

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JOHN WAYNE BRANNON,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,
PLAINTIFF,
VS.
JOHN WAYNE BRANNON,
DEFENDANT.

TRANSCRIPT
OF
RECORD
2011-GS-42-4694

December 12th, 13th, and 15th, 2011
Spartanburg, South Carolina

B E F O R E :

THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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

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P R O C E E D I N G S

THE COURT: All right. We're on the record in the case of the State versus John Wayne Brannon. It's my understanding that the defendant has been arraigned on the charge of attempted murder. The case is Case Number 2011-GS-42-4694. Present is the State represented by Mr. Boyd, and the defendant represented by Ms. Tanya Jones.

I think you had a motion, Ms. Jones, you indicated you wanted to make before I brought the jury in.

MS. JONES: Yes, Your Honor. We would do a motion to settle Mr. Brannon's record.

THE COURT: Mr. Boyd, will you put on the record Mr. Brannon's record that the State---

SOLICITOR BOYD: Yes, Your Honor.

THE COURT: ---intends to introduce.

SOLICITOR BOYD: Yes, Your Honor.

The State would intend to introduce a 1994 armed robbery conviction, which he was released within the past ten years, Your Honor. Also a 2007 conviction for assault and battery, a 2000 -- assault and battery in 2008, nine counts of fraudulent check in 2009, and an ABHAN in 2009, Your Honor.

THE COURT: All right. Yes, ma'am, anything further concerning the record?

1 MS. JONES: Your Honor, we would indicate that the 1993
2 charge is outside the ten year time frame, Your Honor, as
3 well as the, the additional ABHAN would be prejudicial
4 because it is close to the charge that he is currently being
5 tried for, Your Honor. So, we would request that you
6 disallow them to bring that up, sir.

7 THE COURT: Mr. Boyd.

8 SOLICITOR BOYD: Yes, Your Honor.

9 State v. Allaman says attempted armed robbery, excuse
10 me, armed robbery is a crime of dishonesty. Therefore, it
11 is permissible itself, Your Honor. The incarceration date
12 extends through 2000 -- excuse me. Within the past ten
13 years. So, it would fall within the past, previous ten
14 years time frame.

15 THE COURT: Do we agree on this, Ms. Jones, that the
16 incarceration period for armed robbery extended within the
17 last ten years?

18 MS. JONES: Your Honor, my client does tell me he did
19 get released in 2004.

20 THE COURT: Okay. So, it would of been within the last
21 ten years.

22 All right. Anything further?

23 MS. JONES: No, sir.

24 THE COURT: All right. Well, I'm, I'm, I'm going to
25 allow those in. Now, the assault and battery, I'll allow

1 you to refer to it as a felony conviction. will not allow
2 you to refer to it by name since it is closely related to
3 the charge that's before the Court, and I find, if it were
4 referred to by name, that it would be too prejudicial, the
5 prejudicial effect would outweigh its probative value.
6 However, I will allow you to refer to it as a felony
7 conviction during that period of time, and in that case it
8 would be my determination that the prejudicial affect would
9 not outweigh the probative value.

10 SOLICITOR BOYD: Yes, Your Honor, and as to the other
11 assault and battery, simple assault and battery?

12 THE COURT: Same, same ruling.

13 SOLICITOR BOYD: Thank you.

14 THE COURT: All right. Anything further, Ms. Jones,
15 that you'd like for me to take up before we bring the jury
16 in for jury selection?

17 MS. JONES: No, sir.

18 THE COURT: Mr. Boyd, anything from the State?

19 SOLICITOR BOYD: No, sir, Your Honor.

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

21 MS. JONES: And, Your Honor, just for clarification,
22 because it's an attempted murder, does the defense receive
23 ten strikes or the five strikes?

24 SOLICITOR BOYD: It's five strikes, Your Honor.

25 THE COURT: I think it's five strikes, my understanding

1 of the rule.

2 MS. JONES: Thank you. Anytime I would agree with you.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: All right. Ladies and gentlemen of the
6 jury, we're about to begin the trial of the State of South
7 Carolina versus John Wayne Brannon. I'm going to go over
8 with you, before we begin our process of jury selection, the
9 indictment in this case.

10 Let me explain to you, the indictment is the document
11 that brings this case before this Court. It contains the
12 formal charges that have been lodged against this defendant.
13 It informs the defendant of the charges that have been
14 lodged against him, and it informs this Court of the charge
15 to be tried.

16 Now, an indictment does not constitute evidence, and
17 can not be used by a jury in any fashion in determining the
18 question of guilt or innocence of a defendant. It is simply
19 the necessary document that informs the Court of the charges
20 and brings the case before this Court for trial.

21 The reason I'm going over the indictment with you is so
22 that you will be informed of what's been alleged. In a few
23 minutes I'm going to ask you questions that pertain
24 specifically to this case, and the information contained in
25 the indictment may give you some information so that you can

1 more fully answer the questions that I'm about to ask.

2 The indictment in this case is in Case Number
3 2011-GS-42-4694. The indictment is for the charge of
4 attempted murder. The indictment states that John Wayne
5 Brannon did, in Spartanburg County, on or about April 10 of
6 2011, with malice aforethought, intend and attempt to kill
7 the victim, Ronnie Brannon, in violation of Section 16-3-29
8 of the Code of Laws of South Carolina, 1976 as amended,
9 against the peace and dignity of the State, and contrary to
10 the statute in such case made and provided.

11 Again, that is the charge that is brought this case
12 before the Court, and it's the charge that informs this
13 Court of the charge to be tried.

14 Now, before I begin asking you questions it's necessary
15 that you be sworn in this case to truthfully, honest, and
16 honestly answer the questions that I'm about to ask.

17 So, Madam Clerk, please swear the jury panel for me.

18 (WHEREUPON, the jury was placed under oath at this
19 time.)

20 THE COURT: Now, if any member of the jury panel either
21 failed or refused to take the oath that was just
22 administered by the clerk, I'd ask that you now please
23 stand.

24 (No response.)

25 THE COURT: The Court record will reflect that all

1 jurors have been sworn for purposes of my questioning.

2 Also I'm going to ask that the attorneys now involved
3 in the trial of this case introduce themselves, and in the
4 case of the State, if the victim is present, I'll ask that
5 the State introduce the victim, Ronnie Brannon.

6 The attorney for the State is?

7 SOLICITOR BOYD: Good afternoon, ladies and gentlemen.
8 My name is Wes Boyd, Assistant solicitor here in
9 Spartanburg.

10 Mr. Ronnie Brannon.

11 THE COURT: Please stand, sir, face the jury panel for
12 me.

13 (Witness complies.)

14 THE COURT: Thank you, sir. You may be seated.

15 And for the defense, if you'll introduce the defendant.

16 MS. JONES: Hi, my name is Tanya Jones, and I am
17 representing John Wayne Brannon.

18 (Defendant stands.)

19 THE COURT: Thank you very much. You can be seated.

20 Now, ladies and gentlemen, we'll follow the same
21 procedure that we followed during jury qualification. I'm
22 going to ask questions, and if you have responses to my
23 questions, I'll be asking that you stand. Again, before I
24 can discuss your response I have to put your name and juror
25 number on the record so that we can identify who is

1 responding to the questions that I'm asking.

2 All right. First of all, has any member of this jury
3 panel ever been related by marriage or are you related by
4 blood to either the defendant, John Wayne Brannon, or the
5 alleged victim, Ronnie Brannon, if that's true, please
6 stand.

7 (No response.)

8 THE COURT: Has any member of this jury, jury panel
9 ever had a close personal or a social relationship with
10 either the defendant, John Wayne Brannon, or the alleged
11 victim, Ronnie Brannon, if that's true, please stand.

12 (No response.)

13 THE COURT: Now, has any member of this jury panel ever
14 been represented by either of the attorneys who are involved
15 in the trial of this case or have they ever appeared on the
16 other side of a legal matter from you, if that is true,
17 please stand.

18 (No response.)

19 THE COURT: Has any member of this jury panel ever been
20 related by marriage or are you related by blood or have you
21 ever had a close personal or a social relationship with
22 either of the attorneys who are involved in the trial of
23 this case, if that is true, please stand.

24 (No response.)

25 THE COURT: Now, ladies and gentlemen, I'm going to

1 read to you a list of people who have been identified as
2 potential witnesses in this case. If any of these
3 individuals are present I'll be asking that they stand and
4 face the jury panel so that you can place a face with the
5 names that I have called.

6 First of all, Mr. Scott Cheeks from Spartanburg, South
7 Carolina.

8 (Witness stands.)

9 THE COURT: Thank you. You may be seated.

10 Doctor Bradley Davis. He's with the Spartanburg
11 Regional Medical Center.

12 Brendall Mathis. He's with the Spartanburg Public
13 Safety Department.

14 (Witness stands.)

15 THE COURT: Thank you, sir.

16 Louis Nelson also with the Spartanburg Public Safety
17 Department.

18 (Witness stands.)

19 THE COURT: Thank you, sir.

20 Mr. Mike West with the Spartanburg County Emergency
21 Communications.

22 And, of course, Mr. Ronnie Brannon who is the victim in
23 this matter, alleged victim.

24 Please stand, sir, again.

25 (Witness stands.)

1 THE COURT: Thank you very much.

2 Now, as to the individuals that I've just named as
3 potential witnesses in this case, has any member of the jury
4 panel ever been related by marriage or are you related by
5 blood or have you had a close personal or a social
6 relationship with any person that I've named as a potential
7 witness, if that's true, please stand.

8 (No response.)

9 THE COURT: Has any member of the jury panel or a
10 member of your immediate family or a close personal friend
11 of yours ever been prosecuted by the Seventh Judicial
12 Circuit solicitor's Office, if that's true, please stand.

13 (No response.)

14 THE COURT: Has any member of the jury panel or a
15 member of your immediate family or a close personal friend
16 of yours ever been prosecuted by any other prosecution
17 agency, either state or federal, if that's true, please
18 stand.

19 (No response.)

20 THE COURT: Is there any member of the jury panel who
21 does not allow alcohol in their home or who would disapprove
22 of anyone who did, if that's true, please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 has any association with Alcoholics Anonymous or other

1 similar substance abuse groups, if that's true, please
2 stand.

3 (No response.)

4 THE COURT: Has any member of this jury panel gathered
5 or received any information from any source whatsoever such
6 that it would have caused you to form or express an opinion
7 concerning any matter or issue that might be involved in the
8 trial of this case, if that's true, please stand.

9 (No response.)

10 THE COURT: Is there any member of this jury panel who
11 is aware of any bias or prejudice that you might have either
12 for or against either the State or the defense in this
13 matter, if that's true, please stand.

14 (No response.)

15 THE COURT: Has any member of this jury panel or a
16 member of your immediate family or a close personal friend
17 of yours ever been the victim of a violent crime, if that is
18 true, please stand.

19 (No response.)

20 THE COURT: Is there any member of this jury panel who
21 is a member of or a contributor to any group that has as its
22 primary concern the enforcement of laws or the preservation
23 of victims rights?

24 These groups would include, but certainly not be
25 limited to such groups as Mothers Against Drunk Driving,

7
1 Students Against Drunk Driving, Citizens Against Violent
2 Crime, the South Carolina Sheriff's Association, the South
3 Carolina Troopers Association, or other similarly oriented
4 organizations, if that's true, please stand.

5 (No response.)

6 THE COURT: Does any member of this jury panel know of
7 any reason whatsoever why he or she should not serve as a
8 juror in this case with particular emphasis being placed
9 upon your ability to be both fair and impartial to both the
10 State and the defense, if that's true, please stand.

11 (No response.)

12 THE COURT: Any additional questions from the State at
13 this time?

14 SOLICITOR BOYD: No, sir, Your Honor.

15 THE COURT: Any from the defense?

16 MS. JONES: Your Honor, just whether or not anybody has
17 been a victim of a serious crime.

18 THE COURT: I asked a violent crime.

19 MS. JONES: Violent. Thank you.

20 THE COURT: I'll ask that question.

21 MS. JONES: Thank you.

22 THE COURT: Any others?

23 MS. JONES: No, sir. Thank you.

24 THE COURT: All right. Now, I'll declare that these,
25 that the jury panel is qualified to serve in this case as it

1 now is constituted. I'll direct the clerk to prepare a list
2 of potential jurors.

3 Let me explain to you the process that we're going
4 through at this time. I'll tell juries -- it's the first
5 time I've had you in jury selection, but back in the 70's,
6 when I started practicing law, we use to put everyone's name
7 in a oak barrel and spin it around and we had to have a
8 legally blind person pull the names out of the barrel for
9 the jurors. Now we have computers and apparently our law
10 says that they're legally blind so they get to pull the
11 jury.

12 And, so, the computer is making a list. In just a
13 minute, once that list has been generated, we'll begin to
14 call the names in the order in which the names appear on the
15 list. It's a random selection program that we use.

16 When your name is called it's going to be necessary for
17 you to step out, come down the aisle directly in front of
18 the clerk here, and stand and face the back of the
19 courtroom. They'll be a bailiff down here to show you where
20 to come.

21 Now, at that time the attorneys will be in a position
22 to exercise their strikes in this case, and in this case the
23 State has five strikes, the defense has five strikes. We'll
24 pick one alternate with the State having one and the defense
25 having two strikes.

1 Now, as you come down, bring with you any personal
2 belongings that you have. If you have a pocketbook or a
3 purse or a book or something with you, bring that with you
4 because if you're selected to serve on the jury you'll
5 immediately go over to the jury box and have a seat to my
6 left. You won't be going back out into the gallery. So,
7 bring with you anything that you have with you when your
8 name is called.

9 Looks like we've got a little computer glitch. So, I
10 wish I had my barrel back. I tell you that. It will take
11 just a moment.

12 BAILIFF: Your Honor, Juror 99 thinks she may know the
13 gentleman sitting right there.

14 THE COURT: well, let's, let's -- is that the lady
15 that's standing?

16 Ma'am, ma'am, you got to talk to me. You can't -- no,
17 no, wait right there. wait right there. Step back in.
18 Thank you.

19 Your name and number is?

20 JUROR: Kim Little, Number 99.

21 THE COURT: And do you know someone that I asked about?

22 JUROR: I did, but I wasn't sure. I haven't seen---

23 THE COURT: All right. who is it that you know?

24 JUROR: This person here, but I wasn't sure if it was
25 the same person, Brendall Mathis, I do know.

1 THE COURT: All right. And can you tell me in what, in
2 what context you know that individual?

3 JUROR: I know his parents. He went to school with my
4 daughter, and actually I kept his little brother a couple of
5 times and we all---

6 THE COURT: All right. Well, let me ask you a
7 question. That seems to be several years ago, is that
8 right?

9 JUROR: (Nods affirmatively.)

10 THE COURT: Is that been several years ago?

11 JUROR: Yes, it has been a while since we've seen one
12 another.

13 THE COURT: All right. Would that fact that you have
14 known his family and perhaps his, his sibling, would that
15 affect your ability to be fair and impartial in the trial of
16 this case?

17 JUROR: No, sir.

18 THE COURT: All right. State wish for me to ask her
19 any additional questions?

20 SOLICITOR BOYD: No, sir, Your Honor.

21 THE COURT: Does the defense wish for me to ask her any
22 additional questions?

23 MS. JONES: No, sir.

24 THE COURT: Thank you for responding, ma'am. You can
25 be seated.

1 BAILIFF: Your Honor, you got Juror Number 109,
2 Mr. Miller, please stand.

3 THE COURT: Yes, sir.

4 JUROR: I think I know the gentleman right here,
5 Brannon, excuse me, Ronnie Brannon.

6 THE COURT: All right. Can you tell me in what context
7 you know him?

8 JUROR: I deal with his cousins.

9 THE COURT: You're related to him?

10 JUROR: No, sir, not related to him. Just his cousin.

11 THE COURT: Oh, you know one of his cousins?

12 JUROR: Might be just David Smith.

13 THE COURT: All right. And how close is that
14 relationship with this individual?

15 JUROR: Haven't seen him in quite a while.

16 THE COURT: All right. Would it affect your
17 impartiality, the fact that you've known him in the past?

18 JUROR: No, sir.

19 THE COURT: All right. Thank you, sir.

20 Any additional questions from the State for this juror?

21 SOLICITOR BOYD: No, sir, Your Honor.

22 THE COURT: Any additional questions from the defense?

23 MS. JONES: No, sir.

24 THE COURT: All right. I'll declare that both
25 individuals who responded are qualified to continue to

1 serve.

2 All right. Now, again, ladies and gentlemen, I'm going
3 to have the clerk call the names of those who appear on the
4 list. When your name is called I want you to come down
5 front in front of the clerk here. The bailiff will be here,
6 turn and face the back-door, and the attorneys will be in a
7 position to exercise their strikes.

8 Madam Clerk, you can begin the jury selection process.

9 CLERK: Yes, sir.

10 (WHEREUPON, a jury panel was selected at this time.)

11 THE COURT: We are now selecting the alternate.

12 (WHEREUPON, an alternate juror was selected at this
13 time.)

14 THE COURT: Any objection to the jury selection process
15 from the state?

16 SOLICITOR BOYD: No, Your Honor.

17 THE COURT: Any from the defense?

18 MS. JONES: No, sir.

19 THE COURT: All right.

20 (Pause.)

21 THE COURT: All right. Anything from the state before
22 I swear the jury?

23 SOLICITOR BOYD: No, sir, Your Honor.

24 THE COURT: Anything from the defense?

25 MS. JONES: No, sir.

1 THE COURT: Ladies and gentlemen of the jury, you've
2 been sworn several times today to respond to my questions
3 truthfully and accurately. At this time I'm, again, gonna
4 ask you to take a oath, but this oath has to do with your
5 responsibilities and duties as jurors in the actual trial of
6 this case.

7 Madam Clerk, please swear the jury panel for me.

8 (WHEREUPON, the jury panel was placed under oath at
9 this time.)

10 THE COURT: Now, if any juror failed or refused to take
11 the oath just administered by the clerk, I'd ask that you
12 now stand.

13 (No response.)

14 THE COURT: It appears that all jurors have been sworn
15 concerning their duties in this case.

16 Now, before we begin the trial of this case I want to
17 tell you a little bit about the trial, and what your
18 responsibilities and duties might be in this case. Probably
19 what you're going to be involved in is some, a little bit
20 different from what you might otherwise expect. That's
21 because, for most of you, this is your first experience in
22 actually serving on a jury, and perhaps if that's the case,
23 most of what you might know about what goes on in a jury
24 trial during the trial of the case you would have learned
25 from such things as watching television, or watching movies,

1 or perhaps reading books or things of that nature.

2 And while those sources of information are interesting,
3 and they're always full of high drama, intense action,
4 rivetting, I hope you realize that all of those sources of
5 information are primarily intended for your entertainment.
6 They're designed to keep your attention and tell a good
7 story to you.

8 I think the perfect example of that is the fact that,
9 on television, you can have an event occur, a trial happen,
10 and all the matter be ended in an hour and you still have
11 time for commercials. So, obviously those sources of
12 information about what goes on in a trial or on a jury are,
13 are -- they take what they call literary license. In other
14 words, the people who write those books and that information
15 take a great deal of license with what actually goes on in a
16 trial.

17 Now, while those sources of information are intended
18 primarily for your entertainment, what you're engaged in
19 today is intended for anything but your entertainment. I
20 hope you realize that you're engaged in a fundamental part
21 of our democracy.

22 Our system is one that takes ordinary citizens from
23 their day-to-day lives, we bring you into the courtroom,
24 qualify you as jurors, and then give you the important task
25 of making important decisions concerning the guilt or the

1 innocence of persons who have been charged with the
2 commission of a crime. What you're engaged in is a search
3 for the truth. It's an effort to see that justice is done
4 between the parties that are in front of the Court at this
5 time. In this case, the State of South Carolina that is
6 brought a charge against one of its citizens, and, of
7 course, the defendant who is charged with the commission of
8 that particular crime.

9 Making an effort to see that justice is done and
10 pursuing the truth is going to be a slow, deliberate, and
11 repetitive process. If I were to ask you what you would
12 expect a search for the truth to be, you'd probably tell me
13 that you would expect it to be slow and deliberate and
14 sometimes even repetitive in seeking to find what the truth
15 is in any matter, and I hope you realize that this courtroom
16 is a place of honor. It's dedicated to the preservation of
17 citizens' rights through the system of justice that I've
18 already referred to under the law and the Constitution of
19 this state, and of the United States.

20 Many people believe that the justice system that you're
21 involved in is one of the best justice systems ever devised
22 on the face of this earth because it does allow for direct
23 participation in the decision making process. Now I've
24 never told you that it's a perfect system. No justice
25 system operated by men or devised by men will ever be

1 perfect. But it's our best effort, it's our honest effort
2 to see that justice is done in this situation that's before
3 this Court.

4 Now, the lawyers that are going to appear during this
5 trial are here to represent their clients' interest and I'm
6 sure they'll do an excellent job in presenting their case
7 before you today and into tomorrow. But first and foremost,
8 I hope you realize those lawyers are also officers of this
9 Court. At some point in time they've appeared before this
10 tribunal or some other Court in the State, and they've taken
11 an oath. Part of the oath that they have taken is that they
12 will assist you in your search for the truth.

13 That means that they will act in a professional and a
14 reasonable and an ethical manner in their presentation of
15 their client's cases before you during this trial, and I'll
16 remind you too that you've come before this Court now.
17 You've taken an oath. You're expected to act in a
18 reasonable, a professional, and an ethical manner in the
19 discharge of your duties as jurors during the trial of this
20 case. I've told you a couple of times today, and I'll tell
21 you again, I want to thank you very much for your
22 willingness to come forward and participate in our justice
23 system in this fashion.

24 What I'm telling you now is not intended to be a charge
25 concerning the law in this case. Later on, once all the

1 arguments have been made, and all the evidence has been
 2 presented, at that time I will charge you concerning the law
 3 to be applied in this matter. Again, what I'm telling you
 4 now is an explanation of the procedure that we'll follow and
 5 the duties and the responsibilities that each of us has in
 6 the trial of this case.

7 A few minutes ago I began this case by reading to you
 8 the indictment that's been filed in the Court, and that
 9 charge is the charge of attempted murder. I explained to
 10 you that the indictment is the charge that brings this case
 11 into this Court. It is not, in any sense, evidence of any
 12 of the allegations that are contained in the indictment.

13 The defendant has pled not guilty to that indictment,
 14 and, therefore, by that plea, under the law and the
 15 Constitution of this state and the United States, the burden
 16 of proof now rests solely upon the State, and that burden is
 17 to prove the allegations that are contained in the
 18 indictment by proof beyond a reasonable doubt.

19 Now, later on, I will, during my charge on the law at
 20 the close of the trial, I'm going to explain to you that
 21 concept and that those theories of, of proof and burdens,
 22 burden of proof, but, again, suffice it to say that the
 23 State, at this time, has the sole burden of proof in this
 24 case.

25 Now, your purpose, as jurors, will be to decide, at the

1 end of the trial, whether or not the State has met its
2 burden of proof in this case. It's your purpose, therefore,
3 as jurors, to find and determine the facts in this matter,
4 and I will tell you now that you will be the sole judges of
5 the facts in this case. Under the law, and, again, the
6 Constitution, every case in which a jury participates in
7 this Court, the jury is always the sole and the exclusive
8 judge of the facts in this case.

9 You are to determine the facts from the evidence and
10 testimony that you hear during the trial of this case. It's
11 up to you to determine what inferences can be drawn from the
12 evidence that's presented. I will tell you it's especially
13 important that you, the jury, perform your duties as jurors
14 both diligently and conscientiously because, at the close of
15 the trial, it will be your responsibility to determine the
16 guilt or the innocence of the defendant in this matter, and
17 ordinarily, under our system of justice, there's no means by
18 which an erroneous determination of the facts made by a jury
19 can ever be corrected.

20 Now, the same law that makes you the sole judges of the
21 facts in this case makes me the sole judge of the law in
22 this case. Under your oath as jurors it's your
23 responsibility to take the law as I give it to you, then
24 apply it to the facts as you determine them to be. That
25 should put you in a position, at the close of the trial, to

1 render a just, a true, and a fair verdict in this case.

2 Now, until I advise you to begin your deliberations in
3 this case, I'm going to ask you, and I'll tell you and
4 instruct you on numerous occasions, not to begin any
5 discussions concerning this matter until I've asked you to
6 do so. The reason I do that is because only when you've
7 heard all the arguments of counsel, all the evidence that
8 will be presented in the trial, and my charge concerning the
9 law will you have all of the information in your possession
10 with which to deliberate on the questions that will be
11 placed in front of you.

12 You've been selected as fair and impartial jurors with
13 an open mind concerning this case, and I hope you realize
14 that even the most innocent conversations you might have
15 among yourselves about what the charge is about or whose
16 been charged or other matters involved in the trial, that
17 might begin to color your ultimate decision in this case
18 before you've heard all the evidence or all the facts
19 necessary to make that decision. So, I'll caution you at
20 every stage of the proceeding, do not discuss the case among
21 yourselves or with anyone else.

22 Also, I want to point out to you that the, that the
23 oath that you have taken in this matter is to decide this
24 case based upon the law and the evidence. Let me explain to
25 you that the only evidence that you will hear in this case

1 will be testimony from witnesses who've been sworn to tell
2 the truth who will testify from this witness stand, and
3 whatever evidence or documents or other things will come
4 into the record through that testimony. That's the only
5 evidence that will be involved in the case, and for that
6 reason it would be highly improper for you to attempt to
7 gather any information outside of this courtroom.

8 There is no evidence outside of this courtroom. For
9 that reason you should not attempt to gather information
10 from media reports, from anyone who might be involved in
11 this case, or from the Internet or any other source. I can
12 assure you that those sources of information, quite often,
13 in fact, most often contain information that would not be
14 allowed into evidence during the trial of a case, and,
15 therefore, should not be considered by a jury whose been
16 sworn to consider only the evidence in reaching a verdict.

17 So, therefore, you should not listen to, watch, or read
18 any media reports that you might be exposed to during the
19 trial. You should not attempt to gather information on your
20 own outside of the courtroom, and you should not discuss the
21 case with anyone during the trial of the case.

22 Again, you have a fair and an open mind. You've been
23 selected in that fashion. I want you to keep that open mind
24 throughout the trial and until such time as I tell you to
25 begin your deliberations in this case. It's going to be

1 your solemn responsibility to determine the guilt or the
2 innocence of the defendant and your verdict must be based
3 solely upon the evidence that's been presented to you during
4 the trial and as, and the law as I instruct it to you at the
5 close of the trial.

6 Now, I've told you that I'm the sole judge of the law
7 in this case. For that reason I will instruct you that if
8 you came into this courtroom with any idea or notion as to
9 what the law is or what you think it ought to be, you should
10 leave those notions outside of the jury room during your
11 deliberations. Under your oath, it's your obligation to
12 take the law exactly as I give it to you, and then apply it
13 to the facts as you determined them to be. Again, that
14 should put you in a position to render a just, a true, and a
15 fair verdict at the close of the trial.

16 Now, we're gonna begin this trial with the attorneys
17 making what's called an opening statement or opening
18 argument to you. That's the first thing we'll do.

19 Now, the opening statements made by attorneys will
20 serve to tell you a little bit about what this case is
21 about, and perhaps what they might expect to prove during
22 the trial. And once all the evidence has been presented,
23 I'll give the attorneys an opportunity to make what's called
24 a closing statement or a closing argument, and on those two
25 occasions the attorneys are allowed to directly address you,

1 the jury.

2 But I will tell you that during those statements and
3 those statements, that information does not constitute
4 evidence in this case. Those statements can't be used by
5 you, by you directly in making a determination of the
6 question or guilt or innocence. At the beginning of the
7 trial they tell you what the case is about. At the close of
8 the trial they'll sum up the evidence that you've heard from
9 their clients' prospective or position. But, again,
10 statements made by lawyers do not constitute evidence. The
11 only evidence is the testimony of witnesses who've been
12 sworn to tell the truth, who will testify before you, and
13 whatever information comes into the record through that
14 testimony.

15 Now, it's my job, as the presiding officer of this
16 trial, and that's my other job, is to preside over this
17 case, to rule on questions of the admissibility of evidence
18 or perhaps the appropriateness, appropriateness of a
19 question that's been asked, and I will tell you, on
20 occasion, during my, my conducting those, those
21 responsibilities, that I will discuss matters with
22 attorneys, perhaps in your presence, perhaps not in your
23 presence. But I will tell you that you should not take from
24 anything that I do in the discharge of my duties to indicate
25 to you, in any manner whatsoever, that I might have an

1 opinion one way or the other as to how you determine the
2 facts in this case.

3 I've told you already, you are the sole judges of the
4 facts in this case. The law does not allow me an opinion
5 concerning the facts. I can assure you I have no opinion as
6 to how you determine the facts in this case. You see, it's
7 my job, however, to see that the attorneys follow the rules
8 of evidence and follow the rules of procedure in the
9 presentation of testimony and evidence in this case. And if
10 I decide, during an objection to something that's going on
11 in the courtroom, that that discussion might involve
12 something that I believe later on will be ruled to be
13 inadmissible and shouldn't be something that you consider, I
14 may decide to send you back to the jury room while I have
15 those discussions with the lawyers so that you won't hear
16 that information.

17 You see, that's me doing my job. My job is to see that
18 you only consider the properly admissible evidence under the
19 rules of evidence and the rules of criminal procedure that
20 govern the trial of this case. So, if I ask you to step out
21 of the courtroom while I have that discussion, don't, again,
22 think that I have an opinion as to how you determine the
23 facts in this case. It's just me doing my job to see to it
24 that you only consider properly admitted information in
25 reaching a verdict in the case.

1 Once I've had that discussion with the lawyers, and
2 I've made a ruling, I'll ask you to come back into the
3 courtroom, I'll announce my ruling, and we'll proceed with
4 the trial in the case, and that may happen from time to time
5 during the trial, and I want to be sure you understand what
6 that process is about, and why I'm asking you to leave the
7 courtroom while I have those discussions with the lawyers.

8 Now, in determining what true facts are in the case,
9 I'm going to tell you, as jurors, it's going to be necessary
10 that you decide the credibility or believability of
11 witnesses who are going to testify during this trial, and
12 that's what credibility means. It means believability. And
13 I'm going to tell you to use your own good common sense in
14 making that determination.

15 Every single day you make common sensical decisions as
16 to what you choose to believe and what you choose not to
17 believe. Today and tomorrow will be no different than any
18 other day in your life. Again, I urge you to use your own
19 good common sense in determining the credibility or
20 believability of the witnesses that you will hear during
21 this trial. You, as jurors, have the right to consider such
22 factors as whether or not a witness has a bias or prejudice
23 one way or the other, whether or not a witness has a stake
24 in the outcome of the trial, whether or not a witness
25 actually has the ability or had the ability to know the

1 facts about which the witness testified, and perhaps, most
2 importantly of all, some people believe it is, you'll
3 have -- the witness stand is always right in front of the
4 jury box. You'll have the right and the ability to observe
5 the witnesses as they testify, the way they deliver their
6 testimony. You can take any or all of those factors into
7 consideration. Again, use your own good common sense, but
8 make a determination as to the credibility or believability
9 of the witnesses and the testimony that you hear during the
10 trial.

11 I will tell you, as the sole judge of the facts, you
12 have the right to believe all of what a witness is told you,
13 none of what a witness has told you, or part of what a
14 witness has told you. If there's ten witnesses in the case,
15 you can believe one against all the others or all the others
16 against one. You're the sole judges of the facts. That
17 makes you the sole judges of credibility and the
18 believability of the witnesses that you will hear during the
19 trial of this case.

