

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAJLIA SYMONE TORBIT,

APPELLANT

APPELLATE CASE NO 2016-002433

RECORD ON APPEAL

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State of South Carolina.,) In the General Sessions
) Court of York
)
) Case No. 2016-GS-46-02343
 County of York.) 2016-GS-46-02327

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Dajlia Symona Torbit.,)
)
 Defendant.)

York, South Carolina
 November 30, 2016

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 To The Honorable John C. Hayes, -III

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OFFICER MARK SCHURIG: DIRECT BY SOLICITOR HAYES
PRETRIAL

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1 car video provided from Officer Revels and Officer Jones.
2 This morning as the Court is aware we discussed in chambers
3 there was pictures provided this morning. There were
4 additional statements, three statements, from three fire
5 fighters that were provided this morning. At this point,
6 your Honor, I think that that represents the entirety of
7 the discovery that has been provided to the Defense.

8 And specifically I want to inquire that there was no
9 report filed by Officer Schurig or a statement from Officer
10 schurig; no video from Officer Schurig. Nothing that seems
11 to be at least provided to us nothing documented from the
12 incident date from Officer Schurig has been provided to us
13 so I was gonna make sure that's -- because it doesn't
14 exist.

15 SOLICITOR HAYES: And, your Honor, I would proffer
16 Officer Schurig on that question to certify for the Court
17 at this time if your Honor would like to hear from him.

18 THE COURT: Yeah, you can go ahead and call him.

19 Come on up and be sworn, Officer Schurig.

20 (WHEREUPON, MARK SCHURIG,
21 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 DIRECT EXAMINATION

23 OFFICER MARK SCHURIG BY SOLICITOR HAYES:

24 Q. Officer Schurig, did you have a in-car video from this
25 incident?

OFFICER MARK SCHURIG: DIRECT BY SOLICITOR HAYES - PRETRIAL
CROSS BY MR. BARROWCLOUGH - PRETRIAL

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1 A. No.

2 Q. Did you have -- Were you wearing a body camera at this
3 incident?

4 A. No, sir.

5 Q. Do you have any photo or video evidence of this
6 incident that has not been turned over to Mr. Barrowclough?

7 A. No, sir.

8 SOLICITOR HAYES: Please answer any questions Mr.
9 Barrowclough may have.

10 CROSS-EXAMINATION

11 OFFICER MARK SCHURIG BY MR. BARROWCLOUGH:

12 Q. Now, Officer, you didn't write a statement about
13 what happened in this incident for your supervisor or
14 anything?

15 A. There was a statement that was written for an internal
16 paperwork but nothing that was used in the criminal case.

17 Q. When you say internal paperwork, what do you mean?

18 A. From the -- Our use of force paperwork a statement was
19 prepared.

20 Q. And was that statement turned over to the Solicitor?

21 A. I'm not sure.

22 Q. Does that statement talk about the specifics of what
23 occurred at [REDACTED] Eden Terrace, Apartment [REDACTED] that day?

24 A. They did.

25 Q. And does it talk about when you say use of force does

OFFICER MARK SCHURIG: CROSS BY MR. BARROWCLOUGH
PRETRIAL

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1 that include your use of force?

2 A. Yes.

3 Q. Okay. So does that report, is there anything else
4 from paperwork respect that you wrote with regards to what
5 happened that day?

6 A. No, sir.

7 Q. Okay. Did you receive any paperwork back concerning
8 the use of force paper that you submitted?

9 A. No, sir, I did not.

10 Q. All right.

11 MR. BARROWCLOUGH: That's all the questions I would
12 have or what at this time, your Honor, I would ask to be
13 provided with a copy of that report because I think it's
14 germane to what happened out there that day especially
15 given the fact that Officer Schurig did not commit to paper
16 or anything else about it.

17 THE COURT: You can step down right now.

18 OFFICER SCHURIG: Thank you, your Honor.

19 THE COURT: Thank you.

20 (WITNESS LEAVES WITNESS STAND.)

21 THE COURT: Yes, sir.

22 SOLICITOR HAYES: Your Honor, for the record I have
23 provided to the defense a three page Use of Force Report I
24 believe is what Mr. Barrowclough is requiring about.

25 And I have my copy here in the courtroom and I

1 provided it to --

2 MS. LIPINSKI: Maybe he just needs to indicate what it
3 is . . .

4 MADAM COURT REPORTER: Sorry, Mindy, you're going to
5 have to speak up so I can hear you if you're talking to the
6 Court.

7 MR. BARROWCLOUGH: Your Honor, I have not seen this
8 before.

9 SOLICITOR HAYES: Your Honor, I'm checking our
10 electronic discovery service that will tell me when it was
11 sent and when it was downloaded by the Public Defender's
12 Office if the Court will give me just a moment.

13 THE COURT: Okay.

14 (PAUSE.)

15 MR. BARROWCLOUGH: And, your Honor, just for purposes
16 of the record, since I did just inherit this case a few
17 weeks ago from Mr. Bowen, I did check with Mr. Bowen and he
18 did not recognize that report. And Ms. Lipinski as you
19 know had the co-defendant and she didn't recognize it
20 either so I'm not sure what happened.

21 SOLICITOR HAYES: Your Honor, the Use of Force Report
22 I just described to Mr. Barrowclough was transmitted to the
23 Public Defender's Office on October 3rd, 2016.

24 THE COURT: The State says they provided it and where
25 it went thereafter they can't be responsible for that.

1 Didn't you send it by email?

2 SOLICITOR HAYES: Yes, your Honor. I sent it by our
3 electronic discovery system which we select documents to
4 send discovery and the defense attorney gets an email and
5 is able to download the document and we get a read receipt
6 that they have received it and downloaded it so I have that
7 in my possession.

8 THE COURT: You've got the read receipt?

9 SOLICITOR HAYES: Yes, your Honor.

10 THE COURT: Okay. All right. Well I find that it was
11 no discovery violation.

12 MR. BARROWCLOUGH: I gotta ask what happened on our
13 end I guess.

14 SOLICITOR HAYES: And I have no problem with making an
15 additional copy for courtroom purposes.

16 THE COURT: Yeah.

17 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
18 MARKED, RECEIVED INTO EVIDENCE.)

19 MR. BARROWCLOUGH: Your Honor, I have no other
20 motions.

21 THE COURT: All right, you can call your first
22 witness.

23 SOLICITOR HAYES: Your Honor, the State calls to the
24 stand Officer Chris Revels.

25 THE COURT: All right. You can come up and be sworn.

OFFICER CHRISTOPHER REVELS: DIRECT BY SOLICITOR HAYES

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1 (WHEREUPON, CHRISTOPHER
2 REVELS, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
3 FOLLOWS:)

4 DIRECT EXAMINATION

5 OFFICER CHRISTOPHER REVELS BY SOLICITOR HAYES:

6 Q. Officer Revels, could you please state your full name
7 for the record please?

8 A. Christopher Cody Revels.

9 Q. Who is your current employer?

10 A. Rock Hill Police Department.

11 Q. How long have you been employed by the Rock Hill
12 Police Department?

13 A. Since April of 2015.

14 Q. Can you briefly tell us the training you went through
15 to become a police officer?

16 A. Out of twelve weeks Academy training; twenty-two to
17 twenty-six weeks of field training divided into three
18 phases with the Eval phase at the end.

19 Q. And you've completed all of that?

20 A. Yes, sir.

21 Q. Who was your field training officer?

22 A. Phase I was Officer Bryson; Phase III - Correction,
23 Phase I was Officer Abenon, Phase III was Officer Bryson.
24 Sergeant Ellis was my evaluation officer.

25 Q. Had you completed that process by April 15th, 2016?

OFFICER CHRISTOPHER REVELS: DIRECT BY SOLICITOR HAYES

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1 A. Yes, sir.

2 Q. Were you involved in a medical call to [REDACTED] Eden
3 Terrace on April 15th?

4 A. Yes, sir.

5 Q. Is that within the city limits of Rock Hill?

6 A. Yes, sir.

7 Q. Was Dajlia Torbit ultimately arrested for resisting
8 (B) on that date?

9 A. Yes, sir.

10 Q. At that location?

11 A. Yes, sir.

12 Q. Is she present in the courtroom?

13 A. Yes, sir.

14 Q. Can you gesture to her?

15 A. Sitting over there, sir.

16 Q. Can you describe what she's wearing?

17 A. Burgundy blouse, a grey over coat, sweater.

18 Q. Okay. Tell us why you went to -- Is [REDACTED] an apartment
19 complex?

20 A. Yes, sir.

21 Q. Tell us why you went to the apartment com -- When
22 and why you went to the apartment complex on April 15th.

23 A. We went there after one o'clock for a assist up call
24 to assist EMS with securing the scene.

25 Q. Okay. And what did that mean on that date?

OFFICER CHRISTOPHER REVELS: DIRECT BY SOLICITOR HAYES

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1 A. When there is multiple people on the scene with EMS
2 they request our presence to make sure everything is secure
3 so they can work unhindered.

4 Q. Okay. Tell us what you saw when you arrived at that
5 apartment complex.

6 A. Once we arrived we saw Mr. Holley was on the ground
7 getting assisted by EMS. Fire was also there. There was
8 multiple people out in the breezeway out of the apartment.

9 Q. Okay. Where was Mr. Holley?

10 A. I believe he was on the ground.

11 Q. Was he in an apartment or was he in a breezeway?

12 A. He was in the breezeway.

13 Q. Who from the Rock Hill Police Department was with
14 you that day?

15 A. Officer Schurig.

16 Q. When you first arrived how many officers from the
17 Rock Hill Police Department were there?

18 A. Just myself and Officer Schurig.

19 Q. How many firefighters were there?

20 A. I believe three.

21 Q. How many EMS were there?

22 A. Two paramedics.

23 Q. About how many other citizens were standing in the
24 breezeway?

25 A. Between three and six.

OFFICER CHRISTOPHER REVELS: DIRECT BY SOLICITOR HAYES

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1 Q. Okay. Describe Mr. Holley when you first walked
2 up.

3 A. He was coming out of consciousness. He had a marked
4 figure between his eyes where he fell. He appeared very
5 incoherent, almost intoxicated.

6 Q. Okay. What happened after EMS was treating him?

7 A. EMS was treating him when myself and Officer Schurig
8 noticed a overwhelming odor of marijuana.

9 Q. Where was that coming from?

10 A. Apartment [REDACTED]

11 Q. Where is Apartment [REDACTED] in relation to where y'all
12 were in the breezeway?

13 A. He was right next to us.

14 Q. Was it the nearest apartment to where y'all were?

15 A. Yes, it was on the right.

16 Q. What happened then?

17 A. Mr. Holley declined EMS treatment so me and Officer
18 Schurig decided to address the odor of marijuana. We spoke
19 to Ms. Torbit advised her that we could smell the odor of
20 marijuana coming from the apartment.

21 Q. When did you first see Ms. Torbit?

22 A. She was standing outside the door of Apartment [REDACTED]

23 Q. Was she inside the apartment -- Was -- Did you ever
24 see her inside the apartment at first?

25 A. No, sir, she was blocking the door.

OFFICER CHRISTOPHER REVELS: DIRECT BY SOLICITOR HAYES

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1 Q. Was she in the breezeway with Mr. Holley?

2 A. Yes, sir.

3 Q. Did she open the door while you were there or was
4 the door already open?

5 A. The door was closed.

6 Q. What did Ms. -- What did Ms. Torbit do at that point?

7 A. Officer Schurig addressed her; said we could smell
8 marijuana coming from the apartment we would like to step
9 in and speak with you about it and she refused to let us
10 enter or speak about the marijuana.

11 Q. Okay. What did she do at that point?

12 A. We advised her that we had probable cause that there
13 was marijuana in there we'd like to just speak to her about
14 it and she continued blocked us said we had no right and
15 she started shoving Officer Schurig.

16 Q. Okay. Did she say who that apartment belonged to?

17 A. I don't recall.

18 Q. What happened after she shoved Officer Schurig?

19 A. After she shoved Officer Schurig Officer Schurig
20 advised her she was under arrest. I went to place her in
21 custody and then that's when more physical altercations
22 ensued.

23 Q. Okay. What were you doing when that initial
24 altercation broke out?

25 A. I turned to address three individuals among Mr. Holley

1 and several others who tried to prevent Officer Schurig
2 from placing Ms. Torbit under arrest.

3 Q. At what point did the door to the apartment open?

4 A. I believe it -- I don't recall the specific time it
5 opened but once I was trying to restrain the other three
6 from getting Officer Schurig Officer Schurig and Ms. Torbit
7 went into the apartment continued to get phys -- get
8 physically -- fight each other.

9 Q. Okay. Did you see that altercation between them?

10 A. Yes.

11 Q. Tell us what you saw.

12 Q. Mr. Torbit kept grabbing him trying to push him away
13 and he kept trying to handcuff her; put her hands behind
14 her back, but once they went inside the apartment I
15 followed in and then three other individuals followed me in
16 at which time placed one under arrest and tried to prevent
17 the other two from getting involved.

18 Q. How many people -- In addition to the people in the
19 breezeway who many people were in the apartment?

20 A. Probably from fifteen to twenty.

21 Q. Okay. About what ages?

22 A. I would say between fourteen and eighteen.

23 Q. Okay. What happened in the apartment as Officer
24 Schurig and Ms. Torbit continued to fight?

25 A. They continued to tussle around. Multiple people

OFFICER CHRISTOPHER REVELS: DIRECT BY SOLICITOR HAYES

-20-

1 started to leave the apartment; I had one subject under
2 arrest I was trying to restrain Mr. ---- -- and several
3 other people. At that time they went back outside.

4 Q. Who is they?

5 A. Officer Schurig and Ms. Torbit.

6 Q. And what was happening at that point?

7 A. They continued to wrestle with each other and they
8 went from the breezeway to the sidewalk.

9 Q. Okay. And tell us what you saw Ms. Torbit do to
10 Officer Schurig.

11 A. She struck him in the face with a cell phone.

12 Q. Okay. Was she saying anything at this point?

13 A. I believe she said "I don't give a Fuck about the
14 police."

15 Q. Tell us what happened at that point.

16 A. At that point I was still trying to restrain one of the
17 subjects. I believe it's Ms. Torbit's sister ran past me
18 and to where Officer Schurig and Ms. Torbit were on the
19 sidewalk. She jumped on top of Officer Schurig. I
20 instructed one of the firefighters to detain the guy I
21 already cuffed and I followed out to assist Officer Schurig
22 who was being beat on by two different females.

23 Q. How Ms. Torbit ultimately or how did the fight between
24 Ms. Torbit and Mr. Schurig ultimately end?

25 A. I went to the sidewalk pulled - I believe it was the

1 sister off Officer Schurig and restrained her and I also
2 shoved Ms. Torbit off of him when I believe that he
3 handcuffed her from there.

4 Q. Okay. And what happened at that point?

5 A. At that point I looked to my left. I was trying to
6 restrain the other female. Several other males were
7 approaching me appearing they wanted to fight against and I
8 instructed them to stay back and then other officers and
9 multiple people started showing up from there.

10 Q. Does your patrol car have a video camera running at
11 this time?

12 A. Yes, sir.

13 Q. Did your patrol car make a recording of this incident?

14 A. Yes, sir.

15 Q. I'm gonna ask if you recognize this item?

16 A. Yes, sir.

17 Q. What is this item?

18 A. It's a DVD copy of the in-car video from the incident.

19 Q. And have you watched this video before?

20 A. Yes, sir.

21 Q. Is it a true and accurate representation of your
22 dash cam from April 15th?

23 A. Yes, sir.

24 SOLICITOR HAYES: Your Honor, at this time I would
25 move this disc into evidence as State's Exhibit One.

OFFICER CHRISTOPHER REVELS: DIRECT BY SOLICITOR HAYES

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1 MR. BARROWCLOUGH: Your Honor, I have no objection.

2 THE COURT: In without objection.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE, IDENTIFIED AND
4 MARKED, RECEIVED INTO EVIDENCE.)

5 SOLICITOR HAYES: Your Honor, at this time with the
6 Court's permission I would publish just a brief portion of
7 this video to give your Honor as the fact finder a sense of
8 the layout of this particular apartment complex that's in
9 question.

10 THE COURT: Do you need the lights down?

11 SOLICITOR HAYES: Yes, please.

12 (COURTROOM LIGHTS DIMMED.)

13 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE PUBLISHED TO
14 THE COURT AT 11:33 AM.)

15 BY SOLICITOR HAYES:

16 Q. Officer Revels, can you see the screen from where
17 you're sitting?

18 A. Yes, sir.

19 Q. Is that Officer Schurig on the left?

20 A. Yes, sir.

21 Q. Who is that on the right?

22 A. I'm not really sure from this point.

23 Q. Is this before or after the altercation between
24 Officer Schurig and Officer - and Ms. Torbit?

25 A. This is just after.

OFFICER CHRISTOPHER REVELS: DIRECT BY SOLICITOR HAYES

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1 Q. Which direction if we were facing the screen which
2 direction is the breezeway at the apartment where this took
3 place?

4 A. To the right where the second officer on the right is
5 walking towards.

6 Q. And is this before or after Mr. Torbit has been placed
7 into custody?

8 A. I believe this is right after.

9 Q. But Mr. Holley is yet to be placed into custody?

10 A. Correct.

11 (STATE'S EXHIBIT ONE CONTINUES TO BE PUBLISHED AT
12 11:35 AM.)

