the fact that the State was
12 willing to recommend ---

13 THE COURT: --- I think it's what 20 maximum on
14 ABHAN and five on the possession of a weapon?

15 MS. FORD: Yes, Your Honor.

16 THE COURT: They can be run concurrent but it can
17 be up to 25 years -- excuse me, consecutive would be 25.

18 MS. FORD: Yes, Your Honor. We would ask for the
19 five years because that is day for day from my
20 understanding on the weapon charge. And for someone with
21 no record who has obviously never been to prison I think
22 that is a very significant amount of time. I do believe
23 David acted in more like a heat of the moment and nothing
24 demonstrates he has a history of being this violent guy
25 and we would ask you to consider that, Your Honor.

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March 17, 2016

1 THE COURT: Okay. Mr. White, anything you would
2 like to tell the court?

3 MR. WHITE: I apologize. I did not intend to cut
4 this man.

5 THE COURT: Who are you apologizing to?

6 MR. WHITE: Everybody and Joseph Johnson ---

7 THE COURT: --- this is the gentleman over here
8 [indicates] you cut. That's who you need to apologize
9 to.

10 MR. WHITE: I apologize to him but I didn't intend
11 to cut him. I get knocked from behind and I just swing
12 up. The reason why I had this knife on me I was cutting
13 saran wrap, I mean saran off the pallets. I did not try
14 to kill him nor cut him. I just swing out -- I had my
15 hand on it and I just pull out and I had it in my hand.
16 I did not intend to cut him at all in no type of way.

17 THE COURT: Anything else? Why did you pull the
18 knife out?

19 MR. WHITE: Sir, I had my hand inside my pocket. I
20 just swing out ---

21 THE COURT: --- well, you've got to take the knife
22 out of your pocket, you've got to grab the knife, you got
23 to pull it out your pocket ---

24 MR. WHITE: --- I already had it ---

25 THE COURT: --- and you got to swing it. Why did

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March 17, 2016

1 you do it?

2 MR. WHITE: I already had my hand inside my pocket
3 on the knife. I wasn't thinking nothing about cutting
4 nobody nor him. I didn't even notice I had the knife. I
5 just pull the knife and just swing back.

6 THE COURT: You didn't even know you had the knife?

7 MR. WHITE: I know I had it; I didn't know I had it
8 open I mean to swing at him. I wasn't trying to swing at
9 him or try to kill him in no type of way.

10 THE COURT: You don't think swinging a knife ---

11 MR. WHITE: --- sir ---

12 THE COURT: --- that particular knife would hurt
13 someone or injure someone? And you testified you didn't
14 even know who was behind you ---

15 MR. WHITE: --- it was a reaction, sir ---

16 THE COURT: --- and you just swung it out?

17 MR. WHITE: It was a reaction.

18 THE COURT: What was the accident; swinging the
19 knife or slicing the guy?

20 MR. WHITE: It was a reaction, a reaction. My hand
21 just swing out. It was a reaction. It wasn't nothing I
22 intended to do.

23 THE COURT: Okay. Anything else you want to tell
24 me?

25 MR. WHITE: That would be it.

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1 THE COURT: Is there anybody else you would like me
2 to listen to on behalf of Mr. White, any family, I would
3 be glad to hear from them.

4 MS. FORD: Just one moment, Your Honor.

5 [Whereupon, Ms. Ford confers with her client]

6 [Whereupon, an individual stands]

7 THE COURT: Hold on a second please ma'am. What's
8 your name? Come around by the front if you would and
9 tell me your name please?

10 MS. WHITE: My name is Karen Marie White.

11 THE COURT: Ms. White, I will be glad to hear you.

12 MS. WHITE: Honestly, when we got home and how
13 shaken up he was and when he called you I was upset
14 because I knew this was not him but I would like to
15 apologize to you. When I heard I just kept asking if he
16 was all right and I said I'm going to pray and I did
17 that. But now I'm praying again for him. I understand
18 he needs to be punished in some way but just be a little
19 lenient on him please.