20 For that reason I will tell you to pay close attention
21 to what goes on in the courtroom. You have the right to
22 consider anything that's in the record of the trial that
23 will help you evaluate the testimony of the witnesses. That
24 means it's your duty to pay close attention to what goes on,
25 to listen to the witnesses and the attorneys, try not to let

1 your thoughts wonder during the trial, try to stay focused
2 on what's being said and what's going on in the courtroom.
3 That will put you in a position, at the close of the trial
4 when I send you out to deliberate, to be able to discuss
5 those matters with your fellow jurors during your
6 deliberation. So, again, try to pay close attention and
7 focus on what is going on in the courtroom as the trial goes
8 forward.

9 Now, ladies and gentlemen of the jury, I do not appoint
10 a foreperson of the jury until the close of the trial. I
11 know, on television, they do that differently. I like to
12 observe the jury. I like to consider a few factors in
13 making that determination. Also I want to stress one other
14 thing to you.

15 When I do send the case out with you to the jury room
16 for your deliberations, your verdict has to be unanimous.
17 That means all 12 of the jurors who are considering the case
18 must agree upon the verdict before it is the verdict of the
19 jury. That means no other juror has any greater say than
20 any other juror in the ultimate outcome of the case. That
21 includes whoever I appoint as foreperson. Their job will be
22 simply to preside over your deliberations, to write down
23 questions if they have to come back to the Court with a
24 question, and to record the verdict on a verdict form that
25 I'll supply at the close of the trial.

1 So, the foreperson has no duties until deliberations
2 begin and that person has no greater say in the outcome of
3 the case than any other juror. So, I want all of you to pay
4 close attention to what goes on so you'll be able to discuss
5 this among yourselves during deliberations when I turn the
6 case over to you.

7 I want to be sure that I haven't violated anyone's
8 rights in what I might of said to you in my opening comment,
9 does the State have an objection to my opening comments?

10 SOLICITOR BOYD: No objection, Your Honor.

11 THE COURT: Does the defense have any objection?

12 MS. JONES: No, sir.

13 THE COURT: All right. Ladies and gentlemen, I've told
14 you that the State has the burden of proof and the only
15 burden of proof in the case, and for that reason we're going
16 to allow them to go first in opening statements, and first
17 with the presentation of their evidence. Does -- the
18 defense will follow and go second concerning, concerning
19 those matters.

20 Now, once all the evidence is in, I've told you I'll
21 let the state's attorney make a closing argument and
22 statement. Then I will charge you concerning the law. Once
23 I've completed that charge I'll turn the case over to you
24 for your deliberations in this matter.

25 All right. I'm gonna take a short break. we've been

1 going for a little while before we begin those opening
2 arguments. The bailiffs are gonna show you back to the jury
3 room that we'll be using in the case. So, we'll have about
4 a ten to fifteen minute break. I don't know if we have a
5 smoker in the crowd. You can't smoke in the building. If
6 you would like to light a cigarette, let the bailiffs know.
7 We'll have to take you outside to do that and you'll be
8 accompanied by a bailiff while we do that.

9 So, at this time I'm going to ask you to retire to the
10 jury room. Again, don't discuss anything about the case
11 until I've advised you to do so.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. We'll take a short recess.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: All right. State ready to proceed?

17 SOLICITOR BOYD: We are, Your Honor.

18 THE COURT: Yes, ma'am.

19 MS. JONES: Your Honor, I have two children I need to
20 pick up from day care. So, it's very hard for me to run
21 past five o'clock since I have two pick-ups. I don't
22 anticipate this case taking longer, longer than a day, Your
23 Honor. If we could start at 9:00.

24 THE COURT: I understand.

25 Do you want them just to adjourn to start back at nine

1 o'clock in the morning?

2 MS. JONES: I would be most appreciative.

3 THE COURT: Is that okay with you?

4 SOLICITOR BOYD: State has no objection, Your Honor.

5 THE COURT: All right. Let's do that.

6 MS. JONES: Thank you, Your Honor.

7 THE COURT: Bring the jury in.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. The record will reflect that
11 the jury has returned to the courtroom.

12 Ladies and gentlemen, I'm sorry for the long break.
13 I'm -- this is the first day of this week's trial term, and
14 what I did, I took a plea in a case that has nothing to do
15 with this case, but I was able to dispose of four other
16 cases while we had our break. So, I took the opportunity to
17 do that. I appreciate your patience.

18 I do note though that we're only ten minutes from five
19 o'clock. I don't want to hold you past five o'clock. So,
20 I'm gonna decide -- I've decided we'll just start the actual
21 trial of the case at nine o'clock in the morning. I want
22 you to be back in the jury room at that time, and we'll be
23 in a position to start shortly thereafter. Try to be there
24 on time. We'll get started quicker.

25 We're aware the court house is closed, cold. We have

1 made the clerk aware of that. They've had the maintenance
2 people over here, and hopefully by in the morning they'll
3 have that solved, but bring with you something warm to wear
4 if you, if you feel cold because if it's not running
5 properly there's not a lot I can do about that rather than
6 go forward with court. So, just be aware that we're aware
7 of the problem. We're doing what we can to fix it, but be
8 sure you bring a sweater or jacket or something that you
9 might need to wear that while we go forward.

10 Again, I'm gonna caution you not to discuss the case
11 with anyone. Don't listen to any media reports. Don't try
12 to gather any information on your own. Don't allow anyone
13 to discuss the case with you, and I want to tell you, if
14 someone tries to call you or contact you about your service
15 on this jury, I've already told you about jury tampering,
16 please report that in the morning to the Court if that were
17 to happen. I can assure you I'll take the appropriate steps
18 should that occur.

19 Nine o'clock in the morning. The bailiffs will show
20 you how to come back to the jury room that's in use for this
21 courtroom. Be in that, that room at nine o'clock. We
22 should be able to start shortly thereafter. I hope everyone
23 has a good evening. The bailiffs will show you out.

24 Thank you very much.

25 (WHEREUPON, the following takes place outside the

1 presence of the jury.)

2 THE COURT: All right. We have begun the trial of this
3 case. I'm going to require that the defendant be taken into
4 custody during the trial of the matter. So, he will be
5 taken into custody at this time.

6 we'll start at nine o'clock in the morning.

7 Thank you very much.

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9 (WHEREUPON, Court was in recess for the evening.)

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1 123, Amy Ofair, is having car trouble and is not going to be
2 able to arrive in a timely fashion. Therefore, I have
3 removed her from the jury.

4 And, Mrs. Shockley, you will -- which is Mrs. Shockley?
5 Over here. You're now a member of the jury instead of
6 the alternate. Okay.

7 All right. Now, when we broke yesterday afternoon we
8 had completed my opening comments and we were ready to begin
9 the trial with the opening statements by counsel.

10 State may proceed.

11 SOLICITOR BOYD: Please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 SOLICITOR BOYD: Ms. Jones.

14 Good morning, ladies and gentlemen.

15 As Judge Couch said yesterday, this is gonna be a slow
16 and deliberate search for the truth. The truth starts and
17 ends with that man in the white shirt, Mr. Ronnie Brannon,
18 and involves Mr. Brannon, his cousin, John Wayne Brannon.
19 You're gonna hear evidence about what happened at
20 Mr. Brannon's home on Bonair Avenue the morning of
21 April 10th of this year.

22 You're gonna hear from his friend who found him,
23 Mr. Cheeks. He's gonna tell you what he saw, what he did.
24 You're gonna hear from officers who responded to the
25 hospital and also later to Mr. Brannon's home. You're also

1 gonna hear from the doctor who treated Mr. Brannon and his
2 injuries. He's gonna tell you what he saw and what he did,
3 what he observed.

4 Finally you're gonna hear that from Mr. Brannon
5 himself. He's gonna tell you what he was doing in his
6 house, who else was in his house, and what happened from
7 that morning.

8 This is a slow and deliberate search for the truth.
9 Judge Couch will remind you to use your common sense.
10 Whenever a witness takes the stand, you can believe that
11 witness or don't believe that witness. But use your common
12 sense, and do it deliberately, slowly, and carefully.

13 THE COURT: For the defense.

14 MS. JONES: Good morning, ladies and gentlemen.

15 My name is Tanya Jones and I represent the defendant in
16 this matter, John Wayne Brannon, and as the State indicates
17 or has alleged, my client is accused of attempted murder.
18 My client is accused of attempting to murder his cousin,
19 Ronnie Brannon, and what that means is he tried to kill him.
20 He had a malignant heart, a depraved heart, ladies and
21 gentlemen.

22 Now, I'm not going to suggest what the evidence is
23 necessarily gonna show because a lot of times what I think
24 is going to happen, reading all the police reports and the
25 witness statements, isn't always what happens on the stand.

1 But I can tell you this, ladies and gentlemen. John Wayne
2 Brannon, as well as Ronnie Brannon, are cousins and they
3 live together, and the evidence is also gonna show that that
4 night, as well as probably into the morning, Ronnie Brannon
5 was drunk, highly intoxicated. The doctor also is going to
6 support that, that he was highly intoxicated.

7 He was told to stop drinking. He was so intoxicated he
8 couldn't even tell the doctor what had happened. They
9 called him a poor historian. His memory is what is at stake
10 today, ladies and gentlemen, is what you believe from Ronnie
11 Brannon today, and at the end of the day, ladies and
12 gentlemen, cause I don't think this is gonna be a long
13 trial, I think actually we'll probably be finished today,
14 you're gonna come back with a not guilty verdict on
15 attempted murder. The elements just aren't going to be met.

16 Thank you.

17 THE COURT: Mr. Boyd, you may call the first witness
18 for the State.

19 SOLICITOR BOYD: Thank you, Your Honor.

20 The State calls Scott Cheeks to the stand.

21 THE COURT: Come forward, sir, to be sworn.

22 SCOTT CHEEKS, having been first duly
23 sworn, testified as follows:

24 THE COURT: Have a seat please, sir.

25 (Witness complies.)

Scott Cheeks - Direct examination
by Solicitor Boyd

1 THE COURT: State your name.

2 WITNESS: My name is Mr. Scott Cheeks, Miller Cheeks.

3 THE COURT: Mr. Boyd, your witness.

4 DIRECT EXAMINATION

5 BY SOLICITOR BOYD:

6 Q Morning, Mr. Cheeks.

7 A Good morning.

8 Q Do you know Ronnie Brannon?

9 A Yes, sir.

10 Q How do you know Mr. Brannon?

11 A He's a good friend of mine.

12 Q How long have you known Mr. Brannon?

13 A About six years.

14 Q Have you been friends with him the entire time?

15 A Yes, sir.

16 Q How often do you see Mr. Brannon?

17 A Almost every day.

18 Q Okay. Did you see him on Sunday, April 10th---

19 A Yes, sir.

20 Q ---2011?

21 A Yes, sir.

22 Q Okay. Where did you see him?

23 A At his home.

24 Q What were you doing at his home?

25 A I normally stop by there from time to time to check on

Scott Cheeks - Direct examination
by Solicitor Boyd

1 him to see if he needs anything or if he needed to go
2 somewhere, stores or anything, to check on him.

3 Q Approximately what time, on April 5th, did you see him?

4 A That's about 8:30, nine o'clock.

5 Q What did you do when you got to his front door?

6 A Knocked on the door as I always do. I normally knock
7 twice. If I don't hear him twice I know he ain't there.
8 So, I leave. But the second knock I heard a moan, you know
9 what I'm saying, and sometimes he do be a little bit
10 intoxicated. So, I figured he was in there laying down, he
11 done got a little bent.

12 And, so, I knocked again. It was a different kind of
13 moan. I said something ain't right. I said, man, come
14 outside, man, come outside on the porch, and he moaned
15 again. So, I opened the door. The door was already opened.
16 I opened the door, and he was coming from the back room up
17 the hallway and it's a one room. It's another room in the
18 back to the right, and I couldn't hardly see him until he
19 got on towards me. I noticed he had a thing around his
20 head.

21 So, when he came on outside, we normally come on
22 outside on the porch and chit-chat, when he came on the
23 porch I got to messing with him. I said man, what you doing
24 with that Daniel Boone thing on your head, and he said man,
25 something happened to me last night. I got into something.

Scott Cheeks - Direct examination
by Solicitor Boyd

1 I said what you got into it with.

2 MS. JONES: I'm gonna object to hearsay, Your Honor.

3 THE COURT: I'll sustain the objection.

4 Sir, I'm going to caution you. You're not allowed to
5 quote what anyone said unless you're quoting what the
6 defendant may have said. If there's an exception to that
7 rule I'm sure the lawyer will ask you the question that's
8 appropriate. But at this time I'll instruct you the hearsay
9 rule prevents you from quoting what anyone may of said to
10 you---

11 WITNESS: Yes, sir.

12 THE COURT: ---except under certain circumstances.

13 You may proceed.

14 Q Mr. Cheeks, did you see Mr. Brannon?

15 A Huh?

16 Q Did you see Ronnie Brannon?

17 A Yes, sir.

18 Q what did he look like?

19 A well, he had a white like a t-shirt tied around his
20 head. I thought it was red cause he, he seen something
21 parts of it. You know, it was, it was white, but it had all
22 kind of blood in it. You could squeeze it and get blood out
23 of it. I said man, take that off, you need to go to the
24 hospital. He like no, it ain't that bad.

25 MS. JONES: I object again to hearsay.

Scott Cheeks - Direct examination
by Solicitor Boyd

1 THE COURT: Sustain the objection.

2 Q Mr. Cheeks---

3 THE COURT: Sir, don't quote -- let me finish,
4 Mr. Boyd.

5 WITNESS: Sorry.

6 THE COURT: Don't quote what the gentleman said to you.
7 Go ahead, Mr. Boyd.

8 Q Mr. Cheeks, when you saw Mr. Brannon, did you think he
9 was hurt?

10 A Yeah.

11 Q Okay. Did you call 9-1-1?

12 A Yes, sir.

13 Q Okay. Do you see any injuries to Mr. Brannon?

14 A Yes, sir.

15 Q What did you see?

16 A A long cut all the way across there. Now, that was
17 before he turned around to go back in the house. When he
18 turned around, I noticed he -- I said you got another gash
19 in the back of your head.

20 Q Did you try to stop the bleeding?

21 A Uh-huh. (Affirmative).

22 Q What happened when you tried to stop the bleeding?

23 A It just got worse and I said man -- you know what I'm
24 saying, I said it's open, man, you need to go on to the
25 doctor. It's real open back---

Scott Cheeks - Direct examination
by Solicitor Boyd

- 1 Q Did you call 9-1-1?
- 2 A Yes, sir.
- 3 Q Okay. Did they send an ambulance?
- 4 A Well, they sent one, but I had already took him to the
5 doctor.
- 6 Q So, you drove---
- 7 A I didn't want to leave him there like that.
- 8 Q You drove Mr. Brannon to the hospital?
- 9 A Yes, sir.
- 10 Q Okay. How long were you with him at the hospital?
- 11 A About 20 minutes, something like that. That's -- when
12 he got all the way to the back where everybody took care of
13 him, that's when I left. I told them if he needed anything,
14 give them my number.
- 15 Q Okay. You said Mr. Brannon was wearing a, had a shirt
16 around his head?
- 17 A Uh-huh. (Affirmative).
- 18 Q Okay. What color was his shirt?
- 19 A Looked like a white t-shirt.
- 20 Q Was it colored in anyway?
- 21 A Red from, from the blood.
- 22 Q Okay. Did he have anything else around him?
- 23 A Hu huh. (Negative).
- 24 Q Anything else on his head?
- 25 A Hu huh. (Negative).

Scott Cheeks - Direct examination
by Solicitor Boyd

1 Just that.

2 Q Okay. Do you know John Wayne Brannon?

3 A Yeah, I know him.

4 Q Do you consider yourself friends?

5 A Yeah, we -- I don't consider him no friend, but I know
6 him. Like I said, I don't see him that much like I know
7 Ronnie.

8 Q Okay. No further questions.

9 THE COURT: Ms. Jones, your witness.

10 MS. JONES: Thank you, Your Honor.

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MS. JONES:

14 Q You indicated that you stopped by to see him about 8:30
15 or nine o'clock in the morning?

16 A Yes, ma'am.

17 Q And at that time you, you -- how much -- how long were
18 you there until you called the ambulance?

19 A About ten, fifteen minutes.

20 Q And you indicated that Mr. Brannon is usually
21 intoxicated in the morning?

22 A Yeah, maybe not bad. He might have a beer or so.

23 Q In the morning?

24 A Uh-huh. (Affirmative).

25 Q Okay. Is it fair to say that Mr. Brannon drinks

Scott Cheeks - Cross-examination
by Ms. Jones

1 everyday?

2 A Yeah, you could say that.

3 Q Okay. And, so, he drinks at night and then wakes up in
4 the morning and has a beer?

5 A Well, I, I don't see him between all that. So, I can't
6 say.

7 Q Okay. You just know in the morning?

8 A Yes, ma'am.

9 Q Okay. And this morning did he appear intoxicated to
10 you?

11 A Yes, ma'am, I could smell it on his breath.

12 Q Okay. Nothing further.

13 THE COURT: Redirect.

14 SOLICITOR BOYD: No, thank you, Your Honor.

15 THE COURT: Sir, you may step down. Thank you very
16 much.

17 Do you wish to have this witness excused?

18 SOLICITOR BOYD: Please, Your Honor.

19 THE COURT: Any objection to his leaving the courtroom?

20 MS. JONES: No, sir.

21 THE COURT: Sir, you're free to go if you'd like.

22 You're free to stay also.

23 You may call your next witness.

24 SOLICITOR BOYD: Thank you, Your Honor.

25 State calls Brendall Mathis to the stand.

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 THE COURT: Come forward, sir, and be sworn.

2 BRENDALL MATHIS, having been first
3 duly sworn, testified as follows:

4 THE COURT: Have a seat please, sir. Once seated, I'd
5 ask that you state your name.

6 MS. JONES: Brendall Mathis.

7 THE COURT: Mr. Boyd, your witness.

8 DIRECT EXAMINATION

9 BY SOLICITOR BOYD:

10 Q Morning, Mr. Mathis.

11 A Morning.

12 Q Where do you work?

13 A Spartanburg Public Safety.

14 Q How long have you been there?

15 A Just about four years.

16 Q Okay. What are your current duties?

17 A I'm assigned to the violent crimes task force.

18 Q How long have you been doing that?

19 A Just about five to six months.

20 Q Okay. Before that what did you do?

21 A I was on patrol.

22 Q Okay. What areas did you patrol?

23 A The north side of town basically from downtown, out
24 Howard Street, and Church Street.

25 Q Were you working on April 10th, 2011?

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 A Yes, sir.

2 Q Okay. Were you dispatched to the hospital on that day?

3 A Yes, sir.

4 Q Okay. And in reference to what?

5 A In reference to an assault.

6 Q Okay. When you got to the hospital, did you see

7 Mr. Ronnie Brannon?

8 A I did.

9 Q Okay. Did you see the injuries on Mr. Brannon?

10 A I did.

11 Q Did you take those -- did you take pictures of

12 Mr. Brannon while he was at the hospital?

13 A Yes, sir.

14 (WHEREUPON, four photographs were marked as State's
15 Exhibit Nos. 1 through 4 for identification purposes only at
16 this time.)

17 SOLICITOR BOYD: Approach the witness, Your Honor?

18 THE COURT: You may.

19 Q Showing you what's been identified as State's Exhibits

20 1 through 4, can you look at those?

21 (Witness complies.)

22 Q Are you familiar with those images?

23 A Yes, sir.

24 Q Okay. Are those photographs that you took of

25 Mr. Brannon?

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 A Yes, sir, they are.

2 Q Do they fairly and accurately represent, represent the
3 way Mr. Brannon looked when you saw him?

4 A Yes, sir.

5 SOLICITOR BOYD: Your Honor, at this time I would like
6 to move State's Exhibit 1 through 4 into evidence.

7 THE COURT: Any objection?

8 MS. JONES: Your Honor, may we approach?

9 THE COURT: You may.

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 THE COURT: Ladies and gentlemen, this is one of those
13 occasions that I told you I may send you out of the
14 courtroom while I discuss a matter with the attorneys. As
15 always, before you leave, I'll ask you not to begin any
16 discussions concerning the case until I advised you to do
17 so.

18 You may retire to the jury room.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right. Do you wish to place your
22 objection on the record, Ms. Jones?

23 MS. JONES: I -- yes, Your Honor, I would.

24 Give me one second.

25 (Pause.)

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 MS. JONES: Your Honor, we would object to the
2 photographs of the -- if I may note the specific objection.

3 May I approach the witness, sir?

4 THE COURT: You may.

5 MS. JONES: Thank you. Just to make sure we get
6 everything. Just these ones.

7 Your Honor, we would object to State's Exhibit No. 2 --
8 well, State's Exhibit No. 1, No. 2, No. 3 as well as No. 4
9 in that they arouse the, that they're, their prejudice and
10 arouse the sympathies, calculated to arouse sympathies of
11 the jury, Your Honor, and not only that, they're cumulative
12 in effect, Your Honor. There's one, two -- there's two of
13 the, of the, the head, Your Honor. State's Exhibit No. 1
14 and as well as State's No. 3, we would argue that would be
15 cumulative as well as State's Exhibit No. 2 and State's
16 Exhibit No. 4.

17 They're of the same injuries, Your Honor, and, again,
18 are aroused to -- we would argue that that would be
19 cumulative and is unfairly prejudicial to my client.
20 They're going to have testimony from the doctor to indicate
21 the injuries as well as Mr. Brannon to testify as to the
22 injuries he suffered from. Your Honor, these were injuries
23 that were closed via stitches with a local anesthesia, and
24 we believe that these again are, especially State's Exhibit
25 No. 4, is very gruesome and, again, is calculated to arouse

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 the passions and the sympathy of the jury, sir.

2 Thank you.

3 THE COURT: well, will you pass them up so I can take a
4 look at them?

5 MS. JONES: Yes, sir. Sorry.

6 THE COURT: Thank you.

7 I'll hear from the State.

8 SOLICITOR BOYD: Your Honor, it's not the State's
9 intention to play on the sympathy of the jury. Rather, as
10 this is a general intent crime, the jury has a right to see
11 the extent of the injuries sustained by my victim. It's a
12 blunt force trauma to the head. The jury can infer whatever
13 type of malice they want to from those injuries. It's a
14 question for the jury whether they believe the injuries do
15 rise to the level as alleged by the State in the
16 indictments.

17 Each picture shows a different aspect of it. The
18 close-up shows the depth of the wound. The more wide angle
19 shots, Your Honor, show the size of the wound, and there's
20 also the wound to the back of the head that's un, that's
21 unavailable to be seen on the rest of the pictures, Your
22 Honor.

23 THE COURT: well, in looking at Photos 1, 3, and 4,
24 those all appear to be of a wound just about where the, one
25 person would have their normal hairline. But they're all

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 pictures of the same wound. I realize they're from
2 different distances, but I find those to be cumulative and
3 to allow all three would be unduly prejudicial.

4 Do you want to tell me which one of these three that
5 you do want to introduce and I understand that you're trying
6 to get to the depth of the wound, which may have some
7 bearing on the, the force by which the blow or the, the
8 wound was inflicted. So, I realize that may be a matter
9 that the jury should consider. But, again, three pictures
10 of the same wound, I'm not gonna allow that.

11 The other is a, a picture of the, a wound that appears
12 to the back of the head or towards the back of the head, and
13 it does indicate the size of that wound. It has been
14 cleaned up I note, notice at least partially. It appears to
15 have been anyway but the time this photo was taken. I'm
16 going to allow that one because it does show the location of
17 the injury, and I do not find that unduly prejudicial. But
18 of those three, I'm not allowing all three.

19 Do you want to tell me which one you want to introduce?
20 I'll consider the one you do wish to have introduced?

21 SOLICITOR BOYD: Yes, sir, Your Honor.

22 May I look at the exhibits again?

23 THE COURT: Sure. Please do.

24 Pass that down to him, Mr. Bishop.

25 SOLICITOR BOYD: The State would move Exhibit 3 as the,

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 to the exclusion of one and four, Your Honor. Three will be
2 on top.

3 THE COURT: You want to take a look?

4 Let Ms. Jones take a look at that one and I'll hear
5 from her on that one if there's additional concerns given my
6 ruling.

7 MS. JONES: Your Honor, we've taken a look at that and
8 I would say it's better than the actual close-up one, but,
9 again, we would argue that it is unduly prejudicial and
10 arouses the sympathy of the jury.

11 THE COURT: I understand the position. I do find that
12 those, the probative value of those two photographs, which
13 is State's 3 and State's 2, do outweigh the prejudicial
14 effect and I will allow them. I have made the opposite
15 ruling as to one and four because they are duplicative, they
16 are cumulative, and also, especially the close-up of the one
17 head wound that close, I find that to be highly prejudicial.

18 I'm gonna have those marked. The ones I didn't allow
19 in, they have been marked, and will serve as marked for
20 identification purposes. They will remain a part of the
21 record for any review of them will indicate what I have,
22 what I have included and what I left in.

23 THE COURT: All right. So, I'm going to admit Exhibits
24 2 and 3.

25 Anything further before I bring the jury in?

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 SOLICITOR BOYD: Nothing from the State, Your Honor.

2 MS. JONES: No, sir, Your Honor.

3 THE COURT: You can bring the jury in.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: All right. The record will reflect the
7 jury's returned to the courtroom.

8 The State has offered Exhibits 1 through 4. I have
9 admitted Exhibits 2 and 3. I have excluded Exhibits 1 and
10 4.

11 (WHEREUPON, State's Exhibit Nos. 2 and 3 were received
12 into evidence at this time.)

13 THE COURT: You may proceed.

14 SOLICITOR BOYD: Yes, Your Honor.

15 Your Honor, State request permission to publish
16 Exhibits 2 and 3.

17 THE COURT: You may so.

18 By publication we mean I'll allow you to, let you look
19 at those things. That's what publish means for you.

20 Lower the lights please and the, and the screen.

21 CONTINUED DIRECT EXAMINATION

22 BY SOLICITOR BOYD:

23 Q Officer Mathis, showing you State's Exhibit 2.

24 What are we looking at?

25 A That was a photograph that I took of Mr. Brannon when I

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 got to the hospital. That was to the back of his head more
2 or less right at the -- I guess you would consider that like
3 the crown of his head. There's, there's approximately an
4 inch to an inch and a half long.

5 Q Okay. Showing you State's Exhibit No. 3.
6 Can you tell us what we're looking at?

7 A That was Mr. Brannon when I first arrived into the
8 hospital room. That was a larger gash, probably 3-inches or
9 so just to the front of his head that was split open pretty
10 wide. Still, still bleeding pretty good at the time when I
11 got there.

12 Q Okay. And how did Mr. Brannon appear to you when you
13 saw him?

14 A He was, he was pretty disoriented. Just -- he seemed
15 to be in a pretty good bit of pain, but he was -- he still
16 seemed to be kind of out of it, just unaware of what I think
17 had actually happened, what was, what was going on with his
18 head.

19 Q And approximately how large is that wound?

20 A It's probably about 3-inches from what I recall.

21 Q Did you see if the wound had any depth to it?

22 A Yes, sir, it was -- when I first walked in, the doctor
23 was actually checking out his head, and you could pretty
24 much see his skull I guess is the best way to explain it,
25 and when they would, when they would clean it up initially,

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 you could actually see the skull.

2 Q Did you see his skull?

3 A Yes, sir.

4 MS. JONES: I'm gonna object to this, Your Honor. He's
5 not the doctor in this case. He's only a lay person. He
6 certainly has the doctor who is going to testify as to the
7 nature and extent of the injury.

8 THE COURT: Well, I find that he's not offering an
9 opinion. He is offering an observation. He has the right
10 to testify concerning what he observed.

11 Overruled.

12 Q Were you able to speak to Mr. Brannon at that time?

13 A I was.

14 Q Did you obtain consent to search his house?

15 A I did, yes, sir.

16 Q Okay. where is this house located?

17 A 212 Bonair.

18 Q Is that in Spartanburg County?

19 A Yes, sir, in the city as well.

20 (WHEREUPON, ten photographs were marked as State's
21 Exhibit Nos. 5 through 15 for identification purposes only
22 at this time.)

23 SOLICITOR BOYD: Approach the witness, Your Honor?

24 THE COURT: You may.

25 Q Officer Mathis, I'm handing you what's been marked for

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 identification as State's Exhibit 5 through 15.

2 would you please look at those images?

3 A (Witness complies.)

4 Q Do you recognize those photographs?

5 A Yes, sir.

6 Q What are those photographs of?

7 A Photographs of Mr. Brannon's house, 212 Bonair, that I
8 took the day that, right after I left the hospital to go
9 perform the consent search of the residence.

10 Q To your knowledge, is those -- have those images been
11 altered in anyway?

12 A No, sir.

13 Q Do they fairly and accurately represent what you saw at
14 the time?

15 A Yes, sir.

16 SOLICITOR BOYD: Okay. Your Honor, I move State's
17 Exhibit 5 through 15 into evidence.

18 THE COURT: Objections?

19 MS. JONES: No, sir.

20 THE COURT: Without objections they'll be admitted as
21 numbered.

22 (WHEREUPON, State's Exhibit Nos. 5 through 15 were
23 received into evidence at this time.)

24 SOLICITOR BOYD: Permission to publish, Your Honor?

25 THE COURT: You may publish.

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 Q Showing You State's Exhibit 5, Officer Mathis, whose
2 house is that?

3 A Mr. Brannon's.

4 Q Is that at 212 Bonair?

5 A Yes, sir.

6 Q In the city limits of Spartanburg?

7 A Yes, sir.

8 Q Okay. That window on the left, looking at the picture,
9 left of the door --

10 A Yes, sir.

11 Q -- what's underneath that window?

12 A There's a table right there and just pretty much
13 in-between the table and the door was where I actually
14 located the rock that I believed to be used.

15 Q Okay. Showing you State's Exhibit 6, what are we
16 looking at?

17 A That's the table just to the left of the door. The
18 rock was laying just underneath that in, in front of that
19 chair. We placed it on the table to get a, to get a better
20 photograph of it.

21 Q Approximately how big is that rock?

22 A I would say it's a foot and a half in length and
23 probably 8-inches or so high.

24 Q Okay. Did you manipulate, manipulate the rock?

25 Did you handle the rock?

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 A Yes, sir, I picked it up off of the, the porch and set
2 it up on the table just for the, the pictures.

3 Q To your best estimate, how heavy was the rock?

4 A I would say between ten and fifteen pounds is what,
5 what I would estimate.

6 Q Okay. Showing you State's Exhibit 7, what are we
7 looking at?

8 A Just to the left of the door is a small piece of the
9 rock. It, it looked as if the rock had fallen to the ground
10 and a, just a piece of it had flew off and was laying there.
11 They're actually on the rug, the smaller little white specs
12 were, were actual pieces of the rock as well.

13 Q And State's Exhibit No. 8.

14 A That was -- the, the bannister to the left of the table
15 on the outside of the porch, that was a, just another small
16 piece of the rock that was, that was found laying there.

17 Q It was found laying on the bannister?

18 A Yes, sir.

19 Q Okay. State's Exhibit 9, where is this?

20 A When you first walk into the front door, probably five
21 to six feet inside of the door right in the, right in the
22 center of the, the walkway is, is where that's at. That's a
23 blood stain from where Mr. Brannon said that he actually
24 laid.

25 Q Okay. How large is that discoloration, that stain?

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 A It's probably six to eight inches round.

2 Q Okay. On the right side of the image --?

3 A That's a black jacket was sitting in a chair right in
4 front of I believe what's his fireplace. The jacket also
5 had blood stains on that.