13 BY SOLICITOR HAYES:

14 Q. Officer Revels, who is that that we just saw walk
15 across the screen? Who is the officer and the subject
16 there?

17 A. The one in custody?

18 Q. Yes.

19 A. I believe that's -- Could you play it back a little
20 bit?

21 (STATE'S ONE REPLAYED.)

22 A. The subject in handcuffs is I believe Quantavious
23 Torbit. The subject without his shirt on is Mr. Holley.

24 Q. Okay. And that was you that just walked across?

25 A. Yes, sir.

OFFICER CHRISTOPHER REVELS: DIRECT BY SOLICITOR HAYES

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1 Q. Those were the two individuals - So those were the
2 two individuals that you were attempting to deal with while
3 Ms. Torbit and Officer Schurig were in their altercation?

4 A. Yes, sir.

5 Q. At this point do you know where Ms. Torbit is?

6 A. I believe she's in the back of Officer Schurig's
7 patrol car.

8 Q. Is that the patrol car we're looking at?

9 A. Yes with the back open gate.

10 SOLICITOR HAYES: Your Honor, at this time I will
11 cease publishing this. That was just to give your Honor a
12 layout of ---

13 THE COURT: All right.

14 SOLICITOR HAYES: --- a mental lay out of what took
15 place. The Court's indulgence, your Honor.

16 Q. What did you do after you secured -- I believe you
17 said it was Quantavious Torbit?

18 A. Yes, sir.

19 Q. What did you do at that point?

20 A. At that point I was trying to get him inside the other
21 patrol vehicle. Mr. Holley walked up on me aggressively.
22 I was trying to tell him to get back while I deal with the
23 other gentleman, he kept trying to get past me. I'm not
24 sure what he was trying to do though.

25 Q. Okay. And after that were Mr. Holley and Ms. Torbit

OFFICER CHRISTOPHER REVELS: DIRECT BY SOLICITOR HAYES
CROSS BY MR. BARROWCLOUGH

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1 transported to the Rock Hill Police Department?

2 A. Yes, sir.

3 SOLICITOR HAYES: Your Honor, at this time I don't
4 have any further questions for Officer Revels.

5 THE COURT: All right. Cross?

6 MR. BARROWCLOUGH: Thank you, your Honor, may it
7 please the Court.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 OFFICER CHRISTOPHER REVELS BY MR. BARROWCLOUGH:

11 Q. So Officer Revels, you're the case agent in this case?

12 A. Yes, sir.

13 Q. And as such you did prepare the Case Summary?

14 A. Yes, sir.

15 Q. And you also have reviewed the documents in relation
16 to this case?

17 A. Yes, sir.

18 Q. And this case began as a call to assist EMS, correct?

19 A. Yes, sir.

20 Q. You were not called there to investigate a crime?

21 A. No, sir.

22 Q. And in fact you did not have any information that
23 Ms. Torbit was involved in any criminal activity?

24 A. Can you rephrase?

25 Q. When you were called to that location you did not have

OFFICER CHRISTOPHER REVELS: CROSS BY MR. BARROWCLOUGH

-26-

1 any information that Ms. Torbit was involved in any
2 criminal activity?

3 A. That's correct.

4 Q. Or that there was any allegation of criminal activity
5 originating from Apartment [REDACTED]

6 A. Correct.

7 Q. You were not there investigating any criminal activity
8 whatsoever?

9 A. No, sir.

10 Q. And according to the CAD Report you arrived
11 approximately four minutes after Officer Schurig; correct?

12 A. Yes, sir.

13 Q. And when you arrived on scene Mr. Holley was in the
14 breezeway?

15 A. Yes, sir.

16 Q. He was conscious?

17 A. Yes, sir.

18 Q. I believe you said he was being treated by EMS?

19 A. At the time yes.

20 Q. And the scene was secure?

21 A. Yes, sir.

22 Q. And it was at that time that there was this allegation
23 of there being an odor of marijuana?

24 A. Yes, sir.

25 Q. And it was at that time that Officer Schurig wanted

OFFICER CHRISTOPHER REVELS: CROSS BY MR. BARROWCLOUGH

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1 to make entry into Apartment [REDACTED]

2 A. We discussed beforehand just to confirm that we both
3 smelled marijuana.

4 Q. Okay. And at that time you of course were equipped
5 with your mic; right?

6 A. Yes, sir.

7 Q. And your dash cam?

8 A. Yes, sir.

9 Q. All your video and all your recording equipment?

10 A. Yes, sir.

11 Q. And you did not turn that on at that time?

12 A. No, sir.

13 Q. And to your knowledge as case agent there is no video
14 or audio recordings of what exactly transpired at the door
15 to Apartment [REDACTED] that day is there?

16 A. No, sir.

17 Q. Okay. And at that time Officer Schurig did make his
18 way to the door of Apartment [REDACTED]

19 A. Yes, sir.

20 Q. And Ms. Torbit did place herself between Officer
21 Schurig and the door?

22 A. Yes, sir.

23 Q. And he said that he would need to go in there because
24 he smelled marijuana?

25 A. No, sir, he instructed her that he would like to talk

OFFICER CHRISTOPHER REVELS: CROSS BY MR. BARROWCLOUGH

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1 to her about the marijuana.

2 Q. And to step inside?

3 A. Yes, sir.

4 Q. And that he wanted to go inside?

5 A. He would like to speak with her inside.

6 Q. And she said no, she wanted to wait until her mother
7 got there?

8 A. Yes, sir.

9 Q. And isn't it true that at that time he places his
10 hand on her arm?

11 A. I don't recall, sir.

12 Q. Okay. And that at some point while he was continuing
13 to try to convince her to let him in and she continued to
14 say no she wanted to wait until her mother got home?

15 A. I believe so, sir.

16 Q. And at some point while this exchange is going on
17 isn't it true that Officer Schurig drew his taser out?

18 A. I don't recall, sir.

19 Q. Okay. And then while he was still restraining her or
20 holding her the door opened and they both entered the
21 apartment?

22 A. Yes, sir.

23 Q. And at the time that they both entered the apartment
24 she had not given consent for him to enter the apartment?

25 A. No, sir.

1 Q. And you did not have a search warrant?

2 A. No, sir.

3 Q. You did not have an arrest warrant?

4 A. No, sir.

5 Q. And as was already stated you didn't have any
6 information about anything going on in that apartment, any
7 criminal activity; right?

8 A. We smelled marijuana coming from the apartment.

9 Q. Right. Other than that. No prior knowledge?

10 A. No, sir.

11 Q. And no information that Ms. Torbit or anyone else
12 associated with that apartment would be armed and
13 dangerous?

14 A. No, sir.

15 Q. Nothing of that sort?

16 A. No, sir.

17 Q. And after Officer Schurig made entry into that
18 apartment with Ms. Torbit as you put it they tussled
19 around; right? And they came back outside of the
20 apartment?

21 A. Yes, sir.

22 Q. And at some point after that when they're outside is
23 when Officer Schurig had grabbed her by the hair?

24 A. I don't recall that, sir.

25 Q. And they went to the ground?

OFFICER CHRISTOPHER REVELS: CROSS BY MR. BARROWCLOUGH

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1 A. On the sidewalk, yes.

2 Q. And at some point in there is when Mr. -- I mean
3 Officer Schurig got struck in the face with a cell phone;
4 correct?

5 A. Yes, sir.

6 Q. Okay. And after that point Ms. Torbit was arrested;
7 was taken into custody?

8 A. Yes, sir.

9 Q. Okay. And then placed in a patrol car?

10 A. Yes, sir.

11 Q. Like we saw in the video?

12 A. Yes, sir.

13 Q. And then it was after that that your video came on?

14 A. Yes, sir.

15 Q. And to your knowledge Officer Schurig's video never
16 came on?

17 A. To my knowledge yes.

18 MR. BARROWCLOUGH: That's all the questions I have,
19 Officer. Thank you.

20 THE COURT: Redirect?

21 SOLICITOR HAYES: No, your Honor. We ask that this
22 witness be allowed to step down.

23 THE COURT: You can step down. Thank you.

24 (WITNESS LEAVES WITNESS STAND.)

25 THE COURT: Call your next witness.

BRIAN HAMILTON: DIRECT BY SOLICITOR HAYES

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1 SOLICITOR HAYES: Your Honor, they are in the hallway,
2 I will go . . .

3 THE COURT: Okay.

4 SOLICITOR HAYES: Your Honor, the State calls Brian
5 Hamilton of the Rock Hill Fire Department.

6 THE COURT: All right. Step up here first and be
7 sworn.

8 (WHEREUPON, BRIAN HAMILTON,
9 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 DIRECT EXAMINATION

11 BRIAN HAMILTON BY SOLICITOR HAYES:

12 Q. Mr. Hamilton, can you tell us your full name please?

13 A. Brian Andrew Hamilton.

14 Q. Who is your current employer?

15 A. The city of Rock Hill, Rock Hill Fire Department.

16 Q. How long have you been with the fire department?

17 A. I been four and a half years since 2012.

18 Q. Were you working on April 15th 2016?

19 A. Yes.

20 Q. Were you dispatched to Apartment [REDACTED] at [REDACTED] Eden
21 Terrace?

22 A. Yes.

23 Q. Why were you dispatched there that day?

24 A. Dispatched for a medical call. It initially come out
25 as an unconscious not breathing and once we arrived on

BRIAN HAMILTON: DIRECT BY SOLICITOR HAYES

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1 scene it was - the patient had a knot on his head and he
2 was actually conscious at the time.

3 Q. Where was he when you arrived?

4 A. He was sitting in front of the door of the apartment
5 in a chair.

6 Q. Was he -- Would that be in the breezeway of the
7 apartment?

8 A. In the breezeway.

9 Q. What happened at that point?

10 A. Well we accessed him. He didn't want to go to the
11 hospital. Two of the females that were on scene wanted to
12 - wanted him to go to the hospital but he declined and P D
13 was on scene, Officer Schurig was on scene plus scene
14 safety and at this time the officer wanted to know, talk
15 about the smell of marijuana in the apartment and at that
16 time the female stated that he couldn't come in the house
17 without a warrant.

18 Q. And before we get to that, how many people total were
19 in the breezeway?

20 A. Including us it was - one -- two. It was three people
21 with the fire department and two officers. There was five
22 people. A total of I believe the two females and then
23 there was two other guys out there including the patient
24 himself. It was the patient and another guy and then it
25 was two females there.

BRIAN HAMILTON: DIRECT BY SOLICITOR HAYES

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1 Q. Okay.

2 A. So I would say nine people.

3 Q. Did you notice anything coming from the apartment?

4 A. I could smell marijuana.

5 Q. Did you hear any sounds or anything coming from the
6 apartment?

7 A. No, sir.

8 Q. And I believe you were telling us that Officer
9 Schurig and one of the females had a conversation about the
10 smell of marijuana. Can you resume what you were saying
11 and tell us what happened from that point?

12 A. Well he first ask who lived there and she said it was
13 her mother's house. And he said he wanted to talk about
14 the marijuana smell and she said that he couldn't come in
15 unless he had a warrant.

16 Q. Okay. What happened at that point?

17 A. A scuffle ensued. Somehow he ended up inside the
18 doorway of the house and at that time Captain Baker from
19 the fire department and Mike Broletti which is another fire
20 fighter tried to mediate with the rest of the people on
21 scene and --

22 Q. What -- I'm sorry, go ahead.

23 A. Well they tried to mediate with the people on scene
24 to kind of try to break it up or whatever.

25 Q. What were you doing at this particular point?

BRIAN HAMILTON: DIRECT BY SOLICITOR HAYES

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1 A. At that time I was with the patient doing an
2 assessment or whatever.

3 Q. Okay.

4 A. And actually they had just - He decided he didn't
5 want to go so I was actually getting ready to grab the
6 medical bags to take back to the truck.

7 Q. And what did you do when the scuffle broke out?

8 A. Well initially when it broke out I kind of stayed back
9 to see what was going on. And then it ended up coming back
10 out onto the breezeway and then outside to the parking lot
11 and the sidewalk.

12 Q. Did you ever see that female make contact with the
13 officer in a physical way?

14 A. Yes I did.

15 Q. What did you see?

16 A. I seen' her swinging at him and she - He was actually
17 on the ground and she was on top of him.

18 Q. Did she have any objects in her hand?

19 A. No, sir.

20 Q. Did you see her make contact?

21 A. Yes.

22 Q. What happened after that?

23 A. I pulled her -- I pulled her off of him and at that
24 time he was able to get up off the ground and put cuffs on
25 her.

BRIAN HAMILTON: DIRECT BY SOLICITOR HAYES
CROSS BY MR. BARROWCLOUGH

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1 Q. Okay. Did you have any further involvement after she
2 was handcuffed?

3 A. No, sir.

4 Q. Anything else about that day stick out to you?

5 A. No, sir.

6 SOLICITOR HAYES: Your Honor, at this time I have no
7 further questions for this witness.

8 Please answer any Mr. Barrowclough may have.

9 MR. BARROWCLOUGH: If I may please the Court?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BRIAN HAMILTON BY MR. BARROWCLOUGH:

13 Q. So Officer Hamilton, you were there to check on a
14 patient?

15 A. Yes, sir.

16 Q. And that's what you were doing?

17 A. Yes, sir.

18 Q. And I believe you said that he was not really wanting
19 treatment; right?

20 A. Well he said he didn't want it.

21 Q. And you were getting ready to pack up your bag?

22 A. At that time, yes.

23 Q. Meanwhile you said that Officer Schurig was at the
24 door of Apartment [REDACTED] right?

25 A. Yes.

BRIAN HAMILTON: CROSS BY MR. BARROWCLOUGH

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1 Q. And that was with the female; right?

2 A. Yes, all of us were outside.

3 Q. Right. But what I'm saying like right at the door
4 it was Officer Schurig and the female; correct?

5 A. Yes.

6 Q. And he, Officer Schurig, wanted to enter the
7 apartment?

8 A. He said he wanted to talk to her about the smell of
9 marijuana.

10 Q. Okay. And she said he couldn't go in without a
11 warrant?

12 A. Right.

13 Q. And the -- And you said she tried to block the door
14 so he could not go inside?

15 A. Correct.

16 Q. And then you said that a scuffle followed; right?

17 A. Yes, sir.

18 Q. And that Officer Schurig did draw his taser; right?

19 A. Correct.

20 Q. And that was at the doorway; right?

21 A. Yes.

22 Q. Before they went inside?

23 A. Uh-huh.

24 Q. And then after he drew the taser you say he ended up
25 inside the house?

BRIAN HAMILTON: CROSS BY MR. BARROWCLOUGH

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1 A. Yes.

2 Q. Okay. And they're inside that house for a short time?

3 A. Yes, a short time.

4 Q. And then came back outside the house?

5 A. Correct.

6 Q. And then did you see where she pulled away from him
7 and tried to get away and he grabbed her?

8 A. No, I didn't see that.

9 Q. Okay. And did you see where he pulled her hair?

10 A. No I didn't.

11 Q. Okay. Did you see them wind up on the ground?

12 A. Yes, sir.

13 Q. Okay. And it was after they wind up on the ground
14 that you saw her strike him?

15 A. Correct.

16 Q. Okay. And then you said you went over to restrain
17 her?

18 A. Yes, I pulled her off.

19 Q. And did she fight with you?

20 A. No.

21 Q. Okay. And then she submitted to being handcuffed?

22 A. Yes, she actually put her hands up.

23 Q. She put her hands out to be handcuffed?

24 A. Yes, sir.

25 Q. Okay.

BRIAN HAMILTON: REDIRECT BY SOLICITOR HAYES

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1 MR. BARROWCLOUGH: Thank you, Officer. That's all
2 the questions I have.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BRIAN HAMILTON BY SOLICITOR HAYES:

6 Q. When you pulled her off of Officer Schurig were you
7 assisting Officer Revels in that effort as well or was it
8 just you?

9 A. It was just me.

10 Q. Was Officer Revels nearby ---

11 A. I'm --

12 Q. --- this entire time?

13 A. I'm not sure where he was.

14 Q. Okay.

15 A. There was so much stuff going on.

16 Q. All right.

17 SOLICITOR HAYES: I don't have any further questions.
18 Thank you, sir.

19 MR. BARROWCLOUGH: Nothing further, your Honor.

20 THE COURT: You can step down and be excused. We
21 appreciate your time.

22 (WITNESS LEAVES WITNESS STAND.)

23 THE COURT: Call your next witness.

24 SOLICITOR HAYES: Yes, your Honor, he's in the
25 hallway.

MICHAEL BIOLETTI: DIRECT BY SOLICITOR HAYES

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1 Your Honor, the State calls Michael Bioletti of the
2 Rock Hill Fire Department.

3 (WHEREUPON, MICHAEL BIOLETTI,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 THE COURT: Please have a seat up here.

6 DIRECT EXAMINATION

7 MICHAEL BIOLETTI BY SOLICITOR HAYES:

8 Q. Mr. Bioletti, can you tell us your full name?

9 A. Michael Keith Bioletti.

10 Q. Who is your employer?

11 A. Rock Hill City, Rock Hill Fire Department.

12 Q. How long have you worked for the fire department?

13 A. Almost nine years.

14 THE COURT: Let's get him to spell his last name for
15 the court reporter.

16 MADAM CLERK: I got it, Judge.

17 THE COURT: Oh, you do?

18 MADAM COURT REPORTER: Yes, sir.

19 THE COURT: Okay. Go ahead. Sorry.

20 SOLICITOR HAYES: Thank you, your Honor.

21 Q. Were you on duty on April 15th, 2016:

22 A. Yes, sir.

23 Q. Were you dispatched to [REDACTED] Eden Terrace on that day?

24 A. Yes, sir.

25 Q. Can you tell us why you were sent there?

MICHAEL BIOLETTI: DIRECT BY SOLICITOR HAYES

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1 A. Yes, sir. We were called -- We were called out for
2 an unconscious patient.