20 THE COURT: Tell me a little bit about him.

21 MS. WHITE: Raising him I never had any trouble
22 raising him as a single parent and I never had any
23 trouble with him. He worked, he cleans. He wasn't in
24 trouble toting pistols, guns, and all this, never, drugs;
25 never. Nothing -- clean house he did whatever I told

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1 him; he was like a momma's boy. No history of no
2 violence or nothing. He stayed by himself at that time.
3 He started working at a early age, a real early age. He
4 would go in the creek, he would pick pecans. He made a
5 house somehow the legal way by doing something; just
6 keeping busy. He was never -- he's a good boy.

7 THE COURT: Anything else you've like to tell me?

8 MS. WHITE: No --

9 THE COURT: Ms. Ford, anybody else you'd like me to
10 hear from?

11 MS. FORD: No, Your Honor. Just David obviously
12 has a lot of support. A lot of people who care about him
13 including some of the people who testified and we'd ask
14 you to consider that, Your Honor.

15 THE COURT: Anything else from the State?

16 MS. NEWMAN: Your Honor, I would just add that from
17 Mr. White's own mouth he admitted that whoever was behind
18 him was going to get it. So I would just leave with
19 that, Your Honor.

20 THE COURT: Okay. Thank you very much.

21 [Whereupon, the court reviews documents]

22 THE COURT: All right Mr. White, indictment number
23 6530 that's the possession of a firearm during the
24 commission of a violent crime I sentence you to the State
25 Department of Corrections for a period of five years.

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1 Indictment number 4864 assault and battery of a high and
2 aggravated nature I sentence you to the State Department
3 of Corrections for a period of ten years. Those
4 sentences will run consecutive, which means they will run
5 separate. Thank you very much. Ms. Ford, do you want
6 ten days to file any post trial motions?

7 MS. FORD: Yes, Your Honor.

8 THE COURT: I'll be happy to give you ten days ---

9 MS. FORD: --- yes, sir ---

10 THE COURT: --- if you want me to.

11 MS. FORD: Yes, sir.

12 THE COURT: All right. I'll give you ten days to
13 file your post trial motions. Thank you so very much.
14 Mr. Forman and ladies and gentlemen of the jury if you
15 will, follow the bailiffs to the jury room please.

16 [Whereupon, the jury exits at 11:17 a.m.]

17 [Whereupon, the jury trial concludes at 11:18 a.m.]

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SEL20131108997

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013041501

ARREST WARRANT NUMBER

DIRIND2197

DATE OF ARREST

September 2, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *Carole M. [Signature]*

SEP 3 - 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1005530

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2014

THE STATE

vs.

DAVID ALAN WHITE

DOB:

B/M

Indictment for

Possession Of A Weapon During The
Commission Of A Violent Crime

FILED

9/23/2014 2:31:54 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 2, 2014 the Grand Jurors of Charleston County present upon their oath:

Possession Of A Weapon During The Commission Of A Violent Crime

That in Charleston County, South Carolina, on or about November 27, 2013, the Defendant, DAVID ALAN WHITE, did possess a knife during the commission, or attempted commission, of Attempted Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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


SHANNON ELLIOTT
ASSISTANT SOLICITOR

SEL20131108997

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013041501

ARREST WARRANT NUMBER

2013A1010206460

DATE OF ARREST

November 28, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *Julio J. He* SEP 3 - 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1004864

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2014

THE STATE

vs.

DAVID ALAN WHITE

DOB:

B/M

Indictment for

Attempted Murder

FILED

9/23/2014 2:31:53 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 2, 2014 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about November 27, 2013, the Defendant, DAVID ALAN WHITE, did, with intent to kill and malice aforethought, attempt to kill Joseph Johnson. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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

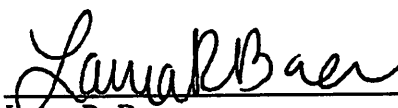


SHANNON ELLIOTT
ASSISTANT SOLICITOR

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,

A handwritten signature in cursive script, reading "Laura R. Baer", written over a horizontal line.

Laura R. Baer
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 3rd day of May, 2017.