6 MS. JONES: I do object to that, Your Honor. I don't
7 think that jacket or the carpet was actually tested for
8 blood. So, we don't know what substance it is. There's
9 lack of foundation there.

10 THE COURT: I'll, I'll allow the witness to state what
11 it appeared to him, but if he has an opinion concerning what
12 it actually was, I'm going to sustain the objection.

13 So, I'll ask you to rephrase the question.

14 SOLICITOR BOYD: Yes, Your Honor.

15 THE COURT: You may proceed.

16 Q Did that stain on the ground appear to be blood to you?

17 A Yes, sir, it did.

18 Q Did you see a discoloration on the jacket?

19 A Yes, sir.

20 Q What did that appear to be?

21 A It appeared to be blood as well. Same thing that was
22 on the floor from what it looked like.

23 Q Is that why you took the picture?

24 A Yes, sir.

25 Q Showing you State's Exhibit 10, is this the same jacket

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 you saw in State's 9?

2 A Yes, sir, it is. Just a little bit wider view. You
3 can see that same, what appears to be blood also towards
4 the, the right side of the jacket from what we're looking
5 at, and you can also see the, the stain that was on the
6 floor.

7 Q And State's Exhibit No. 11, is there a discoloration on
8 that, on that jacket?

9 A Yes, sir.

10 Q Where do you see the discoloration?

11 A There's one on the, the left side of the jacket down
12 kind of on the sleeve, and there's a larger portion right in
13 the center, and there was also some on the, the right side
14 where you can see just a little bit at the very top.

15 Q Do those discolorations appear to be from the same
16 substance?

17 A Yes, sir.

18 Q Is that why you took the picture?

19 A Yes, sir.

20 Q Looking at State's Exhibit No. 12, could you tell us
21 what that is?

22 A That's the, the sleeve that we're just looking at on
23 the, the left-hand side. Just a little bit closer picture
24 of the same, same substance that I thought was blood at the
25 time.

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 Q Okay. State's 13, just tell us what we're looking at
2 please.

3 A That's just a close-up of the, the substance that was
4 on the, the jacket that was sitting in the chair.

5 Q Is that the same jacket as the previous exhibits?

6 A Yes, sir.

7 Q Looking at State's No. 14, where is this picture taken?

8 A This is the, the very back of the, the kitchen pretty
9 much at the back of the house. In his sink, it's just kind
10 of a dish pan that had the shirt that seemed to be
11 discolored from, from what I thought was blood at the time.

12 Q Okay. Could you tell what color that shirt is?

13 A I couldn't tell. It almost looked white, but I wasn't
14 real sure. Everything was pretty well saturated and it was,
15 it was the red color. So, I wasn't real sure if it had an
16 original color other than that.

17 Q Okay. And finally State's Exhibit No. 15, where was
18 this picture taken?

19 A That's at the end of Mr. Brannon's sidewalk that leads
20 up to his, to his front porch.

21 Q Okay.

22 A That was the, as we were leaving the house, that
23 appeared to be where that, the large rock on the porch came
24 from. It was really the only thing that was, that appeared
25 out of place or where that, that large rock would of, would

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 of came from.

2 Q And approximately how far distance is that from that
3 corner to Mr. Brannon's living room?

4 A Oh, it's a good 20 to 30 feet at least.

5 Q Okay. Were you made aware of any suspects?

6 A When I first went to the hospital to speak with
7 Mr. Brannon he advised that it, it was his cousin, John
8 Brannon, that, that actually hit him. He said he hit him
9 over the head with something, and it was big and it hurt was
10 pretty much what he told me.

11 Q Okay. And after you took these pictures, did you speak
12 with Mr. Brannon again?

13 A I did.

14 Q Okay. When did you speak with him again?

15 A On the 12th.

16 Q Okay. Were you advised of the same situation?

17 A I was.

18 Q At what point did you develop the defendant as a
19 suspect?

20 A Initially when I originally spoke with him at the, the
21 hospital, like I said, he was adamant that it was John
22 Brannon that, that caused the injuries as well as was
23 adamant about that, again, on the 12th when I spoke with
24 him.

25 Q In your experience, did Mr. Brannon seem certain as to

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 who hit him?

2 A Absolutely, yes, sir.

3 Q Did he waiver?

4 A No, sir, when I spoke with him he was, it was, it was
5 John Brannon is what he told me everytime I asked him.

6 Q Okay. And subsequently you arrested the defendant---

7 A Yes.

8 Q ---for this act?

9 A Yes, sir. Well, I signed a warrant on him, yes, sir.

10 Q And did you collect any of the items in the pictures
11 that we just saw?

12 A I did not.

13 Q Please answer any questions Ms. Jones might have for
14 you.

15 THE COURT: You need the lights up or down, Ms. Jones?

16 MS. JONES: Up please.

17 THE COURT: Bring the lights up. Thank you.

18 You may proceed.

19 MS. JONES: Thank you.

20 CROSS-EXAMINATION

21 BY MS. JONES:

22 Q Were you the, the initial officer to respond to the
23 scene?

24 A Yes, ma'am.

25 Q Okay. And per your report, it appears that you were

Brendall Mathis - Cross-examination
by Ms. Jones

1 dispatched at approximately 11:57?

2 A Yes, ma'am.

3 Q Okay. And you actually wrote the initial incident
4 report, is that correct?

5 A Yes, ma'am.

6 Q Were there any other officers involved in the
7 investigation?

8 A I was speaking with Mr. Brannon at the hospital and
9 checking his residence and Investigator Nelson looked over
10 the case and checked the case after, afterwards for that.

11 Q Okay. But fair to say you did the initial
12 investigation?

13 A Yes, ma'am.

14 Q Okay. And you wrote a report, correct?

15 A Yes, ma'am.

16 Q Okay. And you put all the important information into
17 that report, correct?

18 A Yes, ma'am.

19 Q Okay. Now, in regard to being dispatched, did it
20 appear to you that Mr. Brannon was drunk?

21 A I could smell alcohol on him, yes, ma'am, but I didn't,
22 didn't have any other reasons -- he didn't, he didn't get up
23 and move around much from the hospital. So --.

24 Q But he could certainly smell it on him---

25 A Yes, ma'am.

Brendall Mathis - Cross-examination
by Ms. Jones

1 Q ---correct, and this was already 11:57---

2 A Yes, ma'am.

3 Q ---AM going into the noon, correct?

4 A Yes, ma'am.

5 Q Okay. And when you initially interviewed him, you also
6 wrote in your report Mr. Brannon was still unclear as to
7 exactly what happened to him and how he was hit, correct?

8 A Yes, ma'am.

9 Q Okay. So, at some point when you were interviewing him
10 he had no idea what had really happened to him, correct?

11 A The -- he was pretty sure on what had happened to him
12 as far as what took place with the assault. The only thing
13 that was a little hazy was his, his time frame that he was
14 giving me.

15 Q Okay. But, again, you write reports --

16 A Yes, ma'am.

17 Q -- to make sure, when you come to court, you remember
18 exactly what you wrote, correct?

19 A Yes, ma'am.

20 Q And what happened---

21 A Yes, ma'am.

22 Q ---correct, and what you had observed---

23 A Yes, ma'am.

24 Q ---correct, cause this is a long time ago and memories
25 get hazy and fuzzy, right?

Brendall Mathis - Cross-examination
by Ms. Jones

- 1 A Uh-huh. (Affirmative).
- 2 Q And you go on to a lot of different calls and things
3 like that, correct?
- 4 A Yes, ma'am.
- 5 Q And, in fact, in your report you put he was unclear as
6 to what happened and how he was hit, correct?
- 7 A Just that he was, he was unclear of the situation at
8 the time.
- 9 Q Okay. And he was also unclear as to the time it
10 happened, correct?
- 11 A Yes, ma'am.
- 12 Q He initially told you he thought it was at five
13 o'clock, correct?
- 14 A Yes, ma'am.
- 15 Q And then he indicated it happened in the morning,
16 correct?
- 17 A Yes, ma'am.
- 18 Q Okay. And you also talked with another witness who
19 indicated she saw Mr. Brannon at 2200 hours, which is what?
- 20 A Ten o'clock.
- 21 Q Ten o'clock at night?
- 22 A Yes, ma'am.
- 23 Q He was highly intoxicated and had no injuries, correct?
- 24 A Correct.
- 25 Q Okay. So, you have a very big time frame, correct?

Brendall Mathis - Cross-examination
by Ms. Jones

1 A Yes, ma'am.

2 Q Okay. And it's really no clear indication as to what
3 had really happened or the time that it happened, correct?

4 A At that time, yes, ma'am.

5 Q Okay. And you testified that you believed that this
6 brick was the weapon, correct?

7 A At the time when I got to the, the residence, that was
8 the only thing that I could see that would possibly cause
9 that, that type of injury to him, yes, ma'am.

10 Q Okay. And the police have the capability to swab items
11 to check for blood, correct?

12 A Yes, ma'am.

13 Q Did you do that with this?

14 A No, ma'am.

15 Q Okay. And I think you indicated those are fragments of
16 that rock, correct?

17 A Yes, ma'am.

18 Q Did you swab that for blood?

19 A No, ma'am.

20 Q You also indicated that that was a fragment you
21 believed from the rock, correct?

22 A Yes, ma'am.

23 Q Did you swab that for blood?

24 A No, ma'am.

25 Q Is it fair to say that this house was, was fairly

Brendall Mathis - Cross-examination
by Ms. Jones

1 messy?

2 A Not as to some of them I've seen, but yes, ma'am.

3 Q Fairly run down, correct?

4 A Somewhat.

5 Q And, in fact, this house is now been condemned,
6 correct---

7 A I---

8 Q ---on Bonair Avenue?

9 SOLICITOR BOYD: Objection, Your Honor. Relevance.

10 THE COURT: Sustained.

11 Q Now, these stains you indicated on the carpet that
12 could of been blood, did you swab any of those?

13 A No, ma'am.

14 Q Okay. And you didn't swab the jacket?

15 A No, ma'am.

16 Q Didn't do any of that follow-up, correct?

17 A No, ma'am.

18 Q You just took a statement, took some pictures, signed a
19 warrant --

20 A Yes, ma'am.

21 Q -- fair to say?

22 I have nothing further, Your Honor.

23 THE COURT: Redirect?

24 SOLICITOR BOYD: Thank you, Your Honor.

25 THE COURT: Yes, sir.

Brendall Mathis - Redirect examination
by Solicitor Boyd

1 REDIRECT EXAMINATION

2 BY SOLICITOR BOYD:

3 Q You testified that when you initially spoke to
4 Mr. Ronnie Brannon he was hazy on the time frame of the
5 injuries?

6 A Yes, sir.

7 Q Okay. Subsequently, after speaking with him again, did
8 you -- were you able to narrow down the time frame?

9 A Yes, sir, once we, once we talked again we were able to
10 determine that it actually happened the morning of the, the
11 10th.

12 Q Okay. Were his answers to your questions more or less
13 coherent subsequent, after you spoke with him the first
14 time?

15 A When I talked with him on the 12th he was very clear
16 about what had happened at that time.

17 Q Okay. The rock in question, showing you State's 6, did
18 there appear to be any blood on that stone when you just saw
19 it?

20 A Not that I can tell. There was some discoloration on
21 one of the corners, but it doesn't -- it appeared to be like
22 the texture of the rock. It didn't appear to be any blood
23 at all.

24 Q Would you have swabbed every piece of evidence you saw
25 even if it didn't appear to have blood on it?

Brendall Mathis - Redirect examination
by Solicitor Boyd

1 A No, sir.

2 Q Okay. Did this fragment appear to have blood on it?

3 A No, sir.

4 Q If it appeared to have blood on it would you have had
5 it swabbed?

6 A Sure.

7 Q Okay. And this fragment?

8 A Yes, sir.

9 Q If it had blood on it, would you have had it swabbed?

10 A Yes, sir.

11 Q Okay. You testified you didn't have the rock
12 fingerprinted, did you?

13 A No, sir.

14 Q Okay. In your experience, can fingerprints be left on
15 any object?

16 A It's -- that's able to retrieve them, yes, sir.

17 Q Okay. In your experience, is a rock of this texture,
18 this apparent texture, a good candidate for a solid
19 fingerprint?

20 A No.

21 Q Okay. Is that why you didn't have it fingerprinted?

22 A Yes, sir.

23 Q Okay. And you told Ms. Jones that the victim smelled
24 of alcohol when you met with him?

25 A Yes, sir.

Brendall Mathis - Redirect examination
by Solicitor Boyd

1 Q In your experience in interviewing people for cases,
2 investigating cases, is it possible for a person to be drunk
3 and still tell the truth?

4 A Yes, sir.

5 SOLICITOR BOYD: No further questions.

6 THE COURT: Recross.

7 MS. JONES: I have no questions, sir.

8 THE COURT: You may step down, sir.

9 The State may call its next witness.

10 SOLICITOR BOYD: Thank you, Your Honor.

11 The State calls Doctor Bradley Davis.

12 THE COURT: Come forward, sir, to my left and be sworn.

13 BRADLEY DAVIS, having been first duly
14 sworn, testified as follows:

15 THE COURT: Have a seat please, sir, and once you're
16 seated I'd ask that you state your name.

17 WITNESS: My name is Bradley Davis.

18 THE COURT: Mr. Boyd, your witness.

19 DIRECT EXAMINATION

20 BY SOLICITOR BOYD:

21 Q Good morning, Doctor Davis.

22 where do you work?

23 A I work at Spartanburg Regional Emergency Center.

24 Q Okay. What do you do there?

25 A I'm an emergency physician.

Bradley Davis - Direct examination
by Solicitor Boyd

1 Q Okay. How long have you been in that position?

2 A Eight years.

3 Q Okay. What are your current duties?

4 A My current duties are clinical, clinical work in the
5 Emergency Center, and I also have administrative duties for
6 the Emergency Center.

7 Q Okay. Are you some type of director or position?

8 A I'm the medical director of the Emergency Center.

9 Q Okay. Where did you get your medical degree?

10 A From Lake Lanier College of Osteopathic Medicine.

11 Q What year was that?

12 A That was in 2000.

13 Q Okay. And where did you do your residency?

14 A At Dozier Medical Center in Pennsylvania.

15 Q Okay. What did you do during your residency?

16 A I did emergency medicine residency and a transitional
17 year internship. So, it was four years total after
18 training.

19 Q Okay. And how long have you been at Spartanburg
20 Regional?

21 A For seven and a half, eight years.

22 Q Okay. Your best guess, how many trauma patients have
23 you seen in your seven or eight years at Spartanburg
24 Regional?

25 A Many. Multiple hundreds.

Bradley Davis - Direct examination
by Solicitor Boyd

1 Q Okay. Were you working on April 10th, 2011?

2 A Yes, sir.

3 Q Okay. Did you have occasion to treat Ronnie Brannon
4 that day?

5 A Yes, sir.

6 Q Okay. What did you treat him for?

7 A I treated him for head injury.

8 Q Okay. What was your diagnosis of his injuries?

9 A Traumatic head injury and multiple scalp lacerations.

10 Q Okay. Showing you State's 3, it's already in
11 evidence---

12 THE COURT: Mr. Hayes, you want to bring the lights
13 down for us. Thank you, sir.

14 Q Is that the injury you're talking, you're speaking
15 about of Mr. Brannon?

16 A That's one of the two lacerations.

17 Q Okay. Approximately how many centimeters is that
18 laceration?

19 A It's approximately ten centimeters.

20 Q Okay. Did you examine it to how -- about how deep was
21 that injury?

22 A The injury was down to the, what's called the galeal,
23 which is a covering of the skull, and there's very little
24 subcutaneous tissue in this area over the entire scalp. So,
25 approximately, if you had to have, give it a measurement, it

Bradley Davis - Direct examination
by Solicitor Boyd

1 would be, you know, approximately three-fourths of a
2 centimeter probably.

3 Q Okay. Is that considered a deep wound for a, a head
4 injury?

5 A Well, it's, it's a laceration down through the
6 subcutaneous tissue to the galeal. So, down to the covering
7 of the skull. So, certainly it was as deep as it could go.

8 Q Okay. And how many lacerations did you identify on his
9 head?

10 A Two.

11 Q Okay. Is this the other laceration identified?

12 A Yes, sir, that's a posterior scalp laceration.

13 Q And that means it's on the back of his head---

14 A Yes, sir.

15 Q ---correct?

16 Okay. How long is that laceration?

17 A It's approximately four centimeters.

18 Q Okay. Is that laceration as deep as the first one?

19 A It was probably slightly more shallow because of it
20 wasn't as -- anterior laceration wasn't a bulging injury.
21 So, it seemed to take more subcutaneous tissue than the
22 posterior injury.

23 Q In layman's terms, what does that mean?

24 A The, the front injury, because it was a larger injury,
25 took more of the tissue underneath with it as it got pulled

Bradley Davis - Direct examination
by Solicitor Boyd

1 away from the, the scalp. The posterior injury was probably
2 more of a direct injury or not as much of an indirect
3 injury. So, it was more just a laceration and not pulled
4 away from the scalp.

5 Q Okay. What treatments did you administer to
6 Mr. Brannon?

7 A The treatments that we administered for him was a C.T.
8 Scan of the brain to confirm that there was no skull or
9 intracranial injury, that means inside the skull, injury to
10 the brain or bleeding inside the skull, and then we started
11 to clean the wound and repaired it primarily with sutures.

12 Q Okay. How many sutures did you use?

13 A I can't recall exactly the number that was listed, but
14 I mean it took a number of sutures to close both wounds.

15 Q Would you say more than ten?

16 A Yeah, it's listed on the medical record.

17 Q Okay. You mentioned you gave Mr. Brannon a C.T. Scan?

18 A Yes, sir.

19 Q Briefly what does a C.T. Scan show?

20 A A C.T. Scan will show any type of bone injury. What we
21 are specifically looking for in that situation was a skull
22 fracture underneath the areas of trauma or any kind of
23 bleeding inside the brain which would be what we would call
24 a subdural hematoma or, from the traumatic force, that a
25 blood vessel ripped underneath the skull and caused bleeding

Bradley Davis - Direct examination
by Solicitor Boyd

1 and that could potentially be harmful.

2 Q Do you normally order C.T. Scans for lacerations?

3 A We do not order C.T. Scans for simple lacerations
4 because of the radiation exposure that's incurred by them.

5 Q Okay. Why did you feel it necessary to order a C.T.
6 Scan in Mr. Brannon's case?

7 A It was necessary medically in this case to order a C.T.
8 Scan because of a number of instances. Although the patient
9 had a Glasgow Coma Score of 15, he was clinically
10 intoxicated and thus a poor medical historian. He could not
11 describe symptoms. That could be somewhat concerning for
12 injury inside the head or I guess more specifically some
13 symptoms from alcohol intoxication may mimick symptoms of
14 injury inside the head, and then with the nature of the
15 wound, although externally we didn't see any injury on
16 direct examination, we needed to make sure there was no
17 skull fracture that had happened or any internal injury
18 because of, because of the, the nature of the wounds and
19 because of the nature of the, the presentation of the
20 patient. The patient was intoxicated and could not provide
21 a reliable medical history symptoms standpoint to help us
22 determine if there was or was not an internal injury to the
23 brain.

24 Q Okay. Is a C.T. Scan capable of showing concussions?

25 A No, sir.

Bradley Davis - Direct examination
by Solicitor Boyd

1 Q Okay. Can a person have a concussion, but have a
2 positive C.T. Scan?

3 A A person can have a -- concussion's a clinical
4 diagnosis from symptoms. So, a concussion will not show up
5 on a C.T. Scan or M.R.I. or any imaging study. So,
6 certainly a concussion is caused by traumatic injury to the
7 head. So, anytime there's traumatic injury, whether or not
8 that results in a laceration or skull fracture, anything
9 like that, somebody can suffer a concussion with or without
10 any of those things.

11 Q A person suffering a concussion, could they be a poor
12 historian with a concussion?

13 A Certainly.

14 Q Okay. In your experience as a trauma physician, having
15 seen multiple hundreds of patients, are lacerations
16 generally a result of direct impact?

17 A Lacerations can occur with any kind of traumatic
18 injury. This appears, from a medical standpoint, to be not
19 what we call a penetrating trauma or a trauma caused by some
20 sort of sharp object, but more of a blunt trauma because of
21 the, the laceration type of---

22 Q Okay. And from a medical standpoint, would the
23 laceration to the front of Mr. Brannon's head be caused by a
24 direct blow or a indirect or a glancing blow?

25 A This is, you know, the speculation with this type of

Bradley Davis - Direct examination
by Solicitor Boyd

1 injury is that force applied to this wound was that, was
2 indirect or at an angle and thus caused the evulsion. That
3 means it kind of peeled the skin back. It's not just a
4 single slight line. You see that there's a crescent shape
5 and then there's skin and subcutaneous tissue pulled down.

6 Q Okay. Is a direct blow to the skull more, more capable
7 of saying I guess -- let me rephrase it.

8 Is a direct blow more dangerous to a patient than an
9 indirect blow?

10 A I would say that either blow is, is dangerous to a
11 patient. Certainly a direct blow, you could argue that that
12 may cause, because the force is directed perpendicular to
13 the skull or directly at the skull, that it can cause more
14 injury to the skull and underlying structures to the brain.

15 Q In your medical opinion, medical opinion, was this
16 patient fortunate not to receive a direct blow to the skull?

17 A Well, I mean certainly I would say that anybody would
18 probably benefit from an indirect blow as opposed to a
19 direct blow.

20 Q Okay. In your medical opinion, are head traumas ever
21 considered deadly?

22 A Absolutely.

23 Q Why would they be considered deadly?

24 A Well, because, you know, certainly, you know, head
25 trauma, you know, there's an assault to the brain, and you

Bradley Davis - Direct examination
by Solicitor Boyd

1 have -- your skull is relatively thick in certain places,
2 but can easily be fractured and cause injury underneath the
3 skull, potential bleeding that could cause pressure and
4 cause injury to the brain. And, so, any head injury has a
5 potential to cause damage that the amount of C.T. Scans we
6 do of the head overall is much greater because of the
7 concern for head injury.

8 Q Please answer any questions Ms. Jones might have.

9 THE COURT: Ms. Jones, before you begin your
10 cross-examination, Mr. Boyd elicited several opinions from
11 this witness. He was never qualified by the Court as an
12 expert.

13 Mr. Boyd, are you offering him as an expert within the
14 field of emergency medicine?

15 SOLICITOR BOYD: Yes, sir, Your Honor.

16 THE COURT: Any objection to his designation as such?

17 MS. JONES: No, sir.

18 THE COURT: All right. Ladies and gentlemen, the
19 distinction I'm making here is that, under the rules of
20 evidence in South Carolina, witnesses are generally not
21 allowed to give opinions concerning matters. They're
22 allowed to give testimony concerning what they saw,
23 observed, or experienced, but not opinions. An exception to
24 that general rule is made for witnesses who, because of
25 their training or expertise in some field, they're declared

Bradley Davis - Direct examination
by Solicitor Boyd

1 to be experts by the Court, and for those witnesses they are
2 allowed to give opinions concerning matters.

3 This gentleman has now been offered to the Court as an
4 expert within the field of emergency medicine. The defense
5 is not objecting to that designation. So, I will designate
6 him as an expert. He's been offering opinions and he
7 appears to be qualified as such. But I want to be sure that
8 he's formally designated as an expert within that field.
9 we'll allow him to state his opinions within the field.

10 You may proceed, Ms. Jones.

11 MS. JONES: Thank you, Your Honor.

12 THE COURT: Bring the lights up.

13 BAILIFF: I'm trying to.

14 THE COURT: It takes a minute.

15 BAILIFF: It's slow this morning.

16 THE COURT: There we go.

17 MS. JONES: There we go.

18 THE COURT: You may proceed, Ms. Jones. Thank you.

19 MS. JONES: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. JONES:

22 Q You were the emergency doctor on, on the scene so to
23 speak, is that correct?

24 A Yes, ma'am, I was working that day.

25 Q Okay. You were -- isn't it fair to say that the

Bradley Davis - Cross-examination
By Ms. Jones

1 patient was brought in at round 12:11PM, is that correct?

2 A That -- if the admission time says so on the medical
3 chart.

4 Q Okay. And, in fact, he was released at about 2:25,
5 correct?

6 A The discharge time is on the chart too.

7 Q Okay.

8 A whatever that says.

9 Q well, your recollection, you only treated him for about
10 a couple hours, correct?

11 A Yes, ma'am.

12 Q Okay. He didn't need surgery, correct?

13 A No, ma'am.

14 Q Didn't take him to the O.R.?

15 A No, ma'am.

16 Q Okay. You talked a lot about a fractured skull and,
17 and different things.

18 According to your assessment, Mr. Brannon didn't have a
19 fractured skull---

20 A No, ma'am.

21 Q ---correct, and, in fact, you treated his wound with
22 some sutures, correct?

23 A Yes, ma'am.

24 Q It appears that you did nine sutures in the anterior
25 and six sutures in the posterior, is that correct?

Bradley Davis - Cross-examination
By Ms. Jones

- 1 A Yes, ma'am.
- 2 Q Okay. And, in fact, you used a local anesthesia,
3 right?
- 4 A Yes, ma'am.
- 5 Q You didn't even put him under?
- 6 A No, ma'am.
- 7 Q Okay. So, he was basically alert for the whole
8 process?
- 9 A Yes, ma'am.
- 10 Q Okay. Stitches, is that fair to say?
- 11 A Yes, ma'am.
- 12 Q You also indicated that he was intoxicated, correct?
- 13 A Yes, ma'am.
- 14 Q And that he was a poor historian, correct?
- 15 A He was a poor medical historian, yes, ma'am.
- 16 Q Okay. In fact, according to the hospital notes, he
17 couldn't even recall what had happened other than he was
18 drinking alcohol, correct?
- 19 A Yes, ma'am, we don't -- we never ask about situations
20 that occur that lead to something. We ask about symptoms
21 that may be helpful in determining a patient's medical
22 condition at the time.
- 23 Q But you also want to know how the injury happened,
24 correct?
- 25 well, you talked about the indirect and the direct

Bradley Davis - Cross-examination
By Ms. Jones

1 blows and how that might be important and how it might not
2 be important, correct?

3 A Yes, I was giving you my opinion on the nature of the
4 injury because of the way that the laceration looked.

5 Q Okay. And this, this patient couldn't tell you how
6 this injury had occurred, whether, how he was hit, what he
7 was hit with, correct?

8 A Not clearly, no, ma'am.

9 Q And that is one of the reasons why you had to order the
10 C.T. Scan cause you wanted to make sure you got everything
11 cause he couldn't tell you?

12 A Right, we, we ordered the C.T. Scan because he can not
13 provide a good medical history that, support that nothing
14 was wrong inside his head. So, we needed to make sure that
15 that was the case.

16 Q Okay. And, in fact, when you discharged him, one of
17 the things you had told him is he needed to stop drinking
18 alcohol?

19 A Yes, ma'am.

20 Q Okay. He was very intoxicated and he showed signs of
21 alcoholic abuse?

22 A Yes, ma'am.

23 MS. JONES: I have nothing further, Your Honor.

24 THE COURT: You may redirect.

25 SOLICITOR BOYD: Thank you, Your Honor.

Bradley Davis - Redirect examination
by Solicitor Boyd

1 REDIRECT EXAMINATION

2 BY SOLICITOR BOYD:

3 Q - If a patient appears to be intoxicated, severely
4 intoxicated, would it be good medical practice to put him
5 under anesthesia, general anesthesia?

6 A No, I mean it depends, it depends on the situation.
7 Now, if somebody is intoxicated, they need an emergency
8 surgery, then certainly those folks would be under general
9 anesthesia. The, the local anesthesia that he received,
10 that the victim received for his wounds was the standard
11 practice for repair for those type of wounds.

12 Q Okay. Can a patient ever be a poor historian due to
13 head trauma?

14 A Absolutely.

15 Q Can, can you, in your medical opinion, attribute his
16 being a poor historian a hundred percent to head trauma or a
17 hundred percent to alcoholism?

18 A I can not differentiate what caused the nature of his
19 being a poor historian. But at that time when he was
20 clinically evaluated he was not able to offer the
21 information that we needed to make sure that he was
22 medically okay at the time thus requiring further studies
23 that may not have been needed to be done if he was not a
24 poor historian for whatever reason that he was. But
25 certainly head trauma, intoxication, or base line mental

Bradley Davis - Redirect examination
by Solicitor Boyd

1 status could all lead to being a poor historian.

2 Q Did it matter to you why he was a poor historian?

3 A Did it matter to me why he was a poor historian?

4 well, the fact that he was a poor historian was the
5 only thing that was needed at that time to clinically treat
6 him.

7 Q So, you couldn't attribute his inability to recall what
8 happened to his alcohol abuse, could you?

9 A I can not speculate what caused his, his being a poor
10 historian.

11 Q So, it's equally feasible that his ability to recollect
12 was due to his head trauma?

13 A I could not speculate whether or not it's from head
14 trauma, alcohol abuse, or another cause.

15 Q But as his treating physician, it didn't matter to you?

16 A At that point in time, what mattered to me was that he
17 could not provide me with a medical history that, that I
18 needed to make sure that he didn't have a life threatening
19 injury. So, I needed to do further studies at that point in
20 time.

21 Q And that's why you ordered the C.T. Scan?

22 A Yes, ma'am. Yes, sir.

23 Q Okay. No further questions.

24 THE COURT: Recross?

25 MS. JONES: No, sir.

Lewis Nelson - Direct examination
by Solicitor Boyd

1 THE COURT: Sir, you may step down.

2 SOLICITOR BOYD: Your Honor?

3 THE COURT: Would you like to excuse the witness?

4 SOLICITOR BOYD: Please, Your Honor.

5 THE COURT: Any objection?

6 MS. JONES: No, sir.

7 THE COURT: Sir, you're free to go. Thank you very
8 much.

9 WITNESS: Thank you, sir.

10 THE COURT: State may call its next witness.

11 SOLICITOR BOYD: Yes, Your Honor.

12 State calls---

13 THE COURT: Is this gonna be a fairly lengthy witness
14 you think?

15 SOLICITOR BOYD: Not too lengthy, Your Honor.

16 THE COURT: All right. You may call, call him now.

17 SOLICITOR BOYD: State calls Lewis Nelson.

18 THE COURT: Come forward, sir, and be sworn.

19 LEWIS NELSON, having been first duly
20 sworn, testified as follows:

21 THE COURT: Have a seat please, sir, and once you're
22 seated, state your name.

23 WITNESS: My name is Lewis Nelson.

24 Thank you.

25 THE COURT: Your witness, Mr. Boyd.

Lewis Nelson - Direct examination
by Solicitor Boyd

1 DIRECT EXAMINATION

2 BY SOLICITOR BOYD:

3 Q Morning, Mr. Nelson.

4 A Morning.

5 Q where do you work?

6 A Spartanburg Public Safety.

7 Q what are your duties there?

8 A I'm a criminal investigator in the criminal
9 investigations division.

10 Q Okay. How long have you been doing that?

11 A Been doing that for about four years now.

12 Q Okay. And how long have you been in law enforcement?

13 A Nearly 18 years.

14 Q Okay. How did you become involved in Mr. Brannon's
15 case?

16 A Traditionally in cases sometimes we get assigned to do
17 follow-ups, to go out and do follow-ups on certain cases.
18 This is one of those cases where I was assigned as a
19 follow-up to just make sure that state, we had statements
20 and whatnot in this particular case.