3 Q. Can you tell us about your initial encounter with
4 that patient?

5 A. Yes, sir. Once we got off of the fire apparatus we
6 went down the breezeway and met the patient sitting in a
7 chair, a folding chair outside an apartment just outside
8 the door and he had two females that were there with him
9 and that's when we made our initial contact with the
10 patient sitting on the chair outside of his apartment.

11 Q. Okay. How would you describe his condition?

12 A. He had -- I don't know the right way to say it. I
13 mean it wasn't really a gash or anything but he had a wound
14 to his head area and it was said that he hit a door jam or
15 the edge of a door or something like that; a doorway or
16 something. But he seemed to be fairly coherent and his
17 level of conscious wasn't altered or anything like that. I
18 ask one of the bystanders, one of the females that was with
19 him to step just to the side so that the other two people
20 that were with me could tend to him and, you know, take his
21 vitals and get his information and all that stuff or get,
22 you know, check on him and provide him with aid.

23 And I was driving that day so it was kind of my job to
24 get his name and his address and his phone number and just
25 the stuff for our basic reports. And that's what I did. I

1 ask one of the females to step over and then she gave me
2 the information.

3 Q. Did you ever -- Did you end up treating him or did he
4 decline?

5 A. He declined our treatment.

6 Q. Were there any police officers on scene at that
7 point?

8 A. There were.

9 Q. How many?

10 A. There were --

11 Q. Initially.

12 A. There was one initially.

13 Q. How many people were in the breezeway while you were
14 treating Mr. Holley?

15 A. There started out with seven there being me, Anthony
16 Baker, Brian Hamilton, the patient, two females, another
17 male and I'm not really sure where he kind of came from and
18 then the other second officer that came out as we were
19 treating.

20 Q. Okay. And how far was this taking place from the
21 front door of Apartment [REDACTED]

22 A. Very -- We were right there at it. I mean I could
23 reach out and touch the door.

24 Q. Tell us what happened after he declined treatment?

25 A. Once he declined treatment then obviously there was

MICHAEL BIOLETTI: DIRECT BY SOLICITOR HAYES

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1 nothing more that we could do. We can't make anybody, you
2 know, take treatment. We let EMS know that they didn't
3 need to bother coming up the breezeway because, you know,
4 of sort of a formality that they would have to get some
5 more signatures and all that stuff and there was a very
6 strong smell of marijuana in the vicinity of the doorway
7 and Officer Schurig said that well given the fact that he's
8 not gonna, you know, gonna be taking any treatment then my
9 next step is gonna be to talk to you about the odor of
10 marijuana. We're gonna have to go inside and talk about
11 the smell of marijuana.

12 Q. Was the door to the apartment open at this point or
13 was it closed?

14 A. The door was shut.

15 Q. Did you hear anything going on inside the apartment?

16 A. There was noise coming from inside the apartment yes.
17 sir.

18 Q. Okay. Tell us what happened then.

19 A. Once he -- Once Officer Schurig stated that they were
20 gonna go inside and talk about the smell of marijuana then
21 the initial female that I made contact with she -- she was
22 already really in the -- in the way of the door but she kind
23 of got up and stood up into the frame of the door and
24 basically said you're not coming in the house, you're gonna
25 have to have a warrant, nobody's coming in this house, this

1 is my momma's house. And she just kind of -- her raised --
2 raised her tone quite a few volumes and started to -- to I
3 guess confront Officer Schurig about going into her
4 residence or her mother's residence.

5 Q. What happened after that initial face to face
6 confrontation?

7 A. There was some back and forth. Officer Schurig said,
8 ma'am, we're -- we don't need a warrant. The female in the
9 doorway said that you need a warrant to come into the house
10 because its my momma's house. And said we don't need a
11 warrant, you know, the probable cause with the smell of
12 marijuana and it just kind of went back and forth and by
13 this point there were more people raising their voice and
14 kind of yelling and it was a big screaming match.

15 Myself and Captain Baker and Brian Hamilton were still
16 kind of just a little bit to the side and Officer Schurig
17 and the patient and the female in the doorway were there
18 sort of arguing and then the other female got involved.
19 And then like I said there was another guy that came
20 around. I don't know the gentleman's name. But he came
21 from what looked like the opposite side of the breezeway,
22 wherever he came from, and came up and he along with the
23 initial patient where the two males that were kind of all
24 like circling in on Officer Schurig and that's when I saw
25 the second officer coming in to assist Officer Schurig.

MICHAEL BIOLETTI: DIRECT BY SOLICITOR HAYES

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1 And somehow the door opened. I don't know who opened the
2 door. I didn't see anybody's hand go on the door handle
3 but they all -- it was almost like a vacuum; they all just
4 kind of just went in. My captain went in right behind 'em
5 and I went in right behind my captain.

6 Q. Okay. And what were you trying to do?

7 A. I was going in there basically just to make sure that
8 there was nobody else that needed any help and make sure
9 that Officer Schurig didn't get overwhelmed.

10 Q. How many people were in the house -- approximately?

11 A. Eight to ten people.

12 Q. What was going on in the house?

13 A. Well it all kind of happened so fast. It seemed to
14 me that everybody was either in the kitchen or towards the
15 back bedrooms. I know there was -- it was a small child in
16 the living room area. I don't know if the child had walked
17 in after everybody came in or if the child was just there
18 playing, but once I met -- once I went in then there were a
19 good eight, maybe ten people there were coming and sort of
20 -- Like if you have the living room on this side both
21 officers, the initial female, and the -- the -- it wasn't
22 the patient, it was the other male, were kind of like of
23 like over in this area and they were struggling to get him
24 under control and they end up struggling to get the female
25 under control and myself and Captain Baker sort of had our

1 backs turned and were just kind of keeping -- just keep a
2 presence here trying to keep anybody else from going over
3 and getting involved in the altercations that were going on
4 behind us.

5 Q. Would the altercation between the initial female who
6 was in the doorway, and Officer Schurig, did you ever see
7 her land any blows on Officer Schurig?

8 A. Uh -- Honestly, no I don't think I did. I saw them
9 schuffling when we first went into the house. Like I said
10 it was more of a verbal thing. They went off to the left
11 and I kind of paid my - paid attention to the right cause I
12 knew it was, you know, two and two and they were gonna
13 handle their own and by the time he got her under control
14 and went back out into the breezeway out onto the lawn
15 where everything else took place I was trying to sort of
16 restraint someone else from jumping into that altercation
17 and with me restraining him. The next thing that I saw was
18 I did see Officer Schurig on the ground; her - her being
19 pulled from on top of him.

20 Q. Okay.

21 A. Off of him.

22 Q. So for part of the altercation you were preoccupied
23 with other individuals?

24 A. For the majority of it yes, sir.

25 SOLICITOR HAYES: I don't have any further questions.

MICHAEL BIOLETTI: CROSS BY MR. BARROWCLOUGH

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1 Please answer any that Mr. Barrowclough may have.

2 MR. BARROWCLOUGH: Thank you, your Honor, may it
3 please the court.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 MICHAEL BIOLETTI BY MR. BARROWCLOUGH:

7 Q. Officer Bioletti, so you went there to help a patient?

8 A. Yes, sir.

9 Q. And that's what you were doing initially?

10 A. Yes, sir.

11 Q. And then when it appeared that your job was done
12 with helping the patient as much as you could, as much as
13 he would let you, is when this sort of second part of the
14 incident occurred where there is the odor of marijuana?

15 A. Yes, sir.

16 Q. And Officer Schurig approached the door to Apartment

17 [REDACTED]

18 A. He was already at the door.

19 Q. Okay. And the female sort of put herself between
20 him and the door; right?

21 A. Yeah, she stayed there for the dura -- for the
22 better part of the duration but, yes, she --

23 Q. And Officer Schurig said he would have to search the
24 home; correct?

25 A. No, he said he was gonna have to go inside and talk

1 with her about that.

2 Q. Okay. And you did give a statement in this case;
3 right?

4 A. Yes, sir.

5 Q. Okay. And if I were to show a copy of that statement
6 would it potentially refresh your memory?

7 A. It does and I noticed this earlier. I did write that
8 the police officer stated he smelled what was believed to
9 be marijuana coming from the apartment and said that he
10 would have to search the home. This is one of var - I owe
11 it, all a mistake. That is what was said. He did not say
12 that he was supposed to search the house. It's a mistake
13 that I made.

14 Q. Okay.

15 A. An error in my writing.

16 Q. Okay. In any event though he did want to enter the
17 home?

18 A. He wanted to discuss with her about the, I guess,
19 the smell of marijuana.

20 Q. Right. But not there in the door. He wanted to
21 enter the home.

22 A. That you would have to ask him. I'm not really sure.

23 Q. Okay. Well in any event she told him that he could
24 not enter the home?

25 A. That is correct.

MICHAEL BIOLETTI: CROSS BY MR. BARROWCLOUGH

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1 Q. That he needed a search warrant; right?

2 A. Yes.

3 Q. And then you said an argument ensued?

4 A. Yes.

5 Q. And that was an argument about whether or not he

6 could legally enter the home; correct?

7 A. I -- Yeah, I guess.

8 Q. Okay. And while that was ensuing he did grab her by
9 the arm; correct?

10 A. That I don't know. And the reason was because by
11 this time there were numerous people around -- around them
12 and obstructed my line of sight.

13 Q. Okay. And you said at some point the door opened and
14 they went in?

15 A. Yes, sir.

16 Q. Okay. And you testified prior to that happening you
17 did not see her strike him in any way; right?

18 A. No, I did not.

19 Q. Okay. And while they were inside then you had
20 followed them in; right?

21 A. Yes I did.

22 Q. And then they went back outside?

23 A. They ended up back outside yes, sir.

24 Q. Okay. And pretty much that was while you were able
25 to observe because you were caught up with what you were

MICHAEL BIOLETTI: CROSS BY MR. BARROWCLOUGH

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1 doing with other people on scene; right?

2 A. Other than the fact of me seeing her being pulled off
3 of him yes, sir.

4 Q. Okay. And do you remember was it Officer - your
5 co-worker - -

6 A. Mr. Hamilton?

7 Q. Yes.

8 A. Yes, sir.

9 Q. Okay. And when he did that the female did not
10 struggle with Officer Hamilton at all; right?

11 A. I don't know. I was not - I didn't observe it for
12 that long and it was kind of like a momentary glance and
13 like I said I had my hands full with what was going on.

14 Q. Okay.

15 MR. BARROWCLOUGH: Thank you, Officer Bioletti.

16 OFFICER BIOLETTI: Yes, sir.

17 THE COURT: Redirect?

18 SOLICITOR HAYES: Nothing from me, your Honor. I ask
19 that this witness be excused.

20 THE COURT: You can step down and be excused. We
21 appreciate your time.

22 (WITNESS LEAVES WITNESS STAND.)

23 THE COURT: You got one more fireman I understand?

24 SOLICITOR HAYES: Yes, your Honor.

25 THE COURT: We'll do him and then do lunch.

ANTHONY BAKER: DIRECT BY SOLICITOR HAYES

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1 SOLICITOR HAYES: Yes, sir.

2 Your Honor, the State calls Anthony Baker, Rock Hill
3 Fire Department.

4 THE COURT: All right. Please come up and be sworn.

5 (WHEREUPON, ANTHONY BAKER, BEING FIRST CALLED AND DULY
6 SWORN, TESTIFIED AS FOLLOWS:)

7 DIRECT EXAMINATION

8 ANTHONY BAKER BY SOLICITOR HAYES:

9 Q. Captain Baker, can you tell us your full name please?

10 A. Joseph Anthony Baker.

11 Q. Who is your current employer?

12 A. City of Rock Hill Fire Department.

13 Q. How long have you been with the fire department?

14 A. Sixteen years.

15 Q. Were you on duty on April 15ht, 2016?

16 A. Yes, sir.

17 Q. Were you dispatched to [REDACTED] Eden Terrace, Apartment

18 [REDACTED]

19 A. Yes, sir.

20 Q. Can you tell us about that call?

21 A. ,We were dispatched to a medical call. I don't know
22 the exact nature but we were told on the way in that the
23 scene was not secure so we staged while the police
24 department went in and secured the scene. When we were
25 told it was clear we moved up closer to the scene. The --

ANTHONY BAKER: DIRECT BY SOLICITOR HAYES

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1 I was met by Officer Schurig in the breezeway of an
2 apartment complex and he led us to a male subject sitting
3 in a chair with a few other people around him in front of
4 an apartment door.

5 Q. Okay. Where was -- Was that in the breezeway of the
6 apartment complex?

7 A. That was in the breezeway yes, sir.

8 Q. How far from that apartment door?

9 A. A matter of feet. Two feet maybe.

10 Q. Was the door open or closed?

11 A. The door was closed.

12 Q. Other than police and fire fighters how many people
13 were in the breezeway?

14 A. Uh - there was - The patient we were called for, I
15 believe there were two females and one other male subject.
16 And one of the females was standing right in front of that
17 door to tell you how close they were.

18 Q. Okay. Did you ultimately treat the individual who
19 was in the chair?

20 A. We did access him. EMS came in behind us. He had
21 related to us that he did not want to go to the hospital so
22 we actually didn't have to do any treatment. There weren't
23 any treatment needed but we did access him and at that
24 point when I found out he didn't want to be transported I
25 went to meet the EMS crew coming in to let them know that.

ANTHONY BAKER: DIRECT BY SOLICITOR HAYES

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1 Q. Are you aware of what happened next between Officer
2 Schurig and one of those females?

3 A. Yes, sir. When I returned to the - with the EMS
4 crew to the - where everybody was in front of the apartment
5 door, there was a - an altercation going on. Officer
6 Schurig was trying to make entry into the apartment and the
7 female subject was blocking him from entering in through
8 the door.

9 Q. Okay. And did you notice anything in the breezeway
10 as you were standing there?

11 A. Other than the crowd and the chair he was sitting in.
12 no, sir.

13 Q. Did you notice anything about Apartment [REDACTED] at any
14 point?

15 A. I did not.

16 Q. Okay. Tell us what happened after that initial
17 altercation between Officer Schurig and that female?

18 A. Well Officer Schurig did make entry into the residence
19 and there were some other people in the residence so it
20 appeared the other officer was tied up with the two male
21 subjects outside to me so I followed Officer Schurig and
22 another fire fighter with me went into the apartment to try
23 to help him control the situation. There were other folks
24 in the apartment. I don't know exactly how many but it
25 became even more heated at that point with people making

1 threats toward Officer Schurig and myself of, you know,
2 what they would do and that went on for what seemed like a
3 minute. And then Officer Schurig and the female that was
4 blocking the door to begin with left out of the apartment
5 so we left behind 'em.

6 Q. Okay. About how many people were in that apartment?

7 A. I would say not counting the original group of four
8 people that were outside it seemed like maybe two or three
9 adults and at least one child that I remember.

10 Q. During the altercation when Officer Schurig and that
11 initial female did you see her land any blows on him?

12 A. I don't recall.

13 Q. What were you doing during the altercation primarily?

14 A. Inside the apartment the - I was trying to keep
15 some other females back from, you know I thought at that
16 time I thought Officer Schurig was the only officer in
17 there and I was trying to keep anybody from attacking him
18 from his blind spot so I was trying to keep all these
19 family members back from him.

20 Q. Okay. And then at some point the altercation left the
21 apartment and went where?

22 A. Officer Schurig and the first female left. I'm not
23 sure how but they left out into the breezeway and like I
24 said we left behind 'em. When we got out to the breezeway,
25 myself and Mike Bioletti, I noticed one male subject in

ANTHONY BAKER: DIRECT BY SOLICITOR HAYES

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1 handcuffs that was by himself and it seemed like there was
2 a commotion out past the breezeway on the grass so I held
3 that male subject so he wouldn't hurt himself or get
4 involved in any altercation while the two other officers
5 were busy. And at that point another male subject ran by
6 Bioletti and myself and Bioletti went after him to keep him
7 from getting involved in the altercation.

8 Q. Did you have a chance to observe Officer Schurig after
9 this incident?

10 A. I did and from where I was in the breezeway at that
11 point all I could see was the subject in handcuffs. After
12 Bioletti left me there wasn't anybody. I couldn't see
13 anything going on on the grass from that point on.

14 Q. Did you have a chance to observe Officer Schurig after
15 everything was all said and done and everybody was put in
16 cars?

17 A. I did. After his support officers got there and the
18 situation calmed down he did come back to me and ask me to
19 look at his eye. I did notice that it was red and swollen
20 and had some scratches on his face.

21 SOLICITOR HAYES: Thank you, Captain Baker. I have no
22 further questions at this time. Please answer any that Mr.
23 Barrowclough may have.

24 MR. BAKER: Thank you.

25 MR. BARROWCLOUGH: Your Honor, I don't have any

OFFICER AMY JONES: DIRECT BY SOLICITOR HAYES

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1 THE COURT: She's identified it. I over rule the
2 objection.

3 MR. BARROWCLOUGH: Yes, sir.

4 THE COURT: And we can deal with the relevancy, a
5 portion of it. It is a little awkward and I admit.

6 MR. BARROWCLOUGH: Yes, sir.

7 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO IDENTIFIED AND
8 MARKED, RECEIVED INTO EVIDENCE.)