21 Q Okay. As part of your follow-up, did you go to 212
22 Bonair Avenue?

23 A I did.

24 Q whose home did you know that to be?

25 A Mr. Brannon, Ronnie Brannon.

Lewis Nelson - Direct examination
by Solicitor Boyd

1 Q Okay. why did you go there?

2 A I was directed to, to go there to recover some items
3 that were a part of a incident that the police were
4 dispatched to.

5 Q Okay. Did you know what you were collecting prior to
6 your approval?

7 A Yes, I think it was a, it was a rock and a jacket and I
8 think it was a towel also that was suppose to be collected.

9 Q Did you collect those items?

10 A Yes, I did.

11 Q What did you do when you collected those items?

12 A Once I collected the items -- I went over, I went over
13 to Mr. Brannon's house. He was on the front porch I
14 believe. I spoke with him. I explained who I was, and my
15 purpose for being there, and I told him that I needed to
16 recover these items. The items were readily available. I
17 took custody of them, and I returned them to City Hall and
18 placed them into our evidence.

19 Q Have the items that you collected been secured in
20 evidence at City Hall ever since you collected them?

21 A Yes, they have.

22 MS. JONES: Objection, Your Honor. He is not a
23 qualified witness to determine whether or not it was
24 properly secured in the evidence room. That would be the
25 evidence technician.

Lewis Nelson - Direct examination
by Solicitor Boyd

1 Q Did you retrieve those items from the evidence locker
2 at City Hall?

3 THE COURT: So, you withdrew the last question?

4 SOLICITOR BOYD: Yes, sir, Your Honor. Withdrawn.

5 THE COURT: All right. Go ahead.

6 Q Did you retrieve those items from the evidence locker
7 at City Hall?

8 A Yes, I did.

9 Q Did you bring those with you today?

10 A Yes, I did.

11 SOLICITOR BOYD: Okay. Your Honor, I need to mark
12 three exhibits if the Court will permit.

13 THE COURT: Yes, sir.

14 Q Do you have those items in the, a box with you?

15 A Yes, sir.

16 Q Okay. Can you retrieve what's marked as a towel out of
17 the box?

18 A Yes, I can.

19 Q Investigator Nelson, is that the towel that you
20 retrieved from 212 Bonair Avenue?

21 A Yes, this is the towel I retrieved that day.

22 SOLICITOR BOYD: Your Honor, I like to mark this for
23 identification as State's 16.

24 THE COURT: Be marked for identification purposes.

25 (WHEREUPON, the towel was marked as State's Exhibit No.

Lewis Nelson - Direct examination
by Solicitor Boyd

1 16 for identification purposes only.)

2 Q Investigator Nelson, can you retrieve what's labeled as
3 a jacket out of that same box?

4 A (Witness complies.)

5 Q Is that the jacket you retrieved from 212 Bonair
6 Avenue?

7 A Yes, it is.

8 SOLICITOR BOYD: Please allow the clerk to mark that as
9 State's Exhibit 16 or State's Exhibit 17 for identification.

10 (WHEREUPON, a jacket was marked as State's Exhibit No.
11 17 for identification purposes only at this time.)

12 Q Finally, can you pull out the last item in that box?

13 A (Witness complies.)

14 Q What is in your hand?

15 A This is a rock that was on the front porch when I
16 arrived at 212 Bonair that is believed to be used in this
17 incident.

18 Q Is that the same rock you put into evidence?

19 A Yes, sir, it is.

20 SOLICITOR BOYD: Your Honor, I'd like to mark this for
21 identification State's 18.

22 THE COURT: Be so marked for ID purposes.

23 (WHEREUPON, the rock was marked as State's Exhibit No.
24 18 for identification purposes only at this time.)

25 Q Investigator Nelson, besides collecting the items that

Lewis Nelson - Direct examination
by Solicitor Boyd

1 you just identified, did you do anything else in this case?

2 A Well, the day that I went to the residence, I went
3 ahead and asked Mr., Mr. Brannon to sign a medical release
4 so that we could obtain his medical records from the night
5 that he went to the hospital.

6 Q At what point did your involvement in this case cease?

7 A Pretty much at the point once I recovered the evidence
8 and the medical records and just put together the case file.

9 SOLICITOR BOYD: Okay. No further questions, Your
10 Honor.

11 THE COURT: Your witness, your witness, Ms. Jones.

12 MS. JONES: I have no questions, Your Honor.

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

14 All right. Ladies and gentlemen of the jury, we've
15 been going for a short while. We'll take a break at this
16 time. If they're smokers we'll take care of that for you
17 during this break. So, this will be a little longer than
18 just a trip back to the jury room.

19 As always, I'll instruct you not to begin any
20 discussions until I've advised you to do so. You may retire
21 at this time. Thank you very much.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: Just for Court planning purposes, how many
25 more witnesses do you anticipate, Mr. Boyd?

1 SOLICITOR BOYD: One more, Your Honor.

2 THE COURT: One more?

3 Is that concerning this evidence, is that what we're
4 gonna do?

5 SOLICITOR BOYD: Yes, Your Honor.

6 THE COURT: All right. Okay. We're in recess for
7 about ten minutes. Thank you.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: Is the State ready to proceed?

10 SOLICITOR BOYD: State's ready, Your Honor.

11 THE COURT: Is the defense ready?

12 MS. JONES: We are, sir.

13 THE COURT: Bring the jury in.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. The record will reflect the
17 jury has returned to the courtroom.

18 The State may call its next witness.

19 SOLICITOR BOYD: Thank you, Your Honor.

20 State calls Ronnie Brannon.

21 THE COURT: Come forward, sir, to be sworn.

22 RONNIE BRANNON, having been first duly
23 sworn, testified as follows:

24 THE COURT: Have a seat, sir.

25 WITNESS: Yes, sir.

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1 THE COURT: Once you're seated I'm gonna ask that you
2 state your name please.

3 WITNESS: Ronnie Lee Brannon.

4 THE COURT: All right. Have a seat, sir.
5 Mr. Boyd, your witness.

6 SOLICITOR BOYD: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY SOLICITOR BOYD:

9 Q Mr. Brannon, on April 10th, 2011, where did you live?

10 A I stayed on 212 Bonair---

11 Q Okay.

12 A ---Avenue.

13 Q Is that in Spartanburg County?

14 A Spartanburg County.

15 Q Okay. Do you know John Wayne Brannon?

16 A Yes, that's my first cousin.

17 Q Okay. How long have you known Mr. Brannon?

18 A All my life.

19 Q Okay. Has John Wayne Brannon ever stayed at your
20 house?

21 A No, never.

22 Q Was he staying with you at 212 Bonair anytime this
23 year?

24 A Yes, he was.

25 Q Okay. What were the terms of your arrangement with

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by Solicitor Boyd

1 Mr. Brannon?

2 A Well, my father had passed away and he stayed with my
3 father, and when my father passed away somewhere in January,
4 and he didn't have nowhere to go after my father died cause
5 my sister was clearing his apartment.

6 So, he came to me and asked me could he put some
7 clothes on my back porch for a few days and I told him yes,
8 you know. I said, you know, you didn't have no where to put
9 them, yes, you can put them on the back porch, and then he
10 asked me, he say well, once I put them on there, he say can
11 I have a few days to stay till I can find me somewhere,
12 about three days, to a week, and I told him yes, you can
13 find yourself somewhere to go within that time limit, yes,
14 you know. I told him he could stay.

15 So, I say a week came, another week came, and I told
16 him, I say, you know, I got a lot of my wife's stuff in
17 here, and, you know, she's staying with her brother, you
18 know, cause me and her separated, and I say, you know, it
19 gonna be conflict between me and her by you staying here.
20 So, as soon as possible, you know, you need to leave. So,
21 he understood what I was saying.

22 So, he kept on saying he gonna try to find somewhere to
23 go. So, I kept giving him time, and then time started
24 getting where me and him start having conflicts, got to
25 arguing, and then I couldn't have friends around because he

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1 was trying to bogart them when they came to my house, and I
2 was telling him, I said, them my friends, you know. So, you
3 can't take over my house that way. I say, you know, you
4 just suppose to be here that long or whatever and so what.

5 So, one night, me and him we got doing a little
6 drinking. You know, sometimes, you know, we sit on the
7 porch, and we have a, you know, we sit back and drink and
8 shoot the stuff as usual, and this particular night, he had,
9 he had brought his girlfriend there, and I told him, you
10 know, my wife ain't here. I don't have no ladies in the
11 house, and I say I'm doing good letting you stay here.

12 So, he got kind of pissed off about that. Ah, your
13 wife ain't gonna mind, she ain't gonna mind. I said you
14 don't know my wife. He said well, man, look here, you know,
15 it ain't about all this, it ain't about all that. So, me
16 and him, we got into a conversation. Then he got where he
17 pushed me over the couch, and I said no, you not gonna be
18 fighting in my house. I said well, you need to just go now.
19 I mean we not gonna, we not even gonna let it go this far
20 like this.

21 I said you was here just for a week and just to put
22 your clothes here, and now you're gonna try to run my house,
23 now you done moved your clothes in. I said no, it ain't
24 gonna go.

25 So, I was -- I had got real juice. He had got real

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1 juiced. So, I got mad, I got really pissed off at him, and
2 I -- and he got pissed off -- I really got pissed off when
3 he pushed me in my own house.

4 Q Mr. Brannon, let me stop you there.

5 A Uh-huh. (Affirmative).

6 Q I want to take you to Saturday before the incident.

7 A Yes, sir.

8 Q Okay. That would be April 9th of this year?

9 A Yes, sir.

10 Q Did you go to work that day?

11 A No, I worked in my yard.

12 Q Okay. You did yard work?

13 A I did yard work in my yard. He went, I think, and
14 washed cars that day --

15 Q Okay.

16 A -- if I'm not mistaken.

17 Q What time did you finish your work?

18 A Had to be around before dark, around about 8:00,
19 something like that.

20 Q Okay.

21 A It had to be.

22 Q What did you do when you got home?

23 A I was already home.

24 Q When you went inside the house, what did you do?

25 A When I went in the house I came in and, you know, just

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1 dust myself off, came back out, walked to the store, and
2 grabbed me a few beers, came back to sit on the porch.

3 Q Okay. Who was with you that night?

4 A Well, Scott had came by that night. Then it was a girl
5 next door. You know, they usually come up on the porch and
6 we sit there, shoot, you know, shoot the stuff, you know.
7 Sit and drink a few beers. So, he got off. He got off and
8 he walked up. He walked up that night and---

9 Q Who is he?

10 A That's my cousin, John Wayne, and he still wasn't no
11 trouble that night. I mean everything was, you know, really
12 peaceful that night.

13 Q Okay. About what time did you go to bed?

14 A I went to bed -- it had to be around about 11:00 or
15 12:00.

16 Q Okay. Did John Wayne Brannon go to bed before or after
17 you?

18 A I think I went to bed before him. I'm not for sure.

19 Q Were you drunk when you went to bed?

20 A Yeah, I felt pretty good.

21 Q Would you consider yourself an alcoholic?

22 A Yes, I am.

23 Q Okay. What time did you get up in the morning, and
24 that would be---

25 A That would be around about---

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1 Q ---April 10th.

2 A ---7:30, something like that. I don't really sleep
3 that hard anyway.

4 Q Okay.

5 A So, when he, when he came in---

6 Q Mr. Brannon?

7 A Okay.

8 Q When you woke up, was the defendant there?

9 A Yes, he had come in.

10 Q Okay. What did you and he do that morning?

11 A Well, we started drinking. We had something left from
12 last night.

13 Q Okay. Did you and he get into an argument that
14 morning?

15 A Yes, we did because---

16 Q What was -- what was that argument about?

17 A The argument was about -- he brought up something that
18 happened, when I was saying from the get go, the argument
19 that me and him had got into, and I told him I didn't want
20 to hear -- I wanted to have a peaceful day. I didn't want
21 to hear none of that, you know, not today. I said, you
22 know, we feeling good, let's go ahead and finish our little
23 drinks and, you know, grab something to eat and, you know,
24 that's, you know, that's it.

25 He said well nah, he say you been on me for getting out

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1 and, and, you know, we been arguing and this, he said you
2 done wanting to fight me and all this right here, and I said
3 wayne, you too big for me. Look how big he is, man. I say,
4 ain't no use in me trying to fight you. That's a losing
5 battle.

6 You know, I said let's just call it like this right
7 here. I said you -- let's take you a walk and we'll just
8 erase this right here, we'll talk about you leaving another
9 day, and he said well, I don't have to go nowhere. I said
10 yes, you have to go somewhere. I say you done stayed over
11 your limit, you know.

12 when the -- the last time when the police came out on
13 that, before I was, before you cut me off, they came out and
14 they wouldn't take neither one of us to jail, but they
15 remove me -- well, wouldn't remove him from the house
16 because he had put clothes inside the house. So, they said,
17 they said well, we can stay there. They got to give him 30
18 days to stay there because he had clothes in my house --

19 Q Okay.

20 A -- you know.

21 Q So, you've had prior difficulties with the defendant?

22 A Yes, before this accident.

23 Q You were trying to get him to leave your house?

24 A To leave my house.

25 Q Okay. Back to the morning of the 10th.

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1 A Yes, sir.

2 Q Okay. You got into the same argument?

3 A Yes, over that, over that point right there.

4 Q Okay. Did you ask him to leave that morning?

5 A Yes, I did.

6 Q Okay. Did he leave?

7 A I thought he left.

8 Q Okay. When you thought he left, did he exit the front
9 door?

10 A He exited the front door.

11 Q Okay. What did you do after he exited the front door?

12 A I went and I put away the little dishes what we had ate
13 out of. I throwed them back on my microwave. When I
14 throwed them back on my microwave, I went into my little
15 refrigerator, I got a little portable refrigerator, I put a
16 little Bud or something that I had, I put it back in the
17 refrigerator.

18 When I turned around to come back through the kitchen
19 to go through the living room, he was standing there with
20 the brick and that's the only thing I could really remember.
21 He just -- I just seen him with the brick held up like that
22 and that was it. I couldn't remember nothing else. Only
23 thing I could remember was falling backwards and just seeing
24 him. I just seeing the look in his face like I done did
25 your girl, something, I done did something to him when I was

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1 trying to help him.

2 Q Okay.

3 A You know, I mean I just seen -- that's the only thing
4 that I seen and I still see that now.

5 Q When you turned around you saw---

6 A I saw---

7 Q ---your cousin?

8 A ---my cousin with that brick in his hand coming down on
9 my face like that.

10 Q Okay.

11 A And then the only thing I can remember is falling
12 backwards.

13 Q Okay. Were you knocked unconscious?

14 A I was gone.

15 Q Okay. To your best guess, how long do you think you
16 were out?

17 A It had to be an hour or so, hour or two or whatever.
18 It had to be for a good bit.

19 Q And when you came to, did you realize you were hurt?

20 A No, not really. I didn't really -- I was just dazed.
21 I didn't really know I was really bleeding like that.

22 Q Okay. When you realized you were injured, did you try
23 to stop the bleeding?

24 A I tried to get a shirt or something just to wrap around
25 me. When I wrapped that around, I just feel like I took a

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1 little time trying, trying to get myself back together. I
2 laid back down on the floor. I just laid there cause I
3 didn't have strength to get back up, you know. I mean I
4 know it had to be with the alcohol too because I had been
5 having to drink that night and then I woke up at least and
6 finished drinking some that morning.

7 Q You, you said -- did you use a shirt wrapped around
8 your head?

9 A Yes, I used, I used a couple of things to try to stop
10 it, but when I seen it wouldn't stop, I couldn't do nothing.
11 I just laid back down.

12 Q Did you use a jacket?

13 A I used a jacket. I used a towel. I used a couple more
14 shirts. Just anything just -- and then when I, when I
15 finally laid, when I, when I finally heard somebody at the
16 door, I didn't know it was him coming back or whatever. I
17 didn't know who was at the door. I just heard somebody
18 calling my name and it was Scott, and when -- he kept
19 calling me. I was trying to get to the door. I was trying
20 to get myself together and wanted to get to the door to see
21 to anybody could get me some help. I was trying to see
22 that.

23 Q And then did Scott, did Scott come into the house?

24 A He came on. He entered the house.

25 Q Did he try to stop the bleeding too?

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1 A Yeah, he got and he started wrapping stuff around it
2 and stuff, and then he asked me did, do I know how bad I'm
3 hurt, and I told him. I said no.

4 Q Did you go to the hospital with Scott?

5 A I went to the hospital with Scott because Scott say
6 probably be a little bit too late.

7 Q Did Scott call 9-1-1?

8 A He called 9-1-1.

9 Q Okay. Do you know if they were sending an ambulance?

10 A I didn't know. I didn't know nothing about that, no.
11 Like I say, I was, I was really pretty well put out.

12 Q Scott drove you to the hospital?

13 A Yes, he drove me. I remember him driving me to the
14 hospital because before we went to the hospital I could
15 remember him going -- he stayed up the street from me. I
16 remember him going to let his wife know that I was hurt real
17 bad because -- he didn't want to have it with her or
18 whatever and she just said you just get him to the hospital.
19 She says the ambulance get there or whatever, I'll try to
20 see what I can do to meet y'all at the hospital.

21 Q Okay. And then when you got to the hospital you were
22 treated by Doctor Davis?

23 A Yes, I was treated by him. Scott signed me in.

24 SOLICITOR BOYD: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

1 (Pause.)

2 Q Mr. Brannon, I'm showing you what's been marked for
3 identification as State's Exhibit No. 16.

4 May I approach the witness, Your Honor?

5 THE COURT: You certainly may.

6 Q Mr. Brannon, I'm holding for you State's Exhibit 16.

7 Do you recognize this?

8 A (Witness nods affirmatively.)

9 Q What is this?

10 A That's one of my house towels.

11 Q Is this your towel?

12 A Yes, it is.

13 Q Okay. Is it discolored in anyway?

14 A Yes, that's my blood.

15 Q Is this a towel you used to stop the bleeding?

16 A All that, yeah. That was wrapped over my head too.

17 Q Was it layered in anyway?

18 Did you double it over?

19 A I do not know. I do not really because I did -- I was
20 just trying to stop the bleeding.

21 Q Can you show for the jury the discolorations on the
22 towel?

23 MS. JONES: I object, Your Honor. That was only for
24 identification. It's not been introduced into evidence, and
25 the chain has not been established to introduce it into

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1 evidence.

2 THE COURT: He's asking him to identify the
3 discolorations on that item. That's what the question was.

4 MS. JONES: Okay.

5 THE COURT: I'm gonna allow him to identify where the
6 discolorations are.

7 You may proceed.

8 A Yes, right here. Over there.

9 Q Would it be fair to say the brown stains --

10 A Is blood.

11 Q -- that's your blood?

12 A That's my blood.

13 Q Is this blood that you used the towel to soak from
14 the---

15 A Yes.

16 Q ---from the incident the morning of April 10th?

17 A Uh-huh. (Affirmative).

18 Q Okay. were you at the house when Investigator Nelson
19 stopped by?

20 A Yes, to get the -- you talking about the light skinned
21 man, black man?

22 Q Yes, Investigator Nelson.

23 A Yes, I was.

24 Q Did he collect this item from you?

25 A Yes, he did.

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1 Q Between the day of the incident and when he collected
2 the item, did you do anything to the towel?

3 A No, I did not. I did not touch the towel.

4 Q Okay. The last time you saw that towel was when
5 Investigator Nelson picked it up?

6 A Yeah, I know it's in -- I know -- I know it's nobody in
7 there because I didn't even go back in the house, and I
8 didn't, and I didn't even really spend the night back at the
9 house that night.

10 SOLICITOR BOYD: Your Honor, the State moves Exhibit 16
11 into evidence.

12 THE COURT: Objections?

13 MS. JONES: Your Honor, we object. The chain has not
14 been established. The evidence technician is still not been
15 here.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, I'm gonna ask you to step back to the jury room. I
18 have some matters at this time to take up with the lawyers,
19 and, as usual, don't begin any discussions until I tell you
20 to do so.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right. I think your objection is to
24 the chain of custody of that item?

25 MS. JONES: It is, Your Honor, so the foundation for

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1 the admission of it has not been established. I think I---

2 THE COURT: well, he's identified it as his towel that
3 came from his home. It's not like a drug or a glove or
4 something that's not an identifiable item. He's testifying
5 about an item that he is identified as specifically being
6 his towel from his home.

7 Do you have a case that says the chain of custody is
8 required on an item that can be identified by the witness
9 independently?

10 THE COURT: Your Honor, not specifically. It is our
11 contention that the towel was picked up by Officer Nelson,
12 turned over to the evidence custodian. The evidence
13 custodian hasn't been here to indicate whether or not he has
14 tampered or touched it in anyway.

15 THE COURT: well, again, we're not talking about drugs
16 that you can't really tell which cocaine came from which,
17 which buy or which search. We're talking about an item
18 which this witness says was his, is his item that came from
19 his home and that's his blood. He's identified the item
20 directly without attaching it to anything. He's identified
21 it. He used it that evening to wipe up his own blood. I --
22 I'm just not aware of a case that requires a chain for that
23 type of evidence.

24 Now, if we were talking about, again, a sample of blood
25 or if we were talking about a chemical test, it is a medical

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1 test, or something like that, or if we were talking about an
2 illicit or illegal drug that they all look the same, then I
3 think the chain is required on those to prove that that
4 particular drug came from that particular search or
5 incident. But here I've got a witness who's identifying
6 this item as his own towel, that's his blood that came from
7 his home, he said yes, that's my towel.

8 State have a position on this?

9 SOLICITOR BOYD: Your Honor, it's non-fungible
10 evidence. There's testimony that this, Investigator Nelson
11 collected the item and Mr. Brannon identified it as his own,
12 and testified that it has his blood on it, Your Honor.

13 THE COURT: I don't think -- it's not a fungible item.
14 I'm gonna overrule the objection as to that particular item,
15 and, of course, we'll see if he can identify the others
16 independently without any other assistance.

17 So, overrule the objection. I'm gonna allow it in.

18 (WHEREUPON, State's Exhibit No. 16 was received into
19 evidence at this time.)

20 THE COURT: Bring the jury in.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: The record will reflect the jury has
24 returned and I have overruled the objection and admitted the
25 item into evidence.

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1 You may proceed.

2 SOLICITOR BOYD: Thank you, Your Honor.

3 THE COURT: It's admitted as, numbered the same as it
4 was marked for identification purposes.

5 CONTINUED DIRECT EXAMINATION

6 BY SOLICITOR BOYD:

7 Q Mr. Brannon, I'm also gonna show you what's been marked
8 for identification as State's Exhibit 17.

9 Do you recognize this item?

10 A Yes, that's my jacket I got from my father.

11 Q Did you have possession of this jacket on April the
12 10th?

13 A Yes.

14 Q What did you use this jacket for on April the 10th?

15 A Probably wore it.

16 Q Did you use this jacket in any way to stop bleeding?

17 A Yes, to hold around my face and all, everything, you
18 know.

19 Q This is your jacket?

20 A Yes, it is.

21 Q Is this the jacket that Investigator Nelson picked up
22 at your house?

23 A Yes, it is.

24 Q Do you see any, any discoloration---

25 A Yes.

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1 Q ---on that inside sleeve?

2 A All over that, sir, and here. So, yes, sir.

3 Q Is this discoloration your blood?

4 A Yes, it is.

5 Q Is this blood from the injuries you sustained?

6 A Yes, it is.

7 Q Okay. Is there blood on the inside of the sleeve?

8 A Yeah.

9 Q Is there blood on the inside back of the jacket?

10 A Yes.

11 Q Is your blood on the other sleeve?

12 A Yes, it is.

13 Q On the inside of the sleeve?

14 A (Witness nods affirmatively.)

15 Q Is there blood, your blood on the back of the jacket---

16 A Yes.

17 Q ---on the outside back of the jacket?

18 The last time you saw this jacket was when Investigator
19 Nelson took it from you?

20 A Yes.

21 Q Okay. Is this blood on the jacket the blood that you
22 sustained that morning?

23 A Yes.

24 Q Did you use this jacket to stop the bleeding?

25 A Yes, I used that jacket and I stopped, to stop the

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1 bleeding.

2 Q Okay.

3 A That's why I say that when I left the hospital I didn't
4 go back. I went and locked the house up because I didn't
5 know if he was still out there. So, I got---

6 SOLICITOR BOYD: Okay. Your Honor, State moves Exhibit
7 17 into evidence.

8 THE COURT: Any objection?

9 MS. JONES: Your Honor, we renew our objection to the
10 chain of custody, sir.

11 THE COURT: I'll make the same ruling. It will be
12 admitted as marked.

13 (WHEREUPON, State's Exhibit No. 17 was received into
14 evidence at this time.)

15 Q Mr. Brannon, I'm also gonna show you what's been marked
16 for identification as State's Exhibit 18, and ask if you
17 recognize the exhibit.

18 Mr. Brannon, do you recognize this exhibit?

19 A That brick came from the bottom of my sidewalk.

20 Q How do you know this is the brick that came from the
21 bottom of your sidewalk?

22 A Because I put it there.

23 Q When did you put it there?

24 A I put it there years ago.

25 Q Where did you get that brick from?

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1 A I got that brick from one of my friends who passed away
2 about five or six years ago, and matter of fact, we got that
3 rock when I was working with this man named Mr. Oakley in
4 Forest city, and he went off down by the bridge at -- he
5 was -- he loved rocks, and when he died I grabbed a few of
6 them because he stayed right behind me.

7 Q How was it that you're able to identify this rock to
8 the exclusion of other rocks?

9 A Because it's granite brick in design. He always loved
10 odd bricks, and I got a few more still in front of my yard
11 right there --

12 Q Okay.

13 A -- same as that one.

14 Q Was this brick placed at the corner of your sidewalk?

15 A Yes, that's it. Side of the -- that's at the bottom of
16 the sidewalk --

17 Q Okay.

18 A -- of my walkway. The sidewalk run up, and then that's
19 my sidewalk where the post run up.

20 Q And you're looking at State's Exhibit 15, the picture
21 of the corner of your sidewalk and the walkway?

22 A Uh-huh. (Affirmative).

23 Q Do you see the two rocks in the middle?

24 A Yeah.

25 Q Okay. There seems to be a patch of dirt above those

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1 two rocks?

2 A Yeah, and that's where that one came from.

3 Q This rock came from that patch of dirt?

4 A Came from that patch.

5 Q Do you know this rock?

6 A Yes, I know that rock.

7 Q Okay. Did you see this rock---

8 A I seen---

9 Q ---on the morning of April 10th?

10 A Yes, coming at me not with one hand, but with two
11 hands. He didn't have one hand on that rock. He had two
12 hands on that rock.

13 Q Whose hands were on this rock when you saw it?

14 A My cousin, John Wayne Brannon, hands was on that rock.

15 Q Was this the rock that he used to strike you in the
16 head?

17 A Yes, it was.

18 Q Okay. How did he have, held the rock?

19 A He had it up like this like I showed you earlier.

20 Q You have two hands above your head?

21 A Yeah, he had, he had two hands above his -- yeah, he
22 had, he had two hands above his -- yeah, he had it like that
23 and it just came just that was it.

24 Q He had it above his head with two hands?

25 A He had it above his head.

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- 1 Q Did he, did he strike you in a downward manner?
- 2 A A downward manner.
- 3 Q Okay. Where did this rock strike you?
- 4 A Right here.
- 5 Q What's the last thing you remember?
- 6 A Just going out.
- 7 Q Okay. Do you remember the defendant's face?
- 8 A Yes. Yes, I do.
- 9 Q Do you remember this rock above the defendant's face?
- 10 A Yes, I do.
- 11 Q Okay. In there any doubt in your mind?
- 12 A No doubt in my mind at all.
- 13 Q Is there possible that some other person had this rock?
- 14 A No, no, wasn't nobody in the house but me and him.
- 15 Q Okay.
- 16 A I mean I might drink and just, you know, like that, but
- 17 I am an appropriate drunk. I'm not anybody is, can not
- 18 remember a big brick like that hitting them in the head,
- 19 something is wrong with them.
- 20 Q Okay.
- 21 A I mean, you know, something got to be wrong. I see
- 22 that brick in my dreams a lot at night now, you know, just,
- 23 you know, looking like that. I know. I know.
- 24 Q Did Investigator Nelson collect this brick?
- 25 A Yes, he did.

Ronnie Brannon - Direct examination
by Solicitor Boyd

1 Q Okay. Is this the first time you've seen the brick
2 since then?

3 A No, sir, it's not. I seen it when he had it.

4 Q When?

5 A I seen it when he hit me with that brick, and that
6 wasn't the first time I seen the brick because I put the
7 brick on my sidewalk. That was suppose to been decorated
8 coming up to my yard. That's where -- that's the first time
9 I seen that brick is when my friend, he dead and gone now,
10 God bless his soul, and that's where I got the brick at his
11 house to decorate my sidewalk with.

12 SOLICITOR BOYD: Okay. Your Honor, the State moves
13 Exhibit 18 into evidence.

14 THE COURT: Same objection?

15 MS. JONES: Yes, sir.

16 THE COURT: All right. Objection's noted, same ruling.
17 I'll admit it as marked.

18 (WHEREUPON, State's Exhibit No. 18 was received into
19 evidence at this time.)

20 Q Mr. Brannon, you testified earlier that you consider
21 yourself an alcoholic?

22 A Yes.

23 Q On average, how many drinks do you have a day?

24 A Depends on how much change I have.

25 Q Okay. On the---

Ronnie Brannon - Direct examination
by Solicitor Boyd

- 1 A The -- if I have loose money I'll buy me a beer.
- 2 Q Mr. Brannon, the night before you were struck, how much
3 did you have to drink?
- 4 A Well, I say about a good two 40-ounces?
5 Do you know what 40-ounces is?
6 It's a bottle.
- 7 Q Mr. Brannon?
- 8 A A bottle of beer.
- 9 Q A 40-ounce bottle of beer?
- 10 A Yeah.
- 11 Q At least two of those?
- 12 A Yeah, two, two will give me a good buzz.
- 13 Q Okay.
- 14 A Yes.
- 15 Q When you drink to excess, are you still able to
16 function?
- 17 A Yes.
- 18 Q To the best of your abilities?
- 19 A Yes.
- 20 Q Okay. And how long have you known your cousin?
- 21 A All my life.
- 22 Q Okay.
- 23 A He's like a big brother. He been like a big brother to
24 me all my life.
- 25 Q Okay.

Ronnie Brannon - Direct examination
by Solicitor Boyd

1 A I never was around him a lot. But, you know, like when
2 he use to come around to us, you know, when we was little,
3 you know, he's about five or six years, you know, older than
4 me, and my oldest brother, he was in service for 25 years.
5 So, when he came around, we always looked up to him as a big
6 brother.

7 Q Okay.

8 A And, you know, right to today, you know, I mean I still
9 love him, but I just don't want to be around him period no
10 more.

11 Q Okay. When you mentioned earlier that you were having
12 problems with getting---

13 A Yes.

14 Q ---your cousin to leave your house, did it ever turn
15 physical?

16 A Yes, a couple of times.

17 Q Did you ever strike him?

18 A No way. I don't -- I think I be kind of crazy trying
19 to strike him.

20 Q Did you strike him that morning?

21 A No, I didn't.

22 Q Okay. Did you hear your cousin come back in the house
23 when you were in the kitchen?

24 A No, I didn't. It happened so fast. I turned around,
25 and, like I say, when I came out the kitchen and turned

Ronnie Brannon - Direct examination
by Solicitor Boyd

1 around, the only thing I could see was that brick and him.

2 Q Okay.

3 A And the next person I seen was Scott, the one who took
4 me to the hospital.

5 Q Mr. Brannon, I'm showing you State's Exhibit 5.
6 Was that screen door on your house that morning?

7 A Yes.

8 Q Okay. Was there a main door inside that screen door?

9 A Yes.

10 Q Okay. Does that screen door make noise if you just
11 open it and shut it?

12 A Well, not really. Not no loud noise or whatever like
13 that.

14 Q Okay. Can you usually hear when people are in your
15 house?

16 A Yes, you know---

17 Q If---

18 A ---but, you know, my house is carpet all the way
19 through it.

20 Q Okay. But you didn't hear the defendant come back into
21 your house?

22 A No, I didn't.

23 Q You testified that you turned around and---

24 A I turned around. When I was coming out the kitchen I
25 turned around. When I got back two steps in the living

Ronnie Brannon - Direct examination
by Solicitor Boyd

1 room, that was him standing there and that's, that's it. He
2 hit him.

3 Q The last time you saw the brick?

4 A The brick and it hit me in my face by my cousin.

5 Q Okay. Is there any doubt in your mind that your cousin
6 struck you?

7 A No doubt in my mind whatsoever.

8 Q Okay. Please answer the questions Ms. Jones might have
9 for you.

10 THE COURT: Okay. Your witness, Ms. Jones.

11 MS. JONES: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. JONES:

14 Q You indicated that Mr. John Wayne Brannon is your
15 cousin, is that correct?

16 A Yes, ma'am.

17 Q Your first cousin?

18 A Yes, ma'am.

19 Q And Mr. John Brannon was staying with you for a while,
20 is that correct?

21 A No, it ain't then suppose to end like that, but it so
22 happened it did.

23 Q Okay. And you indicated you were married at the time?

24 A Yes.

25 Q Was your wife staying with you at all?

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 A She was staying with her brother.
- 2 Q Okay. Okay. Now, you indicated on the, the night of
3 April the 10th, or, I'm sorry, April the 9th, 2011, when
4 you came home from mowing a lawn, is that correct?
- 5 A April the 9th, yes, I always work in my yard.
- 6 Q Okay. And you came home and---
- 7 A I was already at home --
- 8 Q Okay.
- 9 A -- doing my own yard.
- 10 Q You were mowing your own lawn?
- 11 A My own yard.
- 12 Q I'm sorry.
- 13 A My own yard, yes.
- 14 Q Okay. So, you were mowing your own yard?
- 15 A Yes, ma'am.
- 16 Q Okay. You don't have a side business to, for
17 landscaping or anything like that?
- 18 A I do a lot of things for a lot of people in the
19 neighborhood, yes, I do.
- 20 Q Okay.
- 21 A I go around and do a lot of work.
- 22 Q So, you mowed your own lawn and you came inside?
- 23 A Yes.
- 24 Q Okay. Was anybody else there?
- 25 A No, not at the time.

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 Q Not at the time?
- 2 A No, ma'am.
- 3 Q Just you?
- 4 A Yes, ma'am.
- 5 Q At what point is it your testimony that Mr. Brannon
6 came to the residence?
- 7 A It had to be later on that evening.
- 8 Q Okay.
- 9 A Cause---
- 10 Q Do you have any idea what time?
- 11 A Not exactly. Right about -- be around about 6:00 or
12 7:00 because, like I say, I think he went to work that
13 morning cause he had got some kind of job washing cars on
14 Union Street or something like that.
- 15 Q Okay. So, Mr. Brannon was working?
- 16 A Yes.
- 17 Q Okay. Did he bring anybody with him?
- 18 A No, he brought a few beers with him.
- 19 Q Okay.
- 20 A Yes.
- 21 Q So, he brought a few beers with him?
- 22 A Uh-huh. (Affirmative).
- 23 Q Did you have any beers?
- 24 A I had went to the store and I already had gotten them
25 before he got there.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q Okay. And how many beers did you get?

2 A I bought two.

3 Q Two.

4 Okay. And how long did it take you to consume those
5 two beers?

6 A I still had them in the can except half of them.

7 Q Okay. And saying throughout the night, you indicated
8 this is about 6:00 or 7:00 when Mr. Brannon came over, how
9 long did it take you to finish the beer and a half you had
10 left?

11 A Well, we got to drinking together when he came. So, I
12 say around about 10:30, 11:00. I really don't remember that
13 day. Once I get my feeling good I'm ready to lay down.

14 Q You're ready to get out?

15 A I'm ready to lay down.

16 Q Oh, lay down?

17 A Go to sleep, yes, ma'am.

18 Q Okay. So, it's your testimony then you went to bed
19 around 10:30 or 11:00?

20 A Somewhere in there.

21 Q Okay. And what time did you get up the next day?

22 A It was early. It had to be about 7:30, 8:00, somewhere
23 in there.

24 Q Okay. What's the first thing you do in the morning?

25 A What I do in the morning, it depends.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q Okay. Well, what did you do this particular morning in
2 April?

3 A That particular morning I grabbed -- I went to the
4 refrigerator and I grabbed a beer.

5 Q Okay. Where did you get that beer from?

6 You indicated that you went out and you bought your two
7 beers and you came home?

8 A Yeah, I had still had beer left over the night.

9 Q Okay. You had beer?

10 A Yeah, because he brought, he brought some with him too.

11 Q Okay.

12 A So, we still had a little bit there, and we sit there
13 and we drunk a little bit that morning.

14 Q Okay. So, it's your testimony that you and Mr. Brannon
15 started drinking beer that morning?

16 A Yes, we did.

17 Q Okay. Then what happened?

18 A Then we got, he got back to talking about something
19 that happened in the past.

20 Q What, what specifically?

21 A Like when I told, when I told you he got into that
22 accident, he got into that little falling out when I told
23 you he hit me and hit the counter too. Me and him got into
24 it. We got, he got -- he got to wanting to bring that back
25 up.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q Okay.

2 A I told him it's in the past. I didn't want to hear it.
3 I wanted to have a good day.

4 Q Okay. So, it's your testimony today that he brought up
5 some bad blood where you-all had a little fight over a
6 couch?

7 A Yeah, I brought back something, back something that was
8 already finished.

9 Q Okay. You're, and you're saying just leave it alone?

10 A Just leave it alone.

11 Q Okay. And did Mr. Brannon leave it alone?

12 A Yeah, for a minute.

13 Q Okay.

14 A And then he kept on bringing it back.

15 Q Okay.

16 A And then I told him I don't hear him no more. I'm
17 gonna have a peaceful day. I'm feeling pretty decent. I'm
18 feeling nice. Usually I go to church on that Sunday, but
19 that particular Sunday I didn't. I just chose to drink that
20 Sunday.

21 Q Okay.

22 A So, I wanted to just have a nice day, but he just kept
23 on bringing it back and he just kept messing with it.

24 Q Okay.

25 A And I just told him why don't you just go ahead and

Ronnie Brannon - Cross-examination
by Ms. Jones

1 leave and we'll talk about it some other day.

2 Q Okay.

3 A So, in that particular time I thought he just gonna go
4 on out the door and just said well, you know, I heard you,
5 and just, I do, just walked on out the door.

6 Q Okay. So, you didn't ask him to leave, he just got up
7 and---

8 A No, I told him to leave.

9 Q Okay. You said just leave?

10 A Yeah, yeah. Yes.

11 Q And your testimony today is that Mr. Brannon just got
12 up and left?

13 A Yes, I thought he was gone.

14 Q Okay. So, you saw him with your two eyes go out the
15 door?

16 A I seen him go out the door.

17 Q Okay.

18 A When he went out the door I turned around and went back
19 in the kitchen.

20 Q You went into the kitchen?

21 A Yes, ma'am.

22 Q Okay. And at that point did you hear anything?

23 A Did I hear anything?

24 Q Uh-huh. (Affirmative).

25 A No, I didn't hear anything.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q Okay.

2 A Only thing I heard is me putting my pan on top of the
3 microwave, and then I put whatever I had left up in that
4 little refrigerator I had, and then when I turned around,
5 there he was in the living room.

6 Q Okay. He was in -- are you still in the kitchen at
7 this point?

8 A I'm coming out the kitchen.

9 Q Okay. And, so, you're---

10 A what I'm saying, when I, when I, when I, when I looked
11 up, when I turned around and looked up at the flash of my
12 eye, he was standing there with that brick --

13 Q Okay.

14 A -- and he hit me in my head.

15 Q Okay. Where is the---

16 A And I said look, that's what I'm saying to you.

17 Q Where specifically was he?

18 A He was in the middle of my living room.

19 Q He was in the middle of the living room?

20 A Cause I had to just turn around. It don't take that
21 long, over two steps in my house, cause the kitchen here,
22 the living room here. It don't take but that minute over.

23 Q Okay. So, you took two steps out and basically out of
24 the kitchen to the living room---

25 A Yeah, that's it.

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 Q ---you looked up and there he is?
- 2 A Yeah.
- 3 Q And you saw the brick in this hand?
- 4 A In his hand.
- 5 Q Did he say anything to you?
- 6 A He didn't say anything. He just had---
- 7 Q He just hit you?
- 8 A He just had that crazy look in his eyes, a look that I
- 9 will never forget as long as I live.
- 10 Q Okay. And he -- and just say -- he just hit you?
- 11 A He just hit me.
- 12 Q Okay. And you fell to the ground?
- 13 A That was it.
- 14 Q Okay. And you fell in the living room?
- 15 Is that fair to say?
- 16 A I fell on the floor.
- 17 Q Okay. And then the next thing you remember is your
- 18 friend waking you up?
- 19 A Yes.
- 20 Q Or knocking on the door?
- 21 A Well, he was knocking on the door. I had got myself a
- 22 little bit together where I could put some cause I kept
- 23 feeling stuff running over me, and I was trying to get
- 24 myself together, but I was too weak. I kept falling and
- 25 laying back out.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q Okay. How, how many beers would you say you had that
2 morning before---

3 A Oh, that morning---

4 Q ---the whole night?

5 A That morning, we didn't have nothing but two and then
6 we had wine.

7 Q You had two and some wine?

8 A And some wine, yes.

9 Q Okay.

10 A It should be in one of them pictures.

11 Q Oh, the wine bottle?

12 A The wine bottle should be in one of those pictures --

13 Q Okay.

14 A -- if they took them in the living room.

15 Q Okay.

16 A Should be a wine bottle and a beer bottle.

17 Q Now, you recall talking with Investigator Mathis,
18 correct?

19 A Mathis?

20 Q Uh-huh. (Affirmative).

21 The officer who testified earlier today.

22 A Yes.

23 Q Okay.

24 A Yes.

25 Q He was the lead investigator and you spoke with him,

Ronnie Brannon - Cross-examination
by Ms. Jones

1 correct?

2 A Yes.

3 Q Okay. And do you recall talking with him about the
4 incident?

5 A Yes, I think I'm pretty sure, pretty clear, but I know
6 who hit me.

7 Q Okay. And do you recall telling the officer that when
8 you got home from cutting grass you had a couple of beers
9 and your cousin, Mr. Brannon, was already at the residence
10 with a friend?

11 Do you recall telling Officer Mathis that?

12 A I probably did.

13 Q Okay. So, initially, when he first interviewed you,
14 you indicated that you came home, you had a few beers,
15 Mr. Brannon was already at the residence with a friend?

16 A Well, honey, after that brick, I don't know what I
17 said. But I know who hit me with that brick.

18 Q That wasn't the question.

19 A Well---

20 Q Okay.

21 A What, what is you trying to ask me?

22 Q Do you recall telling Officer Mathis, it's shortly
23 after this incident, that you came home from cutting grass
24 and your cousin, Mr. Brannon, was already at the residence
25 with a friend and you-all started drinking beer?

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Do you recall telling the detective---

2 A No, I don't recall.

3 Q ---officer that?

4 A I really don't.

5 Q Okay.

6 A I do not remember that.

7 Q Okay. And do you also recall that he'd been, you told

8 him this happened around five o'clock, this incident?

9 A Yes, I probably did tell him that.

10 Q Okay.

11 A Like I say, I was out.

12 Q Okay. And do you also recall, two days later, talking

13 with the officer and indicating you got in an argument over

14 \$20?

15 A Yes, I remember that.

16 Q Okay. And, in fact, you---

17 A Because Saturday when he had, when he -- I think he had

18 got paid or whatever, and then he came giving me \$20, and I

19 asked him what is \$20 gonna do for two or three months.

20 Yes, I remember that part. Yes, I do.

21 Q Okay. So, you're saying Mr. Brannon gave you \$20?

22 A Yes, he did give me \$20.

23 Q Okay. Well, do you recall in your statement you

24 indicated you were arguing cause he hadn't given you the---

25 A No, he gave me \$20.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q ---\$20?

2 A I was arguing that's all he had gave me.

3 Q Okay.

4 A You can't even get a room for \$20.

5 (WHEREUPON, a statement was marked as Defendant's
6 Exhibit No. 1 for identification purposes only at this
7 time.)

8 Q Okay. You also indicated that you wanted him out of
9 the house, correct?

10 A Yes.

11 Q Okay. So, you stated you hadn't given me or you've
12 only give me, according to your testimony today, you've only
13 given me \$20?

14 A Yes.

15 Q That's not enough. I want more. Get out of the house.

16 A No.

17 Q You didn't say that?

18 A No, that wasn't, that wasn't really the issue at all.

19 Q Okay.

20 A He could of kept that \$20 to be honest. I already had
21 a little change on me. I didn't need his money. Only thing
22 I needed him to go.

23 Q Okay.

24 A That was the whole thing from day one.

25 Q Well, let me ask you this.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Did you want him to leave cause you got into a little
2 fight about something that happened---

3 A - No, that wasn't it. Because my wife have a lot of
4 things in that house, personal things. That was the main
5 reason, and that was the reason she wanted him out too.
6 That was the reason. She had her personal things in there.

7 Q Okay.

8 A And I didn't need him in there roaming around in the
9 house.

10 Q Okay. So, you wanted him out cause you had a lot of
11 things in the house and you didn't want him to steal
12 anything?

13 Is that your testimony today?

14 A No, I didn't want him in the house period.

15 Q Okay.

16 A Because me and him getting into conflicts, and I know
17 it's gonna result in something like this, and that was
18 something I was trying to stop.

19 Q Okay. Well, let's -- going back to April 10th or
20 April 9th, okay, is it your testimony that you-all had a
21 fight about \$20, and whether or not that was enough to cover
22 the rent?

23 A No.

24 Q And then you asked him to leave?

25 A No, I been had asked that man to leave for a hundred

Ronnie Brannon - Cross-examination
by Ms. Jones

1 times.

2 Q Okay. So, you're saying that that wasn't
3 specifically---

4 A He wasn't suppose to even been in my house after three
5 days. He just kept tucking in, tucking in, tucking. He
6 just kept moving a little here, a little there until he got
7 hisself situated in there. He didn't even suppose to be
8 there period.

9 Q Okay. Well, do you recall telling the officer that
10 that was the, that was your belief as to why Mr. Brannon hit
11 you is cause of this \$20 and you wanted him out of the
12 house?

13 A No, the reason why he hit me, the \$20 that he had gave
14 me, he came back wanting five of the 20 that he gave me and
15 I told him no.

16 Q Okay. So, now it's your testimony he came back into
17 the house, he's holding the brick and now---

18 A No, you're talking about another time. Don't try to
19 twist me because you not.

20 Q Okay.

21 A You know, like I say, I'm a focused drunk. Not an
22 idiot.

23 Q Okay. Well, I'm confused now.

24 when did he come back and ask for an additional \$5?

25 A That was the day before he hit me.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q Okay. And---

2 A And?

3 Q Okay. So, what specifically do you believe the reason
4 is he hit you in the head with the brick?

5 A Because he didn't have nowhere to go I guess.

6 Q Cause you kicked out of the house?

7 A Cause I wanted him out the house. Well, my aunt had
8 came and got half his clothes after we had -- I mean this
9 had been two weeks before. Then he kept some more clothes
10 back there that I wasn't even aware of. So, after this
11 accident I made sure that the time -- she kept on coming
12 because she wanted me to come, didn't want me to come to
13 court. She wanted me to talk to the judge for his behalf,
14 and I told her he left me to die.

15 Q Okay.

16 A He didn't call the ambulance. I felt even more better
17 if he would of just -- I could of took the lick, but I would
18 of felt better if he would of at least called the ambulance
19 instead of leaving me in that floor to die. He didn't even
20 have the remorse to call the ambulance. He just left me
21 there to die, to bleed to death.

22 Q Okay. Going back to the original -- I'm gonna hand you
23 something that's been labeled Defendant's Exhibit 1.

24 A Uh-huh. (Affirmative).

25 Q Do you recognize that?

Ronnie Brannon - Cross-examination
by Ms. Jones

1 A Yes.

2 Q Do you recognize that?

3 A Yes.

4 Q Okay. Is that the statement that you gave the
5 detective or Officer Mathis?

6 A Yes.

7 Q Okay. And at the time I'm sure Officer Mathis asked
8 you to explain what had happened, correct?

9 A Uh-huh. (Affirmative).

10 Q Okay. And at the time you told Officer Mathis that
11 you-all were at the house drinking, and he'd only given you
12 \$20, and that may or may not have been enough for the rent,
13 and you stated he had to go, correct?

14 A I had said he had to go required that -- I mean that
15 was just his \$20. That wasn't nothing about him getting out
16 my house.

17 Q But you indicated in your statement that you wanted him
18 out of the house?

19 A I been wanting him out from day one.

20 Q Okay. And, in fact, you went to the door and kind of
21 pushed him out, according to that statement, correct?

22 A According to the statement I done been hit in my head
23 with a brick and everything else. I can't remember all
24 that, ma'am.

25 Q Okay. Well, this, this was written two days after?

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 A I can remember him hitting me with that brick.
- 2 Q That wasn't my question.
- 3 This was written two days after the incident, correct?
- 4 A Yes, this right here, yes.
- 5 Q Okay. So, this memory was fresh in your mind?
- 6 A How can my memory be that fresh after a couple of days
7 getting hit with a big brick like that and stitches in my
8 head and this and that going on in my head?
- 9 Honey, no.
- 10 Q And you're saying your memory is better today than it
11 was two days after the incident?
- 12 A No, I still hear things, see things. I still see the
13 brick in my dream. I see a lot of things now. I see a lot
14 of things very different. It took a lot out of me. I don't
15 even trust people no more. Not nobody. It took my love for
16 people and took love from a lot of things for me. It took a
17 lot of myself if that's what you really want to know.
- 18 Q Okay. So, at the time you remembered pushing
19 Mr. Brannon out the door and shutting it and you walking
20 away?
- 21 A I remember---
- 22 Q Correct?
- 23 A I remember telling him to go on.
- 24 Q I say because we is not gonna argue about this on no
25 Sunday. I'm having a good Sunday, and I told him just go

Ronnie Brannon - Cross-examination
by Ms. Jones

1 on. when I told him to go on I meant for him to go on. I
2 left and went back in the kitchen. I done mentioned that to
3 you three times --

4 Q Okay.

5 A -- and nothing changed, you know. The only thing,
6 next, like I told you, when I was in the kitchen he done
7 came back in. I didn't know he had came back in in that
8 living room until I came out that kitchen and seen him
9 standing over me with that brick and hit me in my head and
10 that's it, and I don't have anything else other than that
11 there. I'm sorry.

12 Q Okay. So, I'm unclear.

13 Did you push him out the door or not?

14 A No, I just told him to go on.

15 Q Okay.

16 A If you call that a push, that's not a push.

17 Q Okay. So, you didn't try to push the door closed on
18 Mr. Brannon?

19 A No, didn't have to.

20 Q Okay.

21 A Not really.

22 Q Do you know why that would of been included in your
23 statement?

24 A No, not really.

25 Q Okay. Okay. So, the things you remember to do quite

Ronnie Brannon - Cross-examination
by Ms. Jones

1 aren't the same you wrote down on April 12th?

2 A No, because I done been hit, I done been hurt. I mean
3 I -- it's so much going on in my head.

4 Q Okay.

5 A So, you just can't remember, you know. Okay. But I
6 remember a good bit of it. I remember and I know a lot of
7 things.

8 Q Okay.

9 A I know the, I know the most important things. I know
10 that much.

11 Q Was it Officer Mathis who first suggested to you that
12 you might of been hit with a brick?

13 A No.

14 Q Okay.

15 A I knew I had got hit with a brick. I seen him when he
16 hit me with the brick.

17 Q In fact, though when you first went to the hospital,
18 you couldn't tell the doctor who was treating your head
19 wounds what had happened to you?

20 A I couldn't tell the doctor?

21 Q Correct.

22 A I told the doctors. I know who hit me with the brick.
23 I told the nurses who hit me with the brick.

24 Q Okay. So, it's your testimony that you told the doctor
25 who treated you for your wounds---

Ronnie Brannon - Cross-examination
by Ms. Jones

1 A I know, I know who hit me with them bricks cause I was
2 telling -- I was -- I told the people who hit me with that
3 brick.

4 Q Sir, that wasn't my question. My question to you was
5 this.

6 Is it your testimony today that you told the doctor who
7 treated your wounds that you had been hit with a brick?

8 A To be honest, I never did see that doctor. I seen
9 nothing but nurses who was working on my face.

10 Q Okay. You didn't---

11 A On my forehead. I really, I really didn't even know the
12 doctor whoever who came in here to be honest.

13 Q Never seen that man in your life?

14 A I have never noticed him in my life.

15 Q And isn't it also true that on 4/20/2011 the victims
16 assistance contacted you and you indicated to them that you
17 did not want to pursue charges against Mr. Brannon?

18 A No.

19 Q Okay.

20 A That's, that's a lie.

21 Q And she indicated to you that you had to cooperate in
22 order to continue to get---

23 A No.

24 Q ---services?

25 A I never heard anything like that.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 MS. JONES: Okay. One moment.

2 THE COURT: Yes, ma'am.

3 (Pause.)

4 MS. JONES: I have nothing further, Your Honor.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY SOLICITOR BOYD:

8 Q Mr. Brannon, what was the original arrangements with
9 your cousin as far as your house is concerned?

10 A Well, my father died. He didn't have nowhere to put
11 his clothes, and he asked me could he put a couple of things
12 on the back porch. I told him okay.

13 Q So, it first began with you allowing him to put stuff
14 on your back porch?

15 A To put a couple of clothes. Yeah, put a couple of
16 baskets on the back porch.

17 Q It's your testimony that he progressed from that?

18 A From that into the house.

19 Q Okay.

20 A And then he wanted three days to a week and then he
21 would be out.

22 Q Did you ever want him to stay in your house?

23 A No, not at all.

24 Q How many times did you ask him to leave?

25 A Over a hundred.

Ronnie Brannon - Redirect examination
by Solicitor Boyd

1 Q Okay. Why did you want him gone?

2 He's your cousin.

3 A Because my sister was telling me the problem that she
4 was having him staying with my father when my father was
5 living.

6 Q Okay.

7 A Tearing up his house and doing this and doing that.
8 But I -- he would always come to me and say it wasn't
9 true---

10 Q Okay.

11 A ---you know.

12 Q Did you ever ask him for money?

13 A No.

14 Q Did you ask him to pay for staying at---

15 A No.

16 Q ---at your house?

17 A No.

18 Q What was that \$20 for?

19 A He just up it. I guess he just -- I guess he just felt
20 guilty. I don't know.

21 Q Okay. You testified -- you told Ms. Jones that you
22 wanted the defendant to leave---

23 A Uh-huh. (Affirmative).

24 Q ---to avoid something like this from happening?

25 A Yeah, it could of been worse.

Ronnie Brannon - Redirect examination
by Solicitor Boyd

1 Q The first time you talked to Officer Mathis --

2 A Uh-huh. (Affirmative).

3 Q -- were you at the hospital?

4 A I'm not for sure. I think I was though, you know,
5 cause all them lights and --

6 Q Okay. Is that -- do you know if that was before or
7 after you were sewn up?

8 A I know I was laying in bed. So, you know, I know the
9 nurses was on because they was trying to get on me fast.

10 Q Was that within a few hours of you being struck?

11 A It was right after I was struck.

12 Q Okay.

13 A After I arrived.

14 Q Okay. You said that you told Ms. Jones that you didn't
15 remember a lot of things then, but you remember the
16 important things?

17 A I remember the important things.

18 Q Okay. You also said that you're a focused drunk and
19 not an idiot?

20 A Yes.

21 Q That's what you said, right?

22 A That's right.

23 Q Okay. The morning of the 10th when you woke up, did
24 you eat breakfast?

25 A No.

Ronnie Brannon - Redirect examination
by Solicitor Boyd

1 Q You didn't reheat anything?

2 A I eat something after I drunk. I drunk a little bit,
3 then I eat something, yes.

4 Q Did you reheat food for yourself and your cousin?

5 A Yeah.

6 Q Do you remember what it is you reheated?

7 A Sloppy Joes.

8 Q From the night before?

9 A From the night before.

10 Q Okay. The last thing you remember that morning was the
11 defendant's face and the brick?

12 A Yeah, that was it.

13 Q The brick that you knew came from your yard?

14 A Yes.

15 Q Okay. Did you ever lay hands on the defendant?

16 A No.

17 Q Okay. But you asked him to leave?

18 A I asked him to leave.

19 Q The last thing you saw was him leaving the house?

20 A I seen him leaving out the door. I seen him when he
21 left off the porch.

22 Q You didn't hear him come back in?

23 A I didn't hear him come back in because I thought he was
24 gone. I went on in the kitchen.

25 Q When you put -- you said you testified you put stuff

Ronnie Brannon - Redirect examination
by Solicitor Boyd

1 away in your frige?

2 A Yeah, I put, you know, put---

3 Q Your frige or pan?

4 A Yeah, clean up as usual and just turned back around and
5 that was it.

6 Q Okay. Approximately how many steps is it from the
7 middle of your living room to the beginning of your kitchen?

8 WITNESS: Am I allowed to get up for a second?

9 THE COURT: If you need to, to answer the question,
10 I'll allow you to stand, stand up, yes, sir.

11 WITNESS: Okay.

12 THE COURT: You can demonstrate.

13 SOLICITOR BOYD: Mr. Brannon, come down.

14 (Witness comes down from the stand.)

15 A If you come out the kitchen right here, all you have to
16 do is take one, two, and you're in the middle of, just about
17 middle of the living room.

18 Q Okay.

19 A That door's probably here.

20 Q Okay. And when you saw your cousin with your brick in
21 his hand, how far away was he?

22 A He was right up on me.

23 Q Okay. Did you have time to react?

24 A No, I was just looking at him. He was just coming
25 down. It wasn't no -- I couldn't move nowhere.

Ronnie Brannon - Redirect examination
by Solicitor Boyd

1 Q Okay.

2 A It wasn't -- I couldn't move. I -- if you see all the
3 stuff I got in my living room you know I couldn't move.

4 SOLICITOR BOYD: Okay. No further questions, Your
5 Honor?

6 THE COURT: Recross.

7 RECCROSS EXAMINATION

8 BY MS. JONES:

9 Q Mr. Brannon, isn't it true that you were just too
10 intoxicated that you really don't know what happened to you?

11 A I'm focused. I know exactly what happened to me.

12 Q And I had---

13 A If somebody hit you with a brick like that I believe
14 you would know if you was drunk. You could be flying drunk,
15 but you know somebody hit you with a brick. I would know.
16 I know exactly who hit me with it.

17 Q Okay. And---

18 A And I did -- you can give me a lie test, lie detector
19 test now and I can tell you exactly and I can pass it and I
20 can make sure that he, that was the one that hit me with the
21 brick. I'm willing to take it.

22 Q Okay. And isn't it fair to say that the state office
23 of Victims Assistance helped you out with some of your
24 medical bills?

25 A Yes, they did.

Ronnie Brannon - Recross examination
by Ms. Jones

1 Q Okay. And, in fact, again, when you, you called
2 Victims Assistance and asked that they drop the charges and
3 they refused to?

4 A No, I didn't.

5 Q Let me finish.

6 They reminded you that you needed to cooperate with law
7 enforcement in order to continue to get assistance, isn't
8 that correct?

9 A I don't understand what you're saying.

10 Q Okay. You indicated---

11 A When I first, when I first went to, to the solicitor's,
12 to them, I had a paper that they had me sign about they had
13 to take care of, the state would take care of my medical
14 bills. I signed that paper. Yes, I did.

15 Q Okay.

16 A I signed that in this court.

17 Q You don't recall, recall talking to E. Gosnell and
18 asking that the charges be dropped and her reminding you
19 that you needed to continue to cooperate in order to
20 continue to get victims assistance?

21 A I wasn't planning to drop no charges.

22 SOLICITOR BOYD: Objection. Relevance. Asked and
23 answered.

24 THE COURT: We've been over this a couple times.

25 MS. JONES: Nothing further.

1 THE COURT: He's denied having made that statement.

2 MS. JONES: Thank you, Your Honor.

3 THE COURT: You may step down.

4 WITNESS: Thank you, sir.

5 THE COURT: The State may call its next witness.

6 SOLICITOR BOYD: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 (Pause.)

9 SOLICITOR BOYD: Your Honor, the State rests.

10 THE COURT: All right. Ladies and gentlemen of the
11 jury, at this point in time I'm gonna ask you to step back
12 to the jury room again, and, as always, I'll ask you not,
13 not to discuss anything else to do with this case until I've
14 advised you to do so.

15 You may retire to the jury room.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Any motions at this time?

19 MS. JONES: Yes, Your Honor.

20 We would make a motion for a directed verdict on the
21 attempted murder, Your Honor. According to the evidence
22 that was presented -- well, initially I should start out by
23 indicating that attempted murder, there has to be an intent
24 to kill somebody with malice aforethought either express or
25 implied. Here, Your Honor, there has been no indication of

1 malice aforethought.

2 We heard from the, Mr. Brannon who indicated that there
3 was some type of fight, and then that fight led to some
4 altercation if we are to believe Mr. Brannon. At most, that
5 could probably be described as a mutual combat situation,
6 and perhaps a lesser charge. But certainly malice
7 aforethought is not met there, Your Honor, as well as the
8 injury.

9 The injury was stitches and lacerations. We do believe
10 that in order to sustain a attempted murder charge that the
11 injuries would have to be greater. Sort of akin to ABWIK.
12 The injuries have to be severe enough that the person could
13 have died, and if they had died, it would of been, the
14 charge would of been murder, Your Honor.

15 THE COURT: I'll hear from the State.

16 SOLICITOR BOYD: Yes, Your Honor.

17 Regarding malice aforethought, malice aforethought is
18 simply unjust doing, the doing of an unjust act without
19 excuse or good cause, Your Honor. There's testimony that he
20 struck him because he was, he struck him because he was mad
21 about having no where to go, having to leave the house. The
22 doctor testified as to the extent of the injuries,
23 specifically about, about the head traumas becoming deadly.
24 He discussed the direct impact, the extent of the injuries,
25 the depth of the injuries going down to the galeal off the

1 skin, Your Honor.

2 Furthermore, attempted murder, the intent to kill is
3 the general intent charge. The jury can infer the intent
4 they need to. It's not specific intent. There's testimony
5 of intent, the intent to commit the act, and there's
6 testimony the intent to commit the act was, was there as
7 perpetrated by the defendant. The extent of the intent is a
8 jury question and it should go to the jury.

9 THE COURT: I'll, I'll overrule motion and allow it to
10 go or deny the motion and allow it to go to the jury.

11 Any other motions?

12 MS. JONES: No, sir.

13 THE COURT: I'm going to inquire of your client
14 concerning his right to testify at this time.

15 Madam Clerk, please swear that defendant.

16 MS. JONES: Your Honor, if I may just have a, two
17 minutes---

18 THE COURT: Sure.

19 MS. JONES: ---with him, sir.

20 THE COURT: Sure.

21 MS. JONES: Thank you.

22 (Pause.)