9 BY SOLICITOR HAYES:

10 Q. Sergeant Jones, tell us about the call that you
11 received and how you responded.

12 A. The initial call went out as a medical call and
13 Officer Schurig and Revels were there. I was doing
14 paperwork, I believe it was on South Anderson Road, and one
15 of 'em keyed up and you could tell that there was a fight
16 or they said that they were fighting someone and so I
17 started heading their way. As I was on the way I believe
18 it was Officer Schurig said he was 10-33 which is an old
19 code we actually don't use anymore but it basically means
20 that the officer needs help immediately and so that's why I
21 was headed their way.

22 Q. Okay. Did you respond to an apartment complex at
23 [REDACTED] Eden Terrace Road?

24 A. Yes.

25 Q. Tell us what you saw when you pulled into the

OFFICER AMY JONES: DIRECT BY SOLICITOR HAYES

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1 apartment complex.

2 A. Initially there was a fire truck there and an
3 ambulance there and so I pulled up trying to find the right
4 building and the right apartment. When I got out of my
5 patrol car immediately there were a lot of people around.
6 Officer Revels was one of the first ones I saw and I was
7 just trying to find out if we were okay, were we still
8 having to fight somebody; did another officer need
9 assistance.

10 Q. Would you characterize the altercation as over at the
11 time you arrived?

12 A. Yes.

13 Q. Where was Officer Schurig when you arrived?

14 A. I'm not sure where he was initially when I arrived.
15 I made contact with him in the parking lot a few minutes
16 into it.

17 Q. Okay. Did you observe any injuries on Officer
18 Schurig?

19 A. I did.

20 Q. What did you see?

21 A. He had two cuts kind of right over his eyes.

22 Q. Did you have any further involvement with this
23 incident after this - after April 15th?

24 A. No.

25 SOLICITOR HAYES: I think that's all the questions

OFFICER MARK SCHURIG: DIRECT BY SOLICITOR HAYES

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1 I have. Please answer any that Mr. Barrowclough may have.

2 MR. BARROWCLOUGH: Your Honor, I don't have any
3 questions for this witness.

4 THE COURT: All right. You can step down and be
5 excused.

6 SERGEANT JONES: Thank you, sir.

7 (WITNESS LEAVES WITNESS STAND.)

8 THE COURT: All right. Call your next witness.

9 SOLICITOR HAYES: Your Honor, the State calls Officer
10 Mark Schurig.

11 (WHEREUPON, MARK SCHURIG,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 DIRECT EXAMINATION

14 OFFICER MARK SCHURIG BY SOLICITOR HAYES:

15 Q. Officer Schurig, can you tell us your full name
16 please?

17 A. Mark Anthony Schurig.

18 Q. Who is your current employer?

19 A. The Rock Hill Police Department.

20 Q. How long have you worked for the Rock Hill Police
21 Department?

22 A. In May it will be twenty-one years.

23 Q. Okay. Can you tell us all the various positions that
24 you have held as a member of law enforcement for the past
25 twenty-one years?

OFFICER MARK SCHURIG: DIRECT BY SOLICITOR HAYES

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1 A. I spent time in the patrol division. I spent eight
2 years assigned to the York County Multi-Jurisdictional Drug
3 Enforcement Unit and two years in the Support Services
4 Division as a marijuana analyst and evidence technician.

5 Q. Okay. Can you describe your day to day duties when
6 you were a member of the Drug Unit?

7 A. We conducted and managed all types of manner of
8 narcotics and vice crimes including from your street level
9 drug transactions to assisting and working in federal drug
10 conspiracies. We managed informants; worked under cover,
11 seized and tagged and marked evidence for our prosecutions
12 and prepared cases for prosecution.

13 Q. Did any of that work involve cases involving
14 marijuana?

15 A. Numerous times.

16 Q. When you were with the evidence control unit did you
17 interact with marijuana on a regular basis?

18 A. One of my job duties as one of the evidence
19 technicians was to conduct chemical tests on marijuana to
20 determine whether or not it actually was marijuana for
21 court cases.

22 Q. Okay. Were you involved in an altercation with
23 Dahlia Torbit on April 15th of 2016?

24 A. Yes.

25 Q. Is she present in this courtroom?

1 A. Yes.

2 Q. Can you describe what she's wearing?

3 A. A grey sweater and burgundy top.

4 Q. We'll get into more of that in a minute but can you
5 tell us how your day, or excuse me, this call started on
6 April 15th, 2016?

7 A. As has been previously stated it started out as a
8 medical call where we normally respond to an unconscious or
9 an unknown medical call just to make sure that no other
10 kind of behavior is occurring to allow the fire fighters
11 and paramedics to do their job. To make sure they're not
12 interfered with.

13 Q. Okay. So tell me what you saw when you responded to
14 [REDACTED] Eden Terrace.

15 A. We got a call to assist EMS and when I arrived the
16 young man was sitting on a chair outside the door of
17 Apartment [REDACTED] And the fire fighters arrived and EMS
18 personnel arrived to being to evaluate him.

19 Q. Okay. How many - At this point who was in the
20 breezeway of the apartment with you and the patient?

21 A. Me and the patient, three fire fighters, two
22 paramedics, Ms. Torbit, her sister and another young man
23 who I don't recall who that is.

24 Q. Okay. Tell me about your interactions with Ms.
25 Torbit from the moment you walked onto that scene until

OFFICER MARK SCHURIG: DIRECT BY SOLICITOR HAYES

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1 this incident concluded.

2 A. Until the incident concluded?

3 Q. Yes.

4 A. Once the medical evaluation of Mr. Holley had ceased
5 there were people coming in and out of Apartment ■ while
6 we were there. Every time the door opened there was an
7 overwhelming and you can actually see smoke of smoked
8 marijuana coming from that particular location, coming out
9 of the door. Once we determined that there was no longer a
10 medical issue because I'm not gonna begin a criminal
11 investigation while an injured party is being dealt with.
12 That's just improper. But once Mr. Holley had said, nope,
13 I'm good, I don't want to go to the hospital, I discussed
14 with Officer Revels and I said there is a lot of marijuana
15 smoke coming out of that apartment let's go see what that's
16 about and that's when I began my encounter with Ms. Torbit.

17 Q. Okay. When you first arrived was the door to the
18 apartment opened or closed?

19 A. Closed.

20 Q. How many -- Do you recall about how many times it
21 opened while you were in the breezeway?

22 A. Two or three.

23 Q. Were you able to glimpse anything inside the apartment
24 when the door opened?

25 A. No.

1 Q. Were you able to hear anything inside the apartment
2 when the door opened?

3 A. Just low conversation but nothing distinctive that
4 stood out.

5 Q. Okay. And then you mentioned that you smelled
6 marijuana in the breezeway?

7 A. Yes.

8 Q. Tell us about the verbal exchanges you had with Ms.
9 Torbit. What you said to her and what she said to you.

10 A. When I spoke with Ms. Torbit who stated it was her
11 mother's apartment I ask I'd like to step in and talk to
12 you about all the marijuana smoke coming out of your
13 apartment. She said no, which is fine. When I stepped
14 closer to the door she shoved me and said you're not coming
15 inside. And I ask her, don't put your hands on me, all I
16 want to do is talk to you about it. When I stepped back
17 towards the door she shoved me again and that's when I
18 began to place her under arrest for assault.

19 Q. Okay. What - Were there any more words exchanged at
20 that point?

21 A. Yes. She -- When I tried to move to arrest her the
22 door opened. I don't know whether it was opened from the
23 inside or whether it wasn't latched all the way; the door
24 came open. I followed Ms. Torbit inside the apartment in
25 an effort to place her under arrest for the assault on me.

OFFICER MARK SCHURIG: DIRECT BY SOLICITOR HAYES

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1 At that point, yes, I did, I pulled my taser but then once
2 I saw a lot of other people inside the apartment I said
3 this isn't gonna end well if I use my taser. I put my
4 taser up. And then at that point Ms. Torbit was enraged at
5 my presence inside the apartment and began striking at my
6 face with her hands.

7 Q. Okay. And just backing up a little bit. Did you say
8 anything to her after that final shove when she attempted
9 to prevent your entry?

10 A. I said you're under arrest.

11 Q. Did she ask you what for?

12 A. I don't even know if it got that far. The fight was
13 well under way and I don't think there were a lot of words
14 exchanged between me and her while inside the apartment or
15 right at the doorway.

16 Q. Okay. So tell us what happened after y'all spilled
17 into the apartment.

18 A. There were other people some trying to interfere with
19 us. A lot of other people were inside the apartment just
20 trying to get out and get out of the way. Like I said we
21 moved into the apartment and I started -- we moved towards
22 where the little den area was where we continued to fight
23 and then the fight spilled back out into the breezeway and
24 back out onto the sidewalk.

25 Q. While you were in the apartment could you give us

1 an estimate of how many people were in the apartment?

2 A. There was anywhere between eight to ten people still
3 inside the apartment once we spilled inside.

4 Q. Does that include the people who were in the
5 breezeway?

6 A. No.

7 Q. So after the fight spilled back outside tell us what
8 happened then.

9 A. We continued to fight in the breezeway. We made it
10 out past where the breezeway ends where a stair well goes
11 up to the second floor. I did grab Ms. Torbit by the hair
12 and slammed her to the ground in an attempt to bring her
13 into custody. At that point I ended up on my back when we
14 rolled over. She had a cell phone in her hand and I
15 remember looking up at her and knowing saying this is gonna
16 hurt and then she came down with her cell phone and smashed
17 me in the face with it screaming I don't give a Fuck about
18 the police.

19 Q. Can you tell us what injuries that resulted then to
20 you?

21 A. Immediately afterwards when taken to Riverview Medical
22 Center the wounds above my eye did not require stitches but
23 when they gave me a vision test my vision came back - and
24 there was some swelling involved -- my vision immediately
25 came back according to them at 20/70. Then I got a

OFFICER MARK SCHURIG: DIRECT BY SOLICITOR HAYES

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1 referral to an opthomologist within a couple of days; they
2 also estimated my vision at 20/70. My vision was normally
3 20/15 before that. As time passed my vision slowly
4 improved but the last vision test I had its still at 20/25
5 and its not gonna improve past that.

6 Q. Okay. That's what it is today?

7 A. Yes.

8 Q. Officer Schurig, I'm showing you what's been entered
9 into evidence as State's Exhibit Number Two. Have you
10 previously watched this video?

11 A. I have.

12 Q. Have you watched the first or does anything stand out
13 to you about the first two minutes of this video?

14 A. You can hear me come over the radio and say 10-33
15 which again is our old emergency code which is I'm in
16 imminent physical jeopardy. We both were. And so at that
17 point when I put that over the radio there is a voice in
18 the background that can be heard as well as mine.

19 Q. Based on your presence at the scene do you have an
20 opinion as to who that voice was?

21 A. I do.

22 Q. In your opinion who is that voice?

23 A. Ms. Torbit.

24 Q. Okay.

25 SOLICITOR HAYES: Your Honor, at this time the State

OFFICER MARK SCHURIG: DIRECT BY SOLICITOR HAYES

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1 would publish this -- a small portion of this video to the
2 Court.

3 THE COURT: Okay.

4 MR. BARROWCLOUGH: Your Honor, just to be -- over my
5 objection because I did just want to check. I don't know
6 if a proper foundation has been laid that it was Ms.
7 Torbit. And from what we saw earlier I'm not clear how
8 this is even a recording since what we saw when Officer
9 Revels was testifying was that by the time any audio or
10 video was being recorded she was already in the back of a
11 patrol car.

12 THE COURT: Well this witness isn't bound by what the
13 other witness said. I mean that's up to the trier of fact
14 to weigh if there's a difference in one's testimony and the
15 other.

16 And you might lay a little better foundation as to why
17 he understands where he was at or knows that that would
18 have been the defendant's voice.

19 SOLICITOR HAYES: Yes, your Honor.

20 Q. Officer Schurig, were you wearing a radio mic when you
21 called for help?

22 A. I was.

23 Q. And you called 10-33?

24 A. Yes.

25 Q. Tell us what happened when you called 10 - what was

OFFICER MARK SCHURIG: DIRECT BY SOLICITOR HAYES

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1 happening around you when you called 10-33?

2 A. There was - The fight was on. There was a lot of
3 yelling and screaming. The reason that I believe that's
4 Ms. Torbit on this particular video because she's the only
5 one that I dealt with until she was in custody and in the
6 back of my car.

7 Q. Okay.

8 A. She would have been the only one I was up close and
9 personal with.

10 Q. Were you engaged in an altercation with any other
11 female at the time you called 10-33?

12 A. Not until I was out on the ground and I called for
13 help before that happened.

14 SOLICITOR HAYES: Your Honor, at this time the State
15 would again seek to publish that portion of the video.

16 THE COURT: I'll allow it in over objection.

17 MR. BARROWCLOUGH: Thank you, your Honor.

18 THE COURT: I find a proper foundation has been
19 established.

20 SOLICITOR HAYES: Thank you.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO, PREVIOUSLY
22 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE/PUBLISHED TO
23 THE COURT AT 01:59 PM.)

24 BY SOLICITOR HAYES:

25 Q. Officer Schurig, can you interpret the police radio

OFFICER MARK SCHURIG: DIRECT BY SOLICITOR HAYES
CROSS BY MR. BARROWCLOUGH

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1 traffic that we just heard on this clip of the video?

2 A. Yes.

3 MR. BARROWCLOUGH: Your Honor, I'm gonna object to
4 that. You can hear it for yourself.

5 THE COURT: It speaks for itself.

6 SOLICITOR HAYES: Yes, your Honor.

7 Q. Officer Schurig, is that the portion of the video
8 that you just testified about where you called for
9 assistance?

10 A. Yes.

11 Q. And the female voice in the background?

12 A. Yes.

13 SOLICITOR HAYES: The Court's indulgence, your Honor.

14 Officer Schurig, I don't have any further questions at
15 this time. Please answer any that Mr. Barrowclough may
16 have.

17 OFFICER SCHURIG: Yes, sir.

18 MR. BARROWCLOUGH: May it please the Court, your
19 Honor?

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 OFFICER MARK SCHURIG BY MR. BARROWCLOUGH:

23 Q. So, Officer Schurig, as you've already testified to on
24 April 15th you went out there to help EMS; correct?

25 A. Yes.

OFFICER MARK SCHURIG: CROSS BY MR. BARROWCLOUGH

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1 Q. You were not out there as part of a criminal
2 investigation?

3 A. That's correct.

4 Q. You had no prior information that there were any
5 drugs being sold from Apartment [REDACTED]

6 A. No, sir.

7 Q. Or that Ms. Torbit was involved in drugs in any way?

8 A. No, sir.

9 Q. Or that any of the other parties on scene were
10 involved in drugs in any way?

11 A. No, sir.

12 Q. Or that any of those individuals on scene were known
13 to be armed and dangerous type individuals?

14 A. No, sir.

15 Q. So you just went out there and Mr. Holley was in the
16 chair?

17 A. Uh-huh.

18 Q. And you assisted while the fire fighters helped him;
19 got to a point where he was stable and that situation was
20 about over with?

21 A. Yes, sir.

22 Q. Okay. And at that point your reason for being there
23 was over?

24 A. Yes.

25 Q. And you did not leave?

1 A. That's correct.

2 Q. And you say that you smelled marijuana?

3 A. Yes.

4 Q. And that you wanted to talk with Ms. Torbit about the
5 marijuana?

6 A. I was willing to talk with anybody who was inside
7 the house whether there was marijuana. Ms. Torbit was the
8 one who took charge.

9 Q. Okay. And she kind of stood in front of the door?

10 A. Yes.

11 Q. Blocking the doorway?

12 A. Yes.

13 Q. Blocking your entry into the apartment?

14 A. Yes.

15 Q. And isn't it true that you grabbed her by the arm?

16 A. No.

17 Q. Okay. You did not grab her by the arm?

18 A. Once the fight started I grabbed her pretty much
19 everywhere.

20 Q. I'm not talking about once the fight started. I'm
21 saying when you wanted to get in and she said no, wait
22 until my mother gets home.

23 A. Did I physically try and remove her?

24 Q. Did you grab her by the arm?

25 A. No.

OFFICER MARK SCHURIG: CROSS BY MR. BARROWCLOUGH

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1 Q. Okay. And -- But you do acknowledge arguing back and
2 forth with her about whether or not you could enter the
3 apartment or whether you had to wait until the mother got
4 home; right?

5 A. Yes.

6 Q. And you did tell her you didn't need a warrant to
7 go inside the house.

8 A. To secure it? No I did not.

9 Q. You don't think you need a search warrant to go
10 inside of a house just based on the odor of marijuana?

11 A. No, sir, I did not because the door ---

12 Q. And --

13 A. --- there were people coming in and out of the
14 apartment and I believe that its possible that contraband
15 could have been destroyed while I was outside.

16 Q. And by contraband you mean marijuana?

17 A. Yes.

18 Q. And there was no warrant involved here either a
19 search warrant or an arrest warrant?

20 A. No.

21 Q. You acknowledge that?

22 A. Yes.

23 Q. And you also acknowledge you did not have consent
24 to go inside that apartment?

25 A. That's correct.

1 Q. And you acknowledge that you did want to get inside
2 that apartment?

3 A. I did, yes.

4 Q. You did try to get inside that apartment?

5 A. I did.

6 Q. You did ultimately wind up inside that apartment?

7 A. Yeah, but no search occurred. There was a fight in
8 progress.

9 Q. And during that time when you say fight you each had
10 a hold of each other and she was trying to actually get
11 away from you?