23 THE COURT: Are you ready for me to---

24 MS. JONES: We are, sir. Thank you.

25 THE COURT: All right. Swear the defendant for me

1 please.

2 (WHEREUPON, the defendant was placed under oath at this
3 time.)

4 THE COURT: You can be seated, sir.

5 All right. Mr. Brannon, at this point in time I'm
6 going to explain certain of your constitutional rights to
7 you. When I finish I'll give you an opportunity to ask any
8 questions you'd like to ask. So, if you don't understand
9 what my, understand my explanation, please let me know and,
10 again, I'll explain it further if that's necessary.

11 We've reached the stage of this trial where you have
12 the right to present your defense to the charges. You have
13 also the right at this time to claim the protections which
14 are given to you under the Fifth Amendment to the United
15 State Constitution. That particular amendment reads in part
16 that no person shall be compelled, in any criminal case, to
17 be a witness against himself.

18 Now, what that means is that you have the right to
19 remain silent. While you have the right to testify, you can
20 not be required to do so. You have the right to testify,
21 but no one can make you testify. The right to remain silent
22 is a personal right, and no one can give up or waive that
23 right except yourself. I will tell you that if you decide
24 to testify, your testimony would be governed by the same
25 rules that govern any other witness, and you would be, first

1 of all, examined by your attorney and then cross-examined by
2 the state's attorney on any relevant issue in the case.

3 In addition, if you have convictions
4 involving dishonesty or false statements or for crime which
5 were punishable by imprisonment for more than one year and
6 the Court determines that the probative value of admitting
7 that evidence outweighs its prejudicial effect to you, the
8 solicitor in that case would be able to attack your
9 credibility using your prior criminal record.

10 Now, I will tell you that if you decide to testify in
11 this case, that decision must be made by you freely and
12 voluntarily. It also must be made intelligently. That
13 means with knowledge of the protections given to you by the
14 Fifth Amendment to the Constitution, to the Constitution and
15 the consequences that might result from your decision to
16 testify. I will advise you that if you decide not to
17 testify that I will instruct the jury that they should not
18 give the fact that you did not testify any consideration
19 whatsoever and that there's to be absolutely no prejudice to
20 you because of the fact that you did not testify.

21 As I told you earlier, the decision as to whether or
22 not to testify is left entirely up to you. You have every
23 right to consult with anyone you would like to consult with
24 concerning your decision. Your attorney, family members, or
25 friends. But in the final analysis, the decision as to

1 whether or not to testify is yours and yours alone.

2 Now, Mr. Brannon, do you understand what I've
3 explained?

4 DEFENDANT: Yes, sir.

5 THE COURT: Do you have any questions about what I've
6 explained?

7 DEFENDANT: No, sir.

8 THE COURT: Have you had an opportunity to discuss this
9 decision with your lawyer?

10 DEFENDANT: Yes, sir.

11 THE COURT: Have you made a decision as to whether or
12 not to testify?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you intend to testify?

15 DEFENDANT: No, sir.

16 THE COURT: Thank you.

17 Now, does the defense intend to call any other
18 witnesses in the case?

19 MS. JONES: No, sir.

20 THE COURT: So, we will be going directly then to final
21 argument. I note we're at, we're at 12:00. So, what I'm
22 gonna do is I'm gonna bring the jury back. I'll call on you
23 to see if you have any witnesses, and, of course, you're
24 gonna indicate that you don't, and then I'm gonna send the
25 jury out for lunch. We'll bring them back around, a little

1 after one o'clock. We'll go directly into closing arguments
2 at that time and I'll charge on the law.

3 Anything further from the State before I bring the jury
4 in?

5 SOLICITOR BOYD: Nothing further, Your Honor.

6 THE COURT: From the defense?

7 MS. JONES: No, sir.

8 THE COURT: Bring the jury back.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: All right. The record will reflect that
12 the jury has returned to the courtroom.

13 The State has rested in the case, and at this time the
14 defense has the right to call witnesses should the defendant
15 choose to do so.

16 Does the defense wish to call any witnesses?

17 MS. JONES: No, sir.

18 THE COURT: All right. That concludes then the
19 presentation of evidence in this matter. When I reached
20 this stage of the proceeding I told you that we would allow
21 the attorneys to make a closing argument or statement
22 followed by my charge concerning the law. I also note that
23 we're just a couple of minutes from 12:00. So, what I'm
24 going to do is I don't want to break that process up. So,
25 I'm going to break for lunch at this time. We'll come back

1 about one o'clock and end with those closing arguments and
2 the charge on the law.

3 I'm gonna give you the same instructions I gave you
4 when you left the court house last night. Again, don't
5 attempt to gather information outside of the court house
6 concerning this case. Don't discuss the case with anyone,
7 and do not allow anyone to discuss the case with you. Don't
8 watch, listen to, or read any media reports that might be
9 circulating concerning this case, and should anyone attempt
10 to contact you about your participation in this case, please
11 inform that Court and I'll see that the appropriate action
12 is taken.

13 I'm going to ask that you be back in the jury room at
14 one o'clock this afternoon, the one that's in use for this
15 trial. We should begin shortly thereafter. You're free to
16 go to lunch.

17 Thank you.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. Defendant will remain in
21 custody and we'll begin again at one o'clock.

22 Thank you very much.

23 MS. JONES: Your Honor, I just have one small issue.
24 We -- regarding jury instructions.

25 THE COURT: Yes, ma'am.

1 MS. JONES: We would request the lesser included of
2 assault and battery second degree, which is -- a person
3 commits battery of a second degree if the person unlawfully
4 injures another and moderate bodily injury results, Your
5 Honor.

6 Moderate bodily injury includes physical injury
7 requiring treatment to the organ system other than skin,
8 muscles, and connective tissues except where there is
9 penetration of the skin, connective tissue that requires
10 surgical repair of a complex nature or when treatment of
11 injuries requires the use of regional or general anesthesia.
12 Here we heard testimony from the doctor that he did put
13 sutures and did, did a regional anesthesia, Your Honor.

14 So, we would request the lesser included of assault and
15 battery second degree, sir.

16 SOLICITOR BOYD: Your Honor, the cuts and the doctor's
17 testimony was that great bodily injury could of resulted.
18 Even the fact that there was great bodily injury that could
19 of resulted, it excludes moderate bodily injury, and,
20 therefore, we object to the assault and battery second
21 degree being charged.

22 THE COURT: All right. I'll take a look at it and let
23 you know when we return.

24 Thank you.

25 MS. JONES: Thank you, Your Honor.

1 (WHEREUPON, Court was in recess for the lunch hour.)

2 THE COURT: All right. Concerning the defense request
3 to charge on the lesser included offense, it would be the
4 Court's intention, if I charge the lesser included offense,
5 to charge both assault and battery first and assault and
6 battery second. In other words, two different stages.

7 Do you still wish for me to do that?

8 MS. JONES: I do, Your Honor.

9 THE COURT: All right. Anything further from the State
10 on that issue?

11 SOLICITOR BOYD: Your Honor, the State would object to
12 the assault and battery first and second, Your Honor. Under
13 assault and battery first, the only way it could, under the
14 statute, it could be assault and battery first is if the act
15 wasn't complete. Under Subsection B, it was offering or
16 attempting to injure. Here there's an actual injury. So,
17 assault and battery wouldn't apply under that statute.

18 Assault and battery second is only moderate bodily
19 injury, but the definition of moderate bodily injury has an
20 exception where surgery, repair of a complex nature, or
21 where treatment of injuries requires use of regional or
22 general anesthesia. Here there's testimony that there was
23 regional anesthesia used for the, for the injury, Your
24 Honor.

25 THE COURT: You're saying that's an exception?

1 SOLICITOR BOYD: Under -- as I read the definition of
2 moderate bodily injury.

3 THE COURT: Well, let me read it again.

4 (Pause.)

5 THE COURT: All right. I have a person commits the
6 offense of assault and battery in the second degree if a
7 person unlawfully injures another person or offers or
8 attempts to injure another person with the presentability to
9 do so and either moderate bodily injury to another person
10 results or moderate bodily injury to another person could of
11 resulted.

12 Now, they define moderate bodily injury as a physical
13 injury requiring treatment to an organ, system of the body,
14 other than the skin, muscles and connective tissue of the
15 body except where there is penetration of the skin, muscles,
16 and connective tissues that require surgical repair of a
17 complex nature or when treatment of the injuries requires
18 the use of regional or general anesthesia.

19 So, you're saying if regional anesthesia is required it
20 can not be A and B second?

21 SOLICITOR BOYD: Yes, Your Honor, as I read the
22 statute. It defines -- it begins by defining moderate
23 bodily injury as the actual injury, excuse me, regarding
24 treatment to an organ, system, except where there's a
25 penetration and it requires either complex surgery or the

1 anesthesia, but since---

2 THE COURT: Let me read the statute itself.

3 SOLICITOR BOYD: But as it's not that, then it doesn't,
4 moderate bodily injury doesn't apply. Therefore, assault
5 and battery second does not apply.

6 THE COURT: Does it specifically say that?

7 SOLICITOR BOYD: Well, it -- assault and battery second
8 degree only deals with moderate bodily injury under the
9 facts of this case as applied to the definition of moderate
10 bodily injury I think is excluded.

11 THE COURT: Let me read that statute. I don't think
12 I'm reading it that way.

13 (Pause.)

14 THE COURT: Yes, ma'am.

15 MS. JONES: Your Honor -- and I understand that these
16 are brand new statutes and the Supreme Court or the Appeals
17 Court hasn't gave us some---

18 THE COURT: There's no reported cases on these
19 statutes.

20 MS. JONES: That's right. So, we're going with them
21 blind.

22 Your Honor, but the way I read it, it says moderate
23 bodily injury means physical injury requiring treatment to
24 an organ of the body other than the skin, muscles, and
25 connective tissues. And, so, other -- in other words, it

1 means something other than those organs except if those
2 organs are -- except when there's a penetration of the skin,
3 muscles, and connective tissues that require surgery or a
4 regional or local anesthetic.

5 So, in other words, they're saying that if the skin,
6 muscles, and connective tissues can qualify as a moderate,
7 moderate bodily injury so long as it required the use of a
8 regional or general anesthetic or it required a complex
9 surgery is my reading.

10 THE COURT: That's the way I'm reading it, that,
11 that -- and here you've got a breaking of the skin. You had
12 some tissue underneath that that was damaged. But if you
13 just took, if you just took out the except part, it says
14 physical injury requiring treatment to an organ system of
15 the body other than the skin, muscles, and connective tissue
16 of the body. But then it says except where there is a
17 penetration of the skin, muscles, and connective tissues
18 that require surgical repair.

19 So, I think where there's surgical repair required of
20 the skin/muscles, then it would qualify as a moderate bodily
21 injury. And, so, I'm gonna, I'm gonna find that second
22 would apply. It is a lesser included.

23 Now, you want to be heard or anything else?

24 SOLICITOR BOYD: Please, Your Honor.

25 Even if moderate bodily injury does occur, that reading

1 of it, that definition does fit this case, as assault and
2 battery second degree is a lesser included of assault and
3 battery first, it still states the condition that assault
4 and battery doesn't apply?

5 THE COURT: Well, you know, the statute goes on and
6 talks about what is the lesser included.

7 where is -- down in subsection---

8 MS. JONES: Three, Your Honor.

9 THE COURT: D. It's (D)(3) and it says assault and
10 battery in the second degree is a lesser included offense of
11 assault and battery in the first degree as defined in
12 subsection (C)(1). Assault and battery of a high and
13 aggravated nature is defined in (B)(1) and attempted murder
14 as defined in Section 16-3-29. So, the statute specifically
15 says A and B and second degree is a lesser included of
16 attempted murder. So, the statute addresses that directly.

17 SOLICITOR BOYD: Well, as, as the testimony relates
18 itself this morning, Your Honor, all the testimony, in fact,
19 responded to great bodily injury that could of resulted
20 regardless of what actually happened to him. That the
21 injuries he sustained -- that the crux of the testimony
22 was---

23 THE COURT: well, I think what the jury has to decide,
24 Mr. Boyd, is they've got to first decide the charge that
25 he's charged with. If they find him guilty of that, this

1 won't even be a question for them.

2 Now, if they find that he's not guilty of that, then
3 and only then can they go down and consider the lesser
4 included and I'll make that clear in the charge. So, the
5 only time they will get to this lesser included issue will
6 be if they find that the State failed to prove, beyond a
7 reasonable doubt, attempted murder.

8 SOLICITOR BOYD: Fine with that, Your Honor.

9 THE COURT: Thank you.

10 Now, so you just want second charged?

11 MS. JONES: Yes, Your Honor.

12 THE COURT: Okay. I'll do it. I'm gonna grant your
13 motion. I'll charge second.

14 MS. JONES: Thank you, sir.

15 THE COURT: Only as a lesser included if he's not found
16 guilty on the original charge.

17 MS. JONES: I understand, sir. Thank you.

18 THE COURT: Okay. All right. Now, any other issues
19 concerning the charge before we---

20 SOLICITOR BOYD: Well, Your Honor, assault and battery
21 second is gonna be charged, we respectfully request assault
22 and battery high and aggravated, high and aggravated be
23 charged as well.

24 THE COURT: Now, A and B -- assault and battery high
25 and aggravated, wasn't it done away with by the new omnibus?

1 SOLICITOR BOYD: No, Your Honor. They redefined that
2 in the statute. Assault -- ABHAN, as it is now, is
3 Subsection B of Subsection 600.

4 THE COURT: Well, let's take a look at it.

5 (Pause.)

6 THE COURT: What's the defense say about that?

7 So, you're wanting the statutory assault and battery
8 high and aggravated, not the common law?

9 SOLICITOR BOYD: Correct, Your Honor.

10 MS. JONES: Your Honor, while we would acknowledge that
11 the assault and battery of a high and aggravated nature is a
12 lesser included offense of the attempted murder, Your Honor,
13 that is not specifically what he was charged with. The
14 charge was attempted murder, that he acted with malice.

15 THE COURT: Well, the question is what, what lesser
16 inclusions would apply.

17 MS. JONES: I understand, Your Honor.

18 THE COURT: Or would possibly apply.

19 MS. JONES: I understand that, Your Honor, and it would
20 involve great bodily injury. Great bodily injury indicates
21 a substantial risk of death or which causes serious
22 permanent disfigurement or protracted loss or impairment of
23 a function, of a bodily of a member, of a bodily member or
24 organ, Your Honor. Here we had testimony that he didn't
25 suffer a great bodily injury. What we heard was they

1 applied a local anesthetic and they sutured him up. There
2 was no testimony---

3 THE COURT: well, now, what the, what the doctor
4 testified to is had this been a direct blow as opposed to a
5 glancing blow, could of resulted in death.

6 Isn't that the testimony that I heard?

7 SOLICITOR BOYD: Yes, Your Honor.

8 THE COURT: well, that's a substantial risk of death.
9 So, there's evidence in there that, that what he did could
10 of caused the death. It just happened, the way, the angle
11 at which he hit the head didn't in this case. It was a
12 glancing blow instead of a direct blow. So, the question is
13 what he intended to do, and that's for a jury to decide on
14 intent.

15 MS. JONES: Your Honor, and I think that that would
16 certainly go to the attempted murder, but the way the
17 statute is written, the act is accomplished by means of, I
18 guess, likely to produce death or great bodily injury.

19 THE COURT: well, that's up to the -- you know, those
20 are factual questions for a jury. It's a very large rock.
21 I mean if you hit somebody in the head with that, taking it
22 back over your head, the jury has a right to consider
23 whether or not that's an action that caused direct bodily
24 injury. That's -- you know, I'm not ruling that that's what
25 it will be. I'm saying it's a possibility.

1 I'll grant the State's motion then to also charge A and
2 B, high and aggravated. In the hierarchy of things, I'm
3 gonna charge that first, the first option. And second
4 option will be the lesser included of assault and battery
5 second.

6 Let me take a look at that. It shows that assault and
7 battery second degree, that's subsection (D)(3), is assault
8 and battery second is a lesser included of assault and
9 battery high and aggravated defined in (B)(1). So, that's
10 what I'll do. I'll charge all three. I'll grant
11 everybody's request.

12 All right. Anything further?

13 SOLICITOR BOYD: Nothing from the State, Your Honor.

14 THE COURT: All right. Now, are you going to open and
15 close?

16 Defense didn't offer any evidence. So, they're gonna
17 be going last.

18 You didn't put anything in, did you?

19 I know, know there was something, something marked as a
20 defense exhibit---

21 MS. JONES: Right.

22 THE COURT: ---and I can't remember if you put it in or
23 not. A statement I believe. It's been marked for
24 identification purposes.

25 MS. JONES: Right.

1 THE COURT: Okay. You'll be going first followed by
2 the defense.

3 All right. Let's bring the jury in.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: All right. The record will reflect that
7 the jury has returned to the courtroom.

8 If any juror had any difficulty in complying with my
9 instructions, I'd ask that the juror please stand.

10 (No response.)

11 THE COURT: It appears that all jurors have been able
12 to comply with the Court's instructions.

13 I told you that when we returned I would allow the
14 attorneys, at that point in time, to make their closing
15 arguments followed by my charge.

16 At this time the State may proceed.

17 Mr. Boyd.

18 SOLICITOR BOYD: Please the Court, Your Honor?

19 THE COURT: Yes, sir.

20 SOLICITOR BOYD: Ms. Jones.

21 I told y'all earlier this morning this was a slow and
22 deliberate process. It didn't take as long as we thought,
23 but we're here nonetheless.

24 As Mr. Brannon said this morning, he doesn't remember
25 everything. He remembers the important things. I hope

1 y'all do the same.

2 This case is about blood. Plain and simple, blood.
3 Blood from family members, from cousins, and blood found on
4 his clothing, the hands of the defendant. I mentioned this
5 morning that's a question of who you believe and what you
6 believe from what you hear from people sitting in that
7 chair.

8 Since it's most important, I want to talk about what
9 Ronnie Brannon had to say. I didn't, can't recall precisely
10 exactly when he said it, but he said I'm a focused drunk,
11 not an idiot. He said I know what happened. It's not a
12 doubt in my mind that my cousin hit me with that rock.

13 When Mr. Brannon testified, he was in a situation where
14 he didn't exactly want his cousin living with him, but he
15 did what he could nonetheless. He let his cousin keep some
16 clothes on the back porch, and he testified that that grew
17 into something more, something more he didn't want. He said
18 I tried to stop it because I knew something bad was gonna
19 happen.

20 Something bad did happen. He got knocked unconscious
21 and left to bleed in his living room floor. For the Grace
22 of God Scott Cheeks came by and took care of him, took him
23 to the hospital.

24 Mr. Brannon, we all know what he is. I'm not making
25 excuses. Didn't try to hide who he is. He's an alcoholic.

1 He said so. He never said otherwise. He likes to drink.
2 He drinks at night. He drinks in the morning, and he knows
3 who his cousin is to him. He's like an older brother to him
4 he said. He knew exactly who he was, what he looks like,
5 what he's capable of, and that's why he asked him to leave.
6 He said I don't want something bad to happen.

7 That morning, you heard him. He said, yeah, woke up,
8 grabbed some, whatever drinks he had left over, and started
9 drinking. I got up and heated some leftovers from the night
10 before, and at that point he said we got into an argument
11 again. Same argument he gets in all the time with this
12 cousin about his cousin staying at his house, knowing what's
13 there. His cousin didn't leave till Ronnie asked him to
14 leave, begging him to leave. The defendant didn't like
15 that.

16 So, he gets out of the house, walks out of the house,
17 walks out this door, his front door of his own cousin's
18 house, and Ronnie says okay, he's gone. Goes back in the
19 kitchen, starts cleaning up. He said he put his pan on top
20 of his microwave, started putting stuff back in a little
21 bitty refrigerator he keeps in his kitchen. He didn't hear
22 anything, wasn't startled.

23 What he said he did, he said he turned around, and more
24 than a few steps away was his cousin back in the house. His
25 cousin had something in his hands. His cousin had gone down

1 out of that door to then to the sidewalk and he got a brick.

2 Now, it's not just any brick. This is a brick that
3 Mr. Brannon knew. It's his brick. He knew where it came
4 from and exactly how long he had it. Knew where it came
5 from. And it's not just a construction brick, a red brick
6 that you find in brick houses everywhere. This is a stone.
7 Officer Mathis testified, in his best guess, weighed
8 anywhere from ten to sixteen pounds.

9 That is what Ronnie Brannon was struck with in his
10 head. He never said he was struck by anything else, but
11 that rock. That rock, he knew exactly where it came from,
12 where he got it, and where it was. He said the last thing
13 he remembers is that man over there, this rock, two hands
14 up, over his head, coming down on him. He was out after
15 that. Knocked cold. Like I said, with the Grace of God,
16 his friend, always comes and checks on him, found him, found
17 him in the state he was in.

18 Mr. Brannon, doing what he could, tried to do whatever
19 he could to stop the bleeding. Used this towel to soak up
20 his own blood and he didn't just use the towel. He used his
21 own jacket. He said I know where the jacket came from. He
22 said this jacket belonged to my daddy, he gave it to me.

23 Now, you heard Mr. Brannon talk about his daddy. He
24 said before his daddy died the defendant was staying with
25 him. He used his own father's jacket that he gave to him to

1 soak up his own blood from an injury caused by that rock in
2 the hands of that man. He may be a drunk, but he is sure of
3 that. He never wavered on the stand. He told you exactly
4 what he told you the entire time. Whenever someone asked
5 him who did it, no matter what state he was in, he never
6 said anyone other than John Wayne Brannon because he remembers
7 the important things.

8 Something else he said that struck me. Starting to
9 getting upset during the cross, but he said it nonetheless.
10 He said left me there to die. His words from a man who is
11 knocked cold in his living room with this rock. You all saw
12 the pictures, these pictures in evidence. You'll get them
13 back to look at with, to look at. You'll see the blood
14 stained shirt, the jacket, the blood stains on the carpet of
15 his living room. Those are pictures that Officer Mathis
16 took of the suspected, suspected blood stains from when Mr.
17 Brannon was knocked out.

18 There's bleeding on the floor. Unfortunately, as we
19 all know, Mr. Cheeks came, took him to the hospital. Said I
20 don't want to wait on the ambulance, get in the car, tell my
21 wife where we're going. We're going to the hospital. They
22 get there. They see Doctor Davis, emergency room doctor.

23 Now, of course, Mr. Brannon says I don't know who he
24 is, but this is a man that just suffered a major head trauma
25 from this rock, bleeding out. He doesn't know how long. He

1 says a couple hours. Doctor Davis is on the stand this
2 morning. You heard him testify. He said we don't normally
3 do C.T. Scans for simple lacerations. Lacerations is just a
4 fancy word for a cut. We don't normally do that, but in
5 this case, in this case we did one to make sure there was no
6 intracranial bleeding, bleeding inside the head, and said
7 that the incisions, the lacerations cut through the skin,
8 cut through the skin to what's called the galeal, which is
9 little tissue underneath the skin right above the skull.

10 Officer Mathis said yeah, when I walked in, I saw him.
11 It looked like that cut was down to the skull. Not just a
12 cut. Down to the skull. That's what Officer Mathis,
13 Officer Mathis said he saw. Something done by this rock.

14 But Doctor Davis also said, you know, based on medical
15 opinion, that something like this wouldn't occur from a
16 direct blow, a direct blow. He said it's probably an
17 indirect blow, a glancing blow, cause he said you can see
18 where it had torn a little bit. It wasn't just a cut. It
19 was -- it was pulled down. It was over.

20 Now, if you compare to what he said to what Ronnie
21 Brannon says what happened, rock above his head coming down
22 from the glancing blow. Doctor Davis said, you know, was he
23 fortunate to not to have sustained a direct blow. Of
24 course, it's always worse. It's fortunate he only suffered
25 that injury. It could of been worse.

1 Now, of course, Doctor Davis didn't know how long he
2 was out, what actually happened. He just saw the injuries
3 to the best of his ability, tried to figure out what caused
4 it, and the extent of that damage. That's why he did a C.T.
5 Scan. That's why he tried to get the most important
6 information he could from Mr. Brannon.

7 Mr. Brannon, he said presented as a poor historian,
8 which means he couldn't recall what exactly happened. He
9 gets things confused.

10 I said well, doctor, is that attributable to his being
11 intoxicated or because he suffered a massive head trauma?

12 He said I can't tell you. I don't know. Could be
13 both, could be one, could be with the other, I don't know.

14 Now, luckily the C.T. Scan didn't show anything he
15 said. So, based on what they did, they just sewed him up.
16 Defense would have you believe that it's just a matter of
17 simple stitches going across your head. Ms. Jones, on
18 cross, said well, actually it was nine stitches in the
19 front, and six stitches in the back. That's 15 stitches.
20 Luckily that's all that it was from a man who's knocked with
21 this rock, left to die, in his own words, in his own living
22 room at the hands of his own cousin living out his own
23 floor.

24 Now, the defense talked to Officer Mathis. Asked about
25 why he didn't fingerprint this, why he didn't take blood

1 swabs. To be honest, that has little or no bearing on what
2 happened. There's no doubt in Ronnie Brannon's mind that
3 what happened was his cousin hit him. He wasn't sure -- he
4 was sure that it wasn't somebody else. He didn't, he didn't
5 waver. He didn't say it was somebody else, I don't know, it
6 might have been my cousin. He said it's him and the last
7 thing I saw was his face and that rock coming down. I
8 didn't have time to react. He was close. I have, I have a
9 small house. It said it only takes a couple of steps to get
10 from the middle of the living room to my kitchen. When I
11 turned around he was there.

12 So, this isn't an issue of missing DNA, bad forensics.
13 It's a simple progression of what happened when he asked his
14 cousin to leave his house. The cousin went outside. At
15 that point the cousin, the defendant, could of left. He
16 could of walked down that street and left. Instead, what we
17 know from the testimony this morning, that didn't happen.

18 He walked out that door, made it to the sidewalk.

19 And from the sidewalk, guess what was there?

20 He decided it was a good idea to get this rock, walk
21 back inside the house, carrying this rock all the way up the
22 sidewalk, up the stairs, across the porch, into the room,
23 into the living room, opening the screen door, opening the
24 main door, or did so in a manner that Mr. Brannon didn't
25 know he was in the house.

1 And, so, he walks in, crossed the living room, and by
2 the time Ronnie Brannon turns around, according to him, it's
3 too late. He couldn't do anything. He was too close.
4 Stone over his head on top of him. That's the last thing he
5 remembers.

6 Now we're here today because of what happened on
7 April 10th. He's charged with attempted murder. Now it's
8 up to you whether you, whether you want to think that the
9 actions that were elicited in testimony, that that man, this
10 rock, over his head, coming down on his own cousin's head,
11 would be attempted murder, whether he intended to kill his
12 cousin with this rock on top of his head.

13 The testimony is that he came down with it on his head.
14 He didn't throw it at him. He didn't shout at him.
15 Mr. Brannon didn't hear a thing. Had he not turned around,
16 he didn't know what happened. But he turned around and he
17 saw his cousin with this rock. He remembers the important
18 things.

19 He may be a drunk. He knows who his cousin is. He may
20 be a drunk. He knows where he got this rock. He may be a
21 drunk, but he knew it when he made it at breakfast that
22 morning, and he says I'm not, I'm not an idiot. I'm a
23 functioning alcoholic. Just because he's drunk doesn't mean
24 he's not telling the truth.

25 Like I said before, this is about blood. People tied

1 to family with blood, cousins, first cousin, known them all
2 my life.

3 Has no where to go. You can put your stuff on my
4 porch. Mr. Brannon said it's fine. Just don't stay here
5 long. You'll be gone.

6 Because of that, Mr. Brannon's here today, luckily,
7 having recovered from these injuries after having used his
8 own clothing including the jacket that his dad gave him, his
9 jacket, to soak up his own blood. You'll have all this
10 evidence back there with you to look at it, and you take it
11 for what it's worth.

12 I want to thank y'all for listening all morning long
13 and this afternoon, and remember the important things. No
14 matter who got on that stand, what shape he was in that
15 morning, Mr. Brannon knew it was his cousin, the rock over
16 his head, coming down on him like that. Took that rock from
17 the sidewalk, up the stairs, into the living room, and on
18 top of his head, came down with it.

19 You know what Mr. Brannon said?

20 He left me there to die. Said I would of been fine if
21 he called the police, done something, as far as Mr. Brannon
22 and he didn't. Scott Cheeks came by and took him to the
23 hospital.

24 It's an attempted murder and it requires intent to
25 kill. You can infer that from what you've heard, what you

1 see, in your own common experience.

2 The question is to remember the important things, the
3 rock, Mr. Brannon, their relationship. That man blasted
4 what Mr. Brannon has in his mind that morning. It's his
5 face, that rock, coming down on him.

6 As Doctor Davis said, could of been worse. Head
7 trauma's can be deadly. Head trauma's are serious. Not
8 just simple lacerations require C.T. Scan. You got a C.T.
9 Scan and luckily nothing was shown on it.

10 This is attempted murder, ladies and gentlemen,
11 attempted murder. Common experience tells us you don't take
12 something, a rock that size and take it over your head with
13 both hands, come down on someone else's head, not intending
14 to kill that person. That's what happened here.

15 Please use your common sense, slow and careful
16 deliberations, and come back with a verdict of attempted
17 murder.

18 Thank you.

19 THE COURT: For the defense, Ms. Jones.

20 MS. JONES: Thank you, Your Honor.

21 Ladies and gentlemen, you heard from the prosecution,
22 and the prosecution hammers over and over again, he may be a
23 drunk, but he sure gets the important things down. He was
24 hit with a brick. That's the only fact that you need to
25 know. That's the only fact you need to consider.

1 Mr. Brannon says he was hit with a brick.

2 Don't get lost in those details. Don't worry about
3 those inconsistencies. Don't worry about the fact he can't
4 remember whether it was five o'clock in the afternoon, in
5 the morning, or what time it was. Don't worry about that.
6 That's not important. You're missing the point. The point
7 is he said he got hit by a brick. Case closed. Come back
8 with a verdict of guilty.

9 Ladies and gentlemen, your role is more than that.
10 Unfortunately the devil is in the details. The details are
11 what separate fact from fiction. The details are what
12 separates what happened, what didn't happen, the truth from
13 fiction, and that's what we need to focus on.

14 He's a drunk. He remembers the important parts?

15 He does?

16 He doesn't even remember the doctor who treated him.
17 He denies that that doctor even laid a hand on him, and the
18 doctor's the one who sutured him up. No memory. He didn't
19 touch me. It's the nurses.

20 If he doesn't even know who sutured him up because he
21 was so out of it, how can we believe what he says?

22 Who did this to him?

23 The fact of the matter is, ladies and gentlemen, he was
24 drunk, and he doesn't know what happened, and he's at the
25 hospital and people are asking him all kind of questions,

1 what happened to you, what's going on, the police are
2 called. At least two officers are on the scene. Tell us
3 what happened. Don't know. You heard the doctor on the
4 stand. He couldn't tell us. Poor historian.

5 And they want to make a lot of hay out of the fact that
6 he needed a C.T. Scan cause these injuries were so terrible.
7 You heard the, you heard the doctor. The doctor testified
8 we had to do that C.T. Scan cause he couldn't tell us what
9 happened to him, and he was so drunk that we had to do that
10 because of defensive medicine. We had to exclude things
11 cause he couldn't tell us, he couldn't give us that
12 information, and that's the man, that's the story.

13 His memory is what they want you to convict this man of
14 attempted murder, malice, his story, and let's not forget
15 the police didn't even bother to corroborate his story.
16 They just said oh, he got hit with a brick. Okay. well,
17 let's write that down. Let's arrest him.

18 They could of taken this brick and swabbed it for
19 blood. Let's -- that's called corroborating evidence,
20 ladies and gentlemen. We don't know if there's blood on
21 that brick. We have no idea. And yet they want you to
22 convict this man of attempted murder, and they don't even
23 bother to do that.

24 There's red spots in the house. They claim it's blood.
25 Do we know that for sure?

1 Again, they don't bother cause they got what they
2 needed. Details are not important. We don't care about
3 detail. What we know is the important facts, and the
4 important facts are what he said. Forget that he's drunk.
5 Oh, he's a drunk. He's just -- that's just the way he is.
6 Don't worry about that.

7 well, ladies and gentlemen, we need to worry about this
8 cause this man's life is on the line. They want you to
9 convict him of this evidence, and let's take a look at what
10 Mr. Brannon initially said, and how his stories just don't
11 add up.

12 He initially said and told the police that he came home
13 at five o'clock from mowing the lawn and Mr. Brannon was at
14 his house with a friend and they all started drinking. Then
15 apparently some fight erupted. From the cross-examination,
16 he's like well, maybe that didn't quite happen. I don't
17 know. I think we -- actually what had happened was I came
18 home, I got some beer, and about probably eight o'clock
19 Mr. Brannon came over, and then a little while later pretty
20 soon Mr. Brannon was with his girlfriend and his ex-wife or
21 his wife wasn't going to appreciate that and then they got
22 into some words, and then pretty soon it was well, maybe we
23 all drank, we went to bed, and then we got up the next day
24 and we just continued to drink.

25 He's just all over the place, ladies and gentlemen. He

1 can not tell a straight story, and the reason he can't tell
2 a straight story is cause he doesn't remember. He was too
3 drunk to know who was at the house, what they were arguing
4 about, and why he got hit.

5 You'll also recall he can't even remember what was the,
6 the beef between him and his cousin. He initially said
7 yeah, it was he was bringing his ex-girlfriend around or his
8 girlfriend and his wife wouldn't like it. That was kind of
9 a problem. And then pretty soon, in his statement that he
10 later denied having told the officer, was that it was over
11 \$20, and that he got \$20, but that wasn't going to be enough
12 for the rent, that he wasn't concerned about the rent money,
13 that wasn't the issue cause \$20 is just \$20.

14 But then he says, prior to this incident on the stand,
15 on direct, he says well, actually what really started this
16 fight is we were arguing about something that happened a
17 while ago involving the couch and we were arguing and I got
18 thrown over the couch and it didn't really make a lot of
19 sense and we never could really figure out what that
20 argument was about, but evidently that led to him trying to
21 kick Mr. Brannon, John Wayne Brannon, out of the house.

22 So now we've got several different versions.
23 Was it cause of the money they were fighting?
24 Was it because of a girlfriend?
25 Was it because of this other argument?

1 we don't know and then he goes into, in his statement.
2 He says he asked Mr. Brannon to leave and he shoved him out
3 the door. Shoved him out the door. But then on cross he
4 says well, no, that didn't happen. No, that didn't happen,
5 that didn't happen, but I remember the important thing, he
6 hit me with a brick.

7 The devil is in the details. It's what separates fact
8 from fiction. It's what separates what happened and what
9 didn't happen. It creates reasonable doubt.

10 If he can only remember one detail, is that enough to
11 convict, ladies and gentlemen, of attempted murder?

12 You also know and they talked a lot about this rock,
13 and this is a heavy rock. I don't think I can lift it above
14 my head and I'm not even gonna try. But they say it was a
15 glancing blow, and he got injured here.

16 well, glancing blow is like this, right?

17 Injury here.

18 How in the world did he get injured back here then?

19 what happened?

20 There's been no explanation of that.

21 Did he fall down and they hit him again?

22 This is a heavy brick.

23 Can you imagine getting hit with this?

24 Is this just gonna require 15 stitches, a local
25 anesthetic and sutures or is this going to do some other

1 damage?

2 If I lift this up and come down on somebody like he
3 claims, would he just require some stitches?

4 Think about that, ladies and gentlemen.

5 And where is this blood, tissue?

6 You look at the injury and it's gruesome. No denying
7 that.

8 Some instrument caused that damage, wouldn't we expect
9 tissue, blood, hair on the instrument that did it?

10 where is it?

11 The police never testified they recovered anything like
12 that. Of course, they didn't bother to check. But you can
13 look at it yourselves. It's in evidence. There's no tissue
14 on it. That's no hair on it. There's nothing. He's just
15 too drunk to remember what happened and now he's in a story,
16 and he's got to see that story to the end.

17 And when you also look at the crime scene, the alleged
18 crime scene, where's the blood spatter if there is, if this
19 is indeed blood?

20 It's just a pool.

21 If somebody's gonna strike you, doesn't it make sense
22 that there's gonna be some sort of splatter?

23 It's a pretty big blow.

24 Maybe he didn't get injured in his house?

25 If we're to believe the State's version of events,

1 they're gonna have you believe that these two men were
2 apparently drinking. What time they started, why they
3 started, we don't know cause Mr. Brannon couldn't fill in
4 those details.

5 But let's just play devil's advocate for a moment, and
6 believe Mr. Brannon for a second. They would have you
7 believe he drank two 40's. They called it a night. Got up
8 in the morning at about 7:00, 7:30, drank so much alcohol he
9 was still intoxicated by the time he left the hospital at
10 about two o'clock in the afternoon. That's a lot of
11 alcohol.

12 His friend testified he came over at the house around
13 9:00, 9:30 and found his friend there. So, he would of had
14 to of consumed this alcohol in about two hours.

15 Okay. Well, let's play devil's advocate and say he's
16 just really chugged it down, completely drunk. Apparently
17 his friend was drinking too, Mr. John Wayne Brannon.

18 Are we to believe that this man too who's probably
19 drunker or at least tipsy is gonna be able to at least pick
20 up this rock from the front, carry it, open that door?

21 As you can see it has a little thing. So, he's got to
22 maneuver this rock, all the while he's been drinking,
23 maneuver it, and then there's a second door. Now he's got
24 to open that door, come in with this rock, without even
25 being detected cause apparently drunk people are very quiet,

1 get up, and surprise Mr. Brannon, and then, after he's hit
2 him, he's on the ground, pick up that rock, again maneuver
3 to the door, open the door, open the other door, come out,
4 and drop it out here cause that's where they said they found
5 the rock.

6 Does that make any sense, ladies and gentlemen, and
7 you've just hit somebody with a rock?

8 Are you gonna come all the way back outside and drop it
9 in broad daylight on the deck?

10 Are you just gonna high tail it out of there?

11 You're gonna hit somebody and run.

12 what do you think somebody's gonna do?

13 Are they really gonna come back out and say, oh, let me
14 leave this here?

15 And, again, that's how they say that rock was found.

16 where's the blood?

17 All these questions, ladies and gentlemen, should lead
18 you to one answer. My client didn't do this. The judge is
19 going to instruct you that my client has no burden in this
20 case. He didn't have to prove anything. He doesn't have to
21 prove his innocence. They have to prove him guilty.

22 He has pled not guilty, ladies and gentlemen. That's
23 all he needs to say. Not guilty. They can't fill in the
24 details, and while they want you to play hide and seek, and
25 say well, don't worry about those details, I implore you to

1 consider those details, and think about those details cause
2 this is a serious charge and a serious crime, and I think
3 once you do you're gonna come back with a verdict of not
4 guilty.

5 Thank you.

6 THE COURT: Ladies and gentlemen, that concludes the
7 closing arguments by counsel. I told you that once we
8 reached this stage of the proceeding it would be my
9 responsibility and obligation to charge you concerning the
10 law to be applied in this case.

11 Before I do that I want to go over with you again the
12 indictment that brought the case before this Court. I'm
13 going to read that indictment to you again. It is in Case
14 Number 11-GS-42-4694. The indictment is for the offense of
15 attempted murder.

16 The indictment states that John Wayne Brannon did, in
17 Spartanburg County, on or about April 10 of 2011, with
18 malice aforethought, intend and attempt to kill the victim,
19 Ronnie Brannon, in violation of Code Section 16-3-29 of the
20 Code of Laws of South Carolina, 1976 as amended, against the
21 peace and dignity of the State and contrary to the statute
22 in such case made and provided.

23 Now, I'll remind you the fact that a defendant has been
24 arrested, charged, and indicted in this case is not evidence
25 in this case, and can not be considered by you, the jury, as

1 evidence of guilt in this case nor do those facts create any
2 presumption of guilt. This is simply the document that
3 brings the case before the Court. Again, it informs both
4 the Court and the defendant of the charge that's been lodged
5 and the charge that's to be tried.

6 To that indictment, the defendant has pled not guilty,
7 and by that plea and under the law and the Constitution of
8 this State and the United States that plea places the burden
9 of proof upon the State. A person charged with the
10 commission of a criminal offense in South Carolina is never
11 required to prove himself innocent of that offense.

12 I charge you that it's an important rule of law that a
13 defendant in a criminal case, no matter what the seriousness
14 of the crime might be, is always presumed to be innocent of
15 the crime for which the indictment has been issued until and
16 unless guilt has been shown to you, the jury, by proof of
17 that guilt beyond a reasonable doubt. The presumption of
18 innocence does not end when you begin your deliberations.
19 It continues throughout this proceeding and into your
20 deliberations.

21 Some people describe the presumption of innocence
22 somewhat like the robe that I wear into the courtroom. That
23 presumption of innocence remains about the shoulders of the
24 defendant, it accompanies the defendant, still about his
25 shoulders, into your deliberations. It remains in that

1 position until such time as it has been stripped from him by
2 proof that satisfies you of the defendant's guilt beyond a
3 reasonable doubt.

4 Now, the presumption is not a mere legal theory, and
5 it's not just a legal phrase. It's a substantial right that
6 every defendant is entitled to until and unless you, the
7 jury, are satisfied from the evidence of the defendant's
8 guilt beyond a reasonable doubt.

9 Now, you've heard me refer to proof beyond a reasonable
10 doubt several times already and you can tell it's an
11 important concept in our criminal law. You may be asking
12 yourself well, just what is meant by a reasonable doubt or
13 what is a reasonable doubt. It's been defined in the law as
14 a reasonable doubt as that kind of doubt which would cause a
15 reasonable person to hesitate to act, and the State has the
16 burden of proving the defendant guilty beyond a reasonable
17 doubt.

18 Now, some of you may have been involved in civil cases.
19 Civil cases are where someone is seeking a monetary recovery
20 from someone. It can be for such things as breach of
21 contract, failure to pay a debt, personal injury of some
22 kind. That's where people are seeking monetary damages for
23 injuries that have been alleged to have occurred, and the
24 standard of proof in those cases is different from in
25 criminal cases. The standard of proof in a civil case is by

1 the greater weight or the preponderance of the evidence.
2 It's defined as the scales of justice tilting ever so
3 slightly one way or the other, and whichever way they tilt,
4 that's the person who would win that case.

5 Those are civil cases. That's not the standard of
6 proof in this case. The standard of proof in a criminal
7 case is more powerful than that. It is proof beyond a
8 reasonable doubt.

9 Proof beyond a reasonable doubt is that kind of proof
10 that would leave you firmly convinced of the defendant's
11 guilt. Now, I'll tell you there's very few things that go
12 on in anyone's life or in any human experience that can be
13 proven beyond any doubt whatsoever. That's not the standard
14 of proof to which the State is placed in this case. They do
15 not have to provide proof that overcomes every possible
16 doubt.

17 I'll tell you, if based on your consideration of the
18 evidence, if you are firmly convinced that the defendant is
19 guilty of the crime charged, again, beyond a reasonable
20 doubt, then you must find the defendant guilty. However, on
21 the other hand, if you think there's a real possibility that
22 the defendant is not guilty, then you must give the
23 defendant the benefit of that doubt and find him, the
24 defendant, not guilty.

25 I'll remind you that you and I have had certain duties

1 to perform in this case. We still have duties to perform as
2 we continue. As the trial judge, it's been my
3 responsibility to preside over the trial, and I've had the
4 duty of ruling on the admissibility of evidence so the
5 appropriateness of questions that are being asked, and I
6 will tell you that you have -- you should only consider the
7 evidence or the facts that were placed into the record of
8 the case.

9 So, if I ruled anything out of order, if I ruled
10 anything to be stricken from the record, you should
11 disregard those matters in their entirety. You should only
12 consider the information, the evidence that was placed into
13 the record of the case during the trial.

14 I have the additional duty of charging you concerning
15 the applicable law in the case, and I've told you, as the
16 presiding judge, I am the sole judge of the law in this
17 case. It's your responsibility to take the law as I now
18 give it to you. You should then apply it to the facts as
19 you determine those facts to be, and that should place you
20 in a position to reach a fair and a just verdict in this
21 case.

22 I told you earlier if you have an idea as to what the
23 law is or what it ought to be, leave those ideas outside of
24 the jury room. You're to take the law exactly as I give it
25 to you, and, again, apply it to the facts.

1 Now, in every case tried before a jury in this court,
2 the jury is the sole and exclusive judges of the facts in
3 this case. As a trial judge, I can not indicate in any
4 fashion that I have an opinion one way or the other as to
5 how you determine the facts in this case, and I told you
6 earlier and I'll repeat that, that the law doesn't allow me
7 an opinion concerning the facts, and, therefore, I have no
8 opinion as to how you determine the facts in this case.

9 So, you should not take from anything that I say or do
10 in the discharge of my duties, both during the trial and
11 during this charge on the law, to indicate to you that I
12 have an opinion one way or the other concerning the facts in
13 this matter. I do not have an opinion on that subject.

14 It's your duty, however, as jurors, since you are the
15 sole judges of the facts, to weigh the evidence that you've
16 heard, determine the effect and the value of the evidence
17 that you have heard, and the truth of the evidence that
18 you've heard. I've told you earlier, as the sole judges of
19 the facts, you are the sole judges of the credibility and
20 the believability of witnesses who've testified during the
21 trial. Again, credibility simply means believability. I
22 urged you earlier, and I'll tell you again, to use your own
23 good common sense in making that determination.

24 You have the right to consider whether a person has a
25 stake in the outcome of the case, a bias or prejudice one

1 way or the other, whether, whether or not the witness
2 actually had the ability to know the facts about which that
3 witness testified, and you can consider the demeanor or the
4 way in which the testimony has been delivered. You can
5 believe all of what a witness has told you, part of what a
6 witness has told you, or none of what a witness has told
7 you. You can believe one against all the others or all the
8 others against one because you are the sole judges of the
9 facts. Again, sole judges of credibility. You determine
10 the weight, the value, and the effect of the testimony that
11 you have heard during the trial.

12 Now, in weighing the evidence, I will tell you there
13 are two types of evidence that you have the right, as a
14 jury, to consider in reaching your verdict in this case, and
15 I'll explain to you what I mean by two types of evidence.
16 First of all we have what we call direct evidence.

17 Direct evidence is testimony by a witness who claims to
18 have direct knowledge of the facts about which that witness
19 testified. That means it's someone who actually experienced
20 the event. An eye witness. Someone who saw the event,
21 heard the event, felt something, smelled something, tasted
22 something. That's what we mean by direct evidence. Someone
23 who testifies about matters that they claim to have direct
24 knowledge of. That's what we mean by direct evidence.

25 The other type of evidence that you have the right, as

1 a jury to consider in reaching your verdict, is what we
2 refer to or is called circumstantial evidence. Now,
3 circumstantial evidence is proof of a chain of facts or
4 circumstances which reasonably indicate the existence of
5 another fact. Under the law it's been described as proof of
6 collateral facts from which a main fact could be reasonably
7 inferred.

8 Now, that's a -- those are some big words and I like to
9 use a very simple example of what is meant by proof of a
10 fact by, by circumstances or collateral facts. Let's say
11 last night, before you went to bed, you looked outside the
12 window at your home and the stars were shining, beautiful
13 night. You went to bed, slept well all night, didn't wake
14 up at all. The next morning you got up and you looked out
15 the same window.

16 Now, the sun might be shining, but when you looked out
17 the window you noticed there's water dripping from all the
18 trees, puddles in the driveway. The road outside your home
19 is wet.

20 Now, you didn't hear it rain, you didn't see it rain.
21 So, you didn't directly experience any of that. But from
22 the collateral facts that you know to be true, the wet tree,
23 the puddles, the wet road, you can reasonably infer that at
24 some time during the night it rained. Now, that's what we
25 mean by proof of collateral facts from which a main fact

1 could be reasonably inferred. So, circumstantial evidence
2 again is a, is proof of a chain of facts or circumstances
3 that indicate the existence of another fact.

4 Now, the law doesn't make any distinction between the
5 weight or value a jury can give to either direct or
6 circumstantial evidence nor is there a greater degree of
7 circumstantial evidence than of direct. I will tell
8 you, as a juror, you should weigh all of the evidence, both
9 direct and circumstantial, and after weighing all of the
10 evidence in the case, giving it the weight that you choose
11 to give it, if you are not convinced of the defendant's
12 guilt beyond a reasonable doubt, then you must find the
13 defendant not guilty. However, on the other hand, if you
14 are firmly convinced of the defendant's guilt beyond a
15 reasonable doubt, you must find the defendant guilty.

16 Now, in this case we had an expert witness who
17 testified, and at the time that person testified I went over
18 the fact or the, the way, the way we treat that testimony.
19 Ordinarily, under our rules of evidence, a witness is not
20 allowed to give an opinion concerning any matters. They
21 must testify concerning facts within their knowledge.

22 The exception to that rule is for someone who is deemed
23 to be an expert witness. That's somebody who, because of
24 training or profession or the work that they've done or
25 their experience, has become an expert in some field,

1 calling, or profession, and as to those witnesses we do
2 allow those witnesses to give opinions within the area of
3 their expertise.

4 They also have the right to state the reasons for those
5 opinions, and I will tell you that you have the right or you
6 should consider the testimony of the expert witness just
7 like any other witness that you've heard in this case. You
8 give it the weight that you think it deserves. If you
9 later -- if you should decide during your deliberations that
10 the opinion of an expert is not based on sufficient
11 education or sufficient experience or you conclude the
12 reasons the expert gave for that opinion are not sound or if
13 you think it's been outweighed by other testimony, you have
14 the right to disregard an expert's opinion like any other
15 witnesses, witness. You can believe all, part of, or none
16 of that testimony.

17 I'll tell you that an expert witness' testimony is not
18 to be given greater weight by you simply because the
19 person's been deemed to be an expert. In other words, you
20 should weigh that testimony like any other testimony in the
21 case. You give it the weight that you think it deserves,
22 and you are not required to accept an expert's opinion even
23 though it might not be contradicted by any other testimony
24 in the record.

25 Now, I'm going to instruct you and emphasize to you

1 that the fact that the defendant did not testify in this
2 case is not to be considered by you in anyway in your
3 deliberations, in your consideration of the question of the
4 guilt or innocence of the defendant. It must not be
5 considered by you in any manner whatsoever.

6 Under the law and the Constitution of this state, a
7 defendant has the Constitutional right to remain silent.
8 The assertion of that right by a defendant must not be
9 considered by you in your deliberations. I repeat to you,
10 that under your oath as jurors, you are to draw no
11 conclusion whatsoever from the fact that the defendant did
12 not testify. The fact that the defendant did not testify
13 should not even be discussed by you in your deliberations.
14 Again, the burden of proof is solely upon the State in this
15 case and only upon the State in this matter.

16 Now, in a few minutes I'm going to go over with you the
17 charge in this case and the statute under which that charge
18 originates, and you will hear in that charge and my reading
19 of that statute some language involving intent, and let me
20 explain to you what we mean by intent when we talk about it
21 in the criminal statute.

22 In order to establish criminal liability, criminal
23 intent is a required element. For example, that's the
24 mental state that a statute might require to be proven by
25 the State for a particular crime, and that might be purpose,

1 intent, knowledge, recklessness, or criminal negligence.

2 Now, criminal intent must be proven by the State the
3 same way as any other element of the crime, by proof beyond
4 a reasonable doubt, and criminal intent is always a matter
5 to be determined by the jury from the circumstances
6 surrounding the situation. Again, as I described earlier,
7 by circumstantial evidence.

8 The reason for that is there's no scientific way that
9 we can open up someone's head at the moment that they commit
10 a particular act and be able to calculate mathematically or
11 scientifically what they intended to do. Therefore,
12 criminal intent is always based on inference from the facts
13 and circumstances that have been shown to have existed at
14 the time that the event occurred. So, therefore, criminal
15 intent is always a matter to be proven by inference, and
16 that's how you make a determination as to whether or not an
17 element of a crime requiring intent was present.

18 So, it's not necessary to establish intent by any
19 direct evidence or positive evidence. It can be established
20 by inference the same way as any other fact taking into
21 consideration the acts of the parties and the facts and
22 circumstances that have been proven to have existed at that
23 time.

24 Now, criminal intent, I will tell you, is a mental
25 state. It's a conscious wrongdoing. It's up to you, the

1 jury, to determine what the defendant intended to do based
2 upon the circumstances which have been shown to you to have
3 existed at the time of the alleged event.

4 Now, I read to you earlier the indictment and I'll pick
5 that back up because it refers to Code Section 16-3-29 of
6 the Code of Laws. I'm going to read the pertinent portion
7 of that statute to you.

8 It says a person who, with intent to kill, attempts to
9 kill another person with malice aforethought, either
10 expressed or implied, commits the offense of attempted
11 murder. That's the relevant portion of the statute, and the
12 defendant has been charged with attempted murder. In order
13 to prove that crime, the State must prove the defendant
14 attempted to kill another person with malice aforethought
15 either expressed or implied.

16 Now, let me explain to you what we mean by malice
17 aforethought. That's a word or phrase you probably don't
18 use much in your day-to-day lives. Malice is hatred or ill
19 will or it's even hostility towards another person. It's
20 the intentional doing of a wrongful act without just cause
21 or excuse and with the intent to inflict an injury or under
22 circumstances that the law would infer an evil intent.
23 Malice aforethought does not require that the malice exist
24 for any particular length of time before the act occurs, but
25 malice must exist in the mind of the defendant just before

1 and also at the time that the act in question had been
2 committed.

3 Therefore, there must be a combination of a previous
4 ill will, no matter what the length, and the act. Malice
5 aforethought can be either expressed or inferred, and these
6 terms expressed or inferred don't talk about different kinds
7 of malice. It's the way that the malice is shown or proven.
8 That is either by direct evidence or by circumstantial or
9 evidence or by inference. That's the different ways you can
10 show malice.

11 Express malice is shown when a person speaks words
12 which express hatred or ill will for another or when a
13 person prepares beforehand to do the act which was later
14 accomplished. For example, lying in wait for another person
15 or any acts done in preparation going to show that the deed
16 was within the defendant's mind would be expressed malice.
17 Malice may also be inferred from conduct showing a total
18 disregard for human life. Inferred malice may also arise
19 when the deed is done with a deadly weapon.

20 Now, a deadly weapon is any article or instrument or
21 substance which is likely to cause death or great bodily
22 harm. Now whether an instrument or an item has been used as
23 a deadly weapon depends upon the facts and circumstances of
24 each case. The following items have been found in other
25 cases to be deadly weapons, and they include such things as

1 pistols, shotguns, rifles, dirk, daggers, knives, sling
2 shots, metal knuckles, razors, gasoline, fire bombs, lighter
3 fluid, and I will tell you that ordinary objects may become
4 deadly weapons when the facts show that they have been used
5 to inflict serious bodily injury, harm, or death. If the
6 facts are proved beyond a reasonable doubt sufficient to
7 raise an inference of malice to your satisfaction, this
8 inference is simply an evidentiary fact to be considered by
9 you, the jury, along with the other evidence in this case
10 and you can give it the weight you decide it should receive.

11 Now, intent requires intending the result which
12 actually occurred. Not some accident or involuntarily act.
13 Intent may be shown by acts and conduct of the defendant and
14 other circumstances when, from which you might naturally and
15 reasonably infer intent. Evidence of the character of the
16 assault, the character of the instrument used, the manner in
17 which it was used, the purpose to be accomplished, and the
18 resulting wounds or injuries may be considered in
19 determining the intent with which the assault was committed.
20 Intent may also be inferred when it is demonstrated that the
21 defendant voluntarily and willfully commits an act, the
22 natural tendency of which is to destroy another's life.

23 Now, that's my, that completes my charge on the law on
24 attempted murder. I will tell you that, under the law,
25 should the State have failed to prove that particular

1 offense, you, the jury, have the right then to consider what
2 we call lesser included offenses, and let me explain to you
3 what this means. It's a little bit, it's a little bit of a
4 strange concept. But under the law, where we have a greater
5 offense, quite often there are lesser offenses, that while
6 the State didn't prove everything in the greater offense,
7 they may have proved, proved lesser offenses that you have
8 the right, as the jury, to consider.

9 So, should you determine that the State has failed to
10 meet its burden of proof in respect to the offense that's
11 been charged, and you find the defendant not guilty of that
12 offense, then you must then determine if the defendant is
13 guilty of any of the lesser included offenses. In this case
14 the possible lesser included offenses are two in nature.
15 One, assault and battery of a high and aggravated nature,
16 and assault and battery in the second degree.

17 Before I start talking about the lesser included
18 offenses, let me explain to you what is meant by an assault
19 and battery cause both of these, these lesser includeds talk
20 about an assault and battery, and I want to be sure you
21 understand what those things are.

22 An assault, under the law, is when someone attempts or
23 offers to commit a violent injury upon another person and
24 has the presentability to complete the attempted injury. An
25 assault is the intentional creation of a reasonable fear of

1 immediate bodily harm.

2 Now, I'll give you a simple example of what that means.
3 If you and I were to meet in the hallway outside of this
4 courtroom and I were to walk up to you within arm's length
5 of you, didn't necessarily say a word to you, but I drew
6 back my fist as if to hit you, then that would be an assault
7 as long as I have the immediate ability to carry out the
8 assault. In other words, if we're in arm's length, if I
9 brought my arm forward and hit you, then that's an assault
10 because I would put you in fear of being injured. So, that
11 is what is meant by an assault.

12 A battery is the unlawful touching of another person
13 who is committed, by someone whose committed an assault.
14 The unlawful touching can be caused by any part of the
15 accused or anything that the accused puts in motion. A
16 battery is the completion of assault by applying or using
17 force to another person, however slight, as long as it's
18 done in a rude, angry, or resentful manner without legal
19 justification.

20 So, using my example, if I walked up outside in the
21 hallway and I got within arm's length, drew back my fist as
22 if to hit you, and then brought it forward and applied force
23 to you, no matter how slight, if I hit your person, that's
24 the battery and that completes the assault. So, an assault
25 and battery is the offering to commit the injury with the

1 ability to carry it out. The battery is applying force to
2 someone in a rude, angry, or resentful manner, no matter how
3 slight, without legal justification for having done so. So,
4 that's what we mean by assault and battery. So, when I use
5 that phrase in these lesser included offenses, that's what
6 I'm talking about.

7 Now, assault and battery of a high and aggravated
8 nature, a person commits the offense of assault and battery
9 of a high and aggravated nature if the person unlawfully
10 injures another person and, A, great bodily injury to
11 another person results or the act is accomplished by means
12 likely to produce death or great bodily injury. Great
13 bodily injury means bodily injury which causes substantial
14 risk of death or which causes serious permanent
15 disfigurement or protracted loss or impairment of the
16 function of a bodily member or organ. That's what is meant
17 by assault and battery of a high and aggravated nature.

18 Assault and battery in the second degree is the next
19 lesser included offense. A person commits the offense of
20 assault and battery in the second degree if a person
21 unlawfully injures another person or offers or attempts to
22 injure another person with the presentability to do so, and
23 either moderate bodily injury to another person results or
24 moderate bodily injury to another person could of resulted.

25 Now, moderate bodily injury means physical injury

1 requiring treatment to an organ, system of the body, other
2 than the skin, muscles and connective tissue of the body,
3 except when there is penetration of the skin, muscles, and
4 connective tissue that requires surgical repair or a, of a
5 complex nature or when treatment of the injured area
6 requires the use of a regional or general anesthesia.

7 Now, those are the possible verdicts. I will tell you
8 later on and I will give you a form, we'll go over that, and
9 what you'll do is you'll need to decide, first of all,
10 whether the State proved attempted murder. If you find that
11 the State did not prove that, and the defendant would be
12 found not guilty of that, then you must go to the next
13 lesser included offense and decide whether the State has
14 proven the offense of assault and battery of a high and
15 aggravated nature. If you find the State failed to prove
16 that charge, then you would need to consider assault and
17 battery in the second degree. So, that's the process that
18 you will go to.

19 Now, your verdict in these cases, as I told you
20 earlier, must be unanimous. Each and every one of you must
21 agree upon the verdict before it becomes the verdict of the
22 jury. That means each of you will have an equal say in the
23 outcome of the case.

24 Ms. Weathers, if you'll raise your hand please?

25 (Juror complies.)

1 THE COURT: You are going to be the foreperson of the
2 jury. That means you will be the person who will be
3 conducting the deliberations of the jury. If the jury has a
4 question during the discussion, I'm going to ask that you
5 write the question on a sheet of paper, knock on the door,
6 tell the bailiff that a question has been asked, and pass
7 the question to the bailiff. The bailiff will bring that
8 question to me, and then I'll consider what the appropriate
9 answer might be.

10 I will tell you, the jury, that I can't answer every
11 question that you might have during deliberations because,
12 as I told you, I don't get involved in your decisions
13 concerning the facts. I can respond to questions about my
14 charge on the law or the procedure that we followed and
15 certain questions about the evidence, but I'm not asking you
16 to edit any question. Whatever the question is, write it on
17 a piece of paper, give it to the bailiff, and I'll decide
18 the appropriate answer or whether I can answer it at all.

19 Also, it will be your responsibility, once a verdict
20 has been reached, to record the verdict on the form that I'm
21 going to give you, and, again, knock on the door, inform the
22 bailiff that a verdict's been reached. We'll return you to
23 the courtroom then to receive the verdict.

24 Now, ladies and gentlemen, I've gone over a lot of
25 things with you in my charge, and I want to be sure I

1 haven't misspoken, and I also want to be sure we get the
2 evidence that's been admitted and only that evidence
3 together for you to take back to the jury room with you.
4 So, one more time, I'm going to ask you to retire to the
5 jury room and don't begin your discussions at this time.

6 Madam Forelady, don't let any discussions begin. I'll
7 bring you back into the courtroom one more time and give you
8 final instructions. You may retire to the jury room.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Objections to the charge from the State?

12 SOLICITOR BOYD: None from the State, Your Honor.

13 THE COURT: Defense?

14 MS. JONES: Your Honor, we would just renew our
15 objection for the assault and battery of a high and
16 aggravated nature for the reasons already stated.

17 THE COURT: I understand and I would make the same
18 ruling. I'll leave the charge in place.

19 I'll ask you to come forward. Let's segregate the
20 evidence that's been admitted so the jury can have that back
21 in the jury room, reach an agreement on what goes back.

22 (Pause.)

23 THE COURT: Do we have any rubber gloves we can give to
24 them in case they decide to get into those biohazardous
25 materials?

1 All right. The verdict form, if you'll take a look at
2 that and let me know if there's any objections.

3 All right. Without objection we'll submit the forms to
4 the jury.

5 All right. Let's bring the jury back.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: Mr. Hayes, if you'll stay up here for just
9 a second. I've got to hand some things to them.

10 BAILIFF: Okay.

11 THE COURT: Thank you, sir.

12 All right. Ms. Weathers, I'm going to hand to you a
13 verdict form, and let me go over it with you so that we have
14 an, have an understanding on that. At the top you'll see it
15 indicates the state and county and the court that we're,
16 we're in, and below that is the caption, the State against
17 Mr. Brannon. It states that it is the verdict.