12 A. No she was not.

13 Q. She was trying to pull away from you?

14 A. Absolutely not.

15 Q. And that's how y'all wound up back outside?

16 A. That's incorrect.

17 Q. And she got - She did pull away and was trying to
18 run away and that's when you grabbed her?

19 A. No.

20 Q. And you do acknowledge you grabbed her by the hair?

21 A. Yep.

22 Q. And slammed her to the ground?

23 A. Yes I did.

24 Q. And in so doing did you also fall to the ground?

25 A. Yes I did.

OFFICER MARK SCHURIG: CROSS BY MR. BARROWCLOUGH

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1 Q. Okay. And that's how she wound up on top of you?

2 A. Yes.

3 Q. And that's when you got hit with the phone?

4 A. Yes.

5 Q. And then it was after that that the firemen got her
6 off of you?

7 A. Somebody did. I -- The fireman said he did. I don't
8 recall much because I couldn't see anything.

9 Q. Okay. But then she did extend her arms to be
10 handcuffed?

11 A. She was handcuffed without incident after that, yes.

12 Q. Do you recall her extending her arms to be handcuffed?

13 A. I do not but I know that once the fight was over it
14 was over.

15 Q. Okay. And --

16 A. Once she was cuffed she went to my vehicle with no
17 problem whatsoever.

18 Q. Okay. And no marijuana was ever recovered from
19 Apartment [REDACTED] correct?

20 A. No.

21 Q. Okay. That's all the questions I have.

22 MR. BARROWCLOUGH: Thank you, Officer Schurig.

23 THE COURT: Redirect?

24 SOLICITOR HAYES: Just a few followup, Your Honor.

25 REDIRECT EXAMINATION

OFFICER MARK SCHURIG: REDIRECT BY SOLICITOR HAYES

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1 OFFICER MARK SCHURIG BY SOLICITOR HAYES:

2 Q. Do you know how many individuals were ultimately
3 taken into custody as a result of this altercation?

4 A. I believe four.

5 Q. What happened to the other numerous individuals who
6 were inside the apartment during this process?

7 A. They left.

8 SOLICITOR HAYES: Thank you, Officer Schurig.

9 I don't have any further questions.

10 THE COURT: Recross?

11 MR. BARROWCLOUGH: No, sir, your Honor.

12 THE COURT: You can step down and have a seat back -

13 OFFICER SCHURIG: Thank you, your Honor.

14 (WITNESS LEAVES WITNESS STAND.)

15 THE COURT: Call your next witness.

16 SOLICITOR HAYES: Your Honor, I may be done if the
17 Court --

18 THE COURT: Give me a minute.

19 SOLICITOR HAYES: Thank you, your Honor.

20 THE COURT: Or two.

21 (PAUSE AT 02:05 PM.)

22 SOLICITOR HAYES: Your Honor, at this time the State
23 rest it's case.

24 THE COURT: All right. Anything from the Defense?

25 MR. BARROWCLOUGH: Yes, your Honor. At this time on

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1 behalf of Ms. Torbit I would move for a directed verdict on
2 the grounds that even in this evidence taken in the light
3 most favorable to the State that this - the facts show that
4 -- that attempted entry into Apartment [REDACTED] was illegal.
5 There was no arrest warrant; there was no search warrant;
6 there was no factual circumstances fitting exigent
7 circumstances. There was no consent and that therefore Ms.
8 Torbit would be entitled to use force to prevent a trespass
9 or to eject a trespasser. I would submit to the Court that
10 it is unclear at what point in this altercation it switched
11 from the officer trying to illegally enter the apartment
12 with force being used to impose that effort versus him
13 attempting to then place her under arrest.

14 I submit that it is clearly an illegal arrest and
15 she's got a right to use force to resist that arrest. Its
16 kind of continuing of action but either way through the
17 entire process there are really no facts here in which the
18 State can base a just verdict showing that this was a
19 lawful arrest for anybody and that the use of force was not
20 justified at any time.

21 THE COURT: So he did not have a right to arrest after
22 she shoved him when he simply ask to enter the house?

23 I mean you've got all this about you've ask him did he
24 touch her first and he denied that so at this point in
25 looking at the light most favorable to the State is he -

1 there is no unreasonable attempt, no real attempt to enter
2 other than a verbal request and the response was she shoved
3 him.

4 I don't believe she had a right to shove him simply if
5 he ask to enter her house. And as far as exigent
6 circumstances I don't even believe we get there because of
7 what I just said although we may after we hear other
8 testimony that may become an issue. At this point I
9 disagree with the United States Supreme Court in their
10 opening case wehre they found it is not exigent
11 circumstances based on the smell of opium.

12 I find that the smell of marijuana does rise to
13 exigent circumstances to allow the entry into some's house
14 without a search warrant because of - and again, I just
15 can't phantom how the Supreme Court came up with the idea
16 that only fumes would dissipate. Marijuana can be flushed
17 down a toilet. It can be secreted. There are all kind of
18 things that could happen if that creates exigent
19 circumstances so I deny the motion for a Directed Verdict.

20 Now, Ms. Torbit, can you hear me?

21 MS. TORBIT: Yes, sir.

22 THE COURT: All right. You have a right to present a
23 defense to this charge if you wish. You don't have to
24 because you are presumed innocent of the charge and the
25 State has to prove your guilt beyond a reasonable doubt so

DISHEIKA TORBIT: DIRECT BY MR. BARROWCLOUGH

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1 you don't have to present any evidence but you can.

2 If you chose to exercise your right to remain silent I
3 won't hold that against you. I won't factor that into my
4 determination as to what verdict to render. You are
5 presumed innocent and in my mind you will be presumed
6 innocent until I'm convinced that you are guilty beyond a
7 reasonable doubt. But you have a right to testify or you
8 have the right to remain silent. Have you determined which
9 path you intend to do? Are you going to testify or remain
10 silent?

11 MS. TORBIT: I want to testify.

12 THE COURT: Okay.

13 MR. BARROWCLOUGH: Your Honor, we do intend on calling
14 a few witnesses. She -- Ms. Torbit does plan to testify
15 but we're not calling her first.

16 THE COURT: Okay. Well are you ready to go forward?

17 MR. BARROWCLOUGH: Yes, sir, your Honor.

18 THE COURT: All right, call your first witness.

19 (WHEREUPON, DISHEIKA TORBIT,
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 DIRECT EXAMINATION

22 DISHEIKA TORBIT BY MR. BARROWCLOUGH:

23 Q. Ma'am, would you please state your full name for the
24 Court?

25 A. Disheika Torbit.

DISHEIKA TORBIT: DIRECT BY MR. BARROWCLOUGH

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1 Q. And, Ms. Torbit, what is your relationship with Dajlia
2 Torbit?

3 A. That's my oldest daughter.

4 Q. And, Ms. Torbit, where you do you live?

5 A. I live -- I used to live at [REDACTED] Eden Terrace.

6 Q. Okay. So back in April ---

7 A. Uh-huh.

8 Q. --- of this year that was your address?

9 A. Yes, sir.

10 Q. And this was your residence?

11 A. Yes, sir.

12 Q. And what was your work shift back at that time?

13 A. Seven to three thirty.

14 Q. Okay. And who all lived in that house?

15 A. Me, me and my twins, Emily, Timothy Holley.

16 Q. Okay. When you saw twins who are they?

17 A. Chantavious and Quantavious Torbit.

18 Q. Okay. And are they siblings of Dajlia Torbit?

19 A. Uh-huh.

20 Q. Okay. And to your knowledge where did she work at
21 that time?

22 A. She worked at Walmart in Tega Cay third shift.

23 Q. Okay. And third shift being what hours?

24 A. Ten to seven.

25 Q. Okay. And would she come to your house on a regular

DISHEIKA TORBIT: DIRECT BY MR. BARROWCLOUGH

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1 basis?

2 A. Yes.

3 Q. What time?

4 A. She had to be there by seven once she get off to take
5 the kids to school cause I have to be at work at seven. I
6 work in Fort Mill.

7 Q. So she would come to your house on a daily basis
8 around seven?

9 A. Yes.

10 Q. And make sure that her two younger siblings got to
11 school?

12 A. Exactly.

13 Q. Okay. And did she have a key to your house?

14 A. Yes she do.

15 Q. Okay. And when you weren't in that house who was in
16 charge of that household?

17 A. Dajlia's in charge.

18 Q. And just briefly with regards to the day in question.

19 Where were you when this incident happened?

20 A. I was at work but when the incident took place they
21 called me at work and I was on my way to my house.

22 Q. Okay.

23 A. But by the time I made it there everybody was
24 arrested and was gone.

25 Q. Okay. And do you recall whether or not there was

DISHEIKA TORBIT: CROSS BY SOLICITOR HAYES

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1 any marijuana in your apartment when you got home?

2 A. No.

3 Q. Do you recall if your apartment smelled like marijuana
4 when you got home?

5 A. No.

6 Q. Okay.

7 MR. BARROWCLOUGH: Thank you, Ms. Torbit. Please
8 answer any questions Mr. Hayes may have.

9 CROSS-EXAMINATION

10 DISHEIKA TORBIT BY SOLICITOR HAYES:

11 Q. Ms. Torbit, are you familiar with [REDACTED] Eastwood Drive
12 in Rock Hill?

13 A. Yes.

14 Q. Do you know where that is?

15 A. That's my daughter's address.

16 Q. Thank you. Your daughter being Dajlia?

17 A. Yes.

18 SOLICITOR HAYES: Thank you.

19 THE COURT: Any redirect?

20 MR. BARROWCLOUGH: No, sir, your Honor.

21 THE COURT: You can step down and be excused. Thank
22 you.

23 (WITNESS LEAVES WITNESS STAND.)

24 MR. BARROWCLOUGH: Your Honor, Defense would call Mr.
25 Timothy Holley.

TIMOTHY HOLLEY: DIRECT BY MR. BARROWCLOUGH

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1 THE COURT: Put your left hand on the Bible and raise
2 your right.

3 A. Right hand?

4 THE COURT: Left on the Bible; right hand raised.

5 (WHEREUPON, TIMOTHY HOLLEY,
6 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 THE COURT: You're gonna need to speak kind of loud so
8 we can hear you.

9 A. Yes, sir.

10 DIRECT EXAMINATION

11 TIMOTHY HOLLEY BY MR. BARROWCLOUGH:

12 Q. Mr. Holley, would you state your full name for the
13 court?

14 A. Timothy Willie Tyler.

15 Q. And Mr. Holley, where do you live?

16 A. Currently?

17 Q. Back in April of 2016.

18 A. [REDACTED] Eden Terrace.

19 Q. Okay. And who lived there with you?

20 A. Me, my mom, my brother and my sister.

21 Q. Okay. And direct your attention to April 15th. What
22 was significant about that date to you?

23 A. It was my daughter's birthday.

24 Q. Okay. How old is your daughter?

25 A. She's one.

1 Q. And what if any plans did you all have for that day?

2 A. We were all going to Chuck E. Cheese that evening.

3 Q. To celebrate your daughter's birthday?

4 A. Correct.

5 Q. Okay. And was Dajlia there?

6 A. She was.

7 Q. And for most of the morning what was she doing?

8 A. Asleep.

9 Q. Had she come from work?

10 A. Yes, sir.

11 Q. And would it be fair that's a usual occurrence that she
12 comes over after work instead of in the morning?

13 A. Yes, sir, every day.

14 Q. Okay. And do you recall what time she got up?

15 A. Approximately eleven thirty, twelve.

16 Q. Okay. And were you the one who was injured?

17 A. I was.

18 Q. Tell the Court about how you got injured?

19 A. I tripped over my daughter bike that she just got and
20 I ran into the wall and I passed out.

21 Q. Okay. And what's the next thing that you remember
22 when you woke up?

23 A. I was outside and when I woke up I was in front of the
24 police.

25 Q. Okay. And were you standing, sitting, on the ground?

TIMOTHY HOLLEY: DIRECT BY MR. BARROWCLOUGH

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1 A. I was sitting in a chair.

2 Q. Okay. And you were sitting in a chair out in the
3 breezeway?

4 A. Correct.

5 Q. Okay. And what do you recall happening next?

6 A. I was waiting on EMS and while I was waiting Officer
7 Schurig said he smelled weed in front of the neighbors -
8 in front of the neighbors door and my brother was walking
9 by and he stopped and searched him.

10 Q. Okay. And who is your brother? What's his name?

11 A. Quintavious Torbit.

12 Q. Okay. And after Officer Schurig searched your
13 brother then what happened?

14 A. He immediately came back to the house and said he
15 needed to go in and search.

16 Q. And when you say the house, you mean Apartment [REDACTED]

17 A. Correct.

18 Q. And was the door open or shut?

19 A. It was closed.

20 Q. Okay. And what happened next?

21 A. My sister said he can go in and search but he got to
22 wait until my mom get there and she be in there in five
23 minutes approximately, something like that.

24 Q. And where was she located when she was saying this to
25 him?

1 A. She was in front of the door.

2 Q. And where was Officer Schurig located?

3 A. He was standing right in front of her.

4 Q. Okay. And what was the next thing that happened?

5 A. Um, she said -- She told him he can wait. And he said
6 he didn't have to wait. And she was like you need the
7 search warrant and he said he didn't need one. And he
8 pulled the handcuffs out and he put them away and pulled
9 out a taser and threatened to tase her and he put -- -

10 Q. When you say he threatened to. Tell the Court exactly
11 what did he do with the taser.

12 A. He pulled it out. He didn't press it against her
13 chest but he pointed it at her chest and he clicked it one
14 time.

15 Q. And then what happened?

16 A. Uh, she said -- told him if he tased her gonna sue
17 him.

18 Q. Okay. When all of this was happening was the door
19 open or shut?

20 A. It was closed the whole time.

21 Q. Okay. And what happened next?

22 A. Uh, he then put the taser away and then he pulled
23 her arm trying to move her from the door. And while doing
24 that someone opened the door and they fell inside.

25 Q. Okay. And so at no point did she give him consent to

TIMOTHY HOLLEY: DIRECT BY MR. BARROWCLOUGH

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1 go in?

2 A. Not at all.

3 Q. And you said he grabbed her arm. Did at any point
4 you observe her push him?

5 A. She didn't make no actions at all.

6 Q. Okay. And what happened -- Well let me ask you this.
7 At any time did you hear him tell her she was under
8 arrest?

9 A. Not at all.

10 Q. Okay. And then what happened?

11 A. Uh, the altercation went inside the house. He was
12 still holding her arm and it ended up outside in the
13 breezweay and like he eventually let her arm go and she was
14 walking, walking like towards the cars I would say and they
15 -- and he pulled her hair and that's how it started again.

16 Q. And while all this was going on what were you doing?

17 A. Uh, the fire department, one of the firemen had
18 grabbed me. He had me in a head lock so I didn't do
19 anything at all.

20 Q. And when you saw her begin to walk away and he grabbed
21 her by the hair, what happened next?

22 A. Uh, I was inside the house. I went inside the house.

23 Q. At that point?

24 A. At that point.

25 Q. So you didn't see what happened?

TIMOTHY HOLLEY: DIRECT BY MR. BARROWCLOUGH:
CROSS BY SOLICITOR HAYES

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1 A. No I didn't.

2 Q. Okay. Did you see - Where was she the next time you
3 saw her?

4 A. Uh, she was outside being arrested.

5 Q. Okay. And at that point did you see her struggling
6 in any way?

7 A. No, not at all. My little sister was.

8 Q. Okay. But Dajlia was not?

9 A. Not at all.

10 Q. Okay.

11 MR. BARROWCLOUGH: Thank you, Mr. Holley. Please
12 answer any questions that Mr. Hayes may have.

13 CROSS-EXAMINATION

14 TIMOTHY HOLLEY BY SOLICITOR HAYES:

15 Q. So, Mr. Holley, on that day you fell somewhere inside
16 your apartment and hit your head?

17 A. Correct.

18 Q. And you woke up dazed and confused out there in the
19 breezway surrounded by police and fire fighters and some of
20 your siblings; is that correct?

21 A. Some what true because I was dazed then again I still
22 was aware of what was going on with it.

23 Q. Okay. And then you saw them spill into the apartment
24 and you tried to go in and help?

25 A. No I didn't try to go in to help.

TIMOTHY HOLLEY: CROSS BY SOLICITOR HAYES

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1 Q. Okay. And you followed them in there?

2 A. No, the fight happened once like they came out I
3 went in.

4 Q. Okay. But then you ultimately wound up back outside?

5 A. After I used the restroom when I went inside. I went
6 inside to use the restroom and came back out.

7 Q. Okay. Did you flush the toilet after you used the
8 bathroom?

9 A. Yes, sir, and I washed my hands.

10 Q. All right. Now when you came back outside they had
11 Dajlia in the car; right?

12 A. They was in the process.

13 Q. They were in the process. And that point you decided
14 you wanted to help her out; right?

15 A. Not at all.

16 Q. Okay. Were you in court earlier this morning?

17 A. I was.

18 Q. Did you plead guilty to a charge?

19 A. I did.

20 Q. What was that charge?

21 A. Assault and battery.

22 Q. Against police officers?

23 A. No. Third degree. Assault and battery third degree.

24 Q. Assault and battery third degree? Okay. I gotha.

25 SOLICITOR HAYES: Mr. Holley, I have no further

KAITLEAN LUMPKIN: DIRECT BY MR. BARROWCLOUGH

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1 questions. Thank you.

2 MR. BARROWCLOUGH: Nothing further for this witness,
3 your Honor.

4 THE COURT: You can step down and be excused if you
5 wish. Thank you.

6 (WITNESS LEAVES WITNESS STAND.)

7 MR. BARROWCLOUGH: Your Honor, the Defense would call
8 Ms. Kaitlean Lumpkin.

9 Ms. Lumpkin, step up here and be sworn. Right up
10 here.

11 (WHEREUPON, KAITLEAN LUMPKIN,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 DIRECT EXAMINATION

14 KAITLEAN LUMPKIN BY MR. BARROWCLOUGH:

15 Q. Ms. Lumpkin, would you state your full name for the
16 Court, please?

17 A. Kaitlean Lumpkin.

18 Q. And, Ms. Lumpkin, where do you live?

19 A. I live on East Main Street, Rock Hill, South Carolina.

20 Q. And how do you know Dajlia?

21 A. Sister-in-law.

22 THE COURT: Sister-in-law?

23 BY MR. BARROWCLOUGH:

24 Q. Explain. Tell the Court.

25 A. Well Timothy -- Well Timothy Holley is my boyfriend

KAITLEAN LUMPKIN: DIRECT BY MR. BARROWCLOUGH

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1 and we have a child together.

2 Q. Okay. So your -- so you're sort on in the family by
3 having a child together?

4 A. Pretty much, yeah.

5 Q. Okay. And directing your attention to April 15th of
6 this year, where were you that day?

7 A. I was on Eden Terrace. I live in the apartment
8 complex.

9 Q. At Apartment [REDACTED]

10 A. Yes, sir.

11 Q. And why were you there that day?

12 A. Cause it was our daughter's birthday and we were
13 going to Chuck E. Cheese and so we just all met up over
14 there.

15 Q. Okay. And when you say you all met up over there,
16 who all was there?

17 A. It was me, Dajlia, Molik, Shannon, Quantavious, and
18 two other females that they were friends with Shannon. And
19 it was my daughter and Dajlia son.

20 Q. Okay. And how old is Dajlia's son?

21 A. Uh, two. Yeah.

22 Q. And at some point did Mr. Holley get injured?

23 A. Yes.

24 Q. And tell the Court how that happened.

25 A. We were -- Well we had a lot of presents and he had

1 tripped over our daughter's bike and when he fell he hit
2 his head on the -- like on the side of the door like where
3 the base is.

4 Q. Like the molding?

5 A. Yeah. And he hit his head there.

6 Q. And when he got injured who called 911?

7 A. Dajlia.

8 Q. And when what did y'all do next?

9 A. We took him outside to get him air and - -

10 Q. When you say we, who's we?

11 A. Me and Dajlia. And when we took him outside because
12 he was still unconscious at the time we were trying to pull
13 him up and at that time that's when the officer arrived.

14 Q. And where was Mr. Holley located when the officer
15 arrived?

16 A. He was sitting in a chair right beside the door but
17 the - not beside where the door handle is; on the opposite
18 side of that.

19 Q. And who all from the apartment was outside when the
20 officer arrived?

21 A. It was me, Malik, Dajlia.

22 Q. You said Malik. Can you describe --

23 A. Timothy, yes.

24 Q. Okay.

25 A. And Quan came out later than that, a little later.

KAITLEAN LUMPKIN: DIRECT BY MR. BARROWCLOUGH

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1 Q. And that's Dajlia's younger brother?

2 A. Yes, sir.

3 Q. And tell the Court what happened when the officer
4 came up.

5 A. The officer ask Timothy did he need EMS -- was he,
6 you know, okay. Timothy said that he did not want EMS that
7 he was okay because he was conscious.

8 Q. And what did you do?

9 A. At the time I'm just, you know, I was still trying to
10 clean him up. I'm just letting them talk really.

11 Q. And what happened next?

12 A. After that he said that -- Well, Quan was going
13 towards like the apartment, where the parking lot, and the
14 officer was coming from the breezeway coming from the
15 parking lot and they crossed paths and that's when he
16 patted Quantavious down guessing cause he thought he had
17 something on him. And that's when he came back to where
18 Malik and Dajlia were located and said that he smelled
19 marijuana that he needed to search the house.

20 Q. Okay. And what happened when he said that he needed
21 to search the house?

22 A. Dajlia told him that if you want to search the house
23 you have to wait on her mom because she's not here she's at
24 work, you know, she'll be here in five minutes. Then she's
25 blocking the door telling him, you know, you can't enter

1 cause she's not here. And I'm sitting there and I'm saying
2 you don't have a warrant, you know, and I kept saying you
3 don't have a warrant over and over and over again. Dajlia
4 kept saying I know my rights and that's all she kept saying
5 over and over I know my rights you cannot enter.

6 Q. And what did the officer do? Or what did you see
7 next?

8 A. After that I saw the officer pull out his handcuffs
9 like he was about to cuff her but he didn't. He put the
10 handcuffs back pulled out his taser and he put it towards
11 her chest but not - it was like a inch away from her chest
12 and he said do you see this and then he clicked it. And
13 then after that he kept it there for about five, not even
14 five minutes, and then he put it away and like after that
15 that's when Shanta, Quantaviou's friend cracked the door
16 open, you know, to see what was going on; that's when
17 everybody fell in.

18 Q. Okay. Do you recall whether or not you observed
19 Dajlia push the officer at any time in that doorway?

20 A. No. It's wasn't no -- She wasn't pushing him away
21 or none of that. He was -- It was more of him looking like
22 coming in like trying to force his way in. That's in my
23 opinion that's what it -- the way it looked like. He was
24 trying to force his way in.

25 Q. Okay. At any point did you hear him tell her she

KAITLEAN LUMPKIN: DIRECT BY MR. BARROWCLOUGH

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1 was under arrest?

2 A. No, I did not.

3 Q. And so tell the Judge what happened when the door
4 opened?

5 A. Wehn the door opened they're going into the living
6 room and he has her by her arm basically going into a
7 circle in the living room pulling her arm. And - -

8 Q. While he's pulling arm what's she doing?

9 A. She's just saying, you know, let go of me. Like she
10 was really saying it hurts, you know, cause the way he had
11 her he had her arm twisted. She kept saying it hurt you
12 have to let go. It was just her really saying that she
13 really in pain.

14 Q. Then what happened?

15 A. As they're going around in the circle they - he bumped
16 into Chantavious's friend and she had me and Timothy's
17 daughter in her hands. And that's when Chantavious got
18 upset about that because of the way he bumped her and just,
19 you know, that's.

20 Q. What did she do? What did Chantavious do?

21 A. Chantavious? She went ballistic. She kept saying
22 that you put, you know, that's my niece, she has her niece
23 in her hand it just - from there it just went crazy.

24 Q. Okay. Where did, if you recall, where did Dajlia
25 and the officer go after that happened?

KAITLEAN LUMPKIN: DIRECT BY MR. BARROWCLOUGH

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1 A. After that happened Dajlia walked out like going
2 toward the breezeway towards the parking lot and the
3 officer was following in behind her and the last thing I
4 seen from her -- of him and Dajlia was when he pulled her
5 braids and then she fell back like this. When she did that
6 that's when I went in the house and met Malik coming back
7 from the restroom and I told him to stay, you know, stay in
8 the house and I shut the door behind us after I walked out.
9 When I went to the breezeway the only person I seen was
10 Chantavious and she was on the ground and the officer had
11 his knee in her back.

12 Q. So you didn't see Dajlia any more after that?

13 A. No I didn't see Dajlia after that. The last time I
14 seen Dajlia was when she was getting into the car, the
15 police car.

16 MR. BARROWCLOUGH: Thank you, Ms. Lumpkin. Please
17 answer any questions that Mr. Hayes may have for you.

18 SOLICITOR HAYES: No questions.

19 THE COURT: All right. You can step down and be
20 excused. We appreciate your time. Thank you.

21 (WITNESS LEAVES WITNESS STAND.)

22 MR. BARROWCLOUGH: Your Honor, now the Defense would
23 call Ms. Torbit to the stand.

24 THE COURT: All right. Please come up and be sworn.

25 (WHEREUPON, DAJLIA TORBIT,

DAHLIA TORBIT: DIRECT BY MR. BARROWCLOUGH

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1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 DIRECT EXAMINATION

3 DAJLIA TORBIT BY MR. BARROWCLOUGH:

4 Q. Ms. Torbit, would you please state your full name
5 for the court?

6 A. Dajlia Symone Torbit.

7 Q. And, Ms. Torbit, how old are you?

8 A. Twenty-one.

9 Q. And how old were you at the time of this incident?

10 A. Twenty.

11 Q. And, Ms. Torbit, at the time of this incident where
12 were you working?

13 A. At Walmart in Tega Cay.

14 Q. And what shift were you working?

15 A. Third shift from 10:00 pm to 7:00 am.

16 Q. All right. And where was your address? Where were
17 you living?

18 A. At [REDACTED] Eastwood Drive in Rock Hill.

19 Q. And tell the Court about your routine though; what
20 would happen when you got off work everyday.

21 A. When I got off work I would go to my mom's house.
22 Sometimes the twins I had to take them to school. My lived
23 in Rock Hill High zone. They went to Northwestern so we
24 had to take them. When I went to my mom's house either
25 they would still be asleep because sometimes I would get

1 there early or either one of them would be in the shower
2 and I would fall asleep on the couch until they were ready.

3 Q. Okay. And did you have a key to the residence?

4 A. I did.

5 Q. And how often did you go there?

6 A. Mostly every day. Like mostly Monday through Friday
7 when I had to.

8 Q. And was it your responsibility to make sure your
9 younger siblings got to school?

10 A. Yes, sir.

11 Q. And when your mother wasn't there who was in charge
12 of that household?

13 A. I was.

14 Q. And directing your attention to this day, what time
15 did you arrive there at Apartment [REDACTED]

16 A. I think it was around 7:12 am.

17 Q. Okay. And what happened or what did you do after
18 you arrived?

19 A. I fell asleep on the couch. Chantavious she was
20 still asleep. Quantavious was suspended due to tardy so he
21 wasn't going to school so I was waiting on Chanta. She was
22 still asleep so I fell asleep on the couch.

23 Q. And when did you wake up?

24 A. I woke up around - I think it was around eleven
25 something. I know it was after eleven o'clock.

DAHLIA TORBIT: DIRECT BY MR. BARROWCLOUGH

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1 Q. Okay. And how did you feel about waking up that late?

2 A. Really when I woke up I woke up like kind of fussing
3 because Chantavious didn't wake me up for her -- for me to
4 take her to school. And I seen two of her friends there so
5 I was kind of like what, you know, like fussing because
6 they didn't wake me up to take them to school.

7 Q. Okay. And then what if anything do you recall
8 special about that day?

9 A. It was my niece first birthday.

10 Q. And do you recall what the plans were?

11 A. Yes. We were gonna go to Chuck E. Cheese.

12 Q. All right. And do you recall what happened with your
13 brother getting injured?

14 A. Yes. I was in the living room at the moment. I
15 think he slipped, you know, fell over one of the toys cause
16 she had her toys. She had just opened up her toys. They
17 were all around in his room on the floor. But I did hear
18 like the initial bump and when I came there he was like
19 kind of slumped over on the floor on his face.

20 Q. All right. So what did you do then?

21 A. At that moment I immediately started crying and I -
22 I turned him over and that's when I seen that he was
23 bleeding from his face so I called 911 and at that moment
24 everyone who was there they came like rushing back there in
25 the room trying to get him to stand up and we come up.

1 Q. Okay. And after you called 911 did you make any
2 other phone call?

3 A. To my mom to her job. I had to speak with the
4 secretary.

5 Q. Okay. And what was your intent in calling your mom?

6 A. Because my brother was injured. I didn't know what
7 was going on. Really I was just a mess because I didn't
8 know what was wrong with him. I called my mom to come
9 home.

10 Q. And after you made those phone calls what did you do
11 with your brother?

12 A. We carried him outside for him to get fresh air
13 thinking that it would wake him up. He was kind of coming
14 to when we was taking him outside to set him on a chair.

15 Q. Okay. And once you got him outside in the chair what
16 happened next?

17 A. At that moment I came back in the house to check on
18 the kids and everything. My son was there and my niece.
19 They were really crying because everyone else was crying.
20 We didn't know like what was going on with Malik so I was
21 trying to make sure everything was calm. I went back
22 outside and that's when I saw Malik. He was woke sitting
23 in a chair. The fire fighters were walking up, up the
24 breezeway towards us at the moment and I saw Officer
25 Schurig standing there.

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1 Q. Okay. And from your group who all was outside at
2 that time?

3 A. It was me, Timothy, Kaitlean, and my brother
4 Quantavious was outside also.

5 Q. And tell the Judge what happened next.

6 A. At that moment that's when they wanted to - One of
7 the fire fighters pulled me aside and ask me information
8 like his name and address and age and things like that
9 while the other ones were -- sorry, while they were talking
10 ot him telling him, you know, he needed - he needed medical
11 treatment. He did he was refusing and he didn't want to
12 go and we were trying to tell him that, you know, he
13 wouldn't stop bleeding so he needed to go to the hospital.

14 Q. Okay. And after you advised your brother that he
15 should in fact go to the hospital what happened next?

16 A. He was like okay at that moment but we were going
17 to take him. He wasn't going to ride in the ambulance. So
18 while we're standing there my brother Quantavious he was
19 walking past like going towards the parking lot and the
20 officer he was -- I want to say he was kind of coming back
21 but he was right there by my brother so when my brother
22 walked past him he did like this and told him to come here
23 and he stated patting him on his pockets. I'm not sure
24 what he was looking for but he was patting him all over his
25 pockets.

1 Q. Okay. And after he did that with your brother what
2 did he do next?

3 A. After that he came back over, he ask who all lived
4 here; who was the adult on the scene and that's when I told
5 him that I didn't live here but this was my mother's home
6 and that I was the oldest.

7 Q. And then what happened?

8 A. After he said that he needed to go in and search
9 because he smelled marijuana.

10 Q. And what did you say?

11 A. I told him - I literally said no you can search once
12 my mom got here she's literally on her way coming from the
13 bridge and that's when he started to really walk towards
14 the door to go in on his own after I told him no and that's
15 when I got in front of the door and I blocked it. I had my
16 hands up on the door frames like this.

17 Q. Okay. And then when you did that what did he do?

18 A. He was basically I was asking him for a search warrant
19 telling him that he needed a search warrant to go in and
20 that I knew my rights. He repeatedly stated that he did
21 not need a search warrant. He also did not need to wait
22 for my mom to come on the premises in which he constantly
23 like tried to really try to get around me to reach for the
24 door to touch the door handle.

25 Q. All right. And while that was going on did you push

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1 him?

2 A. No, sir. I had my hands to the side of the door
3 frame.

4 Q. Okay. Then what happened?

5 A. At that moment that's when he kind of grabbed my
6 wrist. He pulled out his handcuffs. He never said
7 anything he just pulled them out and kind of showed them to
8 me but he put them back and that's when he pulled out his
9 taser. And he ask me did I see his taser. He pointed it
10 at me and he clicked it and he put it back but he had a
11 hold onto my wrist the whole time. He was kind of twisting
12 my wrist.

13 Q. When he pulled out that taser what if anything did
14 you say?

15 A. I told him that if he tased me I would sue him.

16 Q. And what happened next?

17 A. After that someone opened the door from the inside.
18 I couldn't see my back was there so we kind of like when
19 they opened the door we kind of like went back in the house
20 and at that moment he still had a hold onto my wrist and my
21 sister and her two friends and my son and my niece were in
22 the living room and it was like once they seen how he was
23 like twisting my arm that's when everyone kind of got
24 hostile, you know, like you don't have to do that you can
25 let her go why you twisting her arm and things like that.

1 We were really just made like a circle cause as soon as we
2 went in we like circled around and later on we came right
3 back outside and the whole time he still had a hold on my
4 wrist.

5 Q. Okay. And while he was twisting your arm at that time
6 did you strike --

7 A. No, sir.

8 Q. Okay. Then what happened?

9 A. At that time once we were back out the door I jected
10 away from him and that was my first time actually being
11 loose from him from when I wouldn't let him in the
12 apartment. So I kind of turned. I turned my back to him
13 and began walking towards the parking lot and he was behind
14 me and at that time that's when my -- I felt my hair, your
15 know, him -- he pulled my hair and my head went back and I
16 did, my arms went up to try to grab my hair and I did have
17 my cell phone in my hand at the time but my hands went back
18 and I'm guessing I hit him in the face when my hands went
19 back to grab my hair. But at that moment we were kind of
20 stumbled and rolled on the ground which I was on top of
21 him.

22 Q. Okay. When you fell backwards --

23 A. Uh-huh.

24 Q. Did you fall on top of him?

25 A. No. At first it was like we were on our side and we

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1 kind of like rolled.

2 Q. Okay.

3 A. And that's when I rolled on top of him but he wasn't
4 on top of me and I wasn't on top of him when we fell.

5 Q. Okay. And then what was the next thing that happened?

6 A. That's when the fire fighter - I can't remember his
7 name but he pulled me up and at that moment I actually put
8 my hand up for him to arrest me.

9 Q. Okay. And after you were arrested what happened?

10 A. After I was arrested they put me - placed me into
11 the back of the police car and that's when I was like
12 watching everything else unfold from the car like when they
13 tackled my sister Chantavious when they was putting
14 Quantavious in the car and also when they ran up to and
15 arrested my brother from behind.

16 Q. Okay. But nothing else involved you?

17 A. No, sir.

18 Q. Okay. And tell this court again, did you when you
19 were in that doorway did you push that officer at all?

20 A. No, sir.

21 Q. Did he tell you you were under arrest at all?

22 A. No, sir.

23 Q. Okay.

24 MR. BARROWCLOUGH: Please answer any questions Mr.
25 Hayes may have for you.

CROSS-EXAMINATION

DAJLIA TORBIT BY SOLICITOR HAYES:

Q. Ms. Torbit, so on April 15th you were visiting your mom's house?

A. Not visiting.

Q. You were at your mom's house I guess watching your siblings?

A. I wasn't watching them. I was going to take them to school.

Q. You were going to take them to school. They didn't wake up in time?

A. No.

Q. But that was okay because y'all were going to Chuck E. Cheese; right, for your --

A. Well technically we were going to Chuck E. Cheese when my mom got off, when mom got off at three thirty. They got out of school at three thirty-seven.

Q. Okay.

A. We were gonna go when she left.

Q. You all were gonna go when she left. Okay. So Timothy or Malik falls hits his head.

A. Uh-huh.

Q. Y'all got to take him outside to get some fresh air?

A. Uh-huh.

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1 Q. He's on the chair in the breezeway kind of coming
2 to.

3 A. Uh-huh.

4 Q. You call 911?

5 A. Yes.

6 Q. So EMS and Fire show up. And the police also showed
7 up?

8 A. Uh-huh.

9 Q. Everybody's kind of making sure Malik's okay?

10 A. Yes.

11 Q. So Malik's a little drowsey, he's coming to and that's
12 when Officer Schurig says to you I smell marijuana in the
13 house I'm gonna need to get in there?

14 A. Yes. He said that he needed to go in and search.

15 Q. Okay. And you're not about to let somebody search
16 your mom's house are you?

17 A. No, not without my mom being present or her consent.

18 Q. Okay. So y'all get into the fight and according to
19 you it breaks up when y'all are actually in the apartment;
20 right?

21 A. There was --

22 Q. You're walking out. He's still in the apartment and
23 you're walking out; right?

24 A. No. I'm walking out backwards. He still has a hold
25 onto my hand. There wasn't a fight or anything before the

1 door opened or none of that. It wasn't a fight in the
2 apartment. The only thing that was was him holding and
3 twisting my arm.

4 Q but at some point you're able to break free to get
5 back to ---

6 A. Yes.

7 Q. --- the breeezway?

8 A. When we -- After I backed up out the door that's when
9 I was able to eject my arm away and turn around and walk
10 forward.

11 Q. Okay. So you're walking on the breezeway heading
12 towards the lawn and you feel a hand on the back of your
13 head?

14 A. My hair. My hair is being pulled.

15 Q. Okay. So you feel somebody pull your hair?

16 A. Yes.

17 Q. And you take your hands and you throw them back
18 behind you?

19 A. Yes, cause I was reaching for my hair. I had really
20 long braids at the time.

21 Q. And you're -- You had your cell phone in your hand?

22 A. Yes.

23 Q. And that phone must have hit Officer Schurig at some
24 point?

25 A. That's possible yes, sir.

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1 Q. Okay. Did you feel it hit anything with your hand
2 back?

3 A. No. Actually the only thing I felt was my hair being
4 pulled.

5 Q. And then y'all wind up on the ground?

6 A. Uh-huh.

7 Q. And then a fire fighter comes to separate you?

8 A. Correct.

9 Q. At that point you realize I better just give 'em
10 my hands?

11 A. Yeah, just cause it's been going on too long. It's
12 pointless so I gave him my hand.

13 Q. And then they arrested you?

14 A. Yes. He put the handcuffs on me.

15 Q. Now I know it must have been a tense situation but
16 you tried to stay as calm as possible during all this?

17 A. Yes. Especially because when my son and my niece
18 was there.

19 Q. Right. And your interaction with Officer Schurig
20 and all that you tried to just maintain even keel but I
21 guess it just got out of hand?

22 A. Yes.

23 Q. Okay.

24 SOLICITOR HAYES: The Court's indulgence, your Honor.

25 (PAUSE.)

1 SOLICITOR HAYES: I don't have any further questions.

2 Thank you.

3 MR. BARROWCLOUGH: Nothing further, your Honor.

4 THE COURT: You can step down. Thank you.

5 (WITNESS LEAVES WITNESS STAND.)

6 THE COURT: Call your next witness.

7 MR. BARROWCLOUGH: Your Honor, at this time the Defese
8 would rest.

9 THE COURT: All right. I'll be glad now to hear
10 arguments. Or do you have anything in reply?

11 SOLICITOR HAYES: The State has no reply case, your
12 Honor.

13 THE COURT: Any motions?

14 MR. BARROWCLOUGH: Your Honor, at this time I would
15 just renew my motion for a Directed Verdict all on the same
16 grounds with regards to the fact that it's still our
17 position that this was both an unlawful entry to which Ms.
18 Torbit would be entitled to use force to eject the officer
19 as a trespasser and as it morphed into an arrest that she
20 would have the right to resist and unlawful arrest.

21 THE COURT: Well I deny the motion for a directed
22 verdict. I do want to hear the arguments. Any further
23 argument regarding like you would argue to a jury.

24 SOLICITOR HAYES: Yes, your Honor. I would like to
25 close but I do believe I go last.

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1 MR. BARROWCLOUGH: That's fine. I'll go first.

2 THE COURT: All right.

3 MR. BARROWCLOUGH: May it please the Court, your Honor.

4 At this stage in the proceeding, your Honor, of course
5 now the State's burden is to prove their case beyond a
6 reasonable doubt. Your Honor, I think that the vast weight
7 of this evidence is such that the Court can see a sequence
8 of events that includes that the officers were there first
9 to help EMS; not to investigate a crime. And that in some
10 point in time after the situation with regards to Mr.
11 Holley being injured was resolved the officers smelled the
12 odor of marijuana and Officer Schurig wants to make entry
13 into the apartment.

14 Ms. Torbit has called her mother; her mother is on the
15 way. Ms. Torbit I would point out, your Honor, I point to
16 the Missouri case just - I didn't know if the Solicitor was
17 gonna make a standing issue but according to the analysis
18 of Missouri for the purpose of standing certainly Ms.
19 Torbit as more than a guest but as somebody who goes there
20 everyday who is in charge of the house who does in fact
21 have a key to the household would certainly qualify to have
22 standing to challenge the search under the Missouri case.

23 Having said that, your Honor, she steps up and put
24 herself between the officer and the door and does tell the
25 officer that he cannot go in and search until the mother

1 arrives. The mother has already been called. You heard
2 the testimony its uncontroverted and that she was five
3 minutes away.

4 You also heard the testimony, your Honor, from the
5 officer that - from Officer Schurig that, you know, in his
6 opinion that he did have the right to go into that house to
7 search with no search warrant with no consent with no
8 arrest warrant and your Honor, I think that that is
9 indicative of the mind set that was at work here. I think
10 that that mind set is in error, your Honor. It's not - He
11 did not have legal authority to go into that apartment to
12 search for marijuana.

13 The case law is what it is that for a minor offense,
14 that this is not a type of situation, your Honor, that the
15 Supreme Court contemplates being able to go into a private
16 residence and search. ----- v. United States says a
17 search without a warrant demands exceptional circumstances
18 absent some grave emergency. The Fourth Amendment has
19 interposed a magistrate between the citizens and the
20 police. This is not a great emergency. At most this is
21 the odor of marijuana outside of an apartment; it's an
22 apartment complex.

23 And the case law is pretty clear that an entry without
24 a warrant in this situation would be illegal. And I would
25 say particularly given, you know, at most that this would

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1 be some kind of possession of marijuana situation, your
2 Honor, even if, you know, and I'm not ----- from comments
3 from earlier, even if some marijuana is gonna get flushed,
4 your Honor, I think the Fourth Amendment contemplates
5 tolerating a little bit of minor crime maybe being not
6 punishable. I think the sanctity of the home and
7 protection of the Fourth Amendment contemplates some minor
8 crime maybe going unpunished.

9 And I say that bearing in mind the fact that there was
10 a lot of testimony to the fact that there is no marijuana
11 ever found from that apartment. That the mother came home;
12 that she didn't smell marijuana; that the odor of marijuana
13 in an apartment complex and you saw the picture of the door
14 close together could have been coming from another
15 apartment. I'm not saying in sense that Ms. Torbit or
16 anyone else in that apartment even had any marijuana but
17 I'm saying that the level of the analysis of the situation
18 that that is not sufficient. And the officer thinking that
19 it was sufficient I think is pretty frightening for Fourth
20 Amendment protection in Rock Hill.

21 Now having said that, your Honor, to address what you
22 raised also about the push. Your Honor, you heard
23 testimony, you heard testimony from four defense witnesses;
24 you also heard testimony from three firemen and not a
25 single one of 'em said that Ms. Torbit pushed this officer.

1 And some of them, that one of the firemen, I think it was
2 Mr. Hamilton did acknowledge seeing the officer grab Ms.
3 Torbit's wrist which the officer denied. He also said that
4 he had that taser out in the doorway as did Ms. Lumpkin, as
5 did Mr. Holley, as did Ms. Torbit testified to that. The
6 weight of the testimony again is that in that doorway that
7 all Ms. Torbit did was passively resist what he was trying
8 to do and that he was the one who initiated contact by
9 putting his hand on her wrist. He was the one who up the
10 aggressiveness by pulling out both his handcuffs and the
11 taser and threatening to tase her, your Honor.

12 And I mean I ask Officer Revels about that. He didn't
13 say it didn't happen. He just said he couldn't recall.
14 The only person, your Honor, who denies that is Officer
15 Schurig. And, your Honor, the weight of the evidence and
16 of course I know the Court's aware, the State has to prove
17 their case beyond a reasonable doubt, the weight of the
18 evidence is that everything happened according to the way
19 Ms. Torbit said it happened in which case all the officers
20 actions both in trying to get into the apartment and
21 thinking it was okay to get into the apartment and place
22 his hands on our client and pulling out a taser and
23 twisting her arm and ultimately pulling her on the ground
24 none of that is legally justified.

25 And so whatever force she did ultimately use to repel

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1 this illegal behavior was completely justified and the
2 State has not proved beyond a reasonable doubt that it was
3 not justified.

4 THE COURT: Mr. Hayes.

5 SOLICITOR HAYES: Thank you, your Honor. May it please
6 the Court. Counsel.

7 Your Honor, this is a little bit of a unique situation
8 because as the Court's aware you're both the finder of fact
9 and the judge of the law. I do have some cases I would
10 like to hand up on the law all on some of the issues that
11 Mr. Barrowclough has raised. And I would also like to
12 argue the facts at this time.

13 THE COURT: Okay. After I hear that I'll probably take
14 a few minutes to read and look at the cases.

15 SOLICITOR HAYES: Yes, your Honor.

16 THE COURT: Before I make a ruling.

17 SOLICITOR HAYES: But at the end of the day the facts
18 and the law aside you know April 15th, 2016 is the day that
19 will stand out in Mark Schurig's life because we all know
20 that police take a significant risk when they sign up for
21 the job. But at the same time it doesn't mean they deserve
22 to be the victims of brutal assaults that leave them with
23 lingering vision problems.

24 I think that is what really stands out to me about
25 this case. I mean going into the facts of the case which

1 we do have to prove to your Honor beyond a reasonable doubt
2 and I would submit that we have. I think the testimony is
3 clear that on April 15th, 2016 the Rock Hill EMS Service
4 and the Rock Hill Fire Department needed assistance with
5 securing a location for investigating the injuries to Mr.
6 Holley which appeared to be a cut on the face due to fall
7 and so the police department responded.

8 Mr. Holley dazed, confused, disoriented, doesn't want
9 assistance and the Fire Department and EMS respect that but
10 that brings the Rock Hill Police Department lawfully within
11 the proximity of Apartment [REDACTED] And Officer Schurig and
12 Officer Revels and several of the fire fighters all say
13 marijuana is emanating from that apartment. They all
14 testified to that.

15 Then Officer Schurig has a duty to investigate further
16 because marijuana and at various levels is illegal in South
17 Carolina and ask clearly I need to get in that house, I
18 need you to step into the house because we need to talk
19 about this marijuana situation. And then as your Honor
20 heard from Officer Schurig and from the other people who
21 were present there is a shove at that point from Ms. Torbit
22 to Officer Schurig.

23 THE COURT: Not only, he and Officer Revels were the
24 only two that I recall testifying to that. There was a lot
25 of --

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1 SOLICITOR HAYES: Yes, your Honor, there's many people
2 on scene, chaotic scene, but what comes out is that she
3 shoves him from the door but that he goes to arrest her for
4 what would be an assault, just a simple assault and battery
5 third. And then the door is opened into the apartment and
6 they spill inside and a true altercation ensues between
7 Officer Schurig and Ms. Torbit and it ultimately culminates
8 back onto the breezeway, back out onto the lawn with Ms.
9 Torbit on top of Officer Schurig hitting him in the face
10 with a cell phone and saying and I quote I don't give a
11 Fuck about the police.

12 And I think what is instructive for your Honor as you
13 deliberate is State's Exhibit Two. And I would ask that
14 your Honor watch and listen to State's Exhibit Two one more
15 time as you consider this case because there is a female
16 voice that comes over the radio and Officer Schurig
17 testified that it is Ms. Torbit and it is not the Ms.
18 Torbit that appeared in court today.

19 It is somebody who is upset and using profanities and
20 who sounds like they are in the middle of a fight with a
21 police officer. So I commit Exhibit Two to you - to your
22 Honor as you consider this case. As you consider how that
23 effects Mr. Torbit's credibility because it's one thing to
24 testify in court but it's another to have a piece of audio
25 recording that maybe captures a little bit better what was

1 happening that day.

2 And then all the testimony of all the other state's
3 witnesses who indicate how it goes on. I ask you to
4 discount the testimony of Mr. Holley. Mr. Holley was
5 charged as a result of this incident and ultimately
6 convicted as your Honor is aware assault and battery third
7 degree for his role in this malay. So I'd ask that you
8 discount his testimony and not give it any weight because
9 he certainly did not come to the table with clean hands.

10 And I'd also ask your Honor to consider Mr. Holley's
11 testimony that he in the middle of all this found time to
12 retire to the bathroom and flush the toilet. And I ask
13 that your Honor consider that for the inference of the fact
14 that there is the smell of marijuana. There is essentially
15 a fight over the marijuana and in the midst of that fight
16 Mr. Holley makes a point to go to the bathroom and flush
17 the toilet. I find that to be a significant inference that
18 weighs on his credibility.

19 And then as far as the other defense witnesses Mrs.
20 Torbit, the mother, I ask that you not consider her
21 testimony not for any reason other than the fact that she
22 wasn't present that day. And then finally the testimony of
23 the sister-in-law. I'd ask that you your Honor consider
24 that testimony in the light of the fact that she's a family
25 member and I'm certain does not want to see Ms. Torbit

1 convicted of anything.

2 So it's the State's position on the facts that the
3 facts are clear from the State's witnesses and the State's
4 exhibits that we have carried our burden beyond a
5 reasonable doubt and that the Defense witnesses do not rise
6 to the level of creating a reasonable doubt in this case
7 because they can each be discounted for their own separate
8 reasons.

9 And then on the law, your Honor, which is clearly
10 probably the main issue in this case is whether Officer
11 Schurig had the right to go into that apartment at all
12 because that is the domino which if it falls in the State's
13 favor everything that follows was somebody who is guilty of
14 resisting arrest under Sub-Section B.

15 So the cases I'd like to submit to the Court are
16 *Kentucky versus King* from the United States Supreme Court
17 which for the record is 530 -- 563 U.S. 452. And if I may
18 approach I will hand a copy to the Court and the law clerk
19 as well as Mr. Barrowclough. And, your Honor, that stands
20 for the proposition that the Court has already touched up
21 that destruction of evidence in a marijuana situation is an
22 exigency in the Fourth Amendment situation as long as the
23 police didn't create the exigency by being where they are.

24 So in this case the police are lawfully in the
25 breezeway and that is when the situation arises when the

1 marijuana is detected. So I comment that case to your
2 Honor.

3 I also commend *State versus Abdullah* to the Court
4 which is 357 South Carolina 344 from our Court of Appeals
5 on the law of protective sweep which allows officers entry
6 across a threshold for protective sweep purposes in exigent
7 circumstances. So with the Court's permission I'll hand
8 that to the Court and the law clerk as well as Mr.
9 Barrowclough.

10 I will also commend to the Court *State versus Wright*
11 which is 391 South Carolina 436 from our Supreme Court
12 talking about the destruction of evidence and probable
13 cause as it develops in the middle of a scene where law
14 enforcement is allowed to be where they are. Kind of the
15 evolving situation of an exigent circumstance and I will
16 hand that to the Court.

17 And finally then most significantly, your Honor,
18 prerequisite to any Fourth Amendment analysis if the Court
19 is so inclined a prerequisite to any Fourth Amendment
20 analysis is that the person asserting a Fourth Amendment
21 violation have standing to do so. It is clear that this
22 was the defendant's mother's apartment and in the
23 defendant's own words she's not gonna let somebody into her
24 mom's apartment. And I think that's significant as to who
25 really had the control to enter this apartment; to allow

1 permission, give permission, to deny permission, who really
2 had control over this space. From Ms. Torbit's own words
3 that's my mom's apartment. And as Ms. Torbit's mother
4 testified and I believe Ms. Torbit also testified her
5 residence was actually at another location on this date.
6 So the law standing for Fourth Amendment favors the State
7 and is actually the Defendant's burden to prove under the
8 case law on Fourth Amendment. As I read the case law the
9 most significant case on standing in South Carolina is
10 *State versus Robinson* 410 South Carolina 519. That's from
11 our Supreme Court 2014. I'll hand a copy of that to the
12 Court as well and to Mr. Barrowclough.

13 I think that at the end of the day, your Honor, the
14 key part of that analysis is that she concedes this is not
15 her address; this is her mom's address and I in I think her
16 own words can fairly be construed to say that only her mom
17 was the one that could give permission to come into that
18 house. That does not allow her standing to assert any
19 alleged Fourth Amendment violation. But as I previously
20 argued even if the Court does find she has standing the
21 exigent C Doctrine and the protective sweep Doctrine in a
22 case of possible evidence destruction is allowed so this is
23 certainly a multi-tiered legal analysis and a factual
24 analysis but at the end of the day the State submits that
25 we have shown evidence beyond a reasonable doubt that she

1 is guilty of Resisting Arrest (B).

2 She punched the officer in the face with a cell phone
3 as he was attempting to arrest her for simple assault and
4 that the law allowed him to do everything that he did. And
5 so we'd ask that your Honor fairly consider the evidence;
6 consider the law, and render a verdict of guilty of
7 resisting Arrest(B) against Daijia Torbit, your Honor.

8 THE COURT: Let me take a look at these cases so we'll
9 take a little break while I and my clerk -- and I've got of
10 course the cases that were handed up by Mr. Barrowclough
11 from earlier. We'll be at ease.

12 MR. BARROWCLOUGH: Thank you, your Honor.

13 (COURT AT EASE AT 03:05 PM.)

14 (COURT BACK IN SESSION AT 03:48 PM.)

15 THE COURT: Thank you, you may take your seats.

16 My law clerk and I have been studying the cases that
17 have been handed up in regard to -- Its unusual. Usually
18 we're looking at the law particularly in a Directed Verdict
19 Motion or a Motion to Suppress -- but I will make several
20 observations.

21 First in the case of *State versus Jackson* -- I'm not
22 give the full cite -- 227 SC 271 from 1955 sets forth that
23 a proposition that we all understand but its always good to
24 see it in writing, in essence -- I'm not gonna quote it
25 exactly, but in essence in defending their person, a

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1 unlawful arrest, a person has a right to use so much force
2 as was apparently necessary to accomplish their deliverance
3 and no more. I mention that because that was handed up
4 when we all went through the law.

5 I also mention from *Welch versus Wisconsin* which is a
6 United State's Supreme Court case, 104 S.Ct 291, this was
7 handed up, it's a 1984 case by the Defense, and of interest
8 it says before agencies of a government may invade the
9 sanctity of the home the burden's on the government to
10 demonstrate exigent circumstances that over comes the
11 presumption of the unreasonableness that attached to all
12 warrantless home entries. When the government's interest
13 is only to arrest for a minor offense that presumption of
14 unreasonableness is difficult to rebut and the government
15 usually should be allowed to make such arrest only with a
16 warrant issued from a probable cause by a neutrally
17 attached magistrate.

18 More on point in this case are *Kentucky versus King*
19 and *Mowatt -- United States versus Mowatt*. That later one
20 is 513 F.2d. -- F.3d. 395, 2008 from the Fourth Circuit.
21 And *Kentucky versus King* 131 Supreme Court 1849. The *King*
22 case really deals with something that is not even alleged
23 here and that has to do with the State created exigencies
24 which is in essence as I understand it is that the exigency
25 can't be created by the State and then the State rely on it

1 and say we had exigent circumstance. Of course they really
2 can't create that and then rely on that for making it a
3 warrantless search, but, the language in *King* of interest
4 on Page 460 says what is relevant is the need to prevent
5 the imminent destruction of evidence --- and this isn't --
6 it's not a quote -- has long been recognized as a
7 sufficient justification for a warrant less search.

8 It also says on Page 461 destruction of evidence
9 issues probably occur most frequently in drug cases because
10 drugs may be easily destroyed by flushing them down a
11 toilet or rinsing them down a drain. A person's in
12 possession of drugs are unlikely to destroy them unless
13 they fear discovered by the police. Consequentially a rule
14 precludes the police from making a warrantless entry to
15 prevent the destruction of evidence whenever the conduct
16 causes exigency when unreasonably this well established
17 exception the warrant required.

18 Again it talks there about the State created - and I'm
19 not citing it for that part but the rest of the cite I
20 think is applicable here. And at Page 466 the Supreme
21 Court noted the calculus of reasonableness and that is
22 reasonableness in executing the exigent circumstance search
23 must invite allowance for the fact that police officers are
24 often forced to make split second judgments in
25 circumstances that are tense, uncertain, and rapidly

1 evolving.

2 The -- Now I've lost the case but the case that the
3 Defense mentioned, and I did find the cite. I misplaced it
4 because I had so many cases in there but there is a case I
5 think it's fairly old if I can remember correct, that
6 states that exigent circumstances that shouldn't -- a
7 search should not be found -- law enforcement should not be
8 found to have the right to a warrant less search based on
9 exigent circumstances for a quote minor crime.

10 I note that that case has not be cited in any of the
11 other ones handed up and cases post that. Okay, here it
12 is. It is -- That's the *Johnson* case, 333 US 10. No,
13 that's not it. But in any event that case is not cited
14 anywhere else I can find.

15 Of particular interest is the case from 2008, again,
16 since I can't find the case I can't tell you exactly when
17 the case that Mr. Barrowclough is relying on was handed up
18 but it predates *Mowatt*, *M-o-w-a-t-t*, *US versus Mowatt*.
19 That's at 513 F.3d 395 and it list in considering whether
20 exigency existed at the time a search commenced and list
21 five factors. One, and this does not apply, but the fourth
22 do are One: The degree of urgency involved in the amount of
23 time necessary to obtain a warrant. Two: The officer's
24 reasonable belief that the contraband is about to be
25 removed or destroyed. And I don't find that there is any

1 evidence that there was any concern that it was actually
2 about to be destroyed. The testimony is that it could be
3 destroyed and in one of the cases they talk about the fact
4 that drugs can be flushed, drained, washed down the drain,
5 so I modified that prong a little bit. Four -- skipping
6 three -- information indicating the possessors of the
7 contraband or whether the police were on their trail.
8 There is no question they knew the police were here because
9 they tried - Ms. Torbit, the defendant, for whatever
10 reason, made an effort to - or took what was her - I'll get
11 to that in a minute. But took the stand that she was not
12 gonna allow law enforcement without either her mother's
13 okay or a warrant. And the fourth factor, number Five on
14 Mowatt is the readily destructibility of the contraband.

15 So I find based on those principles that here the
16 officers had the right to make under the reasonable exigent
17 circumstances exception to the need for a warrant to make a
18 warrant less search and therefore had the right to effect
19 an entry into the address [REDACTED] I believe it was in these
20 apartments whether it was the address that's been testified
21 to and that the defendant had no right to impede their
22 right to effect a warrant less search.

23 As to my first ruling on the Directed Verdict stage
24 about her shoving first, I am not going to allow that. I
25 quite frankly have weighed the credibility of the witnesses

SENTENCING:

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1 and while I may be able to find by a greater weight of the
2 preponderance of the evidence that that occurred, that
3 situation where I tell jury's if it causes you to hesitate
4 to act then that creates reasonable doubt and I am
5 hesitating to act and find some reasonable doubt as to the
6 who shoved who first without taking either side. I find
7 there is kind of a toss up so in that I weighing
8 credibility, and weighed all those things that I tell
9 jury's - jurors they have to weigh.

10 But I find Ms. Torbit is guilty for resisting arrest
11 under Section (B) of the code based on her resistance to
12 and altercation with and interfering with the officer's
13 attempt to make a lawful warrant less search so I find her
14 guilty.

15 Now you want to bring her around for sentencing?

16 (DEFENSE ATTORNEYS AND DEFENDANT DAHLIA TORBIT
17 APPROACH THE BAR.)

18 THE COURT: All right, the State have any position?

19 SOLICITOR HAYES: Yes, your Honor. Your Honor has
20 obviously heard testimony as the finder of fact and judge
21 of the law so your Honor is well aware of the severity of
22 this incident and the chaos created and the injury to
23 Officer Schurig who is obviously present in the courtroom;
24 has indicated he does not want to address the court at this
25 time.

SENTENCING:

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1 OFFICER SCHURIG: That's correct.

2 SOLICITOR HAYES: But I would like to commend his
3 injury to you, your Honor. It sounds like these are just
4 numbers. My vision is 20/20; my vision is 20/15; my vision
5 is 20/25 but that is a significant injury on a daily basis
6 going forward. So it's the State's position that that
7 weighs heavily against Ms. Torbit. And it is not lightly
8 that we ask for a significant severe sentence from the
9 Court that communicates to Ms. Torbit that you cannot
10 assault police officers and hit them repeatedly on the face
11 with a cell phone to the point that they have possibly
12 permanent vision degradation.

13 The State submits this is a serious injury; a serious
14 case. We ask for a significant punishment from your Honor
15 to make sure that this does not happen again with Ms.
16 Torbit.

17 THE COURT: All right. Do I have a sentencing sheet?

18 SOLICITOR HAYES: No, your Honor, and I apologize for
19 that.

20 THE COURT: All right. While they're getting the
21 sentencing sheet Mr. Barrowclough.

22 MR. BARROWCLOUGH: Thank you, your Honor.

23 May it please the Court. Your Honor, --

24 THE COURT: Before you do, do you have any post trial
25 motions you want to make now?

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1 MR. BARROWCLOUGH: Yes, your Honor, I do. I would
2 move the Court first of all for a -- it sounds ridiculous
3 since you're the fact finder -- but I would move the Court
4 for a new trial. The fact that the facts don't -- taken in
5 the light most favorable to the State don't fit the
6 verdict. And with particularity, your Honor, I point out
7 the fact that as the Court addressed in it's decision
8 making the part of Wisconsin versus Welch that said that it
9 still needs to be a serious crime; a grave situation that,
10 you know, Kentucky versus King sort of drug trafficking
11 situation that still involved the police in the middle of a
12 criminal investigation. I think those are extremely
13 distinguishing from the situation here when the police were
14 there to render support to EMS and not even doing a
15 criminal investigation and all it was was some marijuana
16 smoke and that therefore this was not a grave situation
17 justifying any kind of a warrantless search.

18 THE COURT: Well I'd like to comment on that. I hate
19 to interrupt you, but I will let you go on, but the
20 presence of marijuana could be anywhere from simple
21 possession to trafficking.

22 MR. BARROWCLOUGH: But I would --

23 THE COURT: Its not a minor offense. And I know none
24 were found when they went in but that's not - that's
25 hindsight.

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1 MR. BARROWCLOUGH: But I would say that that burden
2 would be on them to prove that it was; that they are doing
3 something serious; that in the absence of some proof that
4 it was serious crime. We can't assume it was a serious
5 crime that the Fourth Amendment would still interpose that
6 protection to the citizens unless they can prove that it
7 was a serious crime.

8 THE COURT: But no you're telling me it was assumed to
9 be minor.

10 MR. BARROWCLOUGH: I'm saying the Fourth Amendment
11 requires the assumption that it be - that they behavior is
12 unreasonable unless they can prove otherwise.

13 THE COURT: Go ahead.

14 MR. BARROWCLOUGH: But in light, you know, I would ask
15 for a motion for a new trial based on that argument, based
16 on all the other arguments; the arguments that are in my
17 brief, your Honor. So I would move for all of that.

18 THE COURT: Ms. Torbit, anything you want to say?

19 MR. BARROWCLOUGH: Your Honor, may I speak with
20 regards to sentencing?

21 THE COURT: Yes. I'm kind of perturbed that the State
22 doesn't have a sentencing sheet. We do this day in and day
23 out and for some reason they -- the Solicitor is always
24 shocked when I get ready to sentence somebody and there is
25 no sentencing sheet going along with the preparation and

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1 got everything ready. I still can't understand that but do
2 you have one now?

3 SOLICITOR HAYES: I apologize, your Honor, Ms. Naylis
4 is printing it.

5 THE COURT: I'll be glad to hear you on sentencing.

6 MR. BARROWCLOUGH: Thank you, your Honor. Your Honor,
7 as you heard Ms. Torbit is twenty-one years old. She was
8 twenty years old at the time of this incident. Your Honor,
9 she has no prior record. Your Honor, she does work and she
10 - as it came out in testimony at the time of the incident
11 she was employed at Tega Cay Walmart. Because of this
12 incident she lost that job and she obtained other
13 employment working at Shutterfly in Fort Mill.

14 Your Honor, she does have a three year old son who she
15 is the primary care giver for. Your Honor, she is also
16 currently pregnant and due to have another baby in June of
17 2017. And, your Honor, I would ask the Court in accessing
18 the situation, and I do respect what Mr. Hayes said in
19 regards to sentencing, but you know Ms. Torbit being left
20 in charge of that household in that situation as a twenty-
21 year-old and in trying to determine what was right or wrong
22 to do at that time with regards to letting the officers
23 into her mother's apartment or not, I would submit to the
24 Court that, you know, your Honor and myself and Mr. Hayes,
25 three employers trained in the law all did our separate

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1 research and all I think has slightly different points of
2 view on the legality or illegality of what happened that
3 day, but I mean she's twenty years old; I think she was
4 trying to do the best she could under the circumstances
5 with her limited understanding of the law I don't think she
6 set out to break the law that day. It was her nephew's
7 birthday they were supposed to be going to Chunky E.
8 Cheese. This all kind of developed rapidly. I mean I know
9 that, you know, your Honor quoted the fact that in judging
10 the police officer's action in that case it said that
11 things developed rapidly and I would say the same would
12 apply for her.

13 She didn't anticipate any of this happening and she
14 was trying to handle it the best way that she knew how to
15 respect her mother's place and her mother was on the way.
16 I don't think she intended any harm to anybody. She was
17 just trying to do what she felt was right and what was
18 legal. And it's been cited to say that that was not legal
19 and I would respect that but I don't think that - I
20 certainly don't think that for a twenty-one year old with
21 no record that this is a situation that deserves any prison
22 time. And I would ask the court, you know, in light of her
23 lack of a record and her responsible life style, your
24 Honor, in working and taking care of her children that you
25 would give her a probationary sentence.

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1 THE COURT: All right. Ms. Torbit, anything you want
2 to say?

3 MS. TORBIT: No.

4 THE COURT: All right. The sentence is three years
5 that's suspended on three years probation. And no other
6 conditions because there is no indication of any alcohol
7 use or substance abuse involved in this incident.

8 I mean there was the smell of marijuana in there
9 emanating from according to the testimony but there is no
10 indication that this defendant did what she did based on
11 any use of any illegal substance or drugs or alcohol.

12 Did she serve any time in jail on this?

13 MS. TORBIT: I was spent three days the second time I
14 was arrested.

15 THE COURT: Three days?

16 MR. BARROWCLOUGH: Three days, your Honor.

17 THE COURT: I'll give you credit for three days.

18 And in addition to other fees and cost you owe five
19 hundred dollars for having an appointed attorney.

20 MR. BARROWCLOUGH: Thank you, your Honor.

21 SOLICITOR HAYES: Same here, your Honor.

22 THE COURT: We'll be at ease and see if the Solicitor
23 has anything else for us to do.

24 (COURT IN RECESS.)

25 (END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 York County, South Carolina, on 29th day of November, 2016.

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

Wanda Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: February 7, 2017

WITNESSES

RHPD

Witnessing Officer: Tripp

ARREST WARRANT NUMBER

DIRECT INDICTMENT

2016GS4602343

ACTION OF GRAND JURY

TRUE BILL

Danell T. Bower 7/24/16
Foreperson of Grand Jury
Date:

VERDICT

Guilty

John A. [Signature]
Foreperson of Petit Jury
Date: 11/29/16

**DIRECT INDICTMENT
DOCKET NO. 2016-GS46- 02343**

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JULY 21, TERM 2016

THE STATE

VS.

DAJLIA SYMONE TORBIT

INDICTMENT FOR

RESISTING ARREST

SC Code: § 16-09-0320(B)
CDR Code: 0256

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA
COUNTY OF YORK

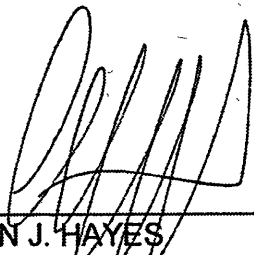
INDICTMENT

At a Court of General Sessions, convened on July 21, 2016, the Grand Jurors of York County present upon their oath:

RESISTING ARREST

The defendant, Dajlia Symone Torbit, did in York County, on or about April 15, 2016, knowingly and willfully assault, beat or wound Mark A. Schurig with the Rock Hill Police Department while Mark A. Schurig was engaged in serving, executing, or attempting to serve or execute a legal writ or process; or did assault, beat, or wound Mark A. Schurig when resisting an arrest being made by Mark A. Schurig and knew or reasonably should have known Mark A. Schurig was a law enforcement officer, all in violation of Section 16-9-320(B), *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.

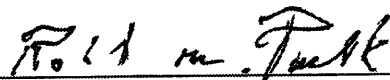

AARON J. HAYES
ASSISTANT SOLICITOR

FILED
JUL 21 2016
CLERK
m3

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 30th day of November, 2017.