18 The first question that you're to answer under that has
19 to do with the charge under which he was indicted, which is
20 for attempted murder. There are two choices under that,
21 either guilty or not guilty, and I want you to put an X or a
22 check on the line adjacent to the correct verdict once that
23 jury reaches a unanimous verdict.

24 Now, you'll see below that it says should you find him
25 not guilty of that charge, then you must ask, answer the

1 same questions concerning assault and battery of a high and
2 aggravated nature. Again, either guilty or not guilty. If
3 you find him not guilty on that charge, then you would need
4 to answer the same questions for assault and battery in the
5 second degree, same choices, guilty or not guilty. You'll
6 only answer those two lesser includeds if you find him not
7 guilty of the first charge. Now, once that's been
8 completed, you'll sign it and again indicate a verdict has
9 been reached.

10 I will send the indictment back with you to the, to the
11 jury room. We're going to give you the exhibits that have
12 been placed into evidence. We've put some plastic gloves
13 with that in case you decide you want to take out those
14 items that may have some biohazard and be sure you wear
15 those gloves if you decide to take those items out. But how
16 you view the evidence is up to the jury. You decide how you
17 wish to do that.

18 So, at this time I'm going to ask you to step back to
19 the jury room to begin your deliberations. Again, we'll
20 send the exhibits back along with the indictment.

21 You may retire. Thank you very much.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: Any objections to my final instructions by
25 the State?

1 SOLICITOR BOYD: No objections, Your Honor.

2 THE COURT: Any from the defense?

3 MS. JONES: No, sir.

4 THE COURT: All right. The defendant will remain in
5 custody.

6 Court is in recess until a verdict is reached.

7 Thank you very much.

8 (WHEREUPON, the jury began deliberations at 2:26 and
9 returned with a question at 3:19.)

10 THE COURT: Ask the attorneys to approach briefly.

11 (WHEREUPON, a bench conference was held at this time.)

12 THE COURT: All right. Bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect that
16 the jury has returned to the courtroom.

17 I've received an inquiry from the foreperson. Please
18 explain the difference between assault and battery of a high
19 and aggravated nature and assault and battery in the second
20 degree.

21 Ladies and gentlemen of the jury, I'm going to give you
22 the charge that I gave earlier. I realize that it can be
23 confusing, especially in light of the other charges. So,
24 I'm just gonna recharge you again, and you can listen for
25 the differences in the, the two charges.

1 Assault and battery of a high and aggravated nature,
2 that's when a person commits the offense of assault and
3 battery, excuse me, a person commits the offense of assault
4 and battery of a high and aggravated nature if the person
5 unlawfully injures another person and great bodily injury to
6 another person results or the act is accomplished by means
7 likely to produce death or great bodily injury.

8 Now, great bodily injury is defined -- it means bodily
9 injury which causes a substantial risk of death or which
10 causes serious permanent disfigurement or protracted loss or
11 impairment of the function of a bodily member or organ.
12 That's the offense of assault and battery of a high and
13 aggravated nature.

14 The offense of assault and battery in the second
15 degree, a person commits the offense of assault and battery
16 in the second degree if the person unlawfully injures
17 another person or offers or attempts to injure another
18 person with the presentability to do so and either moderate
19 bodily injury to another person results or moderate bodily
20 injury to another person could of resulted from the act.

21 Now, moderate bodily injury means physical injury
22 requiring treatment to an organ, an organ system of the body
23 other than the skin, muscles, and connective tissues of the
24 body except when there is penetration of the skin, muscles,
25 and connective tissues that requires surgical repair of a

1 complex nature or when treatment of the injury requires the
2 use of a regional or general anesthesia.

3 So, that's the definition of the two offenses.

4 Does that answer the questions that you had?

5 FORELADY: It does.

6 THE COURT: All right. Thank you very much. I'll ask
7 you to return to your deliberations.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: And objection to my response to the
11 question from the State?

12 SOLICITOR BOYD: Not from the State, Your Honor.

13 THE COURT: Any from the defense?

14 MS. JONES: No, sir.

15 THE COURT: All right. The question will be made an
16 exhibit and placed into the record.

17 (WHEREUPON, the note from the jury was marked as
18 Court's Exhibit No. 1 for identification purposes only at
19 this time.)

20 THE COURT: We'll be in recess in this case until such
21 time as a verdict is reached.

22 (WHEREUPON, the jury began deliberations again at 3:23
23 and returned with a verdict at 4:12.)

24 THE COURT: I have been informed by the bailiff that a
25 verdict has been reached.

1 Is the State ready to receive the verdict?

2 SOLICITOR BOYD: State's ready, Your Honor.

3 THE COURT: Defense ready?

4 MS. JONES: Yes, sir.

5 THE COURT: Bring the jury in.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: All right. Madam Forelady, I've been
9 informed by the bailiff a verdict has been reached.

10 Is that true?

11 FORELADY: Yes, it is.

12 THE COURT: Pass the form to the bailiff, please.

13 (Forelady complies.)

14 THE COURT: Thank you, ma'am.

15 All right. Madam Clerk, I will allow you to publish
16 the verdict.

17 CLERK: In the Court of General Sessions, Case Number
18 2011-GS-42-4694, State versus John Wayne Brannon, as to the
19 Indictment Number 2011-GS-42-4694 for the offense or
20 attempted murder, of attempted murder, we, the jury, find
21 unanimously, find the defendant, John Wayne Brannon, not
22 guilty.

23 How do you find the defendant, John Wayne Brannon, with
24 regards to the lesser included offense of assault and
25 battery of a high and aggravated nature, guilty.

1 This is signed by the foreperson and dated today's
2 date.

3 Ladies and gentlemen of the jury, if this is your
4 verdict and still your verdict, please raise your right
5 hand.

6 (WHEREUPON, all jurors raise their hands at this time.)

7 THE COURT: Anything further from the State before I
8 release the jury?

9 SOLICITOR BOYD: Nothing further, Your Honor.

10 THE COURT: Anything further from the defense?

11 MS. JONES: We request polling of the jury, Your Honor.

12 THE COURT: All right. I'll grant the polling.

13 Ladies and gentlemen of the jury, I'm going to have the
14 clerk call your name. She will be asking each of you or
15 will ask the same question, if this is your verdict and
16 still your verdict. When your name is called, if you will
17 please stand and answer the question as to whether this is,
18 this is your verdict and is still your verdict.

19 Madam Clerk, you may poll the verdict.

20 (WHEREUPON, all jurors were asked if this is their
21 verdict and still their verdict and all jurors responded in
22 the affirmative.)

23 THE COURT: Anything further from the defense before I
24 release the jury?

25 MS. JONES: No, sir.

1 (WHEREUPON, the jury panel was dismissed from the
2 courtroom at this time.)

3 THE COURT: All right. You want to get a sentencing
4 sheet ready for this?

5 SOLICITOR BOYD: We're ready.

6 MS. JONES: And, Your Honor, prior to sentencing I
7 would request to make my normal motions.

8 THE COURT: You may do so at this time.

9 MS. JONES: Okay. Your Honor, we request a motion for
10 a new trial based upon the items we brought up in the
11 directed verdict, that there was not substantial evidence
12 produced to go forward on the attempted murder and the
13 malice, and I'll just reference back to where you indicated
14 that, Your Honor, as well as our renewed objection to the
15 ABHAN, the lesser included charge, as well as that jury
16 instruction, sir.

17 Thank you.

18 THE COURT: All right. The motion is noted and the
19 motions are denied.

20 Are you ready to go forward?

21 SOLICITOR BOYD: We are, Your Honor.

22 THE COURT: If you'll approach the bar please.

23 Mr. Brannon, come forward.

24 (Parties comply.)

25 THE COURT: Mr. Brannon, if you'll step around here in

1 front of the microphone for me please, sir.

2 Yes, sir, Mr. Boyd.

3 SOLICITOR BOYD: Your Honor, if we could have a moment
4 to allow the court reporter to make an exhibit.

5 THE COURT: That will be fine.

6 (WHEREUPON, an affidavit was marked as Court's Exhibit
7 No. 2. The notice of life sentence was marked as Court's
8 Exhibit No. 3. The certified copies of convictions were
9 marked as Court's Exhibit No. 4. All of the above exhibits
10 were received into evidence at this time.)

11 SOLICITOR BOYD: May it please the Court, Your Honor?

12 THE COURT: Yes, sir.

13 SOLICITOR BOYD: Your Honor, this is John Brannon,
14 Indictment 2011-GS-42-4694. He was convicted by a jury of
15 assault and battery high, high and aggravated nature off of
16 an indictment for attempted murder. True bill was issued.
17 Also handing up a proposed restitution order to the victim,
18 actually to the victim, State Office of Victim Assistance.
19 The money rendered in his treatment is \$3,000 -- \$3,095.63,
20 Your Honor.

21 Previously the defendant and his attorney were served
22 notice of a life sentence under the two, three strike law,
23 Your Honor. I have marked for a Court's Exhibit, Court
24 Exhibit No. 2 -- Your Honor, Court Exhibit 2 would be the
25 solicitor's affidavit of service on both Tanya Jones. It

1 was delivered to her office on August 7th, August 17th,
2 2011, by an investigator with our office. That notice was
3 also served on the defendant personally at 950 California
4 Avenue two days later on August 19th, 2011, Your Honor.
5 That's Court Exhibit No. 2.

6 Court Exhibit No. 3 is the actual notice of life
7 sentence pursuant to Section 17-25-45(a) informing him that
8 if he's convicted of attempted murder on the above mentioned
9 indictment, mandatory sentence is based on prior convictions
10 for armed robbery, a most serious offense, on July 31st,
11 1980, and/or any prior convictions for attempted armed
12 robbery, a most serious offense on January 31st, 1980,
13 and/or conviction for armed robbery, a most serious offense,
14 on February 14th, 1994, Your Honor.

15 Court Exhibit No. 4, which was provided to the
16 defendant with service of the notice of the life sentence,
17 are certified copies of his prior convictions for the
18 enumerated offenses, Your Honor, of attempted armed robbery,
19 armed robbery, and armed robbery. That's Court Exhibit No.
20 4. They are notarized by the Clerk of Court.

21 May I pass them up, Your Honor?

22 THE COURT: You may.

23 Ms. Jones, does the defendant challenge any of the
24 information that's been submitted to this Court in Court's
25 Exhibits I believe it's 1, 2, and 3.

1 MS. JONES: Yes, sir.

2 THE COURT: Okay. I'll be happy to hear from you.

3 MS. JONES: In accordance with the notice of life
4 sentence pursuant to Section 25 or 17-25-45(a), it indicates
5 that the defendant will receive a life sentence if he is
6 convicted of attempted murder on the above indictment. We
7 did not, according to the statute, you need ten days notice
8 by the solicitor to the defendant seeking life without
9 parole, Your Honor.

10 He was not convicted of attempted murder. This is a
11 lesser included offense. This is ABHAN. Therefore, we were
12 not given proper notice of the lesser included offense, and
13 the statute was amended now to require that ten day notice.
14 We weren't given notice. Also, attempted murder is a most
15 serious, and ABHAN is serious. So, we would -- it is our
16 contention that if they wanted to seek life on the ABHAN, we
17 would of needed specific notice ten days prior to trial on
18 that lesser included offense. We were not given that. We
19 did not receive that, and, therefore, we do not believe that
20 he is eligible for an L.W.O.P. sentence today.

21 THE COURT: All right. I'll hear from the State.

22 SOLICITOR BOYD: Yes, Your Honor. ABHAN, excuse me,
23 attempted battery, excuse me, ABHAN is a, a lesser included
24 offense statutorily of attempted murder and is included in
25 Section 25, Section 17-25-45 of, of the South Carolina Code

1 of Laws. Notice was given of it, of, of a conviction of a
2 serious or most serious offense that we would be seeking
3 life without parole, Your Honor.

4 The defendant is aware that ABHAN is a lesser included
5 of attempted murder. The facts didn't change. It's still a
6 third strike under our law, and we provided notice of the
7 three prior convictions out of an abundance of caution to
8 allow it to go forward, Your Honor.

9 THE COURT: All right. Anything further, Ms. Jones?

10 MS. JONES: Your Honor, we would just indicate that he
11 could of put attempted murder or any lesser included, and we
12 would remind the Court that the State wasn't even seeking
13 any lesser included until we came up with assault and
14 battery second degree. And they didn't even want that.
15 They objected, they objected, they objected, and at the last
16 minute they received the ABHAN charge really late in trial.

17 Your Honor, again, we would, we would argue that this
18 is not sufficient notice. The Legislature is clear that if
19 you want to seek life, you have to specifically say what
20 you're seeking life for. Therefore, it's deficient under
21 the statutory scheme and we contend that you should be
22 sentencing him under the zero to 20 under your own
23 discretion rather than imposing the mandatory life sentence.

24 THE COURT: All right. Well, I'm gonna -- so, this is
25 a fairly novel issue. I'm gonna take it under advisement.

1 I'll defer sentencing. Defendant remains in custody until
2 such time as he's sentenced.

3 Thank you very much.

4 MS. JONES: Thank you, Your Honor.

5 THE COURT: I'll ask from a brief from both sides by
6 five o'clock tomorrow afternoon.

7 SOLICITOR BOYD: Thank you, Your Honor.

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9 (WHEREUPON, this case was in recess at this time.)

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1 Thursday, December 15th, 2011

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3 THE COURT: All right. We're on the record in the case
4 of The State versus John Wayne Brannon.

5 I have received briefs from the attorneys concerning
6 the imposition of a life sentence. The issue raised by the
7 defendant was that the notice given to the defendant by the
8 State did not or actually was notice -- I've got it here.
9 Let me get it. Stating that the defendant will receive a
10 sentence if he's convicted of attempted murder on the above
11 lifted, listed indictment, which was an indictment for the
12 offense of attempted murder.

13 The defendant was convicted in trial this week of
14 assault and battery of a high and aggravated nature. I have
15 received the briefs. The motion was by the defendant.

16 Does the defendant wish to make any oral argument on
17 the motion?

18 MS. JONES: No, sir.

19 THE COURT: State wish to make any oral, oral argument
20 on the motion?

21 SOLICITOR BOYD: No, sir, Your Honor.

22 THE COURT: I have reviewed the briefs, and based,
23 based upon my review of the briefs, I find that the notice
24 given by the State would trigger the recidivist statute.
25 Specifically, I have reviewed the cases of State versus

1 Burdette, which seems to be closer to the facts in this case
2 than others. I quote from that case that says "specifically
3 listing the triggering charge from the current case is
4 unnecessary because the defendant had been fully informed of
5 the charges against him in the indictment and he has been
6 informed that the State will apply the recidivist statute."

7 In this particular case he was indicted for attempted
8 murder. I note that the statute has recently changed in
9 that, in, as far as the recidivist statute and the statute
10 which now provides for assault and battery of a high and
11 aggravated nature, which is a, a statutory crime. I do note
12 in the statute that provides for the assault, for assault
13 and battery several different levels including assault and
14 battery of a high and aggravated nature, which is a
15 statutory crime. That's Code Section 16-3-600(b)(b)
16 specifically states that assault and battery of a high and
17 aggravated nature is a lesser included offense of the
18 offense of attempted murder.

19 Based upon the cases that I've reviewed in the
20 memorandum and the fact that the statute concerning assault
21 and battery of a high and aggravated nature specifically
22 refers to it being a lesser included offense of attempted
23 murder, I find that the notice was sufficient to place him
24 on notice of the State's intention to seek the sentence
25 under the recidivist statute, and that he would of been on

1 notice of not only the original charge, but the lesser
2 included charges as well. So, therefore, the motion in this
3 case is denied.

4 Now, I have received from the State several exhibits.
5 I'll pass those down to the State's attorney, allow him to
6 place those on the record again in this matter. I
7 believe -- does the clerk have the sentencing sheet in this
8 case?

9 I believe I, I believe I returned it to you the other
10 day.

11 Thank you.

12 All right. Mr. Boyd.

13 SOLICITOR BOYD: May it please the Court, Your Honor.

14 Court Exhibit No. 2 is two affidavits of service by our
15 office. The first page is serving the defense attorney,
16 Tanya Jones, by serving the notice of life sentence on her
17 office on, delivering personally to C. John Luper. That was
18 served on August 19th, 2011, Your Honor.

19 A second page of Court Exhibit No. 2 is the affidavit
20 of service on the defendant himself, Mr. John Wayne Brannon.
21 He was served personally on August 17th, 2011, at 950
22 California Avenue, Your Honor. That is Court Exhibit No. 2.

23 Court Exhibit No. 3 is the actual notice of life
24 sentence served on the defendant and defense attorney by the
25 state, Your Honor, and that was filed with the Clerk of

1 Court on August the 16th, 2011. That states the defendant
2 and his attorney, Tanya Jones, you will please take notice
3 that pursuant to Section 17-25-45(a) and (h) the South
4 Carolina Code of Laws, 1976 as amended, the defendant will
5 receive a life sentence if he's convicted of attempted
6 murder on the above listed indictment.

7 This mandatory sentence is based on our prior
8 conviction for armed robbery, a most serious offense,
9 on January 31st, 1980, and/or prior conviction for attempted
10 armed robbery, a most serious offense, on January 31st,
11 1980, and/or a prior conviction for armed robbery, a most
12 serious offense, on February 14th, 1994.

13 Your Honor, the last and Court Exhibit No. 4 are three
14 separate notarized copies of defendant's prior indictments.
15 The first being an indictment for armed robbery on
16 January 14th, 1994, Your Honor. That is Indictment
17 94-0012. The second indictment, Your Honor, is the
18 indictment against Mr. Brannon for attempted armed robbery.
19 That was 1980-GS-42-57. The last copy of an indictment,
20 Your Honor, is 1980-GS-42-38. That is also an indictment
21 for armed robbery against the defendant, Mr. John Wayne
22 Brannon, Your Honor.

23 If I could pass these three exhibits up to the Court at
24 this time?

25 THE COURT: Thank you very much.

1 All right. Other than the motion previously made which
2 I have now ruled upon, Ms. Jones, any other issues with the
3 documents that have been submitted as exhibits?

4 MS. JONES: No, sir.

5 THE COURT: Anything you'd like to tell the Court
6 before I pass sentence in the case?

7 MS. JONES: No, sir.

8 THE COURT: All right. Mr. Brannon, having been found
9 guilty of a, by a jury of your peers of the offense of
10 assault and battery of a high and aggravated nature, it is
11 the sentence of this Court that you be confined in the State
12 Department of Corrections for the period of your life
13 without parole.

14 Good luck to you, sir.

15

16 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the state of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 12th, 13th, and 15th day of December, 2011.

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

March 15th, 2012



PAMELA E. GREEN, Court Reporter

WITNESSES

SPARTANBURG CITY POLICE

1. SENTENCES MADE

2. REPORTS INDEXED

3. CARDS PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURES

ARREST WARRANT NUMBER

7. ASSESSMENT AND FINE CARD MADE

8. TM753394 (LAWSON COPY)

compute

compute

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Guilty of Assault and Battery of a High & Aggravated Nature
Jessica Weathers

Foreperson of Petit Jury

Date: 12-13-2011

DOCKET NO.

11-GS-42-4694

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

JOHN WAYNE BRANNON

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 JUL 26 AM 9:23

M. HOPE BLACKLEY

4

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT


At a Court of General Sessions, convened on JUL 22 2011, the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That John Wayne Brannon did in Spartanburg County on or about April 10, 2011, with malice aforethought, intend and attempt to kill the victim, Ronnie Brannon, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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



ASSISTANT SOLICITOR

SPARTANBURG

VS.

John Wayne Brannon

INDICTMENT/CASE#: 2011GS4204694

A/W#: M753391

Date of Offense: 4/10/2011

S.C. Code § : 16-03-0029

CDR Code #: 3410

Race: BLACK Sex: M Age: 55

DOB: SS#

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Assault/Assault and Battery of a High and Aggravated Nature

SENTENCE SHEET

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

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

ATTEST: BOYD, WISE SC Bar# Defendant Attorney for Defendant SC Bar#

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

for a determinate term of Life w/... days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered Total: \$ plus 20% fee: \$

Payment Terms: Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$ 643.90

PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Clerk of Court/ Deputy Clerk Court Reporter: SCCA/217 (03/2011)

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

Presiding Judge Judge Code: 2135 Sentence Date: 12/15/11

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF SPARTANBURG) INDICTMENT NOS: 11-GS-42-4694
) WARRANT NOS:
 THE STATE OF SOUTH CAROLINA)
) SOLICITOR'S AFFIDAVIT OF
 vs.) SERVICE
)
 JOHN WAYNE BRANNON)
 DEFENDANT.)
)
)

PERSONALLY appeared before me the undersigned deponent, who being duly sworn, says that he served the following materials:

- | | |
|--|----------------------------|
| 1. _____ Incident report | 5. _____ Co-Def. Statement |
| 2. _____ Detective notes | 6. _____ Rap sheet |
| 3. _____ Defendant's written statement | 7. _____ Sol. Rule 5 req. |
| 4. _____ SLED reports | |
8. Other NOTICE OF LIFE SENTENCE

in this action on TANYA JONES

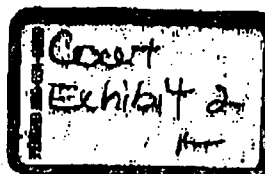
- by delivering SUJON LOOPER personally.
 by delivering _____, a person of age and discretion residing at the residence of the defendant and being at said residence at the time of service.
 by delivering to _____ at the place of business

and leaving with him/her copies of the same at PUBLIC DEFENDER OFFICE, SPARTANBURG, South Carolina, on the 19TH day of AUGUST, 2011, and that the deponent is not a party to this action and has no interest therein or connection therewith.

Cl. S. Howell

 Seventh Judicial Circuit
 Office of the Solicitor

SWORN to before me this 19
 day of Aug, 2011.
Cody B Boome (SEAL)
 Notary Public for South Carolina
 My Commission expires: 6-3-2012



2011 AUG 30 PM 3:54

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG)

INDICTMENT NOS: 11-GS-42-4694
WARRANT NOS:

THE STATE OF SOUTH CAROLINA)

SOLICITOR'S AFFIDAVIT OF
SERVICE

vs.)

JOHN WAYNE BRANNON)
DEFENDANT.)

PERSONALLY appeared before me the undersigned deponent, who being duly sworn, says that he served the following materials:

- 1. _____ Incident report
- 2. _____ Detective notes
- 3. _____ Defendant's written statement
- 4. _____ SLED reports
- 5. _____ Co-Def. Statement
- 6. _____ Rap sheet
- 7. _____ Sol. Rule 5 req.

8. Other NOTICE OF LIFE SENTENCE

in this action on JOHN WAYNE BRANNON

- by delivering John Wayne Brannon personally.
- by delivering _____, a person of age and discretion residing at the residence of the defendant and being at said residence at the time of service.
- by delivering to _____ at the place of business

and leaving with him/her copies of the same at 950 California Ave, SPARTANBURG, South Carolina, on the 17 day of AUGUST, 2011, and that the deponent is not a party to this action and has no interest therein or connection therewith.

Richard W. Dyer
Seventh Judicial Circuit
Office of the Solicitor

SWORN to before me this 17th day of August, 2011.

Thomas J. Pender (SEAL)
Notary Public for South Carolina
My Commission expires: 07/03/2016

2011 AUG 30 PM 3:54

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

THE STATE)

v.)

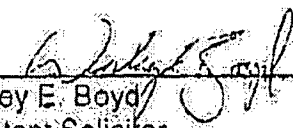
JOHN WAYNE BRANNON,)
Defendant.)

Notice of Life Sentence
Pursuant to Section 17-25-45(A)

Indictment: 11-GS-42-4694

TO: THE DEFENDANT AND HIS ATTORNEY, Tanya Jones

YOU WILL PLEASE TAKE NOTICE that pursuant to Section 17-25-45(A) and (H) of the South Carolina Code of Laws, 1976, as amended, the Defendant will receive a life sentence if he is convicted of Attempted Murder on the above listed indictment. This mandatory sentence is based on a prior conviction for Armed Robbery, a most serious offense, on January 31, 1980, and/or a prior conviction for Attempted Armed Robbery, a most serious offense, on January 31, 1980, and/or a prior conviction for Armed Robbery, a most serious offense, on February 14, 1994.



Wesley E. Boyd
Assistant Solicitor
Seventh Judicial Circuit

August 16, 2011



FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 AUG 16 PM 3:40
M. HOPE BLACKLEY

0630325

WITNESSES

Charles S. Salters, Jr.
Spartanburg City Police Dept.
145 Broad St.
Spartanburg, SC 29301

1. REPORT MADE

2. REPORT INDEXED

3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT MADE
FINE CARD MADE

7. TRAFFIC VIOLATIONS COPY

Computer

Swearing
time

ACTION OF GRAND JURY

John R. ...

Jiffey C. Baily
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

94-CR-42-0012

The State of South Carolina,

County of Spartanburg (03)

07/22/93

COURT OF GENERAL SESSIONS

JAN 10 1994 TERM

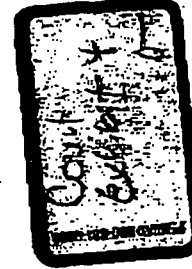
THE STATE

John Dwayne Brannon (38)

Computer M. Brannon

Indictment for Armed
Robbery and Robbery

Holman C. Gossett, Jr.



Clerk of Court

On this 10th day of January, 1994, at the City of Spartanburg, South Carolina, I, the Clerk of Court, do hereby certify that the within and filed indictment is a true and correct copy of the original as the same appears in the files of the Court.

John Dwayne Brannon
Armed Robbery
M. Brannon
Holman C. Gossett, Jr.

238

D-630325

FORM 20 (1/91)

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

INDICTMENT FOR ARMED ROBBERY

~~XXXXXXX~~

JAN 08 1994

At a Court of General Sessions, convened on _____
the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — ARMED ROBBERY

That John Dwayne Brannon did in
Spartanburg County on or about July 21, 1993, while armed with a deadly
weapon, to wit: A knife
_____ feloniously take from the person or presence of Lynn Jones by means of
force or intimidation goods or monies of The Hot Spot, such goods or monies being
described as follows: A cash register belonging to The Hot Spot,
_____ with intent to deprive the owner permanently of such property.

COUNT TWO — ROBBERY

That _____ did in _____
County on or about _____ feloniously take from the
person or presence of _____ by means of
force or intimidation goods or monies of _____
such goods or monies being described as follows: _____
_____ with intent to deprive the owner permanently of such property.

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


SOLICITOR

S E N T E N C E

STATE OF SOUTH CAROLINA

CASE NO. 94 -GS-42-2012

SPARTANBURG COUNTY

The defendant Philip Duayne Brannon is committed to the State Department of Corrections/County for a term of 21 months/years and/or to pay a fine of \$ _____, provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years.

Restitution For physical injury \$ _____
Yes/No property damage \$ _____
to be paid _____

to clerk for _____**

Other conditions _____

Date February 14 1994 [Signature]
Presiding Judge

*Costs and Assessments
Non-waivable \$ _____
Not waived \$ _____
Total \$ _____

[Signature]
Clerk of Court

**Pay to Victim's Compensation Fund if subrogated.

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Witnesses
 Glenn Greer,
 Oglethorpe
 Green
 Strickland
 Smith
 Price
 Stearns
 Downs

Verdict

80-AS-42-57
 The State of South Carolina
 County of Spartanburg
 COURT OF GENERAL SESSIONS
 JAN 26 1980 Term, 12
THE STATE
 VS
 JOHN WAYNE BRANNON *pld*
 WILLIE ERVIN CLAWSON
 INDICTMENT FOR
 APPROPRIATED ARMED ROBERT
 MARY MURPHY'S - Aunt Republic
 Charles A Taylor, Jr.
 Sheriff of Spartanburg
 Sheriff of Spartanburg
 REC'D PERMITS CLERK'S OFFICE

John Wayne Brannon & Willie Ervin Clawson
 hereby appear in my own proper person and plead
 guilty to Attempted murder ~~murder~~ on the within indictment.
 On the within indictment.
 Witness: John W. Brannon Witness: Willie E. Clawson
Ruby Eddy Ruby Eddy
 Clerk of Court Clerk of Court

The sentence of the Court is that you
John Wayne Brannon
 be confined in the S. C. Department of
 Cor. actions for a period of 3 yrs Prob. Control
1.31.80
 Presiding Judge
 The sentence of the Court is that you
Willie Ervin Clawson
 be confined to the S. C. Department of
 Cor. actions for a period of 10 yrs
7.5 P.
3.4.80
 Presiding Judge

M. Eddy
Ruby Eddy
8/11/80

The State of South Carolina
Spartanburg
County of _____

INDICTMENT FOR
ATTEMPTED ARMED ROBBERY

As a Court of General Sessions, convened on the JAN 28 1980 day of _____
19____ the Grand Jurors of Spartanburg County present upon their oath:

That JOHN WAYNE BRANNON & WILLIE E. CLAWSON

did in Spartanburg County on or about the 20th day of September
1979

did willfully and unlawfully while armed with a deadly weapon, to-wit:
a pistol, attempt to rob Mary Price, Main Street Motel, in violation of
Section 16-11-330 (2) of the 1976 Code of Laws of S. C.

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

John W. Bennett
Solicitor

Witnesses
 Glenn Greer
 Osteen
 Green
 Strickland
 Ball
 Smith
 Price
 Stevens
 Downs

Verdict

Foreman

80-15-42-38
 The State of South Carolina
 County of Spawtonville
 COURT OF GENERAL SESSIONS
 JAN 26 1980 Term, 19
THE STATE
 VS.
 JOHN WAYNE BRANNON *plm*
 MILLIE EVELYN CLAWSON
 INDICTMENT FOR
Armed Robbery
 ARMED ROBBERY
 Claude A. Taylor, Jr.
John Wayne Brannon
 Foreman of Grand Jury
 Foreman of Grand Jury
 MCGAS TESTER
 COOPER & T. 228

John Wayne Brannon hereby appear in my own proper person and plead guilty to *Armed Robbery* On the within indictment.
 Witness *John W. Brannon*
Ruby Emory Clerk of Court

Willie E. Clawson hereby appear in my own proper person and plead guilty to *Armed Robbery* On the within indictment.
 Witness *Willie E. Clawson*
Clayton Clerk of Court

The sentence of the Court is that you *John Wayne Brannon* be confined in the S. C. Department of Corrections for a period of 10 years
W. Lee Presiding Judge
 1-31-80 (Date)

The sentence of the Court is that you *Willie E. Clawson* be confined in the S. C. Department of Corrections for a period of 21 yrs
James M. ... Presiding Judge
 1-31-80 (Date)

Adopted
John Wayne Brannon

The State of South Carolina
Spartanburg
County of _____

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on the JAN 8 8 1980 day of _____
10____, the Grand Jurors of Spartanburg County present upon their oath:

That Willie Ervin Clowson & John Wayne Brannon

did in Spartanburg County on or about the 20th day of September
1978,

did willfully and unlawfully, while armed with a deadly weapon, to-wit:
a pistol, commit the offense of armed robbery by feloniously and forcibly
taking a sum of money from Suresh Desai, El Dorado Motel, by putting
him in fear of losing his life or sustaining serious bodily harm in
violation of Section 16-11-330 (1) of the 1976 Code of Laws of S. C.

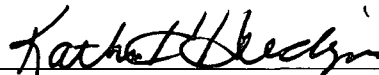
Against the peace and dignity of the State, and contrary to the statute in such case and made and
provided.

John W. Kasse
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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 21st, 2012



Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT