

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

G. Edward Welmaker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RUSSELL EDWARD NIX,

APPELLANT

APPELLATE CASE NO. 2013-000522

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,	)	
	)	2012-GS-39-02627
PLAINTIFF,	)	
	)	
-VS-	)	February 25, 2013
	)	
RUSSELL EDWARD NIX,	)	
	)	TRANSCRIPT OF RECORD
DEFENDANT.	)	(MISTRIAL)
	)	

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

A P P E A R A N C E S.

BAKER CLEVELAND, ESQUIRE
GRAHAM BUCKNER, ESQUIRE
ATTORNEYS FOR THE STATE

DAVID CANTRELL, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P HANKS
CIRCUIT COURT REPORTER

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	(NONE)		

Juror #	Name	Race	Sex	<u>Strikes</u>			Accept
				Court	Plaintiff	Def.	
110	Porter, Adrian J	W	M				x
142	Tinsley, David R	W	M		x		
23	Cassell, Michael H	W	M				x
8	Baker, Jennafer L	W	F				x
11	Bay, Lavonda A	W	F		x		
56	Harley, Rebecca O	W	F				x
104	Owens, Sandra C	W	F			x	
80	Kilton, James M Jr	W	M				x
34	Davis, Thomas B	W	M		x		
2	Adams, Randal S	W	M				x
67	Huffman, Cathy M	W	F			x	
130	Smith, Kathy H	W	F			x	
59	Hicks, James D	B	M				x
85	Lusk, Pamela R	W	F		x		
114	Price, Stephen N	W	M				x
152	Waters, Mark A	W	M				x
158	Williamson, Ivy J	W	F				x
157	Williams, Sandra	B	F				x
115	Pruitt, Betty C	W	F			x	
119	Recio, Benjamin J	W	M				x
31	Dastugue, Paul F III	W	M			x	
102	Orr, Bernetha W	B	F				x

1 **February 27, 2013**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 (WHEREUPON, the jury panel entered the open court at
5 approximately 10:32 a.m.)

6 THE COURT: Ladies and gentlemen, while we're
7 still getting some of these matters resolved and waiting
8 on the things we need, I'm going to ask you if you would
9 just step outside a minute. We've got one little matter
10 we need to talk about. We need to talk about it from a
11 legal standpoint outside of the presence of the jury. So
12 if you would just step out for about five or ten minutes,
13 I believe we'll be ready to call you back then. If
14 you'll just take a short break.

15 (WHEREUPON, the jury panel exited the open court at
16 approximately 10:24 a.m.)

17 THE COURT: All right. All the jurors have
18 departed from the courtroom. In light of our bench
19 conference, this case was on the docket for tomorrow, but
20 we were going to try to get started this afternoon just
21 to utilize our jury best, since other cases were not
22 ready to go today. I understand we're going to try to
23 strike a jury this morning and then start the testimony
24 sometime this afternoon.

25 Are there any matters we need to take care of before

1 we select our jury for this case?

2 MR. CLEVELAND: Judge, the State would ask the
3 Court to present the arraignment formally and arraign the
4 Defendant on Indictment 2012-2527 -- 2627, assault and
5 battery of high and aggravated nature.

6 THE COURT: All right. Mr. Cantrell and Mr.
7 Nix, if you would come forward.

8 (WHEREUPON, Mr. Cantrell and the Defendant
9 approached the bar.)

10 THE COURT: Thank you, ladies and gentlemen.
11 We're now ready to proceed with the selection of a jury
12 for the trial in the next case that we have. This is a
13 case brought by the State of South Carolina against
14 Russell Edward Nix. The State of South Carolina charges
15 him in this indictment with committing an assault and
16 battery of a high and aggravated nature upon a Naaman
17 Earl Guthrie. The State says that that event took place
18 on or about August the 25th, 2011.

19 Mr. Nix has entered a plea of not guilty to this
20 charge. He, as well as anyone else, is presumed innocent
21 of the charge that's been brought against him and the
22 burden of proof is on the State of South Carolina to
23 prove beyond a reasonable doubt that he, in fact,
24 committed the alleged offense that the State seeks to
25 prove. I'm going to judge the law in this case and make

1 the legal decisions. We need to find twelve fair and
2 impartial jurors to be the judge of the facts to
3 determine what the facts are based upon the evidence
4 that's presented in this courtroom and in light of the
5 law that I give you. While you are a qualified juror, I
6 need to ask you some additional questions about this
7 particular case.

8 First of all, ladies and gentlemen, is there anyone
9 on the jury panel have any prior knowledge about this
10 particular alleged incident that happened in August of
11 2011, either that you read something in the newspaper,
12 you heard something on television or the radio, you heard
13 it at the coffee shop, neighbors talking. If you have
14 any prior knowledge from whatever source, would you
15 please stand?

16 (No response.)

17 THE COURT: Thank you, there's-no response.

18 Is there any member of the jury panel related by
19 blood or marriage to Mr. Russell Edward Nix? If so,
20 would you please stand? Yes, sir, you're related to him?

21 THE JUROR: I'm not exactly sure, but I believe
22 that we are.

23 THE COURT: Okay.

24 THE JUROR: Yeah.

25 THE COURT: That's Mr. Nix in front of you. Do

1 you know how close the relationship is?

2 THE JUROR: I do not know.

3 THE COURT: Do you see him on a periodic basis?

4 THE JUROR: I see Mr. Bruce Nix from time-to-
5 time at his place of employment.

6 THE COURT: But you don't know how close your
7 relationship is?

8 THE JUROR: I do not.

9 THE COURT: Okay. I don't want to put you in
10 an awkward position serving as a juror. Do you believe
11 that because of that relationship you would not be able
12 to be a fair juror or do you believe you could weigh all
13 the evidence and listen to the law and still be a fair
14 juror in this case? Again, I don't want to put you in an
15 awkward position?

16 THE JUROR: I believe that I can, but I do have
17 reservations about that matter. I'm not one hundred
18 percent sure that I could.

19 THE COURT: Okay. Well, if you have any
20 hesitancy at all, I think for your benefit -- for both
21 parties' benefit, I'll excuse you from the trial of this
22 case. You don't need to respond to any other questions I
23 ask, Mr. Nix. Thank you for sharing that with us.

24 Is there any member of the jury panel have a close
25 business or a social, a personal relationship with Mr.

1 Nix? If so, would you please stand? Yes, sir. Your
2 name, please?

3 THE JUROR: Roy Davis.

4 THE COURT: All right, Mr. Davis.

5 THE JUROR: I've known Bruce for years just
6 from association around town and different places.

7 THE COURT: And I guess Bruce is related to the
8 Defendant in this case?

9 THE JUROR: Yes, sir.

10 THE COURT: All right. If either of them --
11 obviously, he's sitting there with his relative. Would
12 that affect your ability to be a fair juror?

13 THE JUROR: I don't feel so. No, sir.

14 THE COURT: You don't have any hesitancy? You
15 can be fair to the State of South Carolina, you can be
16 fair to Mr. Nix?

17 THE JUROR: I feel like I can, yes, sir.

18 THE COURT: All right. Thank you. You may be
19 seated. Yes, sir, your name, please?

20 THE JUROR: David Tinsley.

21 THE COURT: All right. Mr. Tinsley, do you
22 have a social relationship with Mr. Nix?

23 THE JUROR: I've known Bruce for quite a number
24 of years.

25 THE COURT: Okay.

1 THE JUROR: Do you think that would affect your
2 ability to be a fair juror if you were selected?

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

4 THE COURT: Well, you say you don't think so.
5 Do you feel like that it might or ---

6 THE JUROR: No, it wouldn't.

7 THE COURT: You could be fair to both sides?

8 THE JUROR: Right.

9 THE COURT: Thank you, Mr. Tinsley. You may be
10 seated.

11 Among the witnesses who may be called upon to
12 testify in this case would be Naaman Earl Guthrie, Rose
13 Marie Guthrie, Bruce Nix, Ovaleen Nix, Dr. Daniel Tran,
14 from the Pickens County Sheriff's Department, Dean Jones,
15 Tony Robinson. Is there any member of the jury panel
16 related by blood or marriage to any of these potential
17 witnesses. If so, would you please stand?

18 (No response.)

19 THE COURT: Is there any member of the jury
20 panel have a close business or a social or personal
21 relationship with any of these potential witnesses? If
22 so, would you please stand?

23 Again, Mr. Tinsley, I think you -- do you know any
24 of the other witnesses?

25 THE JUROR: Tony Robinson.

1 THE COURT: You know Tony Robinson. The fact
2 that you know Mr. Robinson, would that affect your
3 ability to be a fair juror if he were to testify in this
4 case?

5 THE JUROR: No, sir.

6 THE COURT: You could be fair to the State and
7 be fair to Mr. Nix?

8 THE JUROR: Yes, sir.

9 THE COURT: Thank you, Mr. Tinsley. You may be
10 seated. Your name, please, sir?

11 THE JUROR: Richard Owens.

12 THE COURT: All right. Mr. Owens, which of
13 those witnesses do you know?

14 THE JUROR: Dean Jones.

15 THE COURT: All right. And do you just know
16 him socially?

17 THE JUROR: Yeah. He's acquainted with a close
18 friend of mine.

19 THE COURT: Do you see him on a regular basis?

20 THE JUROR: Haven't seen him in a while.

21 THE COURT: You haven't seen him a while?

22 THE JUROR: Right.

23 THE COURT: If he were to testify, the fact
24 that you know him in the past, would that affect your
25 ability to be a fair juror?

1 THE JUROR: I don't think so. I know he's a
2 good fellow.

3 THE COURT: In other words -- excuse me.

4 THE JUROR: I don't think so. I know he's a
5 good fellow.

6 THE COURT: Okay. Would you believe his
7 testimony more than anybody else's testimony?

8 THE JUROR: I would believe what he said, yes,
9 sir.

10 THE COURT: I'm going to excuse you from the
11 trial of this case. Thank you very much, sir.

12 MR. CLEVELAND: Judge, may I approach just
13 briefly?

14 THE COURT: Yes, sir.

15 (WHEREUPON, Mr. Cleveland and Mr. Cantrell
16 approached the bar.)

17 THE COURT: One other potential witness would
18 be Brenda Diane Middleton. Is there any member of the
19 jury panel related by blood or marriage to Ms. Brenda
20 Diane Middleton? If so, please stand.

21 (No response.)

22 THE COURT: Is any member of the panel have a
23 close business or a social or a personal relationship
24 with Ms. Middleton? If so, would you please stand?

25 (No response.)

1 THE COURT: Thank you. There is no response.

2 At this time, I'll ask the attorneys if you would,
3 please, stand and introduce yourselves to the jury.
4 Solicitor?

5 MR. BUCKNER: My name is Graham Buckner and I'm
6 an Assistant Solicitor here in Pickens County.

7 MR. CLEVELAND: My name is Baker Cleveland and
8 I'm an Assistant Solicitor here in Pickens County, as
9 well.

10 THE COURT: Mr. Cantrell.

11 MR. CANTRELL: I'm David Cantrell. I'm an
12 attorney in Easley.

13 THE COURT: Thank you, gentlemen. Is there any
14 member of the panel related by blood or marriage to any
15 of these attorneys or members of their staffs or
16 secretaries or otherwise. If you are related by blood or
17 marriage to any of those, would you please stand?

18 (No response.)

19 THE COURT: Does any member of the jury panel
20 have a close business or a social or a personal
21 relationship with any of these attorneys? If so, would
22 you please stand?

23 (No response.)

24 THE COURT: Is there a member of the jury panel
25 who has ever been involved in any litigation in the past

1 in which any of these attorneys represented you or
2 represented the opposing side? If so, would you please
3 stand?

4 (No response.)

5 THE COURT: Thank you. There is no response.

6 Is there any member of the jury panel who has
7 expressed or formed an opinion in any way about the facts
8 in this case? If so, would you please stand?

9 (No response.)

10 THE COURT: Is there a member of the jury panel
11 who is aware of any bias or prejudice that would
12 interfere with your ability to be a fair juror if called
13 upon to serve in this case? If so, would you please
14 stand?

15 (No response.)

16 THE COURT: Is there any member of the jury
17 panel or a member of your immediate family involved in
18 law enforcement in any way? If so, would you please
19 stand? If you or a family member who is involved in law
20 enforcement.

21 All right. Thank y'all. I'll start with you. Your
22 name, please, ma'am?

23 THE JUROR: Cathy Huffman.

24 THE COURT: And what relative do you have in
25 law enforcement?

1 THE JUROR: My husband is retired chief of the
2 Border Patrol.

3 THE COURT: Chief of Border Patrol. All right.
4 If you would remain standing just a moment, please.

5 Yes, sir, your name, please?

6 THE JUROR: Chaz Anthony. My brother works
7 Pickens County Sheriff's Department

8 THE COURT: Your brother works for the Pickens
9 County Sheriff's Department. If you would remain
10 standing.

11 Yes, ma'am, your name, please?

12 THE JUROR: Wanda Nally. My sister-in-law is a
13 secretary for a Judge.

14 THE COURT: All right.

15 THE JUROR: I also work at -- the hair salon I
16 work at is owned by a judge's wife.

17 THE COURT: All right. If you would remain
18 standing.

19 Your name, please?

20 THE JUROR: Jennifer Baker. My sister was a
21 sheriff's deputy in Spartanburg County and is a Homeland
22 Security Investigator now.

23 THE COURT: So some of you have relatives in
24 law enforcement. Those of you standing, the fact that
25 you have a relative in law enforcement, would that affect

1 your ability to be a fair juror? Could you be fair to
2 the state, fair to the defense, listen to the evidence
3 that comes in this courtroom and make that decision by
4 the facts in the case from the evidence that you hear,
5 the law that I give you and that alone? If you believe,
6 those of you standing, that you could be fair to both
7 sides, I'm going to ask that you be seated. If you have
8 any hesitancy at all, please remain standing.

9 Yes, ma'am, again, your name, please?

10 THE JUROR: Wanda Nally.

11 THE COURT: All right. Ms. Nally, you don't
12 believe you could be fair to both sides in this case?

13 THE JUROR: I'm afraid I would lean toward the
14 side of the law.

15 THE COURT: Okay. All right. I'll excuse you
16 from the trial of this case. I would ask if you'd stay
17 when the rest of the jury are dismissed and I'll talk
18 with you a little further.

19 Is there any member of the jury panel a contributing
20 member of any organization whose primary concern is that
21 of promotion of law enforcement or victims' rights, such
22 as MADD, or SADD, CAVE, PARR, the Sheriff's Association?
23 If you're a contributing member of any such organization,
24 would you please stand?

25 (No response.)

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17

1 THE COURT: Thank you. There is no response.

2 Is there any member of the jury panel or a member of
3 your immediate family who has ever been the victim of a
4 crime of violence or if you or a close family member has
5 ever been arrested or accused or charged with any assault
6 or a similar violent crime. If you've been accused of it
7 or charged with it or you've been the victim of an act of
8 violence against you or an immediate family member, would
9 you please stand?

10 All right. Let me get started with you. Again, if
11 you'd state your name, please?

12 THE JUROR: Cathy Huffman.

13 THE COURT: And have you been the victim or
14 have you been charged?

15 THE JUROR: Well, I was a victim, but it was in
16 another country.

17 THE COURT: All right. And how long ago was
18 that?

19 THE JUROR: Ten years.

20 THE COURT: Ten years ago in another country?

21 THE JUROR: Yes.

22 THE COURT: All right. Do you believe that
23 would affect your ability to be a fair juror in this
24 case?

25 THE JUROR: I don't -- no.

1 THE COURT: You don't know?

2 THE JUROR: No, it wouldn't. It wouldn't
3 affect me.

4 THE COURT: It would not affect your ability?

5 THE JUROR: No.

6 THE COURT: I mean, we all have our, you know,
7 life experiences. But if you believe that that event
8 that happened in your life would impair your ability to
9 be a fair juror, I need to know that.

10 THE JUROR: No, it wouldn't.

11 THE COURT: You could be fair to both sides?

12 THE JUROR: Yes.

13 THE COURT: Thank you, ma'am. You may be
14 seated.

15 Your name, please sir?

16 THE JUROR: Daryl Ray.

17 THE COURT: All right. Mr. Ray, have you been
18 charged or you've been a victim?

19 THE JUROR: Charged.

20 THE COURT: How long ago was that?

21 THE JUROR: Twenty years or better.

22 THE COURT: Do you believe the fact that that
23 charge was brought against you at some time would affect
24 your ability to be a fair juror?

25 THE JUROR: No, sir.

1 THE COURT: You could be fair to both sides,
2 the Defense and the State?

3 THE JUROR: Yes, sir.

4 THE COURT: Thank you, Mr. Ray. You may be
5 seated.

6 Your name, please, ma'am.

7 THE JUROR: Lavonda Bay. I think I stood up
8 and shouldn't have. My son is serving time for CDV.

9 THE COURT: Okay. So a relative who's been
10 charged?

11 THE JUROR: Yes.

12 THE COURT: Would that affect your ability to
13 be a fair juror?

14 THE JUROR: No, sir, not at all.

15 THE COURT: Thank you, ma'am. You may be
16 seated. Your name, please, ma'am.

17 THE JUROR: Deborah Nabors.

18 THE COURT: All right, Ms. Nabors, and have you
19 been charged or a family member been charged or the
20 victim?

21 THE JUROR: Victim.

22 THE COURT: Okay. And was that against you
23 personally?

24 THE JUROR: Yes, sir.

25 THE COURT: How long ago would that have been?

1 THE JUROR: 2010.

2 THE COURT: Okay. Two or three years ago?

3 Would that affect your ability to be a fair juror in this
4 case?

5 THE JUROR: Yes.

6 THE COURT: Thank you, ma'am. I will excuse
7 you from the trial of this case. If you would be seated,
8 please, you don't need to respond to my other questions.

9 THE JUROR: Thank you.

10 THE COURT: Your name, please?

11 THE JUROR: Pam Lusk. Pamela Lusk.

12 THE COURT: All right. And have you been the
13 victim?

14 THE JUROR: I was charged with assault and
15 battery.

16 THE COURT: And how long ago was that?

17 THE JUROR: Oh, about eighteen years ago.

18 THE COURT: Okay. Would the fact that you had
19 that charge against you ---

20 THE JUROR: No, sir.

21 THE COURT: That wouldn't bother you at all,
22 and could be fair to both sides?

23 THE JUROR: (Affirmative nod.)

24 THE COURT: Thank you, ma'am.

25 I told you, ladies and gentlemen, and I'll repeat

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Jury Voir Dire

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1 myself because it's important. The State of South
2 Carolina, Mr. Nix, both desire to have fair and impartial
3 jurors to hear this case, to sit in that jury box, listen
4 to the evidence, listen to the law, and make a decision
5 on the law and the evidence and that alone. That's their
6 desire and they deserve that under the law of our state,
7 the Constitution of our State. Is there any member of
8 the jury panel for any reason whatsoever you believe that
9 in this particular case you cannot be fair to both the
10 State and to the Defendant and render that verdict that
11 would be based only on the evidence and the law and that
12 alone. If for any reason you believe you could not be a
13 fair juror, would you please stand? You don't believe
14 you could be fair in this case?

15 THE JUROR: No, sir.

16 THE COURT: All right. I'll excuse you.
17 Again, your name, please?

18 THE JUROR: Deborah Nabors.

19 THE COURT: All right. I think I've excused
20 you.

21 THE JUROR: Yes.

22 THE COURT: Thank you, ma'am. You may be
23 seated.

24 Any other questions from the State?

25 MR. CLEVELAND: None on behalf of the State,

1 Your Honor.

2 THE COURT: From the Defense?

3 MR. CANTRELL: None, Your Honor.

4 THE COURT: All right. Let's select a jury.

5 THE CLERK: As I call your name and number if
6 you would, please, stand where the attorneys can see you.

7 Juror number 110, Adrian J. Porter. What says the
8 State?

9 MR. BUCKNER: Please seat Mr. Porter.

10 THE CLERK: And the Defense?

11 MR. CANTRELL: Please seat Mr. Porter.

12 THE CLERK: If you would come forward, please,
13 sir, and have a seat in the jury box.

14 Juror number 142, David R. Tinsley. What says the
15 State?

16 MR. BUCKNER: Please excuse Mr. Tinsley.

17 THE CLERK: If you would, have a seat, please,
18 sir.

19 Juror number 23, Michael H. Cassell. What says the
20 State?

21 MR. BUCKNER: Please seat Mr. Cassell.

22 THE CLERK: And the Defense?

23 MR. CANTRELL: Please seat Mr. Cassell.

24 THE CLERK: If you would come forward, please,
25 sir, and have a seat in the jury box.

1 Juror number 8, Jennafer L. Baker. What says the
2 State?

3 MR. BUCKNER: Please seat Ms. Baker.

4 THE CLERK: And the Defense?

5 MR. CANTRELL: Please seat Ms. Baker.

6 THE CLERK: If you would come forward, please,
7 ma'am, and have a seat in the jury box.

8 Juror number 11, Lavonda A. Bay. What says the
9 State?

10 MR. BUCKNER: Please excuse the juror.

11 THE CLERK: If you would have a seat, please,
12 ma'am.

13 Juror number 56, Rebecca O. Harley. What says the
14 State?

15 MR. BUCKNER: Please seat Ms. Harley.

16 THE CLERK: And the Defense?

17 MR. CANTRELL: Please seat Ms. Harley.

18 THE CLERK: If you would come forward, please,
19 ma'am, and have a seat in the jury box.

20 Juror number 104, Sandra C. Owens. What says the
21 State?

22 MR. BUCKNER: Please seat Ms. Owens.

23 THE CLERK: And the Defense?

24 MR. CANTRELL: Please excuse Ms. Owens for this
25 trial.

1 THE CLERK: If you would have a seat, please,
2 ma'am.

3 Juror number 80, James M. Kilton, Jr. What says the
4 State?

5 MR. BUCKNER: Please seat Mr. Kilton.

6 THE CLERK: And the Defense?

7 MR. CANTRELL: Please seat Mr. Kilton.

8 THE CLERK: If you would have a seat in the
9 jury box, please, sir.

10 Juror number 34, Thomas B. Davis. What says the
11 State?

12 MR. BUCKNER: Please excuse Mr. Davis.

13 THE CLERK: If you would have a seat, please,
14 sir.

15 Juror number 2, Randal S. Adams. What says the
16 State?

17 MR. BUCKNER: Please seat Mr. Adams.

18 THE CLERK: And the Defense?

19 MR. CANTRELL: Please seat Mr. Adams.

20 THE CLERK: If you would come forward and have
21 a seat in the jury box, please, sir.

22 Juror number 67, Cathy M. Huffman. What says the
23 State?

24 MR. BUCKNER: Please seat Ms. Huffman.

25 THE CLERK: And the Defense?

1 MR. CANTRELL: Please excuse Ms. Huffman from
2 his trial.

3 THE CLERK: If you would have a seat, please,
4 ma'am.

5 Juror number 130, Kathy H. Smith. What says the
6 State?

7 MR. BUCKNER: Please seat Ms. Smith.

8 THE CLERK: And the Defense?

9 MR. CANTRELL: Please excuse Ms. Smith for this
10 trial.

11 THE CLERK: If you would have a seat, please,
12 ma'am.

13 Juror number 59, James B. Hicks. What says the
14 State?

15 MR. BUCKNER: Please seat Mr. Hicks.

16 THE CLERK: And the Defense?

17 MR. CANTRELL: Please seat Mr. Hicks for this
18 trial.

19 THE CLERK: If you would have a seat in the
20 jury box, please, sir.

21 Juror number 85, Pamela R. Lusk. What says the
22 State?

23 MR. BUCKNER: Please excuse Ms. Lusk.

24 THE CLERK: If you would have a seat, please,
25 ma'am.

1 Juror number 114, Stephen N. Price. What says the
2 State?

3 MR. BUCKNER: Please seat Mr. Price.

4 THE CLERK: And the Defense?

5 MR. CANTRELL: Please seat Mr. Price.

6 THE CLERK: If you would come forward and have
7 a seat in the jury box, please, sir.

8 Juror number 152, Mark A. Waters. What says the
9 State?

10 MR. BUCKNER: Please seat Mr. Waters.

11 THE CLERK: And the Defense?

12 MR. CANTRELL: Please seat Mr. Waters for this
13 trial.

14 THE CLERK: If you would come forward please,
15 sir, and have a seat in the jury box.

16 Juror number 158, Ivy J. Williamson. What says the
17 State?

18 MR. BUCKNER: Please seat Ms. Williamson.

19 THE CLERK: And the Defense?

20 MR. CANTRELL: Please seat Ms. Williamson.

21 THE CLERK: If you would come forward, please,
22 ma'am, and have a seat in the jury box.

23 Juror number 157, Sandra Williams. What says the
24 State?

25 MR. BUCKNER: Please seat Ms. Williams.

1 THE CLERK: And the Defense?

2 MR. CANTRELL: Please seat Ms. Williams for
3 this trial.

4 THE CLERK: If you would come forward, please,
5 ma'am, and have a seat in the jury box.

6 Juror number 115, Betty C. Pruitt. What says the
7 State?

8 MR. BUCKNER: Please seat Ms. Pruitt.

9 THE CLERK: And the Defense?

10 MR. CANTRELL: Please excuse Ms. Pruitt for
11 this trial.

12 THE CLERK: If you would have a seat, please,
13 ma'am.

14 Juror number 119, Benjamin J. Recio. What says the
15 State?

16 MR. BUCKNER: Please seat Mr. Recio.

17 THE CLERK: And the Defense?

18 MR. CANTRELL: Please seat Mr. Recio.

19 THE CLERK: If you would come forward, please,
20 sir, and have a seat in the jury box.

21 This will be for the alternate. Juror number 31,
22 Paul F. Dastugue, III. What says the State?

23 MR. BUCKNER: Please seat Mr. Dastugue.

24 THE CLERK: And the Defense?

25 MR. CANTRELL: Please excuse Mr. Dastugue from

1 this trial.

2 THE CLERK: If you would have a seat, please,
3 sir.

4 Juror number 102, Bernetha W. Orr. What says the
5 State?

6 MR. BUCKNER: Please seat Ms. Orr.

7 THE CLERK: And the Defense?

8 MR. CANTRELL: Please seat Ms. Orr.

9 THE CLERK: If you would come forward, please,
10 ma'am, and have a seat in the jury box.

11 THE COURT: Any legal matters as far as the
12 selection of the jury in this case that we need to take
13 care of? From the State?

14 MR. BUCKNER: None from the State, Your Honor.

15 THE COURT: From the Defense?

16 MR. CANTRELL: None, Your Honor.

17 THE COURT: All right. Ladies and gentlemen
18 who were not selected, if you would please call back
19 tonight after six o'clock. There'll be a message on the
20 answering machine for you. You're excused at this time.
21 If everyone else would please remain seated while the
22 jury is excused.

23 (WHEREUPON, the jury panel exited the open court at
24 approximately 11:04 a.m.)

25 THE COURT: Ladies and gentlemen, you've seen

1 the process by which you were selected. Each of these
2 attorneys believe and the parties believe that you're the
3 best twelve people to hear this case. We have thirteen
4 selected. We have an alternate just in case some
5 emergency were to come up among the first twelve of you.
6 That alternate is every bit as part of the jury as anyone
7 else. You'll be listening and paying attention as the
8 case develops. And if some unforeseen instance were to
9 come up that one of you had to leave, then we wouldn't
10 have to start the trial again. We'd be able to continue
11 as we are. I told you earlier will the full panel that
12 we're not going to be able to start this case -- it was
13 to be scheduled tomorrow, but we're going to be able to
14 get started this afternoon because of other cases having
15 to be continued or otherwise. But we're not going to be
16 able to start right now. So I'm going to give you an
17 extended lunch time based upon the other matters we have
18 to do and the things that have already been schedule.
19 We're not going to have everyone here, ready to proceed
20 until -- I believe we'll be ready to start at three
21 thirty. I value your time. I don't want to keep you
22 waiting. I believe we'll be able to accomplish
23 everything we need to do by then. So if you'll be back
24 at three thirty we'll be ready to begin. Let me just
25 caution you.

1 While you're out and about, you shouldn't be
2 discussing the case with anyone. You should not let
3 anyone discuss the case with you. That would be
4 improper. You've seen the confidence these parties
5 placed in you and you alone to hear this matter, to
6 resolve the matter, based on the law and the evidence.
7 Our Chief Justice of the South Carolina Supreme Court has
8 issued an order that all trial Judges, such as I, must
9 convey to jurors who have been empaneled in a case and
10 that is that you're not to be communicating with anyone
11 or doing any kind of social media or networking or
12 talking with anyone or whatever your social media may be,
13 personally or on the internet. You shouldn't be doing
14 any kind of independent research. You don't know
15 anything about this case. And you shouldn't be trying to
16 find out what you can about words that you've heard or
17 otherwise. That would be improper. It would be against
18 the instructions of the Chief Justice of our Court,
19 conveyed by me.

20 So I'm confident that these attorneys are going to
21 present everything in this courtroom that you're going to
22 need to make a fair and just decision in this case. And
23 it would be improper for you to violate that trust that
24 they've placed in you. We're in a process now of a trial
25 by jury and I know that you'll maintain the purity of

1 that process we're now in and not let anyone talk to you.

2 You may be at lunch and someone come up to you and want
3 to give information or ask you questions about this. And
4 obviously, you should not be talking to them. Just tell
5 that person you're a juror and you can't be talking about
6 it. If they persist, excuse yourself if you can and if
7 possible get the name and report it back to me, and I'll
8 certainly take care of that matter. You may have
9 business associates that you go back to work with or
10 family that for the next few hours that you'll be talking
11 with, you certainly can tell them you've been selected on
12 a trial, but you shouldn't go into any details of the
13 names or what it's about. When this case is over and
14 concluded, you're going to have plenty of opportunity to
15 share your experience as a juror with your family, with
16 your loved ones and your friends. But while we're in the
17 progress of the trial, that's not the time to do that.
18 And I know that you'll take that seriously as it is so
19 important to these parties and to the process that we're
20 now in.

21 I'll have an opportunity when we come back this
22 afternoon to tell you a little bit about how we'll be
23 proceeding. We'll try to work a couple of hours this
24 afternoon and break. We won't stay here late. I think
25 the case, I'm confident the case will be over sometime

1 tomorrow. And you will be concluded with your services
2 on this jury.

3 Have a good lunch, ladies and gentlemen and we'll
4 see you back at three thirty. The bailiff will show you
5 where you are to report back at that time.

6 Everyone else, please remain seated.

7 (WHEREUPON, the jury exited the open court at
8 approximately 11:09 a.m.)

9 THE COURT: All right. Y'all need to get to
10 your court. We'll be at ease until three thirty, okay?

11 MR. CLEVELAND: Thank you, Your Honor.

12 MR. CANTRELL: Thank you, Your Honor.

13 (WHEREUPON, the Court stood at recess in this case.)

14 (WHEREUPON, State Exhibit Numbers 1, 2, 3, 4 and 5
15 were marked for identification.)

16 (WHEREUPON, Defendant Exhibit Numbers 1, 2, 3, 4, 5,
17 6 and 7 were marked for identification.)

18 THE COURT: All right. Is there anything we
19 need to put on the record before our jury comes in? From
20 the State?

21 MR. BUCKNER: Nothing from the State, Your
22 Honor.

23 THE COURT: From the Defense?

24 MR. CANTRELL: Nothing, Your Honor.

25 THE COURT: All right. Let's have the jury

1 come in if they're ready, Mr. Schumacher.

2 THE BAILIFF: Yes, sir.

3 THE COURT: Okay. We'll wait until everybody's
4 ready.

5 MR. CANTRELL: Your Honor, we're just going to
6 ask that one witness on each side be sequestered and
7 they're going to leave the courtroom at this time.

8 THE COURT: Okay.

9 MR. CANTRELL: By agreement.

10 THE COURT: By agreement?

11 MR. CLEVELAND: Yes, sir.

12 THE COURT: Okay.

13 (WHEREUPON, the jury entered the open court at
14 approximately 3:39 P.m.)

15 THE COURT: Thank you for your patience, ladies
16 and gentlemen. We're now ready to begin the trial of the
17 case. In a few moments, the attorneys will make an
18 opening statement to you. They'll give you an overview
19 of what the case is about in their view. I urge you to
20 listen carefully as they address you. Perhaps they can
21 give you some insights to help you listen attentively as
22 the case develops. Obviously, that's what your job is,
23 to be a good listener because you're going to decide what
24 the facts are based upon the evidence that's presented,
25 the testimony that's presented from this witness stand.

1 Please let us know if you can't hear the witnesses'
2 testimony. Raise your hand and we'll make sure they
3 speak louder because that's vitally important. By the
4 same token, if you're uncomfortable in any way and you
5 need to take a break, please let me know. We'll take
6 periodic breaks, but if you need one and we haven't
7 called for one, you let us know. Because if you're not
8 comfortable, you're not going to be able to be a good
9 listener. We have bailiffs throughout the courthouse,
10 Mr. Curtis in the back and Mr. Grant behind me over here.
11 And Mr. Schumacher there to your left. Any of those
12 gentlemen will certainly assist you. And Mr. Welborn,
13 our fine Clerk of Court[?], will be in here to assist. By
14 way of introduction, the young lady with her back to you
15 is the court reporter. She's taking down everything
16 that's said during the proceedings, marking exhibits and
17 keeping up with those. David Brown's the young man
18 seated beside me, my law clerk. Any of these folks
19 around the courthouse will be glad to assist you in any
20 way that they can.

21 After the opening statements of the attorneys, then
22 there'll be witnesses presented. They'll be examined and
23 cross-examined. There may be some exhibits marked and
24 published to the jury either on a screen or passed around
25 to you. After all the evidence is in, the lawyers will

1 again address you in their closing, I'll instruct you on
2 the law, the case will then be yours to decide. I remind
3 you again that during this process you're not to be
4 discussing it with each other or with anyone else. You
5 wait until all the evidence is in and I've given you the
6 applicable law for the case before you start that
7 deliberation process. Coming and going this afternoon,
8 in the morning when you come back in, you may see some of
9 the lawyers in the hallway or on the elevator. And if
10 these lawyers high-hat you in any way and seem to walk
11 the other way and not make eye contact, avoid you, please
12 don't hold that against these lawyers. They're fine
13 lawyers. That's their training. They want to make sure
14 that there's no appearance of any impropriety, that
15 they're discussing a sporting event or the weather or
16 anything else with a juror, innocent though it may be, it
17 could be perceived wrong. So if they seem to avoid you,
18 don't hold that against either of the attorneys. That's
19 part of their training to make sure of that.

20 You've committed already to bring justice to both
21 the State of South Carolina and to the Defendant. It
22 makes me proud that you've accepted this responsibility
23 to be the judges of the facts. You're going to be
24 utilizing the good common sense with which you've been
25 blessed, the everyday experiences that you enjoy at home

1 and the workplace, social activities, and that's going to
2 serve you well as you observe the demeanor of the
3 witnesses, as you listen to the case develop and listen
4 to my instructions at the end.

5 Mr. Welborn is going to administer an oath to you.
6 It's a time-honored oath. I hope you will listen
7 carefully as the oath is given you, to the words. The
8 oath has been in existence, really, before the foundation
9 of our country. It's an oath that came to us from
10 England where jurors such as yourself, in times past and
11 perhaps even today and throughout America are sitting in
12 a box such as you, taking a similar oath and I know that
13 you'll fulfill that oath most capably. After he
14 administers the oath to you, then there will be an
15 opening statement from the Solicitor followed by that of
16 Mr. Cantrell. All right. Mr. Welborn.

17 THE CLERK: If you would please stand. Again,
18 after the oath is administered, if you will answer by
19 saying I will. Raise your right hand.

20 You shall well and truly try the issue joined in
21 this case of the State versus Russell Edward Nix, and a
22 true verdict render, according to the law and evidence,
23 so help you God.

24 (WHEREUPON, the jurors all answered I will and were
25 duly sworn.)

1 THE COURT: Solicitor, you may address the jury
2 in your opening statement.

3 MR. BUCKNER: May it please the Court, Your
4 Honor, Mr. Cantrell.

5 **OPENING STATEMENT**

6 **BY MR. BUCKNER:**

7 Individuals living in this community should not be
8 fearful for their own personal safety or for the safety
9 of their family members, but that is exactly the kind of
10 fear that Russell Nix created on August 25th, 2011, when
11 he severely beat the victim, Earl Guthrie, in front of
12 his wife and daughter.

13 Ladies and gentlemen of the jury, my name is Graham
14 Buckner, and as I introduced myself earlier this morning,
15 I am an Assistant Solicitor here in Pickens County.
16 Seated with me at counsel table is Mr. Baker Cleveland.
17 He is also an Assistant Solicitor here. We will be
18 prosecuting this case on behalf of the State of South
19 Carolina and it will be our duty to prove that the
20 Defendant, Russell Nix, committed the crime of assault
21 and battery of a high and aggravated nature beyond a
22 reasonable doubt.

23 Before I get into the law on this case, I'd like to
24 thank each and everyone of you for serving on the jury
25 this week. I know I speak for everyone in the courtroom

1 when I say we really appreciate you taking time away from
2 your personal lives, from your jobs, from your family and
3 being with us this week.

4 Now, assault and battery of a high and aggravated
5 nature, what exactly does that mean? The Judge will
6 instruct you on the law at the end of the trial; however,
7 essentially what assault and batter of a high and
8 aggravated nature is, the State will be required to prove
9 beyond a reasonable doubt that on August 25th of 2011 the
10 Defendant unlawfully injured another person and great
11 bodily injury was suffered or resulted to that person.
12 Or the act was accomplished by means likely to produce
13 death or great bodily injury.

14 Now, great bodily injury defined is bodily injury
15 which causes a substantial risk of death or which causes
16 serious permanent disfigurement or protracted loss or
17 impairment of the function of a bodily member or organ.
18 Now, that's the law. As far as the burden of proof in
19 this case. In all criminal cases the State is required
20 to prove that the defendant on trial committed the crime
21 beyond a reasonable doubt. Proof beyond a reasonable
22 doubt is proof that leaves you, the jury, firmly
23 convinced that the defendant committed the crime. The
24 proof is not beyond any doubt and the State gladly
25 accepts this burden. This has always been the burden of

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Opening Statement by Mr. Buckner

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1 proof for the prosecution in all criminal cases. Every
2 criminal defendant that has ever been convicted of a
3 crime was convicted because a jury just like you decided
4 that he committed that crime beyond a reasonable doubt.
5 To put it simply, proof beyond a reasonable doubt is
6 proof that does not cause a person to hesitate to act.

7 Now, as this trial progresses, the evidence will
8 show that the Defendant, Russell Nix, did engage in a
9 physical altercation with the victim, Earl Guthrie. And
10 during that physical altercation, the Defendant
11 physically beat Mr. Guthrie so badly that he did suffer
12 great bodily injury. You'll hear more evidence as to
13 those injuries and as to the actual altercation as this
14 trial progresses.

15 Ladies and gentlemen, this case is not complicated.
16 You're the triers of fact. You brought with you the one
17 tool that you need to determine the Defendant's guilt or
18 innocence, and that is your common sense and everyday
19 experiences that you've had.

20 Mr. Cleveland will return at the end of this trial
21 and discuss the case much more thoroughly with you at
22 that point. Until then, I ask that each of you listen to
23 the evidence very carefully and come to a decision based
24 on what you've seen and heard during this trial. Thank
25 you for your time and your services this week.

1 THE COURT: Mr. Cantrell, you may address the
2 jury.

3 MR. CANTRELL: May it please the Court.

4 **OPENING STATEMENT**

5 **BY MR. CANTRELL:**

6 Ladies and gentlemen, we had a brief introduction,
7 but my name is David Cantrell. I am an attorney from
8 Easley. I represent Russell Nix who's seated over here.
9 He's the Defendant or the accused in this case. I will
10 tell you that one thing that is an absolute fact as we
11 speak, and that is he sits there an innocent man. He is
12 presumed innocent as you've been told. At the close of
13 the case, you will hear the Judge charge you or tell you
14 what our law is in South Carolina. That's one of the
15 basic building blocks of our judicial system. Mr. Nix is
16 presumed innocent and the State must convince you with
17 evidence from the witness stand beyond any reasonable
18 doubt that Mr. Nix is guilty of this charge. That is
19 their obligation to construct, so to speak, a structure
20 that is firm in its foundation and will stand under your
21 scrutiny as to -- based on the evidence beyond a
22 reasonable doubt. All any of us ask you to do is to
23 listen. Being an attorney is probably a given that I
24 will never sit in that box as a juror. I'm intrigued by
25 that, because you people are sitting there with a clean

1 slate just like that screen. You have no clue what
2 you're about to hear, what's going to be presented to
3 you. That's an interesting concept. You're going to
4 start from this point and move forward to a conclusion in
5 this trial. You do that, again, by listening to
6 testimony and as you were told, and we concur on that,
7 you use common sense. You use reasonableness. And you
8 use the requirement that the State has to prove their
9 case beyond a reasonable doubt.

10 You also come in here and you're told this is a case
11 of assault and battery of high and aggravated nature. At
12 this stage, you don't know exactly what that means. You
13 might have some ideas, but I will tell you your ideas,
14 your preconceived notions will have to go out the window
15 because the Judge will tell you what that is. He will
16 tell you what the law is and you will apply that law to
17 the testimony.

18 I will tell you just briefly that the fact that two
19 people engaged in conflict and one of them gets hurt more
20 than the other, does not make one or the other guilty of
21 assault and battery of a high and aggravated nature. The
22 fact that somebody was at certain places or alleged to be
23 at certain places doesn't mean that if a fight ensued,
24 they're guilty of assault and battery of a high and
25 aggravated nature. For you to determine guilt beyond a

1 reasonable doubt, you must determine that the facts show
2 that what happened is what the law says cannot happen.
3 Assault and battery of a high and aggravated nature is
4 not all that simple. It is very important that that law
5 be applied fairly and with reason and by twelve
6 individuals that are simply listening, paying attention,
7 and applying their common sense.

8 We truly believe that once you do that, you will
9 determine that Russell is not guilty, which will be the
10 verdict we will ask for. But only after you have heard
11 all of the testimony, seen all of the evidence and
12 deliberated like a good jury would. And we appreciate
13 it. Thank you.

14 THE COURT: Solicitor, you may call your first
15 witness.

16 MR. CLEVELAND: Thank you, Your Honor, may it
17 please the Court. The State calls Rose Guthrie.

18 THE CLERK: Place your left hand on the bible
19 and raise your right.

20 Do you solemnly swear or affirm the testimony you're
21 about to give in this case will be the truth, the whole
22 truth and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: If you would have a seat and state
25 your name for the record. You have to speak up so

1 everyone can hear you, please.

2 THE WITNESS: Okay. Rose Guthrie.

3 ROSE GUTHRIE,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. CLEVELAND:

7 Q. Good afternoon, Ms. Guthrie?

8 A. Good afternoon.

9 Q. Like Mr. Welborn said, I want to make sure that
10 everybody in the jury box can hear you way back here.
11 The acoustics are kind of bad in this courtroom, so if
12 you can keep your voice up for me, I'd really appreciate
13 it.

14 A. Okay. Is this better?

15 Q. That's perfect. Thank you. Are you married, Ms.
16 Guthrie?

17 A. Yes, I am.

18 Q. Who are you married to?

19 A. Earl Guthrie.

20 Q. Is he here with you today?

21 A. Yes.

22 Q. Can you point him out to the jury, please?

23 A. Sitting right there in the red striped shirt.

24 Q. All right. And do you have any family that lives
25 nearby?

1 A. Yes.

2 Q. And who are they?

3 A. Our youngest daughter Diane Middleton, and her
4 husband, our two granddaughter. And then our son Mark,
5 and Allison, they're only like two miles from where we
6 actually live today.

7 Q. Okay. All right. Are any of them here with you
8 today?

9 A. Our youngest daughter is. And our youngest son,
10 he's here, you know, with us. But, yes.

11 Q. All right. You say you live about two miles away
12 from them. Has that always been the case?

13 A. No, sir.

14 Q. All right. Where did you live before you moved two
15 miles away from them?

16 A. in Liberty.

17 Q. All right. Did you live at
18 back on August 25th, 2011?

19 A. Yes.

20 Q. All right. Is that here in Pickens County?

21 A. Yes.

22 Q. I'm going to show you just briefly what's been
23 marked as State's Exhibit Number 1. Would you mind
24 taking a look at this?

25 A. (Witness reviews item.)

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1 Q. Do you recognize that item?

2 A. Yes.

3 Q. What is that?

4 A. It's an aerial map of where we lived on Mauldin Lake
5 Road.

6 Q. All right. Can you see your old home and your
7 children's homes on that road?

8 A. Yes. I see the house where we lived and across the
9 street where our youngest daughter lives and our oldest
10 son lived across the street.

11 Q. All right. Is that an accurate representation of
12 the area where y'all lived?

13 A. Yes, it is.

14 Q. Thank you.

15 MR. CANTRELL: No objection, Your Honor.

16 THE COURT: All right. Without objection
17 Exhibit 1 is admitted into evidence and may be published.

18 MR. CLEVELAND: Request to publish. Thank you,
19 Your Honor.

20 (WHEREUPON, State Exhibit Number 1 was admitted into
21 evidence and published to the jury.)

22 Q. All right. Ms. Guthrie, would you please -- I've
23 got a little laser pointer here. Would you point out for
24 the jury where your house was and where your family's
25 residences were on that map?

- 1 A. Okay. Well, we lived on Do I
2 mash this big round button right here?
3 Q. Yeah. Push the red button right there.
4 A. I'm sorry. This is where we lived on Mauldin Lake
5 Road. And right here is where our youngest daughter and
6 son-in-law and two granddaughters live. And I can't see.
7 And our son, our oldest son and daughter-in-law live
8 right here.
9 Q. All right. Do you know where anybody else lives on
10 that map?
11 A. Yes, sir. The Howards live, the Howards live right
12 here in this house. I can't remember the lady's name
13 that lives right here, but back up in the -- back up here
14 is where Ms. Bray lives, Ms. Rosie Bray. I believe her
15 last name is Bray or Gray. This lady and this lady both
16 live on -- they both live alone.
17 Q. Okay.
18 A. They're elderly.
19 Q. All right. You testified that you lived there on
20 August 25th, 2011.
21 A. Yes.
22 Q. Do you remember that day?
23 A. Yes, I do.
24 Q. What stands out about that day in your mind?
25 A. Well, the Defendant kept coming through our

1 daughter's yard ---

2 Q. Well, just in a nutshell.

3 A. A nutshell.

4 Q. What happened on that day?

5 A. In a nutshell, Mr. Nix fought my husband and caused
6 him great bodily injury to his brain. He was bleeding on
7 the brain and had broke bones in his jaws and this bone
8 comes through here. Just because he asked him to get off
9 our children's property.

10 Q. All right. Let's go back and get into that in a
11 little more detail. What were you doing that day,
12 earlier on?

13 A. Earlier that morning, I was working in my garden.
14 And I'm always down with it by seven o'clock. And so it
15 was around lunchtime and we came in and ate some dinner,
16 because usually between about twelve to three, we always
17 stay in on account it's so hot. And like I say about
18 one, one thirty ---

19 Q. Did you notice anything peculiar?

20 A. Yes, I did.

21 Q. What did you notice?

22 A. Well, I had went to our screened door to look out,
23 like I say, because we just live across the street from
24 our kids. So while they're at work, we just kept a look
25 out for each other. And I seen who is the Defendant come

1 through our daughter's yard. And so I called -- at first
2 I couldn't see a face but I seen a body on account of the
3 way the tree limbs were hanging down.

4 Q. Was that strange? I mean, was that something you
5 saw normally or not?

6 A. No.

7 Q. Not strange or not something you normally saw?

8 A. You don't normally see, you know, people just
9 walking through the yard all the time, no.

10 Q. Okay. All right. Thank you. Continue, please.

11 A. And so he came through the yard and I called my
12 daughter because our son-in-law does heating and air.
13 Sometimes he's there and sometimes he's not. And I said,
14 I asked her, I said, Diane is Walter at home, her
15 husband. And she's like, no, mom. And I said, well, I
16 seen a guy walking through y'all's yard, you know. And
17 she goes I know, mama, this is the second time he's came
18 through our yard. And I could tell in her voice, you
19 know, she sounded scared, concerned.

20 Q. Were you concerned by that?

21 A. Yes, I was.

22 Q. All right.

23 A. Especially it being the second time through there.

24 Q. All right. So what happened next?

25 A. Let me think for a second. After I got off the

1 phone with her, I just, you know, I just minded my own
2 business there for a minute in the house, just trying to
3 think, you know, well, is it just somebody walking by or
4 what's going on.

5 Q. Did you tell your husband right away?

6 A. Not for a minute I didn't because I was trying to
7 think, well, is it just somebody walking, you know, the
8 streets, you know, what I'm saying, cut-through or
9 something. I didn't know. But when she said, I know,
10 mama, you know, that's twice he's done came through our
11 yard. Well, I could tell in her voice she was concerned
12 because she was home with her two daughters, our two
13 granddaughters by theirselves. And so then I decided to
14 tell my husband so he could, you know, we both could look
15 out for the place, since he had done come through twice.

16 Q. All right. What did y'all do next?

17 A. I told him. And whenever I told him, Nix, the
18 Defendant, had done -- can I show with the pointer?

19 Q. Yes. Yes.

20 A. He had done walked from here where I seen him
21 walking through the yard, come down to the road. And by
22 the time he was down there, like I say, then by this time
23 I'd done told my husband so he's walking on down the
24 road. And we seen him go on. And it wasn't, I don't
25 know, a few minutes, five minutes or less, well, like I

1 say, my husband goes to the screen door then to look out.

2 And the Defendant is walking back up through the yard,
3 cutting through the yard again, right in here. And my
4 husband said, that guy's back again. I said, well, no,
5 hon, I don't think that's him because, you know, the
6 clothes are different. He had a ball cap on.

7 Q. Okay.

8 A. And he goes, yes, it is, too. He's changed clothes,
9 but it's the same guy. And so he got in the car. And by
10 this time, you know, Nix is walking pretty fast and he --
11 Nix runs up to the driveway up here.

12 Q. All right. I'm going to stop you real quick. Did
13 y'all -- was this the first time y'all went out looking
14 at anything or looking for anyone or did y'all do it that
15 day before then at all?

16 A. Whenever this happened, when Nix was walking back
17 down this way, yeah, we drove by to make sure he went on,
18 you know, that he wasn't trying to cut back up through
19 the yard in the front here.

20 Q. Okay.

21 A. You know, because there's a lot of places you can go
22 on, you know, off the road there on their place.

23 Q. Yes, ma'am. But did you see anything when you went
24 down there the first time?

25 A. On their property, did I see anything?

1 Q. Yes, ma'am?

2 A. Not on their property.

3 Q. Okay. I understand. I guess what I'm saying is, is
4 it your testimony y'all drove down the street to look and
5 see what was going on the first time?

6 A. Yeah. Well, after we had seen him and I told my
7 husband, he said, well, let's make sure he's going on,
8 you know, that he hasn't cut back through their yard
9 somewhere, you know. And the Defendant was walking up by
10 this bar that's across from our daughter's place on
11 Highway 178.

12 Q. Okay.

13 A. And we seen him walk that way, you know. So we're
14 like, well, at least he's going on. We didn't know who
15 he was, where he lived at or nothing, but at least we
16 didn't see him circling back in their yard again.

17 Q. Did you stop and say anything to him?

18 A. No.

19 Q. Did y'all talk to him at all ---

20 A. No.

21 Q. --- in any way, just went on about your business and
22 went home?

23 A. We went straight back to the house, went right back
24 in the house, you know.

25 Q. Okay. And just to reiterate real quick, who was

1 home here when all of this was going on?

2 A. Our youngest daughter and two granddaughters.

3 Q. Okay. And who was home up here?

4 A. No one.

5 Q. All right. So tell me about that third time y'all
6 saw somebody? How much longer was it after y'all drove
7 down the road was it you saw this person for the third
8 time?

9 A. Like I say, it was probably five minutes or less,
10 you know. Because when we seen him come back the third
11 time, he was actually coming back up this way, that's
12 when my husband said, that is him. You know, he was
13 looking out the door. And I was, Hon, I don't know, you
14 know, his clothes are different. Is that the same guy?
15 He's like, that's the same guy, you know. He can see
16 better a far distance than I can without glasses. And so
17 he gets in the car and goes up here. By this time, the
18 Defendant's up here and my husband's explaining, you know
19 ---

20 Q. Well, first off, I don't want you to testify to
21 anything you didn't hear. Did you -- where were you at
22 the time when your husband got in the car?

23 A. I was out in my yard. Right in here.

24 Q. Okay. All right.

25 A. Because, you know, when my husband went and got in

1 the car, yeah, I came out into the yard, you know, but I
2 stayed in the yard when he drove up there.

3 Q. All right. So he drove up the road and then what
4 happened? What did you observe or hear then?

5 A. When he drove up the road, up to the Defendant, you
6 know, he was on -- he was trespassing on my children's
7 property, that they, you know, work and stuff, so we're
8 looking out for their properties and all while they work.
9 And, you know, I don't know what all was said back and
10 forth, but I could see my husband, you know, pointing to
11 the property lines, like showing him where my son and
12 daughter-in-law live up here. And he was pointing to
13 where the kids, you know, properties is right in here. I
14 could see him doing that.

15 Q. Did Mr. Nix leave immediately?

16 A. No. No, he did not.

17 Q. All right. What did you observe him doing?

18 A. When I could see, you know, my husband was trying to
19 tell him, you know, where their properties were and
20 everything, well, he kept -- Mr. Nix kept throwing his
21 arms straight up, just like ... You know, I couldn't
22 hear what he was saying, but he was just throwing them
23 arms up like this. And I thought, Lord, ---

24 Q. Was he speaking back to him?

25 A. Yes.

1 Q. Speaking to your husband? What kind of tone of
2 voice. Could you hear that?

3 A. No, I couldn't hear, but I could just see him, you
4 know, throwing his hands up at my husband. After my
5 husband kept taking time to explain, you know, whose
6 property and they at work and, you know, they're our
7 children's and, you know ---

8 MR. CANTRELL: Your Honor, I would object.
9 She's quoting someone and she's already stated she was
10 not present for that conversation.

11 THE COURT: I sustain that objection.

12 MR. CLEVELAND: Okay.

13 Q. That's okay. Just testify to what you could hear
14 right now, Ms. Guthrie?

15 A. Okay. After a few minutes of my husband trying to
16 explain and Mr. Nix kept doing like this, my husband
17 asked him again, get off the property.

18 Q. Could you hear him say that?

19 A. Yes.

20 Q. Okay.

21 A. He raised his voice that time.

22 Q. All right. How much distance is there between where
23 you were standing and where this conversation was taking
24 place?

25 A. Hundred and fifty, two hundred yards, I guess.

1 Q. Okay.

2 A. But the way -- where they're standing up in here,
3 you know, this whole thing goes uphill.

4 Q. Yes, ma'am.

5 A. So when they're out in the yard here, even when our
6 neighbors across the street, you know, the way the land
7 is there, sound travels. I mean, you can -- if you're
8 loud enough you can hear, you know.

9 Q. Right. What did Mr. Nix do then, what did you
10 observe him to do?

11 A. Well, then after my husband, you know, told him, get
12 off the property, please get off the property, well, Mr.
13 Nix had got -- there's like a four-foot barbed wire fence
14 right here. And evidently he was -- my husband said he
15 was getting in the road asking, do you own this, you own
16 this? But that must have been when they got close to the
17 fence, I couldn't see either one then, my husband or the
18 Defendant.

19 Q. Okay.

20 A. So then I called my daughter that lives -- that was
21 home with my two granddaughters right here, and I said,
22 Diane, I said, I can't see them. I don't know what's
23 going on. I'm worried about, you know, my husband. I
24 said, you know, we need to go ahead and call the law.
25 And she's like, okay, mama, I'm going to call the law. I

1 said, well, I'm going up there. You know, I'm concerned.

2 I could tell my husband was being patient trying to tell
3 him everything, you know, why he was asking him to leave.

4 And ---

5 Q. Go ahead.

6 A. --- you know, he ---

7 Q. What happened next?

8 A. Okay. After I couldn't see him and I called my
9 daughter, I went ahead -- I went back in the house, got
10 our truck keys. And our truck was parked over in here.
11 So I went from the house to get in the truck. And by the
12 time I got in the truck and I pulled in our yard right --
13 to about right here, I done seen -- I seen the Defendant
14 coming down the road right here and he stops right there,
15 kind of near the end of our driveway, really. But
16 there's some trees right there. And he stops, and I'm
17 thinking why don't he just go on, you know. He's been
18 asked repeatedly over and over and over, please get off
19 our children's property, you know. So he's standing in
20 the road doing like this, you know. Like I say, Nix is
21 standing right here. My husband gets in the car, goes up
22 here to my son's, turns around, comes back down and he
23 pulls the car right there and stops in the grass there in
24 the road. He stops right there. And he gets out and he
25 asked Mr. Nix again, you know, why don't you go on, man?

1 Q. Could you hear him say that?

2 A. Yes.

3 Q. Okay.

4 A. Because I was sitting in my truck, closer to them
5 that time. I could hear, yeah.

6 Q. All right. What happened next?

7 A. And the next thing I know, when my husband had
8 walked down right here to where Nix was at the trees.
9 When they're talking, I don't see Nix anymore because
10 he's done walked up into -- off the road into the trees
11 and my husband's standing there, you know, trying to
12 confront him again to please leave. And I don't see --
13 all I can see is the back of my husband. I can't see Nix
14 anymore because he's done stepped up into the -- off of
15 the road into the trees. And like I say, I could see the
16 back of my husband and then I didn't see him. And I knew
17 right then they were fighting because I could hear, I
18 could hear them.

19 Q. What did you hear?

20 A. I could hear, you know, the fists hitting, the
21 stomping or whatever, what all he done. I could hear it
22 very well.

23 Q. How would you describe those sounds to the jury?

24 A. It was very loud and sickening because he just kept
25 on, kept on, and kept on.

1 Q. All right. When is the next time you actually saw
2 your husband?

3 A. I'd say like after a good minute, minute and a half,
4 you know.

5 Q. All right.

6 A. I walked down there because it -- I'd done got ready
7 to throw up. It was just sickening because all I could
8 hear, you know, you could hear the hitting. And I'm
9 like, enough's enough, you know. The guy might even jump
10 on me. I don't know. But enough's enough, just stop.
11 And so I walked down there. And when I had walked down
12 here to where they were at, they were coming out of the
13 woods. And Nix is in front of him. My husband's like
14 this, trying to get out of the woods and that's when I
15 could see my husband doing like this. And Mr. Nix is
16 steadily throwing, you know. But I could see them coming
17 out of the woods. And so when I got all the way down
18 there to where they was at, they had done come out on the
19 pavement and, you know, I could see my husband got beat
20 up really bad, you know. He was beat. It wasn't like a
21 fight, like a fair man -- like how men would fight, you
22 know. It was just like he slung him down and just took
23 advantage of him.

24 Q. When you said your husband was like this, was he
25 standing, was he laying, what position was he in?

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1 A. Evidently, this is when he'd done got up out of the
2 ditch. Because they was both standing. But like I say,
3 they're reversed this time because Nix is coming out of
4 the woods and my husband's still in the woods, trying to
5 get out.

6 Q. Okay.

7 A. And he's just still slinging, hitting my husband.

8 Q. Okay. He, being the Defendant?

9 A. The Defendant, yeah.

10 Q. Did you confront the Defendant?

11 A. Yes, I did.

12 Q. What did you say to him?

13 A. We were about as close as I am to this lady right
14 here. And I was very upset because like I say, after
15 hearing him repeatedly hit my husband, It was very
16 sickening.

17 MR. CANTRELL: Objection, Your Honor. She's
18 testified she could not see where they were. She just
19 heard them. And now she's saying she saw him hitting
20 her husband.

21 THE COURT: The jury will take note of that.
22 That she's testified that she didn't see this.

23 Q. You testified you could hear your husband being hit.
24 At any point in time did you actually see your husband
25 being hit?

1 A. Yes. The closer I got down to where they was at, I
2 could -- you could see through like the trees -- tree
3 limbs, you know, because they're kind of sparingly like,
4 you know. I could see them both, you know, with their
5 arms doing this. Yes, I did see him.

6 Q. All right.

7 A. But I didn't see him when he had him down in the
8 ditch. It's when he was trying to come out ---

9 Q. Okay. Okay.

10 A. --- is when I seen them.

11 Q. So your testimony is -- is it fair to say you
12 initially heard the altercation and then you saw it
13 towards the end?

14 A. Yes. Yes, I did.

15 Q. All right. Thank you. Tell us about that
16 confrontation with the Defendant?

17 A. Well, like I say, when they had walked out of the
18 woods, when they were coming out of the woods and I was
19 coming down to where they were at, they had walked out on
20 the pavement there. And I asked him -- I hollered at
21 him. I said, would you go on. Just go on, you know.
22 Just get your backside down the road, just go on, you
23 know. And he's still doing all this and hollering all
24 kind of stuff. You know, I'm just trying to keep an eye
25 on my husband and I turned around and looked behind me.

1 And my daughter's hollering at him, asking him just go
2 on, why don't you go on? And, you know, so I turned back
3 around to where my husband -- you know, so I could see my
4 husband. We went back up our driveway, back to our
5 house.

6 Q. All right. What condition was your husband in at
7 that time when you saw him?

8 A. Well, he was very beat up in the face, but it was
9 like he was almost idle like, you know. He had blood all
10 over him and everything and his face, his eye was all
11 swelled and this stuff, you know. It broke my heart.

12 Q. Yeah. Let me ask you this. Did Mr. Nix actually
13 leave at that point in time?

14 A. Whenever I asked him to leave?

15 Q. Yes.

16 A. He was walking backwards, yeah, down the road away
17 from us. But he's just, you know, at first he was
18 throwing his hands up when he was real close, you know,
19 and just hollering all kind of stuff.

20 Q. You said you were as close -- your testimony was you
21 were about as close as you are to Ms. Hanks here. But
22 did you notice any visible injuries on him at that point
23 in time?

24 A. Injuries on my husband?

25 Q. On Mr. Nix?

- 1 A. Mr. Nix, no.
- 2 Q. Okay. Did you get a good look at him?
- 3 A. Yes, I did.
- 4 Q. Is it true you'd already called the police at that
5 point in time; is that correct?
- 6 A. I called the police after I got my husband back up
7 -- set on the porch. And I called them right then.
- 8 Q. Oh, okay.
- 9 A. We were like on the way up to get back on the porch.
10 I called them right then, yeah.
- 11 Q. All right. Describe, I guess, your -- in a little
12 more detail or just go on to what y'all did later and how
13 your husband appeared and how he was acting after this
14 altercation?
- 15 A. On the day of the 25th?
- 16 Q. Yes. This is just continuing. Once y'all got back
17 to the porch, how was he?
- 18 A. Well, he told me that, you know, he thought maybe
19 his jaw was broke because it was hurting so bad, which
20 come to find out, it was broke in two places, you know.
21 But we got him on the porch and I just got some ice and
22 some rags, trying to put on his face to keep the swelling
23 down. And like I say, we were sitting there waiting on
24 the law to come. And the -- I think it was the detective
25 came. I done forgot his name, but he came. And we

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1 talked with him for a minute. And he asked him what did
2 the Defendant look like. And I described him. And he
3 said, I know who it is. He went straight to his house
4 and we had no idea where he lived.

5 MR. CANTRELL: Objection, Your Honor.

6 THE COURT: I sustain the objection.

7 Q. You don't have to testify to any of that. That's
8 all right, Ms. Guthrie. What I do want to do, what I do
9 want to do now is show you some photographs I've marked
10 as State's Exhibits 2, 3 and 4. Would you take a moment
11 to look at those and let me know if you recognize those
12 pictures?

13 A. Yes, sir, I recognize them.

14 Q. Who is depicted in those photographs?

15 A. That's my husband, Earl Guthrie.

16 Q. All right. Do you know when those photographs were
17 taken?

18 A. Yes. They were taken right after the fight on
19 August 25th.

20 Q. All right. And are those pictures -- do they
21 accurately depict your husband's condition immediately
22 after that fight?

23 A. Yes.

24 MR. CLEVELAND: The State would move to admit
25 Exhibits 2, 3 and 4 into evidence at this time, Your

1 Honor.

2 MR. CANTRELL: No objection, Your Honor.

3 THE COURT: All right. Without objection,
4 Exhibits 2, 3 and 4 are admitted into evidence and may be
5 published to the jury.

6 MR. CLEVELAND: Thank you, Your Honor.

7 (WHEREUPON, State Exhibit Numbers 2, 3 and 4 were
8 admitted into evidence and published to the jury.)

9 Q. Was that injury there before your husband got into
10 this altercation with Mr. Nix?

11 A. No, it wasn't.

12 Q. Is there anything you can kind of describe in this
13 photo? I know it's -- I guess, was that the puffiness of
14 his eye you were taking about?

15 A. Yeah. Because it had broke in three places. It was
16 fractured in three places around his eye and the jaw
17 broke in two places, the upper and the lower jaw.

18 Q. Did you have the occasion of observing your husband
19 in the days following this incident?

20 A. Yes.

21 Q. Did that swelling and redness get better or worse in
22 the days following?

23 A. Oh, it got worse. A lot worse.

24 Q. All right.

25 MR. CLEVELAND: All right. I'm going to

1 publish what's Exhibit Number 3.

2 Q. Is that the same photograph at the same time?

3 A. Yes, sir.

4 Q. I know it's kind of blurred out and the jury will
5 have this back in the room. Are there any other injuries
6 on this photograph that you maybe can't see as well that
7 you noticed on the day of the incident?

8 A. Yes, sir. I noticed on his forehead, it's got a
9 tennis shoe print on it.

10 Q. What you interpret it to be one. You can show the
11 jury what you're talking about from right there if you'd
12 like.

13 A. Like on the forehead up here, where he stomped him,
14 right in here.

15 Q. All right. Thank you, ma'am. And lastly, Exhibit
16 4. What is that item your husband's holding up?

17 A. That's a man's T-shirt, like a tank top T-shirt.

18 Q. All right. What condition was that shirt in before
19 this altercation?

20 A. There was no tears on him, no blood, no stains.
21 It's just a regular old man's tank top, you know.

22 Q. That wasn't an old worn out yard shirt or anything
23 like that?

24 A. No.

25 Q. So it did not look like that when your husband left

1 the house. Is that your testimony?

2 A. No, it did not.

3 Q. And, to your observation, was all of that as a
4 result of this alteration that he got into?

5 A. Yes.

6 Q. Now, did your husband receive medical treatment for
7 these injuries?

8 A. Yes, he did.

9 Q. When did he receive treatment?

10 A. After the police took our statements we went to --
11 our son and daughter-in-law drove us to St. Francis in
12 Greenville.

13 Q. All right.

14 A. In the emergency room.

15 Q. All right. And was your husband admitted in the
16 hospital?

17 A. Yes, sir, he was.

18 Q. How long did he stay?

19 A. Twenty-four hours.

20 Q. Okay. Did y'all ascertain what injuries he suffered
21 at that point in time?

22 A. What does that mean, ascertain?

23 MR. CANTRELL: Your Honor, I would object. Her
24 statement as to the description of the injuries
25 ascertained at that point in time would be hearsay.

1 MR. CLEVELAND: That's fine.

2 THE COURT: Sustain the objection.

3 MR. CLEVELAND: We'll cover that later, Ms.
4 Guthrie.

5 Q. I want to take a minute -- and did you care for him?

6 A. Yes, sir, I did.

7 Q. Tell me about some of the -- I guess about his
8 recover after this incident, physically?

9 A. Physically recovery. Well, he had to go to a oral
10 surgeon and stuff. And he wears dentures. And because
11 he didn't have any like his real permanent teeth, they
12 couldn't wire his jaw shut, you know. But he had to eat
13 soup, liquids for days, for weeks. And he had to see the
14 oral surgeon in Anderson several times. And then the
15 emergency room doctor seen him. And then he's had help
16 through the V.A., you know. They kind of followed up on
17 treatment and stuff.

18 Q. All right. Was there any side effects or anything
19 that stands out in your mind as far as resulting from
20 these injuries that you had to care for him on?

21 A. Well, yes, sir, when he was at home, the first
22 couple of nights he was at home, he had to sleep elevated
23 up, you know, because of the head trauma. And he was
24 just like passing like -- it looked like he was
25 hemorrhaging. It was just a bunch of blood clots and

1 stuff, where it was just -- it wasn't like he was blowing
2 his nose and it was coming out, it was just pouring out
3 of his nose. And some was draining down his throat and
4 would gag him. And it was hard for him to sleep, you
5 know, get comfortable. And a matter of fact, he couldn't
6 hardly sleep the first couple of days this happened, you
7 know, just from the trauma of it.

8 Q. Did y'all move away after this incident?

9 A. Yes, we did.

10 Q. Why did y'all move away?

11 A. Well, we didn't know the Defendant lived in the
12 neighborhood, you know. But there's no way we can live
13 there close to where the Defendant's going to be living,
14 you know, with his dad or whatever, because we just don't
15 want to be around him, you know, don't want him coming
16 causing no trouble, don't want him around us, you know.

17 Q. In a nutshell, is this incident why y'all moved?

18 A. Yes.

19 Q. All right. I want to go into -- now, I want to
20 change gears a little bit and I just want to talk about
21 your husband specifically. How long have you known your
22 husband?

23 A. How long have I known him? Since I was fourteen
24 I've know of him since I was fourteen, him and his
25 children.

1 Q. And how long have y'all been married?

2 A. Twenty-six years.

3 Q. Does your husband suffer from any disabilities?

4 A. Yes, he does.

5 Q. What are those disabilities?

6 A. He was diagnosed with PTSD in 2010 through the VA.

7 Q. What was the cause of that diagnosis?

8 A. It's combat related. It's where he was in combat in
9 Vietnam and he witnessed a lot of things. He was a radio
10 operator. So, naturally, he was in a lot of hot zones
11 and stuff like that and seen a lot of horrific things.

12 Q. Does he have any other physical disabilities that
13 you're aware of?

14 A. His legs, he has a little trouble in his motor
15 skills and stuff. In his legs, they sting like needles
16 sticks him a lot and stuff. And the VA said it's, you
17 know, like neuropathy, peripheral neuropathy or something
18 like that. But he's not supposed to walk like long
19 periods of time or like two hundred or two hundred and
20 fifty yards, something like that at a time. Because, you
21 know, it hurts. His legs hurt.

22 Q. How old is he?

23 A. He's sixty today.

24 Q. How old was he at the time of this incident?

25 A. Fifty-nine.

1 Q. All right. And you said he was diagnosed in 2010
2 with post traumatic stress disorder?

3 A. Yes.

4 Q. Does that disability or that diagnosis, does it
5 affect y'all's daily lives?

6 A. Yes, sir.

7 Q. Has he received and have you had to work with him on
8 treatment combating that disorder?

9 A. Yes, sir.

10 Q. What types of treatment are you involved with with
11 him and has he made any progress since that diagnosis?

12 A. Well, when he goes to mental health at the VA, his
13 psychiatrist allows me to go in with him, because he says
14 he feels safe and comfortable when I'm with him. Because
15 sometime when they'll come across with like, you know, a
16 lot of their language, big words and stuff, you know.
17 Some things I don't know what they say. They have to
18 explain to me, but some things I do understand what
19 they're saying when he don't, and I can turn around and
20 kind of break it down for him and he can understand
21 better.

22 Q. Okay. What types of, I guess, problems does he have
23 as a result of his PTSD?

24 A. He doesn't like crowds very much. You know, he's
25 pretty much withdrawn. You know, he doesn't -- he's a

1 nice person, but like he's not a -- I guess you'd say
2 like go out and socialize a lot with people. He likes to
3 stay home because he feels safe. That is part of the
4 PTSD, you know. The main thing is you want to feel safe.
5 And so he feels safe at home in our yard and at our
6 children's and that's pretty much it. That's why we
7 don't go places, go out and eat in big restaurants. You
8 know, on payday, you know, when we go get groceries,
9 he'll go with me to the grocery store, but I've got my
10 list and I get it pretty quick and get out of there, you
11 know, because he doesn't want me to be out by myself, you
12 know. But yet, bless his heart, he, you know, hangs in
13 there with me until I do my groceries and, you know. And
14 so he has his projects at home, working on an old car and
15 we have some chickens and a goat, our animals. And when
16 we have a garden, he helps, we both do the garden and
17 stuff. But he just occupies at home, you know. That way
18 he doesn't have to, you know, deal with a lot of people
19 or be in big crowds, thinks like that. And that's all
20 part of the PTSD.

21 Q. Since his diagnosis, has he gotten better about
22 these symptoms, being in crowds, being around people,
23 being -- having anxiety like that?

24 A. Yes, he did; before August 25th he did.

25 Q. All right. And kind of describe a few of those

1 changes and improvements, I guess, that he had made?

2 A. Okay. Since he'd been going to the VA and, you
3 know, getting treatment, medication and stuff, that's
4 helped him. You know, we could go in like Wendy's. Now,
5 we couldn't go like right at twelve o'clock or one when
6 it's really busy, kind of like at dinnertime thing or
7 lunchtime. But when the crowds is kind of weeded out and
8 whatever, you know, every now and then we would go into
9 like Wendy's or Burger King and have a hamburger. We
10 actually got to go to the jockey lot a couple of times,
11 with our children with us, you know. And that was a big
12 thing, which a lot of people don't -- may not think of it
13 -- that it is, but it is.

14 Q. Is that something y'all could do prior to 2010, any
15 of this treatment or that you ever did?

16 A. No, sir, we couldn't. Couldn't do that.

17 Q. All right. Is this something that he'd been
18 battling for a long time, had just gone undiagnosed on
19 understanding or it something that developed later in
20 life?

21 A. No, this was -- when he came out of Vietnam in '71,
22 you know, he's had it ever since. When he came out of
23 combat, he done his duty in Vietnam, when he came out of
24 combat it's been from then until now.

25 Q. All right. But is it your testimony, he has

1 improved with counseling since he was diagnosed?

2 A. Yes. Oh, yeah. Yeah.

3 Q. All right. Did this incident impact his progress
4 based on your observations of what he could do and how he
5 handled things in daily life?

6 A. Yes, sir. A very big difference.

7 Q. Could you please describe for the jury some things
8 you have noticed as a result, immediately after this
9 incident, changes in your husband?

10 A. Okay. Well, part of PTSD, like I say, you know,
11 they want to feel safe because if they don't feel safe,
12 they feel threatened, you know. He got to where, like I
13 say, we could go to Wendy's or Burger King, you know, a
14 little fast food place and actually go in and not just
15 like go through the drive-thru. I forgot what I was
16 saying. I'm sorry.

17 Q. Changes in your husband since this incident?

18 A. Changes. I'm sorry.

19 Q. Yes, ma'am.

20 A. But after all this on August, he got to where --
21 before he got to where he was, you know, he didn't have
22 his guard up as much, you know. But after this, now, he
23 totally, he's got his guard back up. He doesn't trust
24 people too much. He still keeps his distance now. We
25 don't ever really get to go to the jockey lot or do

1 things, outings. Or like go to Fatz or something like
2 that. When our grandkids have birthdays, you know, we
3 can't actually get out and go and do things like that.
4 If we have any fellowship with our kids, it's at their
5 house, you know. But since this, he's pretty much home
6 and that's it. And like I say, when we go to the grocery
7 store when we get paid, we'll do that, you know. But
8 it's like right back to the house. He has gone to church
9 with me a couple of times, but he got to where he was
10 going pretty good there for a little while. He just
11 doesn't feel safe. His guard went back up. And, you
12 know, we don't have a whole, whole lot of fun time with
13 our kids like we did when we first, you know, moved back
14 from Colorado after he got his help. And we were having
15 good times, you know, with the kids and grandkids and
16 stuff. But, you know, now it's different. He's very
17 withdrawn, you know.

18 Q. What does he do when he feels unsafe? What kind of
19 behavior does he start to exhibit?

20 A. Sometimes he's real quiet, very quiet, you know.
21 Now, around the house he's talkative to me and he's very
22 talkative to our kids, you know, but he ---

23 Q. Specifically, when he starts to feel unsafe?

24 A. If he starts to feel unsafe, he can't -- you know,
25 anxieties can come on. Like if -- it's kind of hard to

1 describe. I'm sorry.

2 Q. That's okay. Just the best you can?

3 A. When he doesn't feel safe, his guard goes up and he
4 goes into that survival mode like he did when he was in
5 combat, you know. You don't trust nobody. You're on
6 guard 24/7, you know. You're not at ease much to where
7 you can relax and actually enjoy life, you know. But
8 it's made a big difference, you know.

9 Q. Does he know what situations are going to make him
10 unsafe, based on your observation, and keep out of them?

11 MR. CANTRELL: Objection, Your Honor. She
12 can't know what he knows about a situation.

13 THE COURT: I sustain the objection as the
14 question is asked.

15 Q. Does he tell you -- has he told you in the past that
16 I'm not going to feel good going there and I'm not doing
17 that?

18 A. Yes.

19 Q. So does he often tell you when he chooses not to go
20 do something, and that's just the way it is?

21 A. Yes, sir. And I had even asked him, you know, since
22 I had started learning about PTSD, you know, Honey, if
23 I'm like let's go to K-Mart, for example, if you don't
24 feel like you can handle it or whatever, tell me. Just
25 tell me. And I'm fine with it. And that way we have

1 that open communication, you know, because I don't want
2 to put him anywhere he doesn't feel comfortable and safe.

3 Q. Very good. Just one final question at this time,
4 going back to the day in question, after what you
5 observed going on and the person on your children's
6 property, were you concerned for their safety?

7 A. Yes, sir, I was. That's the big reason I told my
8 husband, you know. That's our daughter. That's our baby
9 daughter and two granddaughters at home alone. And
10 somebody keeps going through your yard repeatedly, yeah,
11 you know, we were scared for them.

12 Q. Thank you, Ms. Guthrie. I don't have any more
13 questions for you right now. Please answer any questions
14 Mr. Cantrell has.

15 THE COURT: You may cross-examine the witness,
16 Mr. Cantrell.

17 MR. CANTRELL: Thank you, Your Honor.

18 **CROSS-EXAMINATION**

19 **BY MR. CANTRELL:**

20 Q. Ms. Guthrie, let me just start there. You indicated
21 that you had told your husband if you don't feel
22 comfortable or secure going to Walmart or K-Mart, just
23 tell me and we won't go; is that correct?

24 A. Yes, sir.

25 Q. Or to a restaurant or a family outing. If you don't

1 feel comfortable -- go ahead.

2 A. Thank you.

3 Q. If you don't feel comfortable doing that, then we
4 just won't go. You try to -- you have concerns about him
5 being comfortable or feeling comfort in what you are
6 doing; is that correct?

7 A. Yeah. I want him to be comfortable in his life, not
8 feel scared.

9 Q. You don't want him to feel scared, fright, agitated
10 or anything like that?

11 A. Right. Yes, sir.

12 Q. Then what I don't understand is you've just said
13 that you were concerned for the safety of your daughter
14 and grandchildren. You see a stranger, you're terribly
15 concerned. You don't know what's going on or why this
16 person is walking around that area. So you let your
17 husband go into that situation to tell this person to get
18 off your children's property. Why did you not say or why
19 did you not ask him if he was comfortable doing something
20 like that, when you would ask him if he wanted to go to
21 Walmart or not?

22 A. Because when our children's life is on the line, I
23 think it's important that if he wants to have the right,
24 you know, to protect his children, he's got that right.
25 And so do I.

1 Q. I understand that he would have that right. But
2 would you choose to put him in that position?

3 A. In what position?

4 Q. To go and confront what you believe to be a stranger
5 on their property?

6 A. I didn't put him in that position.

7 Q. You allowed him to go, did you not?

8 A. He's a grown man. He went on his own.

9 Q. Without you having yet called 9-1-1; correct?

10 A. Right.

11 Q. Tell me about your husband's symptoms prior to 2010,
12 prior his diagnosis? What sort of problems were there?

13 A. Well, like I say, you know, just couldn't be around
14 a lot of people, you know. We didn't get to, you know,
15 like I say, you always go out and do a lot of things, you
16 know. Our big thing was like we would go to church but
17 ...

18 Q. You would acknowledge, would you not, that one of
19 the symptoms of PTSD related to combat is a feeling of
20 being on guard. In fact, you used those words yourself?

21 A. Yes, sir.

22 Q. You're on guard. And if you feel threatened or
23 things are not as you would like them to be, then you're
24 going to react as if you were on guard. In fact, you
25 said a minute ago you would react as if you were in a

1 combat situation; did you not?

2 A. Yes.

3 Q. And that is one of the symptoms or issues with PTSD?

4 A. Yes.

5 Q. One of the symptoms or problems with PTSD is anger;
6 is it not?

7 A. Yes, it is.

8 Q. You saw that in your husband?

9 A. Yeah. When he kept taking his time and being polite
10 to explain to the Defendant, you know, or one of our kids
11 wasn't even at home, and that he was on our kids'
12 properties and stuff when he was trying to explain.

13 Q. So you saw your husband get angry?

14 A. No. I heard him raise his voice at Mr. Nix.

15 Q. Okay. In fact, at the time you said you heard your
16 husband raise his voice, you also said you could not hear
17 Mr. Nix's voice. So Mr. Nix had not raised his voice;
18 correct?

19 A. Right. Yeah.

20 Q. Okay. But I'm also talking about other situations
21 prior to or even after the diagnosis. Anger was an
22 element of that situation, too; was it not?

23 A. Sure.

24 Q. So that anger could arise at anytime?

25 A. If he was provoked, sure. Sure.

1 Q. Or if he perceived himself to be provoked?

2 A. Yeah. I've seen my husband being provoked, yes.

3 Q. Okay. Now, I was a little confused. How many times
4 did you say you saw Mr. Nix walking in that area?

5 A. Twice. It was his actual second time on the
6 property is when I seen him the first time.

7 Q. Okay. How did you know that that was his second
8 time on the property?

9 A. Because when I had seen him and I called my
10 daughter, you know, to ask her was her -- our son-in-law
11 home or not, that there was a guy on her property. She
12 goes, I know, mom. That's the second time he's been on
13 property. That's the second he's come on our property.

14 Q. And at that point, how many times had your husband
15 seen him?

16 A. He seen him two.

17 Q. Did he see him all of the same times you did?

18 A. We're not standing side-by-side seeing him at the
19 same time. But I seen Nix through the front door when I
20 called my daughter. And then -- that was his second time
21 on the property. And then the third time when he came
22 back up, that's the second time me and my husband both
23 seen him.

24 Q. But the first time and even the starting of the
25 second time, you did not tell your husband you had seen

1 him, I believe you said; is that right?

2 A. The first time I seen him, I did tell my husband.

3 Q. You did, the very first time?

4 A. Yes, the very first time I did. I told my husband,
5 yes.

6 Q. All right. Now, if you will, go back and\show me
7 the first where you believe you saw Mr. Nix?

8 A. He was coming from this area right here, to the
9 street here.

10 Q. And did he go out onto the street?

11 A. Yes.

12 Q. And when he got onto the street, what direction did
13 he go?

14 A. Down this way.

15 Q. And was he confronted by anyone at that time?

16 A. No.

17 Q. Okay. And did you lose sight of him?

18 A. Yeah.

19 Q. Is that the time you and your husband got in your
20 car and followed him?

21 A. No. I really don't understand what you're saying.
22 When he started walking down the road here, that was the
23 first time me and my husband seen him ---

24 Q. Right.

25 A. --- which was actually his second time on the

1 property.

2 Q. All right. But the first you had seen him?

3 A. The first time I had seen him and then when he was
4 walking down through there and I told my husband, well,
5 Nix was about to right here then. And so when my husband
6 seen him, you know, like I say, that was both of our
7 first and second times of seeing him, which was actually
8 his second and third time of being on the property.

9 Q. Okay. Now, let me go back to my question. The
10 first time you saw him and he walked down Mauldin Lake
11 Road, ---

12 A. Yes, sir.

13 Q. --- did you and your husband follow him or not?

14 A. We didn't follow him.

15 Q. Okay.

16 A. He was way -- as a matter of fact, he done left this
17 road here, crossed over 178 and was going up by a bar
18 there.

19 Q. So you could see him all the way down that far from
20 your home?

21 A. No, sir. Whenever we got in the car and come down
22 this way, we just wanted to make sure he wasn't, like I
23 say, cutting up through here or down there at the lake.
24 We come through this way and when we had went by him --
25 like I say, we didn't know where we lived. But when we

1 went by and we turned around -- went down the road and
2 turned around and came back up. And when we came up, we
3 didn't see him nowhere. We didn't know where he was at.
4 Q. Okay. Now, I'm sorry and I'm confused and it's my
5 fault. Was that the first time you and your husband
6 actually saw him or was that on the second time you saw
7 him?

8 A. That was the first time we actually saw him.

9 Q. Okay. So the very first time you actually saw him,
10 you and your husband got the car and went down the road
11 to follow him?

12 A. Yeah.

13 Q. Okay. Tell me where he was the second time you saw
14 him?

15 A. Okay. Now, the second time we both were in our
16 house right here. We were in our house and he come
17 walking up right through here an d cut through their
18 yard. He come off the road and cut through the yard
19 coming up through there. And that's when we both seen
20 him, but it was his actual third time.

21 Q. All right. And where did he go that time?

22 A. He went from here straight up -- well, he kind of
23 went up this way, cut across up through there. But when
24 he seen my husband coming up through here, he ran to get
25 to the road right there.

1 Q. Get to what road?

2 A. The driveway right here.

3 Q. Okay. Can I ask you why you didn't tell Mr.

4 Cleveland that he ran? Because you did not say that a
5 while ago.

6 A. I'm sorry.

7 Q. And he went up to that road there, that gravel road?

8 A. Yes, sir. There's a gravel road there, yes.

9 Q. Okay. So the second time y'all actually saw him,
10 your husband drove down that gravel road and confronted
11 him?

12 A. Yes, sir. But Nix had done got all the way up here.
13 And my husband crossed the road, drove the car -- stopped
14 the car right here in the grass. He didn't even get out
15 of the car to start with. He was just telling him, you
16 know, this is our children's property, they bought this
17 place and this other place, you know, they're at work.
18 He was asking him to leave off their property.

19 Q. Now, at that point in time, Mr. Nix was in the
20 gravel road; right?

21 A. Yes, sir, he was up there at the road.

22 Q. Pardon me?

23 A. Yes, sir. He was up there at the road.

24 Q. And after whatever discussions they may have had,
25 Mr. Nix walked up the gravel road to

1 A. Yes.

2 Q. Now, I don't know if you can see this or not. If
3 you need to come up here, that's fine. But right here,
4 right here's the gravel road; right?

5 A. Yes, sir.

6 Q. And do you see that yellow line on this lower side
7 of that gravel road?

8 A. Well, if I got up there a little closer I could
9 probably see it.

10 Q. You can come up and look if you'd like. You see the
11 yellow line on the lower part of the road?

12 A. Yes, sir.

13 Q. Of the gravel road?

14 THE COURT: Ma'am, if you're going to be
15 answering his questions, you're going to have to speak
16 very loudly.

17 THE WITNESS: Okay. I'm sorry.

18 THE COURT: The court reporter has to hear you.
19 You've got your back to the jury. They need to hear you
20 as well. So just be sure you project your voice, okay?

21 THE WITNESS: Yes, sir.

22 A. Which yellow line are you talking about? Will you
23 show me so I know what we're talking about.

24 Q. Okay. This is the gravel road; correct?

25 A. Yes, sir.

1 Q. And you see this yellow line below it?

2 A. Yes, sir.

3 Q. Do you see the yellow line above it?

4 A. Yes, sir.

5 Q. Do you see those yellow lines going down to that
6 house there? The big house down there that I believe you
7 identified as the Bray house?

8 A. Yes, sir.

9 Q. So those yellow lines go down to that house and then
10 extend to Ms. Bray's property; is that what that's
11 showing?

12 A. Yes, sir.

13 Q. All right. That's all on that.

14 A. (Returns to witness stand.)

15 Q. With the court's permission, I'm going to hand you
16 this and ask if you can look at this tax assessor's map
17 and tell me if you recognize that this is where you were
18 living, and then the road, and then Ms. Bray's property
19 on there. Do you recognize it as being the same property
20 or same lines?

21 A. Yes, sir.

22 Q. Okay. Let me ask you very quickly, have you or your
23 son or your daughter or your husband put the gravel on
24 that road or graded it or done any work to that road?

25 A. No, sir.

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1 MR. CLEVELAND: Judge, I'm going to object. No
2 foundation. That piece of evidence hasn't been entered
3 yet.

4 THE COURT: Well, I'm gathering he is not
5 entering it.

6 MR. CANTRELL: It is marked. Let me -- I'm
7 sorry. I apologize. Let me show it to the Solicitor.

8 MR. CLEVELAND: May we approach just briefly,
9 Your Honor.

10 THE COURT: Yes, sir.

11 (WHEREUPON, Mr. Cleveland and Mr. Cantrell
12 approached the bar.)

13 Q. Ms. Guthrie, my question about this is, this
14 driveway that goes to Ms. Bray's house, the gravel
15 driveway, you, your daughter nor your son either one own
16 that driveway; do you?

17 A. I don't know.

18 Q. You have no idea?

19 A. I don't know the business of their properties, like
20 what's what, you know. I don't know.

21 Q. You know that nobody in your family has ever
22 maintained or worked on that road; correct?

23 A. Correct.

24 Q. You know that the road is used by Ms. Bray and I
25 think some other ---

- 1 A. Yes.
- 2 Q. --- houses back behind there to go in and out?
- 3 A. No, just Ms. Bray, as far as I know.
- 4 Q. Are there other structures beyond Ms. Bray's house?
- 5 A. Back over behind her property there is, yes, sir.
- 6 Q. Do people live there?
- 7 A. Yes, sir. I'm sure.
- 8 Q. Do they use that same driveway?
- 9 A. No, sir. Just Ms. Bray and our son and daughter-in-
- 10 law use that drive to come off Mauldin Lake to go up that
- 11 way.
- 12 Q. But your son and daughter-in-law have never
- 13 maintained or created that driveway or anything?
- 14 A. No, sir, it was -- everything was done when they
- 15 bought the place. So, like I say, I don't know all the
- 16 details in their package that they bought, you know.
- 17 Q. About the time your husband went down to confront
- 18 Mr. Nix, he was in the gravel driveway. And if I
- 19 understood you correctly, he walked up the gravel
- 20 driveway to the public road known as
- 21 correct?
- 22 A. Yes.
- 23 Q. Now, somewhere along the way there, you lost sight
- 24 of your husband, I believe. Did you say that?
- 25 A. Yes.

1 Q. When you later saw him, was he coming up the
2 driveway?

3 A. No. He came down like through this way right here
4 in the car.

5 Q. He came through the yard instead of the driveway?

6 A. It's kind of rutted. It's got some ruts and stuff
7 right through there in it. And the car sits really low.

8 Q. Okay. Now, is it common for you or your husband,
9 even your son, to go through the yard instead of up that
10 driveway?

11 A. No, sir.

12 Q. But your husband did that day?

13 A. Yes, sir.

14 Q. Is it common for him to do that?

15 A. Well, sometimes we have -- the family does kind of
16 cut through like from where my daughter's is, sometimes
17 we'll drive through this way to go up to our son's. Yes,
18 sir, we do do that sometimes.

19 Q. All right. But my question is, from your son's
20 home, is it common for your husband to take off down
21 through the yard instead of down that gravel driveway or
22 does he usually take the driveway?

23 A. He usually takes the driveway, yes.

24 Q. Do you have any idea why he would have taken the
25 yard instead of the driveway that day?

- 1 A. I have no idea, sir.
- 2 Q. And he drove down. Where did he stop and get out of
3 his car at that point?
- 4 A. He stopped the car like right in here.
- 5 Q. Where the trees are?
- 6 A. No, sir, there's no trees right in there.
- 7 Q. What is that, that dark? Is that just grass?
- 8 A. I don't know. But he didn't park where there was
9 trees.
- 10 Q. Okay.
- 11 A. I mean, you know, you can see like a clearing.
- 12 Q. Okay. So he parked in the yard?
- 13 A. Yes, sir.
- 14 Q. Okay. And where -- when he parked and got out of
15 his vehicle, where was Mr. Nix?
- 16 A. The Defendant was standing right there, somewhere
17 right in there.
- 18 Q. He was standing on
- 19 A. On our side, yes, sir. But he was standing on the
20 edge of the road like on this grassy side right here. He
21 was standing right in there.
- 22 Q. Okay. And is a public two-lane
23 road; correct?
- 24 A. Yes, sir.
- 25 Q. Let me show you this and ask you if you recognize

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1 that, please, ma'am?

2 A. Yes, I do.

3 Q. You have to say it out loud?

4 A. Yes, I do, sir.

5 Q. Okay. That's is it not?

6 A. Yes, it is.

7 Q. This is the driveway where you used to live; is that
8 correct?

9 A. Yes, it is.

10 Q. And it is facing down towards your daughter's house?

11 A. Yes.

12 MR. CANTRELL: Your Honor, this has been marked
13 and I believe without objection we would request that be
14 admitted as Defendant's Exhibit 2.

15 THE COURT: Without objection, Exhibit Number 2
16 of the Defense is admitted and may be published to the
17 jury.

18 (WHEREUPON, Defendant Exhibit Number 2 was admitted
19 into evidence.)

20 Q. Ms. Guthrie, this is your driveway at the time;
21 correct?

22 A. Yes. It makes a semi-circle through there.

23 Q. And the driveway we're talking about, the gravel
24 driveway that goes to Ms. Bray's house, is down here; is
25 that correct?

1 A. Yes, sir.

2 Q. And you're saying that Mr. Nix was over here on this
3 side of

4 A. Yes, sir.

5 Q. Because this road is correct?

6 A. Yeah, correct.

7 Q. And your husband came down -- it looks there are
8 tree there now. I don't know if they weren't there then.
9 But he parked somewhere in the grass near the end of the
10 gravel driveway?

11 A. Yes.

12 Q. Does that mean he walked across to
13 get to where Mr. Nix was?

14 A. Yes, sir.

15 Q. Now, was Mr. Nix standing there, was he walking, was
16 he moving, what was he doing when your husband walked up
17 to him?

18 A. Well, first of all, he was kind of like standing
19 still when my husband was walking up to him. And, you
20 know, he's asking him, you know, you going to leave, you
21 know? Why don't you go on?

22 Q. Okay. Now, let me ask you at that point, Mr. Nix
23 was in a public road, moving, going away from where your
24 husband first confronted him. Where did you believe Mr.
25 Nix was supposed to be going at that point in time?

1 Where did you want him to go?

2 A. I just wanted him to leave our area. I didn't know
3 where he lived so I didn't, you know, I didn't know if he
4 was going home or what, but I just wanted him to go on.

5 Q. So you wanted him out of the area?

6 A. Out of our children's yard.

7 Q. Well, he was out of the yard. So at this point you
8 wanted him just gone; is that it?

9 A. Yes, sir, if he would just go on. But he wouldn't
10 go. He kept wanting to confront.

11 Q. Now, okay, let me ask you this. What if he had
12 said, no, Mr. Guthrie, I want you gone. Get out of this
13 road. Did he have a right to do that?

14 MR. CLEVELAND: I object, Judge. It calls for
15 speculation.

16 THE COURT: I'll allow the question.
17 Overruled.

18 Q. Would Mr. Nix have had the right to say, no, sir,
19 you get out of this road?

20 A. Yes, sir. But it wasn't about the road. You know,
21 when he asked him to get out of our children's property
22 that's what he was asking him to do, you know. And then
23 when he come down there next to our place, he asked him
24 again, you know, will you go on or what's your problem?

25 Q. But, again, tell the jury. He was in the road at

1 that time. He was not on yours nor your children's
2 property when your husband told him to get along;
3 correct?

4 MR. CLEVELAND: Object. That's not the form of
5 the question.

6 THE COURT: Well, rephrase your question, Mr.
7 Cantrell?

8 Q. Is that what your husband did, was tell him to get
9 away while he was in the road?

10 A. While they was in -- down here?

11 Q. I'll withdraw that question.

12 A. Yes, sir.

13 Q. Now, you never saw the beginning of the fight; did
14 you? You just heard, is your testimony, you just heard
15 the fight going on?

16 A. Yes, sir.

17 Q. You could not see this gentleman. You could not see
18 that gentleman. All you did was hear noise going on;
19 correct?

20 A. Correct. Correct.

21 Q. And the next thing you know, if I understood your
22 testimony correctly, is they're coming out of the woods,
23 which would be on our right-hand side of the road there
24 and both of them are flailing their hands and arms; is
25 that correct?

1 A. Yes, coming out -- while they're still in the woods
2 like, in the trees there on the edge of the road, they're
3 both doing their arms like that as they're coming out on
4 the road. I could see that, yes.

5 Q. Okay. And that's all of the fight you saw, was them
6 coming out of the woods, both of them standing up, both
7 of them flailing at each other?

8 A. Yes.

9 Q. That is all you saw?

10 A. That is all I saw.

11 Q. Your husband came out and you could tell he had been
12 in a fight, I believe you said?

13 A. Yes, sir.

14 Q. You gave him a cold compress for his eye?

15 A. Yes.

16 Q. And you did not call EMS?

17 A. I had done called the law. After we got in the
18 yard, I called the law then. Because the reason I waited
19 so -- you know, until then, because my daughter said she
20 was going to call the law when I first called her. And,
21 you know, we had talked and I was like, Diane, I don't
22 see them, you know, when they was up on the street. And
23 I couldn't see them. And I called her again, and I said,
24 well, Diane, I don't see them, you know. I'm going to go
25 up there, because I was concerned about my husband. And

1 I said, you think we need to call the law? She said, I'm
2 going to call them right now, mama. So that's why I
3 didn't call them right off the get-go ---

4 Q. Okay ---

5 A. --- until after ---

6 Q. Go ahead, I'm sorry.

7 A. --- until after me and my husband walked back in the
8 yard and I called the law then.

9 Q. Okay. Let me ask the question again, though. Why
10 did you not call EMS once you saw your husband's
11 injuries?

12 A. Because I was trying to get him back up in the yard.
13 I was trying to walk -- I walked down to where he was at.
14 When I seen it, I was trying to get him in the yard. And
15 I assumed my daughter had done called the law, you know,
16 after our conversation on the phone. So normally, you
17 know, you've got to wait until you talk with them before
18 you do anything, you know.

19 Q. So you think you have to wait to call the police
20 before you can call EMS or medical ---

21 A. No, I didn't say that.

22 Q. Okay. Now, so you get him in the yard. Mr. Nix, by
23 this time, is walking down the road, going back down
24 toward 178; right? Or he was getting away. He's
25 leaving?

1 A. After the fight, yeah, he's walking off hollering
2 and stuff, yes, sir.

3 Q. But there's no danger to get your husband home and
4 you're in your own home at that point; correct?

5 A. Yeah, we're in our yard.

6 Q. Why did you not call EMS at that time?

7 A. Because I just -- the shock of everything. Once I
8 see him and trying to get him away from -- make sure he's
9 away from Mr. Nix, you know, I can get him in the yard,
10 then I can call the ambulance and do everything else.
11 But I knew the law was supposed to be on their way. So I
12 hadn't never really dealt with a whole lot of this
13 before, you know, so I don't know procedures.

14 Q. Well, your first gut feeling when you saw your
15 husband apparently injured was not to call EMS, in other
16 words? That was not your first response?

17 A. No, sir, it wasn't. It was just getting him safe to
18 the house. That was my first thought.

19 Q. And, in fact, it was several hours later before you
20 took him to the hospital?

21 A. Yeah. The cops asked him did he want to go to the
22 emergency room or have EMS come out or something like
23 that. And he was like, well, we're going to the
24 emergency room because I think my jaw's broke.

25 Q. Do you know when you got to the emergency room or

1 how long it was before you went there?

2 A. No, sir. This was probably about three, maybe.

3 Three o'clock, three-thirty, something like that, I
4 guess, by the time we got to St. Francis. I don't know.

5 Q. So you believe you got to St. Francis at three
6 o'clock?

7 A. I'm guessing, sir. I have no idea. I don't know.

8 Q. Okay.

9 A. I just know it was about -- close to about one
10 thirty whenever all of this started happening, you know,
11 the fight and everything. So ...

12 Q. Now, let me ask you. You said a minute ago
13 something about you didn't know where Mr. Nix lived. If
14 you had known he lived within a quarter of a mile of
15 where you were living, would that have changed your
16 concern about this person you saw walking around?

17 A. Sure. If I had known of him and his past repeat
18 offending record that he has, sure I'd have been leery of
19 him.

20 MR. CANTRELL: Your Honor, I'm going to have to
21 object to that and ask be heard by the Court.

22 THE COURT: All right. Ladies and gentlemen,
23 we have a -- it's getting toward five o'clock. We have a
24 matter we need to take up right now. I'll ask you if you
25 would go back to your jury room. Don't discuss the case

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1 just yet. We'll call you back in just a short time.

2 Don't discuss the case while you're back in your jury
3 room.

4 (WHEREUPON, the jury exited the open court at
5 approximately 5:11 p.m.)

6 THE COURT: All right. Mr. Cantrell.

7 MR. CANTRELL: Your Honor, I would object to
8 the last question and the response, that the response
9 itself was unresponsive. The question was, had you known
10 this gentleman lived in your neighborhood. The response
11 was, had I known he had a prior record of repeat
12 offender. And that is, to say the least, unduly
13 prejudicial. It was unresponsive. And there are so many
14 different sayings, but you can't un-ring the bell once
15 it's rung. The jury's heard that. I have to presume
16 they're paying attention. They appear to be. I don't
17 believe that can be corrected. Based on that, Your
18 Honor, at this point, I would have to ask the Court to
19 declare a mistrial.

20 THE COURT: Solicitor, I'll be glad to hear
21 from you on that.

22 MR. CLEVELAND: Thank you, Your Honor. I would
23 like to, I guess, check the record. But I heard the
24 question as had you known about him. Not had -- I
25 understand there was some stuff about had he lived in the

1 neighborhood. I believe the question was had you known
2 about him. Not had you known who he was. Not had you
3 known Mr. Nix. Had you been acquainted with him. Just
4 had you known about him. And I feel like the answer at
5 that point in time was responsive and the door was kicked
6 open by the Defense. It was nothing done by the State in
7 that.

8 As Your Honor knows, granting a mistrial is such an
9 extreme measure that it should only be taken when the
10 incident is so grievous that the prejudicial effect
11 cannot be removed in any way. There was no allegations
12 in her statement -- in her responsive statement that had
13 I know he did this or did that or anything specific. It
14 was just a statement that the State believes was
15 responsive. And I think striking the testimony and
16 giving a curative instruction to the jury in this
17 instance would cause -- you know, like I said, I believe
18 the question was responsive -- would suffice. I agree
19 that it's not admissible at this stage. But I do not
20 believe that any conduct was so grievous as to warrant a
21 mistrial in this instance.

22 MR. CANTRELL: Your Honor, if I may respond
23 just very briefly.

24 THE COURT: Yes, sir.

25 MR. CANTRELL: I would like to correct Mr.

1 Cleveland, if I could. I do remember vividly saying,
2 live within a quarter of a mile of your home would that
3 have changed your opinion about this person walking
4 around? I was very specific as to geography, which was
5 the purpose of the question. I think that's the obvious
6 purpose of the question. I think the response was
7 unresponsive and severely prejudicial.

8 MR. CLEVELAND: And I guess, if I may, Judge,
9 my response was that could also be couched as had you
10 known this person who does have a prior criminal history
11 lives that close to you, would you have thought
12 different? It could be couched so much as would you have
13 acted more affirmatively upon seeing him and recognizing
14 who he was, towards the witness. Certainly, that is her
15 knowledge at this point in time of the Defendant. That
16 is, as things go, it's a small town in a small county,
17 it's a small neighborhood. You know, things get around.
18 Again, it is just the State's position while that
19 particular response was not unresponsive and that a
20 curative instruction and a striking of the testimony will
21 be sufficient in this instance.

22 THE COURT: Well, I tried to listen carefully
23 to the question and maybe you're right, Mr. Cleveland,
24 that it was couched in had you known about him. I took
25 the context to mean had you known about him being a

1 neighbor. I know that he said within a quarter of a
2 mile. Even if the question was phrased that way, had you
3 known about him, that he lived within a quarter of a
4 mile, I think that certainly the context of the question
5 would not be did you know about him, but did you know
6 that he was a neighbor of yours or he lived in the
7 neighborhood, would that have changed your mind? I think
8 that's a legitimate question for him to ask. If you had
9 known -- to me all of the testimony has been pretty much,
10 you know, here's a guy, we don't even know who he is and
11 he's crossing back and forth across our daughter's
12 property. Had she known him, good or bad, the question
13 that I thought posed was, would that have made a
14 difference?

15 MR. CLEVELAND: Well, I don't disagree with the
16 interpretation of the intent, what the question posed.
17 But I do disagree with is the pointedness of the
18 question. I believe it was vague to the point where, you
19 know, had you known he was a neighbor is a very simple
20 way to ask the question, to seek the answer, which Mr.
21 Cantrell has doing. I think the opening of the, had you
22 known this individual was around in your area, thus
23 generated the response, which was the true and honest
24 response of Ms. Guthrie in this case.

25 THE COURT: I'm so aware of how the rule is for

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1 a mistrial. We're to be very reluctant, and anything we
2 can do to correct that. I don't know how that can be
3 corrected, frankly. I mean, they heard that. They have
4 been attentive. They were listening. And the way she
5 phrased her response of prior incidents and known about
6 him, prior offender, really that leaves it open as to
7 whether he's been beating up on people or whether he's an
8 offender in some other way. I don't know how to cure it,
9 frankly. And I don't want to grant a mistrial in this
10 case. We've started and we've delayed, but I don't know
11 of any other recourse than to do that, frankly. That's
12 pretty damning, I think, as far as that statement coming
13 out. And the prejudicial effect, I don't believe a
14 curative instruction could cure that, frankly. So I hate
15 to do it, but I think the law requires me to grant the
16 motion for a mistrial. And I'm going to do that.

17 MR. CANTRELL: Thank you, Your Honor.

18 THE COURT: For scheduling purposes, I don't
19 know whether y'all want to get hold of anybody in the
20 Solicitor's office. We've got a jury calling in at six
21 o'clock. Do y'all want to start something tomorrow now?

22 MR. CLEVELAND: I would assume, if it's okay
23 with the Court and with the Defense, it was initially
24 docketed for tomorrow. Since the jurors have not called
25 back yet, it would not hurt -- it would be the State's

1 position that we pick a new jury and start the trial
2 again.

3 THE COURT: Well, if there's someone ready to
4 start a trial?

5 MR. CLEVELAND: No, it was -- Mr. Buckner's ---

6 THE COURT: And I don't know what Mr. Neely
7 might have said about that. We need to not hold Mr.
8 Welborn up. As soon as I dismiss the jury -- in fact
9 y'all might could even leave now to see if we can ---

10 MR. CLEVELAND: This trial has been one of the
11 higher priority.

12 THE COURT: I understand that.

13 MR. CLEVELAND: And it is higher than the one
14 that is being prepared for tomorrow. The one being
15 prepared for tomorrow is a trial that's a street
16 defendant.

17 THE COURT: But if you want to try it tomorrow,
18 then we've got to -- the jury's going to be calling back
19 tonight and say thank you very much. They're not coming
20 back. That's the message now for Mr. Neely.

21 MR. CLEVELAND: I know. That's what I would
22 suggest is if we ---

23 THE COURT: But we don't want to bring them in
24 if there's really not a trial.

25 MR. CLEVELAND: This would be the trial, Your

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1 Honor.

2 THE COURT: This would be?

3 MR. CLEVELAND: This would be the trial. The
4 State would like to begin this case again.

5 THE COURT: Oh, you're going to get a new jury
6 and start ---

7 MR. CLEVELAND: Get a new jury and start
8 tomorrow. It was on the docket for tomorrow. We had
9 originally ---

10 THE COURT: I follow what you're saying now.
11 We'll just have another panel come in without these,
12 perhaps even the ---

13 MR. CLEVELAND: And the trial downstairs pled,
14 so that panel -- the full panel is available, Your Honor.

15 THE COURT: That panel -- well, certainly we
16 would need to leave off the ones who had already been
17 excused when we were picking today.

18 MR. CANTRELL: Your Honor, if I can be heard on
19 that briefly.

20 THE COURT: Yes, sir.

21 MR. CANTRELL: Quite candidly, one of my first
22 concerns with that, obviously, I felt like I was prepared
23 today. I feel like I can be prepared tomorrow. But I
24 guess for lack of a better way of putting it, the witness
25 has had a free dry-run of her testimony, of the

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1 questions, of what's going to be asked. Now, she'll have
2 that at a later date also, but I will not have access to
3 a transcript of her testimony here today, which I think
4 would be tremendously important at a later trial. So I
5 feel like there would be a prejudice to us to start this
6 tomorrow. I'm ready. I'll admit that. But I believe
7 there will be a prejudice to us with this witness having
8 already been cross-examined and I won't have the
9 opportunity to use a transcript if there are
10 discrepancies. Now, I would intend to do that.

11 THE COURT: Well, I guess the State wouldn't
12 either, but ---

13 MR. CLEVELAND: The State wouldn't either.

14 THE COURT: Perhaps we can let our court
15 reporter, if we have to sputter tomorrow and you think
16 there's something that is impeachable, we can send the
17 jury out and let her play it back for you. And then if
18 it is, then you can impeach her with the ---

19 MR. CANTRELL: And that -- obviously, I'll
20 abide by the court's ruling. That is not as good as
21 having it in black and white in front of me. I wish I
22 could say my memory is that good.

23 THE COURT: Well, the black and white in front
24 of you, that might be three more months from now.

25 MR. CANTRELL: I certainly don't want to ---

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1 THE COURT: I know this is an old case to begin
2 with and your client needs to and the State needs to get
3 it resolved.

4 MR. CLEVELAND: And the State's desire, not
5 being overly eager, is mainly we have a doctor witness
6 who is scheduled for tomorrow. He extensively moved his
7 schedule around and even delaying him so much as to pick
8 a jury and get going, we'll probably take the testimony
9 out of order and take him first if we could get a factual
10 concession by the defense that the facts will be
11 foundation and presented, too, as to that. But that's my
12 main concern at this point in time.

13 THE COURT: I'll work with you, Mr. Cantrell.
14 If there's any major discrepancies from the witness
15 testifying, Ms. Hanks can -- I'm confident she'll be able
16 to retrieve that and play it back. We'll play it for the
17 jury if it's impeachable.

18 MR. CANTRELL: And I would ask the Court to
19 note that I do object. I prefer -- I would request that
20 this be continued to the next term or to a later term in
21 order to have that available.

22 THE COURT: I'm going to deny your motion since
23 we're only talking about less than twenty-four hours now.
24 We're talking about fifteen hours. I believe we'll be
25 able to do that. Certainly if you want to get here

1 earlier in the morning, Ms. Hanks accommodate you to let
2 you play it if you could be here by eight fifteen or so.

3 MR. CANTRELL: Sure.

4 THE COURT: She can play it for you if you
5 want. Both of you, I mean. She can play it for both of
6 you and you can listen to it if you want to. It's been
7 forty-five minutes of testimony. We broke at five.
8 Maybe an hour's worth of testimony. With her, it was
9 just over an hour so far.

10 MR. CANTRELL: I don't believe I -- I will be
11 glad to be here that early. I don't think it's
12 necessary. If we're going to trial tomorrow we can do as
13 you suggested and we'll object as we go along.

14 THE COURT: All right. We're going to have the
15 jury come back in at nine o'clock in the morning and
16 we'll be ready to, hopefully, with permission, there's no
17 need to call those jurors who have already been excused
18 from the trial of this case, so they will be left off of
19 whatever panel comes. I don't know whether you can --
20 that's right, everybody's gone, so we'll have to have
21 them all come. Maybe we can call those tonight and just
22 tell them to ignore the message, those four or five that
23 were excused. And we will certainly -- how many will
24 that leave us? We had thirty in here. Was it four or

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1 five excused? All right. I can dismiss the jury without
2 y'all or with y'all, whatever suits you?

3 MR. CANTRELL: I'm fine.

4 THE COURT: You can go ahead and all of you
5 leave.

6 MR. CANTRELL: Your Honor, it'll take me a few
7 minutes to pack up so I'm fine for a little while longer.
8 Thank you, though.

9 THE COURT: All right. Have the jury come in.

10 (WHEREUPON, the jury entered the open court at
11 approximately 5:20 p.m.)

12 THE COURT: Ladies and gentlemen, thank you
13 very much for your patience with us. You have factual
14 matters to determine. I have legal matters to determine.
15 And I've made a legal decision that we won't need your
16 services anymore in this case. I understand from the
17 docket that we have some matters we're going to need to
18 take care of tomorrow, but we've sputtered a little bit
19 with you today. You've been called and had to wait and
20 have lost most of your day, so the jurors are going to be
21 calling in tonight. You don't need to call. There will
22 be instructions for the jury as to when to come back
23 tomorrow. But I'm going to excuse you for the rest of
24 the week. I hope you've had an educational week as a
25 juror. I hope it's been an enjoyable week as best it can.

1 But rather than you having to come in with the pool
2 tomorrow, I'm going to excuse you for the rest of the
3 week. If you're not back at work, we'd love to have you
4 here. You can just come and show up and watch tomorrow
5 if you'd like with the matters that we have before us.
6 In both courtrooms, there'll be things going on. But you
7 are free for the week.

8 And I'm confident if you're ever sitting at one of
9 the tables either accused of a criminal offense or in a
10 civil action, that you'll want good jurors such as
11 yourself sitting in that box to make the factual
12 determination as to what happened in your case. So thank
13 you for your service this week. You may remember from
14 Monday that you'll be exempted for the next two years.
15 If you get called to this court, I hope you'll waive that
16 exemption and you'll feel compelled to serve as a juror.
17 You've been a good group to work with, those of you
18 who've been on the other trial. I appreciate your
19 service so much. You're free to go now. If you'll just
20 leave your badges with Mr. Schumacher there will be a --
21 if you need a statement for your employer, Mr. Welborn is
22 down in the clerk's office. You can stop by or if you
23 can come back by tomorrow, either way, I'm sure he'll --
24 if you'll just mention that to the bailiff they'll take
25 you down there. Some of the doors may be locked going

1 in, but if you'll just stay with one of the bailiffs
2 they'll get you down there to get your work excuse for
3 these days. If you can wait until tomorrow, that's fine
4 too, we'll have them for you then. They'll send you a
5 check in the mail whenever the county cuts those checks.
6 It's not nearly enough, but that's what is paid.

7 Thank you for service, ladies and gentlemen. You're
8 dismissed for the week. You can go with Mr. Schumacher.

9 (WHEREUPON, the jury exited the open court at
10 approximately 5:23 p.m.)

11 THE COURT: All right. We'll be at ease until
12 nine o'clock in the morning. Let's try to be ready.
13 It'll take the jury a little time to be scanned, but
14 let's try to be ready to hit the ground running at nine
15 o'clock. And, again, I'm sure Ms. Hanks will be
16 cooperative with you, whatever you might need as far as
17 listening to the testimony. All right. We'll see you at
18 nine o'clock in the morning.

19 MR. CANTRELL: Thank you, Your Honor.

20 MR. CLEVELAND: Thank you, Your Honor.

21 MR. BUCKNER: Thank you.

22

23 [END OF REQUESTED TRANSCRIPT OF RECORD]

24

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing
6 is a true, accurate, and complete transcript of record of
7 all the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Pickens County, South Carolina,
10 on the 27th day of February, 2013.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 June 15, 2013

16

17

18

19

A handwritten signature in cursive script, reading "Susan Danette Hanks", written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 RUSSELL EDWARD NIX,)
)
 DEFENDANT.)
 _____)

2012-GS-39-02627

February 28, 2013

TRANSCRIPT OF RECORD

B E F O R E

THE HONORABLE G EDWARD WELMAKER, JUDGE

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

BAKER CLEVELAND, ESQUIRE
GRAHAM BUCKNER, ESQUIRE
ATTORNEYS FOR THE STATE

DAVID CANTRELL, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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57	Hawkins, John H	W	M				x
117	Ragsdale, Edmond M	W	M				x
87	Martin, Amy W	W	F			x	
4	Aldrich, Roxie S	W	F				x
25	Cole, Wayne D	W	M		x		
95	Miller, Charles K	W	M		x		
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58	Henderson, Heather N	W	F				x
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6	Anthony, William C, Jr	W	M			x	
22	Carter, Earl H, Jr	W	M				x
62	Holcombe, Elaine C	W	F				x
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1 **February 28, 2013**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 (WHEREUPON, State Exhibit Numbers 1-5 were marked
5 for identification.)

6 (WHEREUPON, Defendant Exhibit Numbers 1-7 were
7 marked for identification.)

8 (WHEREUPON, the jury panel entered the open court at
9 approximately 9:23 A.M.)

10 THE COURT: Good morning, ladies and gentlemen,
11 we need to select a jury for the trial of the case. Many
12 of you have been through this process before. Please
13 understand that I'm not totally forgetful. I know some
14 of you have stood up on these questions before. But
15 obviously, we need to perfect a record on every case that
16 we have and Ms. Hanks is going to get the information
17 down on each particular case. This is a case that was on
18 our roster for today. I tried to get it started
19 yesterday and it didn't work out. So we're going to need
20 to start anew today. This is a case brought by the State
21 of South Carolina against Mr. Russell Edward Nix. The
22 indictment states that Mr. Nix did, on or about the 25th
23 of August, 2011, unlawfully do injury to Naaman Earle
24 Guthrie, such that the victim suffered great bodily
25 injury or the act was accomplished by means likely to

1 produce death or great bodily injury, constituting the
2 charge of assault and battery of a high and aggravated
3 nature.

4 Mr. Nix has entered a plea of not guilty to this
5 charge. That places the burden on the State of South
6 Carolina to prove his guilt beyond a reasonable doubt.
7 Since he, as other individuals who are charged with any
8 offense, they're presumed innocent, so is he. I'm going
9 to judge the law in this case, determine what the law is
10 and the applicable law. We need to find twelve fair and
11 impartial jurors to be judges of the facts in the case.

12 Does any member of the jury panel have any prior
13 knowledge about this particular alleged incident that
14 occurred on or about August 25, 2011? If you have any
15 prior knowledge from any source whatsoever, would you
16 please stand? Yes, sir, you know about this?

17 THE JUROR: Just from coffee shop talk after
18 ---

19 THE COURT: Okay. Well, how long ago did you
20 -- how long ago that you heard some information about it?

21 THE JUROR: Yesterday.

22 THE COURT: Yesterday? Okay. Just after the
23 selection yesterday? The information that you got
24 yesterday, was that from any of the people who were
25 involved in the case?

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1 THE JUROR: No, sir.

2 THE COURT: Did you hear anything, other than
3 what you heard here in the courtroom?

4 THE JUROR: Yes, sir.

5 THE COURT: All right, sir.

6 Your name, please, sir?

7 THE JUROR: Thomas Davis.

8 THE COURT: Your name, please?

9 THE JUROR: Marty James.

10 THE COURT: All right, sir. And you've heard
11 about this case in the past?

12 THE JUROR: Yes.

13 THE COURT: Prior to yesterday?

14 THE JUROR: Yes.

15 THE COURT: All right. Would the information
16 you have interfere with your ability to be a fair juror?

17 THE JUROR: Yes.

18 THE COURT: All right, sir. I'll excuse you
19 from the trial of this case. If you'd be seated. Yes,
20 sir, your name, please?

21 THE JUROR: David Tinsley.

22 THE COURT: All right, sir. And you've ---

23 THE JUROR: Same thing.

24 THE COURT: You know -- you have information --
25 you don't believe you could be a fair juror based on the

1 information you have?

2 THE JUROR: I could.

3 THE COURT: You could be a fair juror?

4 THE JUROR: Yeah.

5 THE COURT: The information you have is just
6 what you heard in the neighborhood?

7 THE JUROR: Yes, sir.

8 THE COURT: When did you receive that
9 information?

10 THE JUROR: Yesterday, this morning.

11 THE COURT: Okay. Yesterday. And that was ---

12 THE JUROR: Just talk.

13 THE COURT: Talk coming here?

14 THE JUROR: Yeah.

15 THE COURT: Which individuals did you -- or how
16 many different individuals talked to you about it?

17 THE JUROR: Three.

18 THE COURT: Three different individuals?

19 THE JUROR: Yeah.

20 THE COURT: Your name again, please, sir?

21 THE JUROR: Thomas Davis.

22 THE COURT: All right. And you heard the
23 information yesterday when you were here at the
24 courthouse?

25 THE JUROR: (Affirmative nod.)

1 THE COURT: You need to answer.

2 THE JUROR: Yes, sir. I'm sorry.

3 THE COURT: All right, sir. All right. If you
4 two would be seated just for a moment.

5 Well, Mr. Davis, do you believe you could be a fair
6 juror in this case based upon the information you heard
7 yesterday?

8 THE JUROR: I have reservations, Your Honor.

9 THE COURT: All right. I'll excuse you from
10 the trial of this case then.

11 Is there any member of the jury panel related by
12 blood or marriage to Mr. Russell Edward Nix? If so,
13 would you please stand?

14 (No response.)

15 THE COURT: Is there any member of the jury
16 panel have a close business or a social, a personal
17 relationship with Mr. Nix? If so, would you please
18 stand?

19 (No response.)

20 THE COURT: Among the potential witnesses that
21 may be called in this case would be Naaman Earle Guthrie,
22 Rose Marie Guthrie, Bruce Nix, Ovaleen Nix, Brenda Diane
23 Milton, Dr. Daniel Tran, Dean Jones, Tony Robinson. Both
24 of the last two for the Pickens County Sheriff's Office.

25 Is there any member of the jury panel related by

1 blood or marriage to any of these potential witnesses?

2 If so, please stand.

3 (No response.)

4 THE COURT: Is there any member of the jury
5 panel have a close business or a social, a personal
6 relationship to any of these potential witnesses. If so,
7 would you please stand? Yes, sir. Your name again, for
8 the record?

9 THE JUROR: David Tinsley.

10 THE COURT: And which one do you have a ---

11 THE JUROR: Tony Robinson.

12 THE COURT: And do you see him on a periodic
13 basis?

14 THE JUROR: Yes, sir.

15 THE COURT: And how often would you see him?

16 THE JUROR: Twice a month.

17 THE COURT: Okay. And the fact that he's going
18 to be a witness in this case, offer testimony perhaps,
19 would that affect your ability to be a fair juror?

20 THE JUROR: I'd be fair.

21 THE COURT: You could be fair to -- you could
22 consider his testimony like anybody else's testimony?

23 THE JUROR: Yes, sir.

24 THE COURT: All right. Thank you, Mr. Tinsley.
25 You may be seated.

1 At this time, I'll have the attorneys if you
2 would, please, stand and introduce yourselves to the
3 jury.

4 MR. BUCKNER: My name is Graham Buckner and I'm
5 an Assistant Solicitor here in Pickens County.

6 MR. CLEVELAND: Good morning, ladies and
7 gentlemen. My name is Baker Cleveland and I'm also an
8 Assistant Solicitor in Pickens County.

9 THE COURT: Mr. Cantrell.

10 MR. CANTRELL: My name is David Cantrell. I'm
11 an attorney from Easley.

12 THE COURT: Is there any member of the jury
13 panel related by blood or marriage to any of these
14 attorneys or members of their staff? If so, would you
15 please stand?

16 (No response.)

17 THE COURT: Is there any member of the jury
18 panel have a close business or a social, a personal
19 relationship with any of these individuals; if so, would
20 you please stand? Yes, ma'am, your name, please?

21 THE JUROR: Boots Roberts.

22 THE COURT: Okay. Which of the ---

23 THE JUROR: Mr. Cantrell is an acquaintance
24 through church. I've known him for the last few years.

25 THE COURT: Has been ---

1 THE JUROR: An acquaintance through our church.

2 THE COURT: Okay. So you see him at church
3 periodically?

4 THE JUROR: Yes, sir.

5 THE COURT: Well, the fact that you attend
6 church with him, would that affect your ability to be a
7 fair juror?

8 THE JUROR: No, sir.

9 THE COURT: You could be fair to the State and
10 to the Defense?

11 THE JUROR: Yes, sir.

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

13 Yes, sir, your name, please?

14 THE JUROR: Haden Holcombe.

15 THE COURT: And which of the individuals do you

16 ---

17 THE JUROR: Baker Cleveland.

18 THE COURT: And do you see him on a periodic
19 basis?

20 THE JUROR: I'd say probably once a month,
21 depending on what time of the month it is.

22 THE COURT: Okay. Would the fact that you know
23 this attorney affect your ability to be a fair juror?

24 THE JUROR: No, sir.

25 THE COURT: You could be fair to both sides?

1 THE JUROR: Yes, sir.

2 THE COURT: All right. Thank you, sir. You
3 may be seated.

4 Is there any member of the jury panel ever been
5 involved in any litigation in which any of these
6 attorneys represented you or represented the opposing
7 side? If so, would you please stand?

8 (No response.)

9 THE COURT: Thank you. There is no response.
10 Is there any member of the jury panel expressed or
11 formed an opinion in any way as to the facts of this
12 case? If so, would you please stand?

13 (No response.)

14 THE COURT: Is there any member of the jury
15 panel aware of any bias or prejudice that would interfere
16 with your ability to be a fair juror if called upon to
17 serve in this case? If so, would you please stand?

18 (No response.)

19 THE COURT: Is there any member of the jury
20 panel a contributing member of any organization whose
21 primary concern is the promotion of victims' rights or
22 law enforcement such as MADD or SADD, PARR, CAVE, the
23 Sheriff's Association? If you're a contributing member
24 of any such organization, would you please stand?

25 (No response.)

1 THE COURT: Thank you. There is no response.

2 Is there any member of the jury panel or a member of
3 your immediate family involved in law enforcement in any
4 way? If so, would you please stand, if you or a family
5 member are in law enforcement.

6 All right, sir. Let me start over here. Your name,
7 please?

8 THE JUROR: Dickie Stewart. My nephew, Brian
9 Gibson, works for the sheriff's department.

10 THE COURT: All right. If you would remain
11 standing just a moment, please, sir.

12 Your name, please, ma'am.

13 THE JUROR: Cathy Huffman.

14 THE COURT: All right. And what relative do
15 you have?

16 THE JUROR: My husband is a retired chief of
17 the border patrol.

18 THE COURT: Thank you, ma'am. If you would
19 remain standing.

20 And your name, please, sir?

21 THE JUROR: Chaz Anthony. My brother works for
22 the Pickens County Sheriff's Department.

23 THE COURT: All right. Those of you standing
24 who have a relative in law enforcement or formerly in law
25 enforcement, would the fact that you have a relative in

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1 law enforcement affect your ability to be a fair juror?
2 In other words, if you're selected and folks in law
3 enforcement testify in this case, would you give higher
4 weight to that testimony than any other testimony? Any
5 of you? All negative responses. And if you believe you
6 could be fair to both sides in this case, I'm going to
7 ask if you would be seated. If you feel, if you have any
8 hesitancy, please remain standing.

9 Let the record reflect that all the jurors have been
10 seated.

11 Is there any member of the jury panel or a member of
12 your immediate family ever been the victim of a violent
13 crime such as an assault or assault and battery or
14 anything of that nature. Or is there any member of the
15 jury panel who has ever been charged or accused or
16 investigated for such event? If so, would you please
17 stand?

18 All right. Let me start here at the front. Your
19 name?

20 THE JUROR: Stephanie Jones.

21 THE COURT: All right. And have you been the
22 victim of ---

23 THE JUROR: Yes.

24 THE COURT: How long ago was that?

25 THE JUROR: Probably about fifteen years ago.

1 THE COURT: Would that fact affect your ability
2 to be a fair juror in this case that involves an assault
3 and battery?

4 THE JUROR: No.

5 THE COURT: You could be fair to the State of
6 South Carolina and to the Defendant?

7 THE JUROR: Yes, I could.

8 THE COURT: Thank you, ma'am.

9 Your name, please, sir?

10 THE JUROR: Erastus Peek.

11 THE COURT: Were you charged or were you ---

12 THE JUROR: I've been assaulted at work before.

13 THE COURT: How long ago was that, sir?

14 THE JUROR: About a year ago.

15 THE COURT: Do you believe that event that
16 happened would affect your ability to be a fair juror?

17 THE JUROR: I believe it would, sir.

18 THE COURT: All right. I'll excuse you from
19 the trial of this case, Mr. Peek. If you'd be seated.

20 THE JUROR: Okay.

21 THE COURT: You don't need to respond to other
22 questions that I ask, sir.

23 Your name, please, sir?

24 THE JUROR: Daryl Ray.

25 THE COURT: All right, sir. Have you been the

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1 victim or have you been charged or accused?

2 THE JUROR: Charged.

3 THE COURT: Okay. How long ago was that?

4 THE JUROR: Twenty plus years.

5 THE COURT: All right. So the fact that you
6 were charged or accused of an assault or a battery twenty
7 years ago, would that ---

8 THE JUROR: No, sir.

9 THE COURT: --- affect you in any way?

10 THE JUROR: No, sir.

11 THE COURT: You could be fair to both sides.

12 Thank you, Mr. Ray. You may be seated.

13 Your name, please, ma'am,

14 THE JUROR: Cathy Huffman.

15 THE COURT: And were you the victim or were you
16 charged?

17 THE JUROR: I was the victim in another
18 country.

19 THE COURT: How long ago was that?

20 THE JUROR: Approximately ten years.

21 THE COURT: Would that affect your ability to
22 be a fair juror?

23 THE JUROR: No.

24 THE COURT: You could be fair to both sides?

25 THE JUROR: Yes.

1 THE COURT: Thank you, ma'am. You may be
2 seated.

3 Your name, please, ma'am?

4 THE JUROR: Lavonda Bay. My son is serving
5 time for CDV.

6 THE COURT: He is presently serving time?

7 THE JUROR: Yes, sir.

8 THE COURT: Would that affect your ability to
9 be a fair juror in this case?

10 THE JUROR: No, sir, not at all.

11 THE COURT: You could be fair to both sides?

12 THE JUROR: Yes, sir.

13 THE COURT: Thank you, ma'am. You may be
14 seated.

15 Your name, please, ma'am?

16 THE JUROR: Pamela Lusk.

17 THE COURT: And have you been the victim or
18 have you been charged in the past?

19 THE JUROR: I was charged with assault and
20 battery.

21 THE COURT: And how long ago was that?

22 THE JUROR: Sixteen years ago.

23 THE COURT: Would that affect your ability to
24 be a fair juror in anyway?

25 THE JUROR: No.

1 THE COURT: Thank you, ma'am. You may be
2 seated.

3 Yes, sir. If you'd state your name, please?

4 THE JUROR: Wayne Cole.

5 THE COURT: And have you been the victim or
6 have you been charged with that at any time?

7 THE JUROR: I've been charged with it.

8 THE COURT: And how long ago was that, Mr.
9 Cole.

10 THE JUROR: Fifteen years or so.

11 THE COURT: Would that affect your ability to
12 be a fair juror?

13 THE JUROR: No, sir.

14 THE COURT: You could be fair to the State and
15 to the Defense?

16 THE JUROR: Yes, sir.

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

18 The State of South Carolina and Mr. Russell Edward
19 Nix, they desire to have fair jurors that can make a
20 decision about the facts in this case. Jurors who will
21 listen to the evidence, listen to the law that I give you
22 and apply that law to that evidence and make a decision
23 on that and that alone. They deserve that under our law.

24 Is there any member of the jury panel aware of any
25 reason whatsoever that in this particular case you could

1 not be fair to both the State and to the Defense and
2 render that verdict based on the law and the evidence and
3 that alone. If so, would you please stand? If for any
4 reason you believe you could not be a fair juror.

5 (No response.)

6 THE COURT: Thank you. There is no response.

7 THE COURT: Could I see the attorneys here just
8 for a moment.

9 (WHEREUPON, Mr. Buckner, Mr. Cleveland and Mr.
10 Cantrell approached the bar.)

11 THE COURT: Okay. Let's empanel a jury.

12 THE CLERK: When I call your name if you would,
13 please stand so the attorneys can see you.

14 Juror number 150, Robert A. Waldrop. What says the
15 State?

16 MR. BUCKNER: Please present Mr. Waldrop.

17 THE CLERK: And the Defense?

18 MR. CANTRELL: Please seat Mr. Waldrop.

19 THE CLERK: If you would, come forward and have
20 a seat in the jury box, sir.

21 Juror number 75, Mark L. Jones. What says the
22 State?

23 MR. BUCKNER: Please present Mr. Jones.

24 THE CLERK: And the Defense?

25 MR. CANTRELL: Please excuse Mr. Jones for this

1 trial.

2 THE CLERK: If you would, have a seat please,
3 sir.

4 Juror number 85, Pamela R. Lusk. What says the
5 State?

6 MR. BUCKNER: Please excuse Ms. Lusk.

7 THE CLERK: If you would, have a seat please,
8 ma'am.

9 Juror number 57, John H. Hawkins. What says the
10 State?

11 MR. BUCKNER: Please present Mr. Hawkins.

12 THE CLERK: And the Defense?

13 MR. CANTRELL: Please seat Mr. Hawkins.

14 THE CLERK: If you would, come forward, please,
15 sir, and have a seat in the jury box.

16 Juror number 117, Edmond M. Ragsdale. What says the
17 State?

18 MR. BUCKNER: Please present Mr. Ragsdale.

19 THE CLERK: And the Defense?

20 MR. CANTRELL: Please seat Mr. Ragsdale.

21 THE CLERK: If you would, come forward, please,
22 sir, and have a seat in the jury box.

23 Juror number 87, Amy W. Martin. What says the
24 State?

25 MR. BUCKNER: Please present Ms. Martin.

1 THE CLERK: And the Defense?

2 MR. CANTRELL: Please excuse Ms. Martin for
3 this trial.

4 THE CLERK: If you would, have a seat, please,
5 ma'am.

6 Juror number 4, Roxie S. Aldrich. What says the
7 State?

8 MR. BUCKNER: Please present Ms. Aldrich.

9 THE CLERK: And the Defense?

10 MR. CANTRELL: Please seat Ms. Aldrich.

11 THE CLERK: If you would, come forward, please,
12 ma'am, and have a seat in the jury box.

13 Juror number 25, Wayne D. Cole. What says the
14 State?

15 MR. BUCKNER: Please excuse Mr. Cole.

16 THE CLERK: If you would, have a seat, please,
17 sir.

18 Juror number 95, Charles K. Miller. What says the
19 State?

20 MR. BUCKNER: Please excuse Mr. Miller.

21 THE CLERK: If you would, have a seat, please,
22 sir.

23 Juror number 93, Donnie D. Meekins. What says the
24 State?

25 MR. BUCKNER: Please present Mr. Meekins.

1 THE CLERK: And the Defense?

2 MR. CANTRELL: Please seat Mr. Meekins.

3 THE CLERK: If you would, come forward, please,
4 sir, and have a seat in the jury box.

5 Juror number 73, Kameron A. Johnson. What says the
6 State?

7 MR. BUCKNER: Please present Ms. Johnson.

8 THE CLERK: And the Defense.

9 MR. CANTRELL: Please seat Ms. Johnson.

10 THE CLERK: If you would, come forward, please,
11 ma'am, and have a seat in the jury box.

12 Juror number 76, Stephanie A. Jones. What says the
13 State?

14 MR. BUCKNER: Please present Ms. Jones.

15 THE CLERK: And the Defense?

16 MR. CANTRELL: Please excuse Ms. Jones for this
17 trial.

18 THE CLERK: If you would, have a seat, please,
19 ma'am.

20 Juror number 58, Heather N. Henderson. What says
21 the State?

22 MR. BUCKNER: Please present Ms. Henderson.

23 THE CLERK: And the Defense?

24 MR. CANTRELL: Please seat Ms. Henderson.

25 THE CLERK: If you come forward, please, ma'am,

1 and have a seat in the jury box.

2 Juror number 155, Michael A. Whitener. What says
3 the State?

4 MR. BUCKNER: Please present Mr. Whitener.

5 THE CLERK: And the Defense?

6 MR. CANTRELL: Please excuse Mr. Whitener for
7 this trial.

8 THE CLERK: If you would, have a seat, please,
9 sir.

10 Juror number 6, William C. Anthony, Jr. What says
11 the State?

12 MR. BUCKNER: Please present Mr. Anthony.

13 THE CLERK: And the Defense?

14 MR. CANTRELL: Please excuse Mr. Anthony for
15 this trial.

16 THE CLERK: If you would have a seat, please,
17 sir.

18 Juror number 22, Earl H. Carter, Jr. What says the
19 State?

20 MR. BUCKNER: Please present Mr. Carter.

21 THE CLERK: And the Defense?

22 MR. CANTRELL: Please seat Mr. Carter.

23 THE CLERK: If you would come forward, please,
24 sir, and have a seat in the jury box.

25 Juror number 62, Elaine C. Holcombe. What says the

1 State?

2 MR. BUCKNER: Please present Ms. Holcombe.

3 THE CLERK: And the Defense?

4 MR. CANTRELL: Please seat Ms. Holcombe.

5 THE CLERK: If you would, come forward, please,
6 ma'am, and have a seat in the jury box.

7 Juror number 135, Dickie R. Stewart. What says the
8 State?

9 MR. BUCKNER: Please present Mr. Stewart.

10 THE CLERK: And the Defense?

11 MR. CANTRELL: Please seat Mr. Stewart.

12 THE CLERK: If you would, come forward, please,
13 sir, and have a seat in the jury box.

14 Juror number 18, Michael G. Bourean. What says the
15 State?

16 MR. BUCKNER: Please present Mr. Bourean.

17 THE CLERK: And the Defense?

18 MR. CANTRELL: Please seat Mr. Bourean.

19 THE CLERK: If you would, come forward, please,
20 sir, and have a seat in the jury box.

21 Juror number 106, Paula M. Parsons. What says the
22 State?

23 MR. BUCKNER: Please present Ms. Parsons.

24 THE CLERK: And the Defense?

25 MR. CANTRELL: Please seat Ms. Parsons.

1 THE CLERK: If you would, come forward, please,
2 ma'am, and have a seat in the jury box.

3 This will be for the alternate. Juror number 122,
4 Boots M. Roberts. What says the State?

5 MR. BUCKNER: Please present Ms. Roberts.

6 THE CLERK: And the Defense?

7 MR. CANTRELL: Please seat Ms. Roberts.

8 THE CLERK: If you would, come forward, please,
9 ma'am, and have a seat in the jury box.

10 THE COURT: Any matters we need to discuss as
11 far as the selection of the jury in this case? From the
12 State?

13 MR. BUCKNER: None from the State, Your Honor.

14 THE COURT: From the Defense?

15 MR. CANTRELL: None from the Defense, Your
16 Honor..

17 THE COURT: Ladies and gentlemen who were not
18 selected, I can excuse you at this time. I will ask if
19 you would, please, we're getting toward the end of the
20 week. We may have some more work to do. If you'll call
21 back after one o'clock today there will be a message on
22 the answering machine. It may be that you're excused for
23 the week. It may be that you need to come back this
24 afternoon. But if you'll just call in at one o'clock or
25 right after one o'clock, there will be a message for you.

1 You're excused at this time.

2 Everyone else, please remain seated while the jury
3 departs.

4 (WHEREUPON, the jury panel exited the open court at
5 approximately 9:54 A.M.)

6 THE COURT: Ladies and gentlemen, let me just
7 make a few preliminary remarks to you. This is in no way
8 an instruction on the law. I will give you the law at
9 the end of the case when all of the evidence is in.

10 I'm confident that some of you have had an
11 opportunity to serve on juries before, perhaps even this
12 week. I'm honored to be working with you. I'm going to
13 do everything in my power to minimize your down time.
14 Part of my job will be to decide when we take breaks and
15 how we proceed with the testimony and so forth. You may
16 have some apprehension about the role you're now sitting
17 in. You may think to yourself, I'm not capable of being
18 a judge, but that's what you're going to be doing,
19 judging the facts. I don't have any prior legal
20 knowledge and I don't have any business law courses.
21 Certainly never been to law school. Never been in the
22 courtroom before this week. I assure you, ladies and
23 gentlemen, you bring into this courtroom every skill
24 you're going to need to be a good judge of the facts in
25 the case because you're going to be utilizing the good

1 common sense with which you've been blessed. You're
2 going to be utilizing the every day experiences that you
3 have in the home and the workplace, social activities.
4 I'm confident that you're going to be fully prepared to
5 fulfill the task that you're about to undertake. Your
6 ability to be a good listener is vitally important,
7 obviously. If we haven't called -- if I haven't called
8 for a break and you need a break, please get my
9 attention. The bailiffs are here to serve you. You've
10 had an opportunity this week to meet all of them. If you
11 notify them, they'll let me know. Obviously, Mr. Welborn
12 will be here to help you as well. The court reporter,
13 Ms. Hanks, has her back to you. She's going to be taking
14 down everything that we have -- that's said, marking
15 exhibits, and so forth during the trial. David Brown is
16 the young man seated beside me, my law clerk, a recent
17 law school graduate and admitted to the South Carolina
18 Bar and you may see him coming and going as we proceed
19 with the trial, taking care of matters back in the office
20 or here on the bench. Any of these folks will certainly
21 be glad to help you in any way they can.

22 Trials take place in stages. In a few moments, the
23 attorneys are going to address you in an opening
24 statement. They'll give you an overview of what the case
25 is about, at least in their perspective. After that,

1 there will be witnesses who'll be examined under oath.
2 After all the evidence is in, then they'll have a chance
3 to address you in a closing statement. I'll then
4 instruct you on the law. The case will then be yours to
5 deliberate and decide the facts.

6 Before that time, you should not be discussing the
7 case one with another, with anyone else. You've made a
8 high commitment in this selection process to be impartial
9 to both sides and that process means that until the case
10 is concluded, you're not going to start that deliberation
11 process one with another. Likewise, you're not going to
12 get any input from anyone else. These attorneys, I'm
13 confident will give you all the information you need to
14 well and truly try this case on what takes place here in
15 the courtroom, not from any outside sources.

16 As we come and go during the day, lunch breaks and
17 otherwise, you may see these attorneys in the hallway.
18 You may see them passing, get on the elevator. And if
19 they seem a little distant to you and high-hat you in any
20 way, don't take offense at that. That's their training.
21 They're trained to make sure that there's no appearance
22 of any impropriety. They may be talking to you about a
23 sporting event or the weather and it may look bad and
24 they want to make sure that there's no appearance of any
25 kind of impropriety that's going on. So if they seem to

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1 be a little distant, walk the other way when they see a
2 juror coming, it's not that they're unfriendly. They are
3 friendly gentlemen, I can assure you. But they want to
4 make sure that the integrity of our process stays intact.

5 You're making a commitment to have justice for both
6 sides. It's an honor to be working with you on this
7 case, ladies and gentlemen. At this time, we're going to
8 take a short break. We'll be ready for the opening
9 statements in just a moment. I'll ask you to go
10 back to your jury room. Some of you may need to
11 familiarize yourself with it. After that, we'll call you
12 back in and be ready to proceed with the opening
13 statements. We'll take a short break. If you'll go back
14 to your jury room.

15 (WHEREUPON, the jury exited the open court at
16 approximately 9:59 A.M.)

17 THE COURT: All right. Before we take a short
18 break are there any matters we need to put on the record
19 as far as motions or other matters for hearings?

20 MR. CLEVELAND: None from the State, Your
21 Honor. I would like to address the issue we addressed
22 yesterday with regards to the *Jackson v. Denno* hearing.
23 If we're under the same understanding as that, the same
24 ground as that.

25 THE COURT: Okay.

1 MR. CANTRELL: Your Honor, as he did yesterday,
2 Mr. Nix would acknowledge, stipulate or agree that his
3 statement to law enforcement, written statement, was
4 voluntary and complete and accurate and he has no
5 objection or no issues regarding that from a *Jackson v.*
6 *Denno* standpoint.

7 THE COURT: All right. So Mr. Nix, you
8 understand that by your waiver of that right for a
9 hearing for me to make a decision as to whether or not it
10 was a voluntary statement, you're giving that up and you
11 agree that the statement ought to come in? You don't
12 have any disagreement with the fact that the statement
13 was made voluntarily by you?

14 THE DEFENDANT: No, sir.

15 THE COURT: You agree with that. All right,
16 sir. Thank you.

17 All right. Anything from the Defense?

18 MR. CANTRELL: Your Honor, at this point, I
19 would renew my motion that was made yesterday. And it's
20 a little tricky. I'm not sure how to say it. Yesterday,
21 I believe my motion was as to this trial, but it was at
22 the conclusion of the prior mistrial. But I would renew
23 it or state it for this trial that I would request that
24 this matter be continued. The basis for that is that a
25 mistrial yesterday was granted because of an

1 inappropriate response by a State witness to an
2 appropriate question by myself. The mistrial was granted
3 at that point. But that was after an hour or a little
4 more of the testimony of the State's first witness.

5 I take the position that that is a prior statement
6 just like the statement made to the police officers, or
7 any other statement made by the witness, that I should
8 have an appropriate and complete opportunity to use that
9 statement from an impeachment standpoint. I believe that
10 my ability to do that can only be done with a continuance
11 and the opportunity to review more than an hour of
12 testimony, to locate questions of concern. If the
13 statements come up during testimony today that I believe
14 are in conflict, it will be difficult to, number one,
15 pinpoint it. And number two, once we do, to locate that
16 statement to verify that it was or was not different from
17 a previous statement. I believe the only way to allow
18 Mr. Nix to have a complete and fair and impartial trial
19 is to have the opportunity to review this prior sworn
20 statement by this witness in an effort to be able to use
21 it as impeachment. For that reason, I would ask that
22 this matter be continued.

23 THE COURT: All right. As I stated yesterday,
24 I believe there's not any harm done. And I, again, deny
25 your motion for the continuance. In addition, I'd like

1 to place on the record that the court reporter was kind
2 enough before we left yesterday afternoon to create flash
3 drives for each of the sides for them to review that hour
4 of testimony, from five-thirty or so yesterday until ten
5 o'clock today. And hear that testimony. Not only would
6 it be fresh in the minds of all of us, rather than months
7 down the road, but I believe that that will adequately
8 allow you to prepare for that, Mr. Cantrell.

9 As I've said, also, I don't know if this was on the
10 record or off-the-record. If you feel at any time that a
11 witness or that that particular witness is giving
12 testimony that is impeachable, we will take whatever
13 breaks are needed as it goes along, just for this one
14 witness. The mistrial fortunately was at the beginning
15 of the trial, not for other witnesses. I'm confident
16 that Ms. Hanks can find the place and you'll have the
17 opportunity to impeach that witness with prior testimony
18 that may be inconsistent. You just let us know. We'll
19 send the jury out and we'll locate that on the record at
20 any time. I think that that will adequately protect your
21 client for any possibility of impeachment.

22 MR. CANTRELL: And, Your Honor, as a second
23 motion, I would move at this time for a dismissal based
24 on the fact that the mistrial itself was granted as a
25 result of an inappropriate and unresponsive response,

1 again, to an appropriate question by a State witness. It
2 would be my position that under those circumstances that
3 double jeopardy would apply at this time, and for that
4 reason, that this matter should be dismissed.

5 THE COURT: Under the law, as I understand it,
6 that would not create a jeopardy issue. I deny your
7 motion, respectfully. The motion is noted for the
8 record.

9 MR. CANTRELL: Thank you, Your Honor.

10 THE COURT: All right. Are the exhibits
11 marked?

12 MR. CANTRELL: I believe so.

13 MR. CLEVELAND: Yes, Your Honor.

14 MR. CANTRELL: I believe so, yes, sir.

15 THE COURT: Y'all need a short break or are you
16 ready to start?

17 MR. CLEVELAND: If I could have ---

18 THE COURT: Three minutes?

19 MR. CLEVELAND: --- one minute.

20 THE COURT: Let's make it three, how about
21 that?

22 MR. CLEVELAND: Okay.

23 THE COURT: A three-minute break and then
24 we'll be ready to call the jury back.

25 (WHEREUPON, the court stood at recess for a short

1 break.)

2 (WHEREUPON, the jury entered the open court at
3 approximately 10:15 A.M.)

4 THE COURT: Now, ladies and gentlemen, we're
5 ready to begin with the opening statements. These
6 attorneys will address you in their openings. I remind
7 you that what the lawyers have to say to you is not
8 evidence. They'll give you their view of the -- what
9 they think the evidence is going to be. But the evidence
10 will come from the witness stand here and from any
11 exhibits that may be introduced. While it's not
12 evidence, I urge you to listen carefully as these
13 attorneys address you. I'm confident they can give you
14 some valuable insights and perhaps help you as you listen
15 and the case develops.

16 Before they make their opening statements, I'm going
17 to have Mr. Welborn administer an oath to you. I hope
18 you'll listen carefully as this oath is given. It's a
19 time-honored oath. It's been in existence since well
20 before the foundation of our country. Jurors such as
21 yourself have taken this oath to sit as judges of the
22 facts. So listen carefully as the oath is given, after
23 which, the Solicitor will make his opening statement to
24 you. Mr. Welborn.

25 THE CLERK: If you would, please, stand.

1 Again, after the oath is administered, please answer by
2 saying I will. Raise your right hands.

3 You shall well and truly try the issue joined in
4 this case of the State versus Russell Edward Nix, and a
5 true verdict render according to law and evidence, so
6 help you God?

7 (WHEREUPON, the jury was duly sworn.)

8 THE COURT: Solicitor, you may address the jury
9 in your opening.

10 MR. BUCKNER: May it please the Court, Your
11 Honor, Mr. Cantrell.

12 **OPENING STATEMENT**

13 **BY MR. BUCKNER:**

14 Individuals living in this community should not have
15 to fear for their own personal safety, for the safety of
16 their family members. We're here today because the State
17 alleges on August 25th of 2011, the Defendant, Russell
18 Nix, created that kind of fear when he physically beat
19 and injured the victim, Earle Guthrie, in front of his
20 wife and daughter.

21 Ladies and Gentlemen, my name is Graham Buckner.
22 And as I introduced myself earlier, I'm an assistant
23 Solicitor here in Pickens County. Myself and Mr. Baker
24 Cleveland seated with me at counsel table will be
25 prosecuting this case on behalf of the State of South

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1 Carolina. And it will be our duty to prove that the
2 Defendant Russell Nix committed the crime of assault and
3 battery of a high and aggravated nature beyond a
4 reasonable doubt.

5 Now, before I get into the law on this case, I'd
6 like to thank each and every one of you for serving on
7 the jury this week. I know it can be a burden to take
8 time away from your personal lives, from your job, from
9 your family. But I know I speak for everyone in the
10 courtroom when I say we really appreciate it.

11 As for the law in this case, assault and battery of
12 a high and aggravated nature. What does that mean? The
13 Judge will instruct you on the law at the end of the
14 case. But essentially, the State must prove beyond a
15 reasonable doubt that on August 25th, 2011, the Defendant
16 unlawfully injured another person and great bodily injury
17 to that other person resulted. Or the act was
18 accomplished by means likely to produce death or great
19 bodily injury..

20 Now, great bodily injury defined is bodily injury
21 which causes a substantial risk of death or which causes
22 serious, permanent disfigurement or protracted loss or
23 impairment of the function of a bodily member or organ.

24 Now, in all criminal cases, the State is required to
25 prove the Defendant guilty beyond a reasonable doubt.

1 Now, what is reasonable doubt? Reasonable doubt is proof
2 that leaves you, the jury, firmly convinced of the
3 Defendant's guilt. The burden is not proof beyond any
4 doubt. The State gladly accepts this burden. This has
5 always been the burden of proof in every criminal trial
6 that has ever taken place in this country. Every
7 criminal defendant that has ever been on trial that was
8 convicted was held to that standard and was convicted of
9 a crime because a jury, just like you, found that he
10 committed the crime beyond a reasonable doubt. To put it
11 simply, proof beyond a reasonable doubt is proof that
12 does not cause a person to hesitate to act.

13 Now, throughout the trial you will hear evidence in
14 this case that will show that Russell Nix, the Defendant,
15 engaged in a fight with the victim, Earle Guthrie.
16 Furthermore, evidence will show that during that fight,
17 the Defendant physically beat Mr. Guthrie so badly that
18 it caused great bodily injury. Now, as the trial
19 progresses, you'll hear more evidence regarding both of
20 those.

21 Ladies and gentlemen, this case is not complicated.
22 You are the triers of fact. You brought with you the one
23 tool that you need to determine the Defendant's guilt or
24 innocence, your common sense, as well as your everyday
25 experiences in life up until this point.

1 Now, Mr. Cleveland will return at the end of this
2 case to talk with you about the evidence more thoroughly.
3 Until then, I ask that you listen to everything very
4 carefully and at the end of this trial render a verdict
5 of guilty. Thank you for your service this week.

6 THE COURT: Mr. Cantrell, you may address the
7 jury in your opening.

8 MR. CANTRELL: May it please the Court, Mr.
9 Buckner, and Mr. Cleveland.

10 **OPENING STATEMENT**

11 **BY MR. CANTRELL:**

12 A true verdict according to the law and the
13 evidence, that's all that's being ask of you, but that,
14 as I'm sure you already realize, that's a substantial
15 task. You come into this courtroom as a completely clean
16 slate. You're not like the rest of us here that have
17 been working with witnesses and preparing the case. You
18 know nothing about this case at this point. You're going
19 to learn everything you learn about the facts or
20 allegations of this case from the witness stand. You're
21 going to learn everything you need to know about the law
22 in this case from Judge Welmaker. And you will take
23 that, as Mr. Buckner said, with your common sense, your
24 reasonableness, into the jury room and make a decision.
25 A true verdict according to the law and the evidence.

1 And that's all anyone can ask of you. And the way you do
2 that is analyze what you hear.

3 You've heard that the charge is assault and battery
4 of a high and aggravated nature. That's not a simple
5 thing to define. It's not a simple thing to describe.
6 And even more so, it's not a simple thing to describe
7 what happened on the day of this alleged incident. What
8 you will need to pay particular attention to are the
9 circumstances surrounding all of these alleged actions.
10 Whose actions led to what circumstances? Whose actions
11 led to things that happened? Whose actions continued an
12 event.

13 We're talking, as Mr. Buckner's mentioned, about
14 personal safety of citizens. And I have to say, I agree
15 with that. But the personal safety, when there is a
16 dispute, fight, whatever you want to call it, applies
17 both ways. Just because someone is more injured than the
18 other doesn't mean that that other person is guilty of
19 assault and battery of a high and aggravated nature. It
20 doesn't mean that they're guilty of any level of assault
21 as the circumstances -- as the consequences of actions.
22 And that is what you will be determining. And that is
23 all we ask for.

24 Russell Nix sits there innocent of this charge.
25 It's the State's responsibility, as you have been told,

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1 to prove this case beyond ant reasonable doubt. And we
2 ask that you listen and require them to do that or
3 return, as I believe you will see, a verdict of not
4 guilty in this case. So we would ask for your attention,
5 your consideration. We appreciate the fact that you're
6 here today on a late Thursday morning. Please don't
7 misunderstand, or please don't hesitate to realize that
8 what you're doing is of the utmost importance. It's of
9 the utmost importance to everyone in this courtroom,
10 Russell Nix especially. But it's of the utmost
11 importance to the entire system. Every trial is the most
12 important event going on at that time. Your duty, your
13 service, your deliberation and your efforts to reach that
14 true verdict according to the law and the evidence is of
15 the utmost important thing for all of us here today. And
16 we appreciate the fact that you've found yourselves or
17 put yourselves in that position to do this job. Thank
18 you.

19 THE COURT: Solicitor, you may call your first
20 witness.

21 MR. BUCKNER: The State calls Dr. Daniel Tran.

22 THE CLERK: Sir, if you would place your left
23 hand on the bible and raise your right.

24 Do you solemnly swear or affirm that the testimony
25 you're about to give in this case to be the truth, the

1 whole truth and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you, sir. If you would have
4 a seat and state your name for the record, please.

5 THE WITNESS: My name is Daniel Tran.

6 DANIEL TRAN, M.D.

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. BUCKNER:

10 Q. Dr. Tran, will you please state your occupation for
11 the Court?

12 A. Yes. I'm the staff physician at St. Francis in
13 Greenville.

14 Q. And do you work primarily at St. Francis in
15 Greenville or anywhere else?

16 A. Yes. I also do some work at Easley Baptist.

17 Q. And do you specialize in a particular field of
18 medicine?

19 A. My training is in internal medicine.

20 Q. And you would consider that your speciality?

21 A. Yes.

22 Q. How long have you practiced medicine, Dr. Tran?

23 A. This will be my eleventh year in practice.

24 Q. And Dr. Tran, you're the doctor who treated Mr.
25 Earle Guthrie at St. Francis Hospital following the

1 altercation that took place on August 25th of 2011?

2 A. That's correct.

3 Q. Now, Dr. Tran, I'm going to ask you about your
4 medical training and experience. After that we'll go
5 into your actual treatment of the victim in this case.

6 A. Sure.

7 Q. Will you please describe for the Court your
8 educational background?

9 A. Yes. I did my undergrads at Clemson University and
10 then subsequently did my medical training at Ross
11 University School of Medicine. And complete my residency
12 at University of Oklahoma.

13 Q. And how long did it take you to get through all that
14 education? That's quite a bit.

15 A. Totally, about eleven years after high school.

16 Q. And Dr. Tran, are you board certified?

17 A. Up until last year, but I did pass my
18 recertification. I'm just waiting for the second
19 recertification any time now.

20 Q. Do you hold membership in any organizations or in
21 the medical field or anything?

22 A. Just the South Carolina Medical Association.

23 Q. But you do have your medical license; that's
24 correct?

25 A. Yes.

1 Q. Dr. Tran, have you ever treated patients with
2 bleeding on the brain or facial fractures or a broken jaw
3 before?

4 A. Yes. Pretty much, I would say monthly.

5 Q. So you've done that quite a bit?

6 A. Yes.

7 Q. And have you ever treated patients that have been
8 involved in physical altercations or fights in your
9 practice of medicine?

10 A. Yes.

11 Q. And how many times do you think you've encountered
12 that?

13 A. Over the last ten years, I really can't recall the
14 exact number. I would say, probably, once or twice a
15 year, average out.

16 Q. And in your current employment, what is your actual
17 title at St. Francis Hospital?

18 A. Yes. In-patient internal medicine. We're called
19 hospitalists.

20 Q. Hospitalists?

21 A. Yes.

22 Q. Do you work in the emergency room?

23 A. We usually are called to the emergency room to
24 assess patient and admissions. Basically, that's my
25 role, and also take care of patients throughout the

1 hospitalization.

2 Q. And is that how you come into contact with victims
3 of physical altercations?

4 A. Yes. I happened to be on call that day.

5 MR. BUCKNER: Your Honor, the State would like
6 to offer Dr. Tran as an expert in the field of internal
7 medicine at this time.

8 THE COURT: Any objection or any voir dire, Mr.
9 Cantrell?

10 MR. CANTRELL: No objection, Your Honor.

11 THE COURT: All right. Ladies and gentlemen,
12 let me just explain to you briefly. Normally, a person
13 who testifies in court can't give an opinion in their
14 testimony. They can testify to what they saw or heard or
15 felt or sensed by one of their senses. But there is an
16 exception when someone is qualified because of education
17 or training. They're permitted to give their opinion in
18 certain areas that the Court finds them qualified. This
19 means that this witness can give an opinion. It doesn't
20 mean that you must accept that opinion. It's evidence,
21 as all other evidence, and you use it in the way that you
22 see fit.

23 All right. Solicitor, you may continue your
24 examination.

25 MR. BUCKNER: Thank you, Judge.

1 Q. Dr. Tran, do you remember treating Mr. Earle Guthrie
2 on August 25th of 2011?

3 A. Yes.

4 Q. And when you treated Mr. Guthrie, can you remember
5 what findings you made as to his condition and treatment
6 off the top of your head?

7 A. Yes. I remember. I'll be on call that day and I
8 was asked to come down to assess Mr. Guthrie. Apparently
9 he was involved in an altercation. So the initial
10 assessment from the ER staff, it was found that he had
11 some injury to his facial area, along with some
12 intracranial hemorrhage.

13 Q. And Dr. Tran, if you need it, I have the medical
14 records here ---

15 A. Sure.

16 Q. --- from your report, if you'd like to refresh your
17 memory.

18 A. Thank you.

19 Q. Now, would you elaborate a little bit for the jury
20 as to specifically the findings you made when you treated
21 Mr. Guthrie?

22 A. Yes. When I was called to see Mr. Guthrie he
23 basically was -- I guess sustained significant swelling
24 to his left eye region, had some nausea, vomiting. And
25 basically we were being asked to admit him to the

1 hospital for potential complication of the head trauma
2 and other traumas, as well.

3 Q. And what specifically did you determine what his
4 injuries were at that point in time?

5 A. Yes. Based on the imagings, he was determined to
6 have a bleed into the left thalamic region, which is a
7 deep organ of the brain. Its function is usually to
8 regulate alertness, sleep, in addition to relay
9 information, whether sensory or motor, sensory to the
10 cortex, and in addition to fracture of his orbital bones
11 in his left eye socket.

12 Q. Can you point out for the jury where the orbital
13 bones are?

14 A. It's actually around this area. And that's
15 basically based on the CT scan finding. Of course,
16 judging from examination, he just has a lot of swelling
17 around the site.

18 Q. Now, I want to get back to the brain injury that you
19 mentioned. What procedures or tests did you use to
20 determine that there was bleeding on the brain of the
21 victim?

22 A. Sure. Initially, we usually do a CT without
23 contrast to look for any bleed. Same with any patient
24 who comes in with possible stroke. We will usually do
25 the same exam. First thing first is to look for -- look

1 out for any bleeding. And that's how we -- it was
2 determined he had the bleeding in the thalamic region.
3 Q. Now, when you were examining Mr. Guthrie and you
4 discovered that there was some bleeding on the brain, did
5 that alert you? Did you consider that a life
6 threatening, potentially life-threatening injury at that
7 time, Dr. Tran?

8 A. Absolutely. When you encounter a patient with a
9 head bleed, it's always -- you treat it as most serious
10 because these bleeds sometime can extend to a bigger
11 bleed. So the answer to your question is yes..

12 Q. And in your opinion, would you characterize Mr.
13 Guthrie's injury as one which causes a substantial risk
14 of death?

15 A. As of any bleeding, yes.

16 Q. What steps did you take from that point forward to
17 treat Mr. Guthrie once you determined that there was
18 actual bleeding from the brain from his injuries?

19 A. Yes. We actually admit Mr. Guthrie to the hospital
20 and perform frequent neurostatic check. And we also
21 asked the neurosurgeon to evaluate the CT scan to see
22 whether it is requiring surgery to evacuate this bleed.
23 And, also, we have to do a subsequent CT scan to be sure
24 there's no extension of the bleed.

25 Q. And will you explain for the jury in laymen's terms

1 how Mr. Guthrie's injury would be considered a
2 substantial risk of death.

3 A. Absolutely. When you have a bleed into any tissue
4 such as a brain, because the brain is contained -- is a
5 soft tissue, it's contained in a very hard skull, we
6 always look for any sign of extension of bleed. And
7 sometimes a bleed can bleed into significant swelling.
8 And, of course, when you have swelling you tend to shift
9 the brain from one side to the next. And, of course, the
10 brain, since it's softer, will give, instead of a skull.

11 Q. And Dr. Tran, was that brain bleeding consistent or
12 resulting from being struck in the head?

13 A. In this case that likely was the cause of that.

14 Q. And did Mr. Guthrie receive any further treatment
15 after you initially examined him?

16 A. If I recall, he -- based on my records, he received
17 symptomatic treatment, including nausea medication and
18 pain medication as needed. And, of course, frequent
19 neurostatic checks throughout his hospitalization.

20 Q. Did you have him examined by anyone else in the
21 hospital?

22 A. Yes. Not only by the neurosurgeon who reviewed his
23 CT Scan, but we also asked a facial trauma surgeon to
24 evaluate the orbital fracture, as well.

25 Q. And Dr. Tran, did any of these injuries you treated

1 the victim for require treatment to an organ system of
2 his body, other than his skin, muscles, or connective
3 tissues?

4 A. I'm sorry, I didn't get the question.

5 Q. When Mr. Guthrie was treated, did the treatment
6 require or was there treatment to an organ system of his
7 body, other than his skin, his muscles or his connective
8 tissues?

9 A. Yeah. But basically, with the superficial injury
10 was attended to by local wound care.

11 Q. So the facial fractures, that would fit in that
12 category?

13 A. Yes.

14 Q. And can you go into a little more detail about the
15 injuries to the face that Mr. Guthrie suffered?

16 A. Well, what I can gather from the CT Scan and my
17 exam, is that he has a few fractures around the eye
18 socket. And that was actually confirmed by another
19 facial CT that was ordered by the trauma surgeon. Let me
20 review this CT.

21 Q. Take your time, Dr. Tran.

22 A. So based on the CT Scan, he has a non-displaced
23 fracture of the left orbital frontal bone, in addition to
24 a fracture of his maxillary sinus, as well. And
25 basically, that's a major finding on the CT of the face.

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1 Q. And would those injuries be consistent or resulted
2 from being struck in the face?

3 A. In this case, yes, absolutely.

4 Q. And did you treat the victim for any other injuries?

5 A jaw, injury to the jaw or anything?

6 A. I don't recall that, no.

7 Q. When Mr. Guthrie was being treated, did he tell you
8 how he received those injuries?

9 A. Based on the history, I believe he was confronted by
10 someone and was beaten up, according to my history.

11 Q. So that's what you have in your records?

12 A. That's right.

13 Q. That you were informed of. Dr. Tran, I have no
14 further questions. Please answer any questions Mr.
15 Cantrell may have.

16 MR. CANTRELL: Thank you.

17 **CROSS-EXAMINATION**

18 **BY MR. CANTRELL:**

19 Q. Dr. Tran, according to your notes, what time did Mr.
20 Guthrie report to the emergency room?

21 A. Well, by the time I saw him it's around, I would
22 say, four or five o'clock in the evening, on August the
23 25th, '11.

24 Q. And do the notes reflect what time he first reported
25 there, if you recall?

1 A. No, I don't have the ER notes here so I can't tell
2 you what time he arrived in the emergency room.

3 MR. CANTRELL: Baker, could I see the notes
4 you're referring to, please?

5 MR. CLEVELAND: Sure.

6 A. Usually, that could be the dictation time of the
7 history. Usually, dictation take place around thirty
8 minutes after the initial evaluation of the patient.

9 Q. Okay. Well maybe that answers my question. Because
10 I see an 8/25/11 and then seventeen fifty-two. Would
11 that be possibly the time the notes were dictated?

12 A. Yes, sir.

13 Q. So that would normally be about thirty minutes after
14 he reports in?

15 A. That I evaluate, my time of evaluation.

16 Q. All right.

17 A. So he may be in the ER prior to that. I don't know
18 the duration of time.

19 Q. All right. And these notes reflect the entire
20 information that you had at the time of his treatment; is
21 that correct?

22 A. Yes, sir.

23 Q. And the information in here was provided -- or the
24 information about the incident was provided by Mr.
25 Guthrie himself; is that correct?

1 A. Yes.

2 Q. And it includes everything that he reported as he
3 stated it; is that correct?

4 A. That's right.

5 Q. And I believe you indicated that the injuries were
6 consistent with being struck in the head or the face; is
7 that correct?

8 A. In this case, yes.

9 Q. And would that be consistent or could these injuries
10 have been caused by one blow to that side of the head?

11 A. It could. But there's no way for me to determine
12 that.

13 Q. One blow could have done it? You don't know. You
14 were not there, I realize that; is that correct?

15 A. Yes. Any blow to the head certainly can result in
16 an injury like this.

17 Q. Okay. All right. And he stayed in the hospital, as
18 best you can tell, approximately twenty-four hours, am I
19 right about that?

20 A. Yes, observation for twenty-four hours.

21 MR. CANTRELL: May it please the Court, one
22 second, Your Honor.

23 THE COURT: Yes, sir.

24 Q. Dr. Tran, on the initial page of these notes where
25 it's -- where it reflects what the patient says happened

1 about this incident, does it reflect that the patient
2 reported that he was assault by a man breaking into his
3 son's house? Is that what that reflects?

4 A. No.

5 Q. Under comments?

6 A. Let's see. Oh, yes. That's exactly -- that's
7 right.

8 Q. Now, you have no knowledge of what happened, but
9 you're going by what you were told by Mr. Guthrie,
10 correct?

11 A. Yes. I can only go by what the patient stated.

12 Q. All right.

13 MR. CANTRELL: No further questions.

14 THE COURT: Any redirect?

15 MR. BUCKNER: Briefly, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. BUCKNER:**

18 Q. Dr. Tran, how long does it typically take for a
19 patient with injuries such as the ones Mr. Guthrie
20 suffered to be seen by a doctor in the hospital? Just
21 describe the process?

22 A. You mean once they are into emergency?

23 Q. In the emergency room.

24 A. It depend. I guess -- usually, with a injury, head
25 injury, typically pretty quickly. If it's minor, then

1 they tend to be a bit longer.

2 Q. But it would take a while for a patient to be seen
3 and fill out the necessary paperwork and all that kind of
4 stuff once he arrived at the emergency room?

5 A. I would assume in certain situations, yes.

6 Q. Dr. Tran, how would you qualify the force of a blow
7 that would cause the injuries such as the ones Mr.
8 Guthrie suffered?

9 MR. CANTRELL: Your Honor, I would object. I'm
10 not sure that that would fall into the area of expertise
11 of an internists, the amount of force required.

12 THE COURT: I believe that's beyond the scope
13 of cross-examination, as well. I sustain the objection.

14 MR. BUCKNER: No further questions, Your Honor.

15 THE COURT: Thank you, Doctor. You may step
16 down. Any objection to this witness being excused?

17 MR. BUCKNER: None from the State, Judge.

18 MR. CANTRELL: None. No objection, Your Honor.

19 THE COURT: All right. Thank you. The witness
20 may be excused. You may call your next witness.

21 MR. CLEVELAND: Thank you, Your Honor. May it
22 please the Court. The State would call Rose Guthrie.

23 THE CLERK: If you would place your left hand
24 on the bible and raise your right.

25 Do you solemnly swear or affirm that the testimony

1 you're about to give in this case to be the truth, the
2 whole truth and nothing but the truth, so help you God?

3 THE WITNESS: Yes, sir.

4 THE CLERK: If you would, have a seat. State
5 your name for the record. You'll need to speak into the
6 microphone where we can hear you. If you would have a
7 seat and state your name for the record, please.

8 THE WITNESS: Rose Guthrie. Rose Marie
9 Guthrie.

10 **ROSE GUTHRIE,**

11 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

12 **DIRECT EXAMINATION**

13 **BY MR. CLEVELAND:**

14 Q. Good morning, Ms. Guthrie.

15 A. Good morning.

16 Q. I'll just ask -- it's kind of hard to hear in this
17 courtroom. I have sort of a soft voice and I know you do
18 too. If we could just make sure everybody in the jury
19 box can hear very well. If you could keep your voice up
20 for me, I'd appreciate it.

21 A. Okay. Is this good? Is this okay?

22 Q. Yes, ma'am. And please tell me if you can't
23 understand anything I say.

24 A. Okay.

25 Q. Ms. Guthrie, are you married?

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- 1 A. Yes, sir, I am.
- 2 Q. And how long have you been married?
- 3 A. Twenty-six years.
- 4 Q. And to whom are you married?
- 5 A. Earle Guthrie.
- 6 Q. Is he in the courtroom today?
- 7 A. Yes, sir.
- 8 Q. Would you point him out for the jury, please?
- 9 A. In the blue and white striped shirt.
- 10 Q. And do y'all have any children?
- 11 A. We have four -- I have four step-children. He had
- 12 four when we got married, yes, sir.
- 13 Q. And do they live nearby?
- 14 A. Yes, sir.
- 15 Q. Whereabouts do your children live?
- 16 A. My oldest son and daughter-in-law live right on
- 17 And my youngest daughter and son-in-
- 18 law live right next to them, right there off Mauldin Lake
- 19 Road.
- 20 Q. Okay. All right. Back on August 25th, 2011, did
- 21 y'all live in the area, as well?
- 22 A. Yes, sir. We lived right directly across the street
- 23 from them.
- 24 Q. All right. Do you live there anymore?
- 25 A. No, sir.

1 Q. All right. I'm going to show you what I've marked
2 as State's Exhibit Number 1. Would you just take a
3 moment and look at that?

4 A. (Reviewing document.)

5 Q. Do you recognize that item, Ms. Guthrie?

6 A. Yes, sir, I do.

7 Q. What is that?

8 A. It's an aerial view map of the location where we did
9 live at on

10 Q. Do you see your previous home and your family's
11 home?

12 A. Yes, sir, I do.

13 Q. Is that an accurate depiction of that area?

14 A. Yes, sir.

15 MR. CLEVELAND: Your Honor, at this time the
16 State would request to move State's Exhibit Number 1 into
17 evidence.

18 MR. CANTRELL: No objection, Your Honor.

19 THE COURT: Without objection, Exhibit 1 is
20 admitted and may be published to the jury.

21 (WHEREUPON, State Exhibit Number 1 was admitted into
22 evidence.)

23 Q. Now, Ms. Guthrie, if you don't mind, I believe
24 there's a laser pointer right in front of you, could you
25 point out your previous residence and your children's

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1 residence and who lives in each of those houses, for the
2 jury, please?

3 A. Yes, sir. This house right here is where my husband
4 and I lived. And this is my youngest daughter and son-
5 in-law's home, right here. And right here is our oldest
6 son's home and daughter-in-law.

7 Q. Do any of your family members have any children
8 living with them?

9 A. Yes. My youngest daughter and son-in-law, they have
10 two daughters.

11 Q. And what's your family members' names there?

12 A. Right here is my daughter, Diane Milton, Mr. and
13 Mrs. Milton.

14 Q. All right.

15 A. And Mr. and Mrs. Guthrie, Mark Guthrie up there.

16 Q. And what's Diane's children's names?

17 A. The children are Destiny and Minor

18 Q. And how old are they?

19 A. Destiny is eighteen and Minor is fourteen, I
20 believe. Fourteen, yeah.

21 Q. All right. Were you home on August 25th, 2011?

22 A. Yes.

23 Q. Does anything stand out in your mind in a nutshell
24 of what happened that day?

25 A. Yes, sir.

1 Q. What happened that day?

2 A. The Defendant, Mr. Nix, kept coming on my children's
3 property and my husband asked him to leave because it was
4 scaring our daughter and two granddaughters.

5 Q. All right.

6 A. And there was an altercation because the guy, he
7 just kept refusing to leave.

8 Q. Okay. And what happened?

9 A. And my husband, he was injured pretty bad in the
10 face and was hit in the chest and stuff.

11 Q. Okay. I want to talk about -- go through that day
12 in a little more detail. When you pointed at these
13 residences, is the property around it also owned by your
14 family members?

15 A. Yes.

16 Q. Okay. You said you saw the Defendant coming on the
17 property. Start out, just tell me what you were doing
18 that morning or that day.

19 A. Well, that morning I had been working in my garden.
20 And I always come back in, I'm done by seven before the
21 sun gets up and it gets hot. And so we were just
22 relaxing at the house, was watching some TV, eating some
23 dinner, snacking on some snacks and stuff, you know. And
24 I had seen Mr. Nix on the Milton's property.

25 Q. All right. Did you know it was Mr. Nix at the time?

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1 A. No, sir, I didn't.

2 Q. Did it concern you that there was a stranger on that
3 property?

4 A. Yes, it did.

5 Q. Why did it concern you?

6 A. Because our daughter and two granddaughters were
7 home alone, you know.

8 Q. All right. How did you know that?

9 A. Well, whenever I had seen him, I called my daughter
10 to ask her was our son-in-law home. And she was like,
11 no, mom. He's at work. And I was like, well, there's a
12 guy walking across y'all's property, you know. And she's
13 like, yeah, mom, I know. This is twice, his second time
14 coming through here.

15 Q. Okay. And what was he wearing, do you remember?

16 A. I know he had the -- when I seen him the first time,
17 I believe he had on a blue t-shirt and some shorts and
18 stuff or something. But I know his shirt was changed.
19 He had on a blue on, I believe, to start with. To start
20 with.

21 Q. All right. Now -- in your recollection. So can you
22 show me where you saw him, with that laser pointer, \
23 walking on this property?

24 A. Yes, sir. He was like coming down through here
25 toward the road here.

1 Q. That was the first time you saw him?

2 A. Yes, which was actually his second time on the
3 property.

4 Q. According to your daughter?

5 A. Yes, sir.

6 Q. Did it concern you to find out that he had been
7 through twice that day?

8 A. Yes, sir.

9 Q. About what time of day was it when all of this was
10 going on again?

11 A. Well, like I say, twelve-thirty, one, you know.
12 Right at lunch time.

13 Q. Okay. Did you tell -- was your husband home at the
14 time?

15 A. Yes.

16 Q. Did you tell him about the stranger on the property?

17 A. Yes, sir, I did.

18 Q. All right. What did y'all do after y'all had seen
19 him the first time?

20 A. We got in the car and rode down by our daughter's on
21 Mauldin Lake to, you know, make sure he went on and make
22 sure he wasn't coming back up on the property.

23 Q. When you say coming back up on the property, what do
24 you mean?

25 A. Well, I mean like -- because they're kind of on the

1 corner there, you know, when we got in the car, we came
2 down this way here. Because there's like place you can
3 come off the road, you know, all down through Mauldin
4 Lake that you can -- people could get on their yard, is
5 what I'm trying to say.

6 Q. Did you see him again?

7 A. Yes.

8 Q. Where was that?

9 A. He was coming back up ---

10 Q. Well, I'm talking about when you were in the car.
11 I'm sorry. Let me try to be clear with my questions.
12 Once y'all got in the car that time, did y'all see him
13 again?

14 A. When we got in the car went down
15 we did see him across 178 on the other side of the road
16 up there. But when we went by, by the time we got up
17 there, you know, he was gone. And so we just went on
18 down the road, turned around and came home.

19 Q. Okay. Was that the last time you saw the Defendant
20 that day?

21 A. No, sir.

22 Q. Tell me about the next time you saw the Defendant?

23 A. The next time he came back, which was his third time
24 actually being on the property, it was my second time
25 seeing him, he was walking back up through here again,

1 going this way.

2 Q. All right. To your knowledge, had anyone given him
3 permission to be on that property or anyone to be on that
4 property?

5 A. No, sir.

6 Q. Were there any notices or trespassing signs posted
7 on that property?

8 A. Yes, sir, there is on all corners, you know, all
9 around.

10 Q. All right. So tell me about when you saw him the
11 third time. What was he wearing? Was he wearing the
12 same clothes or different?

13 A. No, sir, he was wearing different clothes.

14 Q. And about how much time after y'all had seen him go
15 down the road did he come back?

16 A. Just a few minutes, you know. I don't know, five or
17 ten minutes, I guess. Something like that. A few
18 minutes.

19 Q. All right. Tell me about what happened that time?

20 A. That time he came -- he started walking back up
21 through the yard, from the road through the yard this way
22 again. And this time my husband seen him first that time
23 out of our screen window. And he's like, well, that's
24 him. And I'm like, no, hon, it's not. You know, this
25 guy's got different clothes and a ball hat this time and

1 all. And I'm like, I don't think that's him. And he
2 goes, yes, it is, too, you know. And so then he walked
3 straight on up -- come on up this way. And so my husband
4 got in the car and went up there to ask him -- you know,
5 to tell him, you know, our children own it.

6 Q. All right. Where were you at this point in time?

7 A. I was at our house when we seen him walking up
8 through their yard. And then, you know, when my husband
9 came to get out in the car, I walked out into the yard.

10 Q. All right. I want you to tell me what you observed
11 from your yard; is that correct? Is that where you were?

12 A. Yes. Yes, sir.

13 Q. What you observed between your husband and the
14 Defendant; where they were and what you could see and
15 what you could hear, if anything?

16 A. Okay. Well, they were right up in here, somewhere
17 up in here near this curve, right up in there. And my
18 husband, at first he didn't get out of the car. He just
19 rolled the window down and was telling him, you know,
20 that our children own that property and not to be
21 trespassing. And then I don't know what else was said
22 back and forth. But when my husband does get out of the
23 car to talk with him, well, you know, he's pointing to
24 the -- where our children's homes are up in here, you
25 know. Pointing this way, showing him where the kids all

1 live from here and come up through there. He was
2 pointing to show him where they live. And then I seen
3 the Defendant just kept throwing his up like this, you
4 know. And I couldn't hear what he was saying. I could
5 just seen him throwing his hands up.

6 Q. Okay.

7 A. And my husband had asked him, you know, get off the
8 property.

9 Q. Did you hear your husband say that?

10 A. Yes, I did.

11 Q. Okay. At that point in time, about where were they
12 standing, in your recollection?

13 A. Just right up in here somewhere, up in there.

14 Q. Okay. What happened after that?

15 A. After I heard my husband ask him to leave -- well,
16 when they were talking, they still talked a couple of
17 more minutes. And by this time, they're kind of
18 somewhere over in here. And I called my daughter, Ms.
19 Milton, that lives right here, and I said, Diane, you
20 know, I can't see them up there because I don't know if,
21 you know, they're fighting or what. I was concerned. I
22 said, I can't see them. And, you know, I think we need
23 to call the law. And she's like, okay, mom, you know. I
24 said, you know, let's call the law. And she's like okay,
25 mama, we will. And so we hung up right then, you know.

1 And, you know, I went in the house and got our truck
2 keys. And our truck was parked over here to the side of
3 our house, over in here. And I went and got in the
4 truck. And when I -- we have a big front yard here. And
5 I come this way in our yard because they were all down' --
6 they had done moved down here, but ...

7 Q. What happened then? What did you observe?

8 A. Well, when I went and got my key -- but like I say,
9 I drove the truck to the yard right here because I was
10 going to go up there. But when I got like right in here,
11 Mr. Nix had came -- was coming down this way to the

12 And I thought, well, you know, he's
13 going on. And then I just seen him stop right in here on
14 this side of the road kind of close to where our driveway
15 is. And, you know, I'm like, why doesn't this guy just
16 go on, you know.

17 Q. All right. Where was your husband at the time?

18 A. He was up here in the car. He had come up here to
19 turn around. There's like at turn-around place and
20 stuff. He turned the car around up here. And then he
21 drove the car back down, right in here. And he stopped
22 right there.

23 Q. All right. Is that when they got in a fight?

24 A. Yes. My husband stopped the car, got out of the
25 car, and walked over and was asking him to leave again

1 or, you know, what's his deal here. And the next thing I
2 know, while they're talking -- there is some like
3 scraggly trees along the edge of the road there where
4 they're at, and Mr. Nix had stepped up into the -- off
5 the edge of the road into the trees. And my husband, you
6 know, was going over here where they could talk. And all
7 I could see was the back of my husband.

8 Q. All right. Did you ever lose sight of your husband
9 at that point in time, at any point in time?

10 A. Yes, I did.

11 Q. Okay. What happened after you lost sight of your
12 husband? Could you hear ---

13 A. I could tell they were fighting because I could hear
14 it.

15 Q. Describe what you heard to the jury?

16 A. Well, it's not like you think, just a pop sound, you
17 know, when somebody might would hit you. It was awful.
18 It was very hard, very hard pounding.

19 Q. Was it loud?

20 A. Very loud, yes, sir.

21 Q. And how did that make you feel?

22 A. Made me very nauseated. Made me real sick.

23 Q. When did you ultimately, I guess, see your husband
24 again after you hear that?

25 A. After I kept hearing them fight and kept hearing the

1 hitting, the hitting sounds, I just -- after a little
2 while, I went on -- walked down to the edge of the road
3 down there where they was at. And as I was walking up to
4 where they were at, still in the woods, in the edge of
5 the trees there, I could see them both doing like this.
6 But by the time I had walked all the way to where they
7 was at, you know, they, like I say, they was in the trees
8 but they was coming out of the trees. And I walked up to
9 them and, you know, my husband was just standing there
10 and he was hurt real bad in the face.

11 Q. Did you confront the Defendant ever?

12 A. Yes, sir, I did.

13 Q. How close did you come to the Defendant?

14 A. About as close as me and this lady right here.

15 Q. All right. Did you get a good look at him?

16 A. Yes, sir, I did.

17 Q. Did you notice any injuries about his face or
18 person?

19 A. No, sir.

20 Q. What did you tell him, if anything?

21 A. I hollered, would you go on. And then he was
22 hollering and throwing his hands up. And I said, would
23 you please just take your backside down the road. Just
24 go on, you know, just go on.

25 Q. Is it safe to say you were pretty upset at that

1 time?

2 A. Yes, sir. I was real upset, scared and sick and
3 concerned about my husband. And the guy just didn't want
4 to leave for whatever reason.

5 Q. All right. Tell me about how you -- what condition
6 you observed your husband in and what you did with your
7 husband at that time?

8 A. Well, I walked him back up from the road, back up in
9 our yard. And I was trying to get him up to the house so
10 I could wash him up because he did have blood all over
11 him. And I could see the swelling and the bruising in
12 his face around his eye already. And I was cleaning him
13 up and I had called the law myself. And to make sure,
14 you know, somebody was coming, you know. And we waited
15 on the law. He didn't want to go the emergency room
16 then, right then or nothing. I did offer, you know, to
17 take him or call a ambulance. But he was like, if you
18 call I'm not going to go. I just want to wait until the
19 law comes and I know the girls are safe and then we'll
20 go.

21 Q. Okay.

22 A. I said okay.

23 Q. Now, I want to show you what's been marked as
24 State's Exhibits 2, 3 and 4.

25 MR. CANTRELL: No objection, Your Honor.

1 THE COURT: Without objection, 2, 3 and 4 are
2 admitted and may be published.

3 MR. CLEVELAND: Thank you, Your Honor.

4 (WHEREUPON, State Exhibit Numbers 2, 3 and 4 were
5 admitted into evidence.)

6 Q. Take a moment and look at those photographs, please?

7 A. (Witness complied).

8 Q. Who is in those photographs?

9 A. My husband, Earle Guthrie.

10 Q. And do you know when those were taken?

11 A. Yes, sir. The 25th of August, right after the
12 incident, when the law got there.

13 Q. State's Exhibit Number 2, does this picture depict
14 the swelling you were discussing earlier?

15 A. Yes, sir, that's how it was swelling that very first
16 time, yes, sir.

17 Q. State's Exhibit 3, is there any other injuries in
18 this photo you could point out that you noticed on that
19 day?

20 A. Yes, sir. His forehead. I believe it to be a
21 tennis shoe print on his forehead there.

22 Q. All right. It's a little hard to see on the
23 projector. Would you hold up and show the jury just what
24 you're talking about?

25 A. Right here and right there. It's like an oblong

1 shape on his forehead.

2 Q. Okay. Thank you. State's Exhibit 4, what is that
3 item?

4 A. That was his tank top, T-shirt he had on that day.

5 Q. All right. What did that tank top look like before
6 the fight occurred?

7 A. It was just normal. Just like -- you know, it was
8 brand new, but it was normal. No tears, no stains like
9 that or nothing.

10 Q. That wasn't a grungy torn up yard shirt; is that
11 what you're saying?

12 A. Right. That's -- it wasn't like that when he had it
13 on that day.

14 Q. All right. Is that what it looked like immediately
15 after the fight?

16 A. Yes, sir.

17 Q. Now, you testified that this swelling -- that
18 photograph was right after the fight. As time passed
19 throughout the day, did that swelling get better or did
20 it get worse?

21 A. It got worse. It swelled a lot more.

22 Q. And how long did that swelling stay?

23 A. Several weeks as far as the swelling. And the black
24 under it stayed there for several months.

25 Q. Okay. So it would be your testimony that's the

1 fresh injury?

2 A. Yes, sir, that's when it first happened when the law
3 got there and took the picture of it.

4 Q. Did y'all go to the hospital?

5 A. Yes, sir, we did after the statements and stuff.

6 Q. Okay. Who else was there -- by the time you got to
7 your husband -- I meant to ask you -- who else was there,
8 other than the Defendant and your husband when you
9 confronted the Defendant?

10 A. When I was telling him to go on?

11 Q. Yeah, right around that time?

12 A. My daughter, Diane Milton, she was coming up through
13 her yard, you know. When I had walked down there to
14 check on him, she was walking from her house here, coming
15 up this way. And when they had finished fighting and I
16 had my husband, we were going to go back to our house,
17 you know, like I say, he's still throwing his arms up,
18 hollering all kind of stuff. And she asked him, said,
19 why don't you just, why don't you just go on, you know.
20 Can't you see the no trespassing signs? Why don't you
21 just leave us alone.

22 Q. All right. How quick did y'all go to the hospital
23 after that incident?

24 A. It was, I don't know, maybe an hour, maybe a little
25 over an hour because we had to do the statements.

- 1 Q. Was it right after y'all finished with the police?
- 2 A. Yes. Yes, sir. We went straight to the emergency
- 3 room then.
- 4 Q. And which emergency room did you go to?
- 5 A. We went to St. Francis.
- 6 Q. Okay. In Greenville?
- 7 A. Yes, sir.
- 8 Q. Tell me about how -- other than the physical
- 9 injuries, how was your husband acting after this assault?
- 10 A. Well, after the assault he kind of like got
- 11 withdrawn, kind of depressed, depression.
- 12 Q. Okay. Just the day of is what I'm speaking of
- 13 specifically. Did he seem rattled or anything like that
- 14 after this?
- 15 A. Well, yeah. You could tell it took the breath out
- 16 of him. Like, you know, he was kind of like what
- 17 happened, you know.
- 18 Q. All right. Now, how long did he spend in the
- 19 hospital?
- 20 A. He was there like twenty-four hours.
- 21 Q. Okay. Once he got home, did you care for him?
- 22 A. Yes, sir, I did.
- 23 Q. Tell me about the days following the days and
- 24 physically following this incident what type of care
- 25 you've had to give him and what symptoms he had after

1 that?

2 A. Okay. Well, because his upper and lower jaw both
3 were broke, the oral surgeon would have wired it shut
4 because, you know, the two were broke. But since he had
5 dentures, they couldn't wire it or anything. And so he
6 had to, you know, do nothing but liquids and stuff for, I
7 think it was three weeks. And we had to keep taking him
8 back and forth to the surgeon, the oral surgeon in
9 Anderson, for a couple of times. And they were checking
10 that, you know, his jawbone and stuff. And, you know, he
11 just -- he got depressed, you know, after it all hit him
12 good, I guess. I don't know.

13 Q. What about the other facial injures? Did he have
14 any other side effects that came out of that or anything?

15 A. Yes, sir. I don't know if it's where he had been
16 hit and kicked in the face and stuff, but he did have
17 three fractures that go along the side, right through
18 there. And I don't know if it's from the sinuses or
19 what, but it was from the injuries. He would just like
20 bleed like crazy, just like flooding blood and blood
21 clots. And he would have to sleep tilted up at night,
22 you know, so it wouldn't drain and get him choked and
23 stuff. And ...

24 Q. All right. Did y'all move away because of this
25 incident?

1 A. Yes, sir.

2 Q. How old is your husband, Ms. Guthrie?

3 A. Right now he's sixty.

4 Q. But how old was he back in August 2011?

5 A. Fifty-nine.

6 Q. Okay. Does he have any disabilities, physical or
7 otherwise?

8 A. Yes, sir.

9 Q. What are those disabilities?

10 A. He has a disability, a mental disability of PTSD,
11 that's post traumatic stress disorder from being in
12 combat in Vietnam.

13 Q. When was that diagnosis?

14 A. In 2010.

15 Q. Is that something that just developed in 2010 or
16 something he'd been coping with for some time?

17 A. He'd been coping with it since Vietnam in the
18 seventies.

19 Q. Okay. What about physical disabilities, does he
20 have any of those?

21 A. Yes, sir. He has like a neuropathy in his legs and
22 feet where he was walking in Agent Orange a lot, where
23 they had sprayed it where he was at.

24 Q. Okay. What's the physical, I guess, ramifications
25 of that?

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1 A. You have like stinging like pins and needles, like
2 sticking in your legs, burning.

3 Q. Does it limit his mobility any, to your knowledge?

4 A. Yes, sir, it does.

5 Q. In what way?

6 A. Well, they had done some tests on his mobile stuff,
7 skills and stuff. And he's not supposed to walk, like, I
8 think it's two hundred or two hundred and fifty feet, no
9 more than that, you know, and stuff.

10 Q. Okay.

11 A. Yeah. Because it bothers him.

12 Q. Regarding his PTSD or post-traumatic stress
13 disorder, does that cause him to have anxiety?

14 A. Yes, sir.

15 Q. Does that -- is a symptom of that to where he is on
16 guard or vigilant all the time?

17 A. Yes, sir, from the combat experience, that's the
18 core of it right there.

19 Q. All right. Has that caused y'all to avoid stressful
20 situations if you can?

21 A. Yes, sir.

22 Q. Are large crowds and confrontations part of those
23 situations you tend to avoid?

24 A. Yes, sir.

25 Q. You've known your husband for quite some time?

- 1 A. Yes, sir.
- 2 Q. Is he being treated for that post-traumatic stress
3 disorder after the diagnosis?
- 4 A. Yes, sir, he is.
- 5 Q. Were his symptoms -- since he's been receiving that
6 treatment, was he improving?
- 7 A. Yes. He'd made a good bit of improvement.
- 8 Q. Okay. Did this incident affect that progress, to
9 your observation?
- 10 A. Yes, sir, it did. He had a setback with it, yes
11 sir.
- 12 Q. Okay. Increased anxiety?
- 13 A. Yes, sir.
- 14 Q. Okay. Now, you've known your husband for quite some
15 time?
- 16 A. Yes, sir.
- 17 Q. And I can imagine, as in any relationship, that
18 you've seen him lose his patience, or lose his cool?
- 19 A. Yes, sir.
- 20 Q. On your observation of how he was interacting,
21 knowing your husband, with Mr. Nix up here at the top of
22 the driveway, did he lose his cool with him?
- 23 A. He didn't lose his cool up there.
- 24 Q. Was he being patient with him, I guess ---
- 25 A. Yes, he was. I was very proud of him.

1 Q. Okay. And just to reiterate, the reason you drove
2 down the road, the reason you were concerned, is that
3 because you were concerned for the safety of your family
4 on that property regarding a stranger on it?

5 A. Yes, sir. Things can be replaced but your children
6 and grandchildren can't.

7 Q. And just one final clerical point. Are these
8 residences located within Pickens County?

9 A. Yes, sir, they are.

10 Q. I don't have any other questions at this time, Ms.
11 Guthrie. Please answer anything Mr. Cantrell has.

12 A. Okay.

13 THE COURT: You may cross-examine the witness,
14 Mr. Cantrell.

15 **CROSS-EXAMINATION**

16 **BY MR. CANTRELL:**

17 Q. Ms. Guthrie, show me again where Mr. Nix was the
18 first time you saw him?

19 A. The first time we saw him?

20 Q. Yes. Uh-huh (affirmative).

21 A. He was like coming down from this way to Mauldin
22 Lake Road.

23 Q. So he got onto which is a public
24 two-lane road, correct?

25 A. Yes, sir.

1 Q. And where did he go?

2 A. He went down this way.

3 Q. And the second time you saw him, where was he?

4 A. Wait a minute. The second time I saw him -- just
5 give me a minute, sir.

6 Q. Take your time.

7 A. Thank you. Now, what was the question?

8 Q. The question is, the first time you saw him, where
9 was he?

10 A. The first time I saw him, he was in my daughter's
11 yard, back through here. Right in here.

12 Q. Okay. And then he got onto and
13 walked away?

14 A. Yes, sir, that was the first one.

15 Q. That's what you were just talking about?

16 A. Yes, sir, that was the first time I seen him.

17 Q. And you said this was her yard down here?

18 A. Yes, sir, it is.

19 Q. Okay. Now, this is her house, correct?

20 A. Yes, sir

21 Q. Okay. The second time you saw him, where was he?

22 A. The second time he was walking from Mauldin Lake
23 Road back up here.

24 Q. And did he go down that driveway that we see there?

25 A. He walked in the grass from here, about right up in

1 here, somewhere in this area up in here.

2 Q. Now, where did your husband confront him?

3 A. Right up in here. To my knowledge, it's right up in
4 there.

5 Q. Your husband was on the driveway?

6 A. No, he was up in the grass.

7 Q. So he pulled off the driveway in his car?

8 A. I don't know. I guess he did.

9 Q. Okay. Were you watching at that point?

10 A. Well, I seen him get in the car and go up there.

11 But, you know, I was at my screened door, but I walked on
12 out in the yard, you know, so I don't know.

13 Q. So they were somewhere in the vicinity of that
14 driveway when your husband went up there and had this
15 confrontation?

16 A. Yes, sir.

17 Q. And it was your testimony that you could see your
18 husband pointing, Mr. Nix pointing. Both of them had
19 their arms up in some fashion, correct?

20 A. At different times they did.

21 Q. It's also your testimony you could not hear anything
22 they said at first?

23 A. I couldn't hear anything Mr. Nix was saying.

24 Q. So Mr. Nix was talking in a softer tone than your
25 husband, apparently?

- 1 A. I guess so.
- 2 Q. And then at one point you said you heard, apparently
3 fairly dramatically, get out of here or words to that
4 effect; is that what it was?
- 5 A. He asked him to get off the property.
- 6 Q. Get off the property?
- 7 A. Yes, sir.
- 8 Q. And you heard that very distinctly?
- 9 A. Yes, sir, I did.
- 10 Q. And that means that your husband's voice was really
11 loud at that point in time, right?
- 12 A. Well, he had raised his voice. He wasn't screaming,
13 but he did raise his voice.
- 14 Q. But you're still testifying that he didn't lose his
15 cool?
- 16 A. Right. At that point, he didn't.
- 17 Q. After that, did Mr. Nix come back down and get back
18 on
- 19 A. Yes, sir. He came down this way and crossed it and
20 just stood right there at the end of our -- where our
21 driveway ends, right in that area right there.
- 22 Q. All right. At
- 23 A. Yes, sir.
- 24 Q. I'm sorry. Let me back up. At some point did you
25 say you lost sight of both of them?

1 A. Yes, sir. After my husband had asked him to leave
2 and they still kept talking, you know, I didn't see them
3 then because all I could see to begin with was like their
4 shoulders up, you know. Yeah.

5 Q. Okay. And where were you at that point?

6 A. I'm out in my yard.

7 Q. Okay. Show us your yard again, please?

8 A. Okay. This is our yard, kind of -- it's a pretty
9 big yard right in here. I was like right in here, in the
10 yard.

11 Q. And when you lost sight of them, I believe it was
12 your testimony that you called you daughter again?

13 A. I called her, yes, sir.

14 Q. And you asked her, I can't see them, are they
15 fighting?

16 A. No, I said, I can't see them. I didn't know if they
17 were fighting or what. I couldn't see them and I was
18 concerned.

19 Q. Okay. Are you denying that you said in direct
20 examination that you asked her, are they fighting? Did
21 you say that to your daughter?

22 A. I may have, sir. It's been over a year and a half.

23 Q. But at that point, there was no fight going on, was
24 there?

25 A. No, sir.

1 Q. But you asked or you were concerned that there might
2 be a fight going on between your husband and Mr. Nix?

3 A. Yes, sir, because I couldn't see either one of them.

4 Q. You couldn't see any one of them at that point?

5 A. (No verbal response.)

6 Q. Let me show you this and ask --

7 MR. CANTRELL: If I may approach, Your Honor.

8 THE COURT: Yes, sir.

9 Q. --- ask if you can identify that?

10 A. Yes, sir. That's

11 Q. And is that standing directly in front of your
12 driveway?

13 A. No, not directly in front. This is one -- our
14 driveway done a big semicircle.

15 Q. Is that one of your driveways?

16 A. That's one of them.

17 Q. Okay.

18 A. Yes, sir. It goes from one end all the way down to
19 the other end where they were fighting.

20 Q. Okay. Now, this is where your house is, is off the
21 picture there?

22 A. Yes, sir.

23 MR. CANTRELL: Your Honor, I would submit this,
24 Defendant's Exhibit Number 2, without objection.

25 THE COURT: Without objection. It may be

1 admitted and published to the jury.

2 (WHEREUPON, Defendant Exhibit Number 2 was admitted
3 into evidence.)

4 Q. Since we've determined that this is one of your
5 driveways, you have another driveway further down; is
6 that correct?

7 A. That's correct, sir.

8 Q. Your house would have been up here?

9 A. Yes. Yes.

10 Q. And you were standing in your yard at that point in
11 time?

12 A. Yes, sir, I was.

13 Q. Was it in this part of the yard?

14 A. No, it's kind of more back down.

15 Q. Down this way?

16 A. Yes, sir.

17 Q. Okay. And the driveway that you're talking about is
18 this one down here?

19 A. Yes, sir.

20 Q. And you've already stated that -- and I'm sorry.

21 This is correct?

22 A. Correct, sir.

23 Q. And it's your testimony that Mr. Nix came down this
24 driveway and was standing down here on this side of

25

1 A. Yes, sir.

2 Q. Your husband turned around and drove back down
3 there?

4 A. Yes, sir, he did.

5 Q. And did he drive down that driveway or how did he
6 drive back to Mr. Nix?

7 A. Well, where he had went up and turned around, he
8 just come down, like along the edge of the gravel road
9 that goes up there to their house.

10 Q. So he turned around but went through the yard, not
11 down the driveway?

12 A. Yes, sir.

13 Q. Was he in a hurry? Was he driving in a particular
14 fashion of any sort?

15 A. (No verbal response.)

16 Q. Could you see that?

17 A. Well, I could see him coming down, yes, sir. He --
18 just normal.

19 Q. Was he driving quickly or was he in a hurry?

20 A. He did drive a little quick coming down, yes, sir.

21 Q. Okay. And by that point, Mr. Nix was already in
22 this public road called

23 A. Standing on the edge of the road.

24 Q. Okay. Did your husband park in the road or did he
25 stay on that side and park and get out of his car?

1 A. He stayed over on our daughter's side of the
2 property and walked across, yes, sir.

3 Q. And walked across to Mr. Nix?

4 A. Yes, sir.

5 Q. And is it then that you lost sight of them again?

6 A. At first he walked over and, you know, when he was
7 asking him, you know, what are doing, or why don't you go
8 on, whatever it was he was telling him, as they got to
9 talking, Mr. Nix stepped off the edge of the road there
10 over into the edge of the trees.

11 Q. Now, that would be stepping away from your husband,
12 wouldn't it?

13 A. Yeah. He had done stepped over. He was already on
14 the edge of the road.

15 Q. And he stepped further away from your husband while
16 they were talking?

17 A. Yeah. He stepped over into the -- like the trees.
18 And I couldn't even see him by the time my husband got
19 down there to him good, you know.

20 Q. And that -- I'm sorry. Go ahead.

21 A. I'm done.

22 Q. Okay. And that's not your property down there?
23 That's on past your property?

24 A. Our landlord's brother, I believe, owns that
25 property.

1 Q. But that's not where you were living? That's not
2 the property you were renting?

3 A. No, that was not our rental property. It was at the
4 other side of our driveway.

5 Q. So Mr. Nix stepped back further away from your
6 husband. And then did your husband step towards Mr. Nix?
7 Is that how you lost sight of your husband?

8 A. Yes, sir.

9 Q. And the next thing you know you hear fighting going
10 on?

11 A. Yes, sir.

12 Q. The next thing you see is both gentlemen coming out
13 of the woods with their hands flailing, I think is the
14 way you showed it a while ago. And they're both standing
15 up?

16 A. They're both standing, yes.

17 Q. And that is still down here on

18 A. Yes, sir.

19 Q. Ms. Guthrie, every time you saw Russell Nix, if he
20 was or had been on property that appeared to be your
21 daughter's or son's, he, of his own, ended up on Mauldin
22 Lake Road, didn't he?

23 A. Yes. That's where he walked over there and stood.

24 Q. And the fact of the matter is he lived a quarter of
25 a mile away, going down is that

1 correct?

2 MR. CLEVELAND: I object, Judge. That's
3 testimony. It's not a question.

4 THE COURT: I'll allow him to ask the question
5 if she knows the answer.

6 A. Yes, we come to find out he did live down there
7 across 178. Yes.

8 Q. All right. Now, let's get back to your husband's
9 PTSD. You've acknowledged that some of the symptoms of
10 that include something that is essentially called
11 vigilance or hyper vigilance, excessive vigilance or
12 concern about circumstances; is that fairly accurate?

13 A. Well, hyper vigilance is mentioned.

14 Q. Okay. On guard. Someone that suffers from PTSD is
15 often or in fact very often on guard or concerned about
16 circumstances and their surroundings; is that right?

17 A. Yes, sir.

18 Q. Suffers from anxiety?

19 A. Yes, sir.

20 Q. Now, you also indicated he could lose his cool? You
21 said he didn't this day, but you said he could or you've
22 seen him lose his cool or get angry?

23 A. Yes, sir. Sure.

24 Q. And it's best or you encourage him to avoid
25 stressful situations?

1 A. Yes, sir.

2 Q. If it comes time to go out somewhere to a store
3 where there would be any number of people, does he always
4 go with you?

5 A. No, sir.

6 Q. Would you give him the option? Would you say, do
7 you feel like going, do you want to go?

8 A. Yes, sir. You know, I give him the option, you
9 know. Most of the time I don't -- we're always together.
10 You know, if he don't want to go, I don't go kind of a
11 thing, you know.

12 Q. But it sounds like you try to help or encourage him
13 to avoid stress?

14 A. Yes, sir, I do. I try to help him any kind of ways
15 that I can, you know, try to help him be calm and safe.

16 Q. And you don't want to put him or see him put himself
17 into stressful situations?

18 A. That is correct, yes, sir.

19 Q. Do you believe the outcome would not be good if he
20 did, if he got into a stressful situation?

21 A. If a person was trying to hurt him or his family,
22 sure. He would ---

23 Q. Well, I'm not asking about that. Why would you have
24 concerns about him going to Walmart where nobody's going
25 to hurt him? Other things can make him upset or

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1 concerned or angry; is that correct?

2 A. Yes, sir

3 Q. But again, on this day, you saw and you made no
4 effort to stop him from going to have this confrontation
5 with, for you at that point, just some stranger on your
6 daughter's property?

7 A. Since it was our daughter and two granddaughters
8 that we were concerned about from the get-go, sure I told
9 him. Because, you know, that's our daughter and our
10 granddaughter, you know. Yeah, I told him.

11 Q. So you weren't concerned about that? Had you yet,
12 you personally, yet called the sheriff's department?

13 A. At that time, no, I hadn't.

14 Q. So he's going down there before you had called the
15 sheriff's department?

16 A. Yes, sir, because we figured he would leave when he
17 seen the signs and my husband would explain, you know.

18 Q. Now, let me ask you about the signs. Are those
19 signs still up as we speak; do you know?

20 A. Yes, sir, to my knowledge they are.

21 Q. Now, if I told you there is one sign and it's in
22 your daughter's front yard and that's all, could you deny
23 or admit that?

24 MR. CLEVELAND: Again, Judge, that's testimony.
25 She answered, she doesn't, to her knowledge.

1 THE COURT: I'll allow her -- she can answer
2 the question. Overruled.

3 A. I believe there are more than that one still posted,
4 sir?

5 Q. When's the last time you saw them?

6 A. Well, we went over there Christmas, you know, in
7 December.

8 Q. And because of that you felt like your husband ought
9 to go confront this person that he saw?

10 A. Yeah, you know. He'd done come on the property
11 several times and my daughter's scared. I already know
12 that. So to protect our daughter and granddaughters, you
13 know, sure I told my husband, you know, so we could both
14 keep a eye out, you know.

15 Q. Now, how soon after this incident did you move from
16 that property?

17 A. About five or six months after this incident.

18 Q. And how far away from your daughter and her family
19 do you now live?

20 A. It's right at two miles.

21 Q. Okay. So instead of being across the street where
22 you can see them, y'all chose to move away from them a
23 few months after this incident?

24 A. Yes, sir.

25 Q. Now, how long had you been living at this location

1 when this happened?

2 A. A year.

3 Q. You'd been there a year?

4 A. Yes, sir.

5 Q. How long had your daughter been living at that
6 address, at her address?

7 A. About three or four months, somewhere right in
8 there.

9 Q. Okay. So you had been there -- now, it's your
10 testimony you'd been there for a year before she moved
11 into the house down the street?

12 A. No, we had rented the rental house we were in for a
13 year and then like seven or eight months later after we
14 rented the house, that's when our daughter and them seen
15 the property for sale across the road.

16 Q. Okay. So you'd been there a year or so, your
17 daughter had been there just a few months?

18 A. Yes, sir. When this accident happened or this
19 fight, yeah.

20 Q. And let me ask you to identify this, please?

21 A. (Reviewing document.)

22 Q. Okay. Do you know what that is?

23 A. Yes, sir, this is the driveway that goes up to my
24 son's, my oldest son's house.

25 Q. Now you say it goes to your oldest son's house, but

- 1 it goes beyond his house, correct?
- 2 A. Well, it goes -- well, yes, sir. It kind of forks.
- 3 One, you know, stays on his property and my daughter's
- 4 and the other one goes straight back to an elderly lady
- 5 that lives by herself back there.
- 6 Q. But this is the driveway and this is your son's
- 7 house over here?
- 8 A. Yes, sir.
- 9 Q. And the driveway goes straight back to a Ms. Bray's
- 10 house; is that correct?
- 11 A. Yes, sir.
- 12 Q. And are you aware of any other structures back this
- 13 way or other people that live back there?
- 14 A. Back behind Ms. Bray, but it's on another street
- 15 back up in there. There's another house back up in
- 16 there.
- 17 Q. Okay. And Ms. Bray, that's Ms. Bray's driveway.
- 18 And that's what she uses to get in and out; is that
- 19 correct?
- 20 A. Yes, sir, that's how she gets in and out.
- 21 Q. And that's her home back there?
- 22 A. Yes, sir.
- 23 Q. And you, of your own knowledge, have no idea who
- 24 actually owns that driveway or ---
- 25 A. No, sir. I don't know all the details on that, no,

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1 sir.

2 Q. You know you nor your husband nor your son or
3 daughter maintain it or anything, do you? Of your own
4 knowledge you don't know who maintains it, do you?

5 A. Now, my son and them, you know, they'll try to put
6 gravel down sometimes when the rain washes out, you know,
7 try to rake it up and stuff like that. But ---

8 Q. But they don't own it?

9 A. I don't know if they do or not.

10 Q. And I'm sorry. Let me back up just one more time.
11 The first time you saw Mr. Nix, he was walking away from
12 your house, away from your daughter's house, as you
13 learned later, towards his own home; correct, on Mauldin
14 Lake Road?

15 A. Yes, sir. He was walking away from our house.

16 Q. That's the very first time you saw him yourself?

17 A. Yes, the first time I saw him.

18 Q. Your daughter may have seen him or somebody before
19 that. But you had only seen him that one time?

20 A. That was the first time I seen him.

21 Q. And that first time he's walking away, but you and
22 your husband even then chose to get out, drive down this
23 public road that this gentleman is walking on, to make
24 sure he goes away?

25 A. Yes, because of the fact he'd done been on the

1 property twice. And I had done talked to my daughter and
2 I knew she was scared. We just wanted to drive by to
3 make sure the guy went on.

4 Q. But nothing had happened; had it?

5 A. No, sir, not at that point.

6 Q. And as we agreed, he lived in the neighborhood?

7 A. Come to find out he did, yes, sir.

8 Q. You didn't know it at that time?

9 A. No, didn't know nothing about him.

10 Q. But you know it now?

11 A. Yes, sir.

12 Q. And it's your testimony that even after Mr. Nix got
13 down on in the area where this fight
14 took place, your husband's still there telling him to get
15 away; wasn't he?

16 A. Yeah. He was asking him to go on again, you know.
17 What's your problem? He's just standing there, you know,
18 refusing to go.

19 Q. Now, let me ask you this. They were standing on
20 correct?

21 A. Yes, sir.

22 Q. Could Mr. Nix have said to your husband, no, you go
23 away. This is a public road, you get out of this road.

24 A. That is a possibility; he could have said that.

25 Q. And he would have had no more right to do that than

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1 your husband did; would he?

2 A. I don't guess so.

3 MR. CANTRELL: One second, Your Honor, please.

4 Q. Now, two other bits of testimony. The injuries you
5 saw on your husband right after this incident are those
6 in this picture; correct?

7 A. Correct, yes, sir.

8 Q. And it's your testimony you saw, you were looking,
9 you were close and you're testifying that after this
10 incident, are you saying Mr. Nix had no marks on him?

11 A. I didn't see nothing on his face or anything, like
12 no blood or nothing like that, you know. To be honest,
13 we was trying to hurry up and get away from him, you
14 know.

15 Q. In the past when your husband would suffer from the
16 effects of or the symptoms of PTSD, you've indicated he
17 loses his temper; you've seen that?

18 A. Yes, sir, he can.

19 Q. And would that cause him to get agitated or angry,
20 act and show it?

21 A. Yes, sir.

22 Q. And different situations can start that or create
23 that reaction in him?

24 A. Yes. If he feels somebody is going to harm him or
25 the family, yes, sir, he can ---

1 Q. Well, and again, it's not just that. It's just
2 normal situations or you wouldn't worry about him going
3 to Walmart. Normal situations can create that feeling in
4 him?

5 A. I guess it can -- I guess it could, sir.

6 Q. And those are situations that it would not create
7 the same reaction in someone without PTSD; right?

8 A. Yes, sir, that's correct.

9 Q. Your husband still is receiving treatment for PTSD?

10 A. Yes, sir. He goes faithfully to mental health and
11 takes his medication faithfully.

12 Q. Okay. Still working on it?

13 A. Yes, sir. He's still ---

14 Q. Day-to-day?

15 A. Yes, sir.

16 MR. CANTRELL: Your Honor, I believe that's all
17 I have. Thank you.

18 THE COURT: Any redirect?

19 MR. CLEVELAND: Just briefly, Your Honor.

20 THE COURT: Briefly.

21 MR. CLEVELAND: Yes, sir.

22 **REDIRECT EXAMINATION**

23 **BY MR. CLEVELAND:**

24 Q. You testified -- there's been some mention of Mr.
25 Nix walking out in the road and walking down. Was he

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1 walking away silently during that time or was he still

2 talking to your husband or ---

3 A. After my husband had confronted him up there?

4 Q. Yes.

5 A. And then Nix walked away; is that what you're
6 saying?

7 Q. Yes. Or could you see?

8 A. Well, I didn't see him walking away from my husband
9 because I had went to get in my truck, you know.

10 Q. Okay. All right.

11 A. And it's parked away from where I could see.

12 Q. All right. This property, would you agree with me
13 that's a decent distance outside of town?

14 A. Yes, sir.

15 Q. Are y'all a few miles away from the police station?

16 A. Yes, sir. I think we're about two or two and a half
17 miles, I guess from there, or something.

18 Q. Now, were you concerned because there was someone
19 walking up Mauldin Way Road or were you concerned that
20 there had been someone prowling on ---

21 MR. CANTRELL: Objection, Your Honor. There's
22 been no mention of prowling or anything ---

23 THE COURT: Rephrase your question if you
24 would, Mr. Cleveland.

25 Q. Were you concerned because you saw a stranger

1 walking up and down a road or were you concerned because
2 you saw a stranger on your family's property?

3 A. I was concerned because I seen a stranger on my
4 children's property.

5 Q. Did the fact that that stranger came back with
6 different clothes on another time concern you more so?

7 A. Yes, sir, it did.

8 Q. And did the fact that when your husband went to him,
9 he didn't leave immediately. Did that concern you?

10 A. Sure it did. Yes, sir.

11 Q. Now, briefly go into after you saw them come out of
12 these woods, I believe your testimony was their arms were
13 flailing?

14 A. They were like this. Both of them was like this. I
15 could see four arms, you know, doing this number.

16 Q. Okay.

17 A. And they were both standing up, coming out of the
18 woods. As they were doing this, they were coming on out.

19 Q. How long had they been in the woods where you
20 couldn't see them, where you could only hear them? How
21 long had they been there before you saw them come out?

22 A. Lord, it was a good minute and a half or so.

23 Q. So that loud pounding sound you testified that you
24 heard, was that approximately a minute and a half that
25 you couldn't see them?

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1 A. Every bit of it. Because that's why I then started
2 feeling sick. It was just like, my god, enough's enough.
3 Please go on, you know. Leave my husband alone.

4 Q. Now, there was some mention about going to Walmart
5 and stores and that causing your husband anxiety.
6 Whenever he feels anxiety, is it -- does he always lose
7 his temper or fly off the handle?

8 A. No, sir, he doesn't.

9 Q. What else would he do?

10 A. If he's feeling anxiety -- are we talking before the
11 VA, since he's been getting help from the VA or ---

12 Q. Just in general. Really, since the help of the VA
13 because that's when this incident occurred?

14 A. Well, it's like -- he gives people the benefit of
15 the doubt, you know. He tries to explain himself. He
16 tries not to have a confrontation with nobody, you know.

17 Q. Okay.

18 A. But like I say, if they just are persistent to just
19 keep provoking him for some reason, you know, it's
20 different.

21 Q. So just going in Walmart, just being in crowds or
22 something ---

23 A. Yes.

24 Q. --- is it your experience that he just flies off the
25 handle or does something else happen?

1 A. When we're in like a department store?

2 Q. Yes, ma'am.

3 A. No, sir. He's just like, mama, I'm ready to go.

4 And I know that means he's uncomfortable and doesn't feel

5 safe and it's time to go. Sometimes he calls me mama,

6 you know. And I'm like, sure, we'll go.

7 Q. Is that his treatment and how he copes with this

8 disease?

9 A. What?

10 Q. Just acknowledging it and asking you that it's time

11 to go?

12 A. Yes, sir.

13 MR. CLEVELAND: No further questions, Judge.

14 Thank you.

15 THE COURT: All right. Thank you, ma'am. You

16 may step down.

17 This might be a good time for us to take a break.

18 Ladies and gentlemen, I'm going to ask you to go back to

19 your jury room. Don't discuss the case, of course. You

20 realize we have thirteen jurors here. We have an

21 alternate. She'll occupy that seat. She's every bit as

22 much a part of the jury as anyone else. Hopefully, no

23 one gets sick or has an emergency in your family, but if

24 that were to happen, she'll stand in the shoes of the

25 others. There's also one other designated seat. That

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1 would be the seat closest to the witness stand here.
2 Sometimes the -- on the front row. The lawyers may want
3 to pass around exhibits to the jury. They may want to
4 publish those, not on the screen but to the jury.
5 They'll show it to the foreperson. That'll be the one
6 occupying that seat. Sometimes when you're back in your
7 room you may need some contact with the bailiff or the
8 clerk's office or to ask a legal question. We need
9 liaison back there, someone to communicate with the
10 Court. So the foreperson will be the person who does
11 that. Ultimately, the foreperson is going to be the one
12 who'll make sure everyone has their say as you discuss
13 the case and on behalf of the jury, write out the verdict
14 form. I'm going to appoint Mr. Meekins as the
15 foreperson. So he'll occupy that seat when he comes
16 back. The alternate will occupy her seat. Some of you
17 may want to sit on the back row, the front row or either
18 side or the other. We'll take a short break. We'll call
19 you back in just a few minutes. You may retire to your
20 jury room now.

21 (WHEREUPON, the jury exited the open court at
22 approximately 11:44 A.M.)

23 THE COURT: All right. Let's take a ten minute
24 break.

25 MR. CLEVELAND: Just briefly, Judge, may Ms.

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1 Guthrie be excused?

2 THE COURT: Any objection to this witness being
3 excused if she desires, Ms. Guthrie?

4 MR. CANTRELL: Your Honor, I guess. I can't
5 say -- I don't know for sure; I might see a need to
6 recall her. Short of that ---

7 THE COURT: If she needs to run -- as long as
8 we've got contact with her and we can get her here.

9 MR. CLEVELAND: Mainly for the purposes of
10 sequestration so she can be with her husband in
11 Courtroom. That's my only request. She'll be available
12 to testify. She was sequestered. Now that she's
13 testified, I just ask that you allow her to remain in
14 Courtroom.

15 THE COURT: Be in Court, yeah. I thought she
16 was being excused. You asked that she be excused.

17 MR. CLEVELAND: Well, yeah. I want to excuse
18 her from her subpoena so that she's released from
19 sequestration. I guess I was kind of going around ---

20 THE COURT: She'll be here actually. She just
21 won't be sequestered any more.

22 MR. CANTRELL: That's fine.

23 THE COURT: Do you have an objection to that?

24 MR. CANTRELL: No objection.

25 THE COURT: All right, sir. Okay. Let's take

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1 a short break.

2 (WHEREUPON, the court stood at recess for a short
3 break.)

4 (WHEREUPON, the jury entered the open court at
5 approximately 12:02 P.M.

6 THE COURT: Solicitor, you may call your next
7 witness.

8 MR. CLEVELAND: Thank you, Your Honor. May it
9 please the Court. The State calls Naaman Earle Guthrie.

10 THE CLERK: Sir, if you would place your left
11 hand on the bible and raise your right.

12 Do you solemnly swear or affirm that the testimony
13 you're about to give in this case to be the truth, the
14 whole truth and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you, sir. If you would have
17 a seat and state your name for the record, please.

18 THE WITNESS: My name is Naaman Earle Guthrie.
19 And I go by Earle.

20 NAAMAN EARLE GUTHRIE,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. CLEVELAND:

24 Q. Will it be all right if I call you Earle, Mr.
25 Guthrie?

1 A. Yes, sir.

2 Q. Earle, are you married?

3 A. Yes, sir, I am.

4 Q. Who are you married to?

5 A. Rose Marie Guthrie.

6 Q. All right. She's seated here in the courtroom with
7 you here today?

8 A. Twenty-six years.

9 Q. All right. Have you got any children living nearby?

10 A. Yes, sir. Sure do.

11 Q. How many and what are their names?

12 A. I've a daughter, Diane Milton, a son-in-law, Walter
13 Milton, two children of theirs are Destiny and Emily
14 Milton. My son and his wife, Mark Earle Guthrie and
15 Allison Guthrie, live at the other property up there on
16 top of the hill.

17 Q. All right. Referring to State's Exhibit 1, you said
18 the other property on top of the hill?

19 A. Yes, sir.

20 Q. You can use that laser pointer to show where they
21 live briefly.

22 A. Yes, sir. This is where we used to live. This
23 driveway is a semi-circle driveway. And when you come
24 out here, it's almost directly in line with this going up
25 through here. Right here my son lives -- this drive here

1 belongs to my daughter and them, actually. And this
2 drive here goes out to 178. But this drive right here
3 goes from there on up to Ms. Rosie Bray's house. There
4 was a elderly lady that lived there.

5 Q. All right. Which one is -- okay. So your
6 daughter's house on ---

7 A. The daughter's house in back down in this area here.

8 Q. All right. The son's house right above it?

9 A. Yes, sir. Right there.

10 Q. All right. I'm going to cut right to the chase, Mr.
11 Guthrie.

12 A. Yes, sir.

13 Q. Mr. Earle?

14 A. Yes, sir.

15 Q. On August 25th, 2011, did you live right there?

16 A. Yes, sir, I did.

17 Q. And did you encounter the Defendant, Mr. Nix?

18 A. Yes, sir. I met Mr. Nix.

19 Q. All right. And that's the same gentleman sitting at
20 the table?

21 A. Identical same one. Lost a little weight, but he's
22 the same guy.

23 Q. I want you to tell me about, start from the
24 beginning, your encounter of what you remember about
25 August 25th.

1 A. August 25th, I remember this. It's been eighteen
2 months ago. It's been a hard row to hoe.

3 Q. What happened that day?

4 A. I went up to my children's property. I was told by
5 my wife the gentleman had been up there. My daughter and
6 them talking back and forth, they said the gentleman had
7 been on the property twice already. So when he came off
8 the property the second time, which was my first time
9 that I knew about it, because they don't tell me too much
10 about nothing. So we got in the car and followed him
11 down the road just to see where he was going.

12 Q. All right.

13 A. By the time we got in the car, he was gone. I drove
14 down from our place down 178. That's still a good
15 quarter mile, half mile down to the stop sign before you
16 turn to the left to go back up Moorefield Highway.

17 Q. All right.

18 A. And my wife happened to see him going up Bethel
19 School Road.

20 Q. All right. So was he going away from y'all at that
21 time?

22 A. Yes, sir.

23 Q. All right. Did you see him again that day?

24 A. Yes, sir.

25 Q. All right. What -- tell me about what he looked

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1 like and where you saw him then?

2 A. The second time that I saw him ---

3 0. You saw ---

4 A. --- that I saw him, he was back on the property.

5 And I told my wife, somebody's back on their property.

6 She said, no, that's not him. I said, he's changed

7 clothes. That is him too. I might have a little age on

8 me, but I got pretty good vision.

9 Q. So you recognized that was same individual you saw
10 ---

11 A. Lord, yeah.

12 Q. All right. What did you do?

13 A.. I got in my car and drove over, confronted Mr. Nix.

14 Mr. Nix said ---

15 Q. All right. Well, before then, let's talk about
16 where you saw him, where he was when you got in the car
17 and where you actually confronted him?

18 A. When I saw him, you know, and I told the wife he was
19 back, he was coming right up through this property here.

20 And I hate that I'm shaking this thing. I ain't never
21 played with one of these. Coming up through here, just
22 walking off onto the property, going up
23 here. And he and I had our encounter right there next to
24 those little trees.

25 Q. Okay. Tell me about that encounter?

1 A. When I first pulled up and met Mr. Nix, I never got
2 out of the car. I asked him what was he doing? He said
3 he was doing laps, exercising. I said, okay. Then I
4 asked him what's he doing on my daughter and them's
5 property because they're working. My son and them's at
6 work. They teach Christian education. And what was he
7 doing over there? Then he told me he was a good
8 Christian man, he loved the Lord and all this stuff. And
9 then he said, I can walk anywhere I want to. I said,
10 yes, sir, you can, but not on private property. So we
11 discussed that for a little bit. Pretty soon, I asked
12 him, you need to go. He said, you can't tell me where to
13 go. And I said, no, sir, I can't tell you where to go, I
14 really can't. But I can tell you to get off of this
15 property. So at that time, he tells me that he's going
16 to go up here, because he knows this lady. Where this
17 property line runs right up through here, there's like
18 horses up in there in a pasture. And he said he was
19 going up to his friend's house up there. Well, I told
20 him, I said, what's this lady's name? He couldn't tell
21 me. He didn't know her. She's an elderly black lady,
22 good-hearted, good neighbor. And so when he said he was
23 going up here and going up there, so I asked him, what
24 are you doing over here? He said, I'm doing laps. I
25 said, you got plenty of places -- you can go laps up and

1 down 178. Laps up and down Because
2 we see people bicycling, jogging on that road, everything
3 else. They didn't nobody else get on our property, just
4 Mr. Nix.

5 Q. All right. When did you get out of the car that
6 time?

7 A. After I seen that he wasn't going to go, I stepped
8 out of the vehicle. When I did, he moved from this area
9 right here, just to the edge of the drive. And he would
10 ask me, do you own this property? I said, no, sir, I
11 don't own any of it. I'm just looking at it for my
12 children. They teach a Christian Education, all of them.
13 And we had another little talk there for a little while.
14 And I said, you just need to go on. He said, do you own
15 this? He'd walk over a couple of feet from me and he'd
16 ask me, do you own this? And I'd say, no, sir. He
17 walked out of that driveway and he asked me did I own
18 that. And I said, no, sir. But my daughter and them
19 actually owns this driveway here. It was a right-of-way
20 cut for Ms. Bray back there. Because a lady lives right
21 here named Mary Holder. She has a building in her yard
22 right here. And somehow another when Ms. Bray and them
23 bought this property, they said that she had built that
24 building on that property line. So the understanding I
25 have about the property when I children bought it, they

1 own all of this and she owns from here, right up here in
2 this lot right there, Ms. Bray does. But Mr. Nix
3 insisted he was going up there next. And I told him, no,
4 he wasn't.

5 Q. Okay. So tell me more about the conversation when
6 you were out of the car and how that conversation ---

7 A. Once I got out of the car Mr. Nix said this. He was
8 a good Christian man. He had the right to walk anywhere
9 he wanted to. I told him, yes, sir, you do. I know
10 about Christ. I profess to be a Christian too. Am I
11 perfect? No, I'm not. But I do know this. When I asked
12 him to leave probably the fourth or fifth time, he told
13 me, you can't tell me where to go and he made a
14 statement, you come down the street, I'll wear you out
15 old man. But he didn't say it like that, he said it in a
16 vulgar way, like I'll whoop your ass.

17 Q. Now, at that point in time, were y'all still
18 standing outside the car at the top of the hill?

19 A. Yes, sir.

20 Q. All right. How did that conversation end? How did
21 y'all separate?

22 A. Whew, glory. I don't know how long I was standing
23 there but it seemed like an eternity. So finally he
24 turns, started walking down the driveway right here. He
25 looks around and he goes, what you doing to do now, old

1 man? What you going to do now? I ain't doing anything.
2 You leave the property, I'm glad you left. So when he
3 left and come back down to this area right here -- let me
4 get this button now -- right there. There's some trees
5 at the end of our driveway that overhang that Mauldin
6 Lake Road. They stick out in the street so much when we
7 used to come out of our driveway, I had to actually get
8 out and go over into the other lane to make sure I had it
9 clear to pull straight out there.

10 Q. Okay.

11 A. Well, he was -- he walked down to this area right
12 here. And in the meantime, everything about what you
13 going to do now, old man. Well, when he got down there,
14 he didn't continue walking down He
15 stood right there, the edge of those trees. And I went
16 up here in my son's yard, turned our vehicle around, come
17 back down here. And the only reason I didn't drive down
18 that driveway, at that time we was driving a Chrysler
19 300, sits real low to the ground, and it scrubs on some
20 of that gravel going down through there sometime if you
21 just don't hit it just right. Well, when I got down
22 there, I parked the car right here on the edge of my
23 daughter's yard. And some question's been asked why did
24 I drive on the yard, not the driveway. I didn't want to
25 scratch up the car. I've never had too many good cars in

1 my lifetime. So once I got a good one, I wanted to take
2 care of it. Well, I parked right there. Well, he stood
3 right there, not walking away. And he made statements
4 like, what you going to do now, old man? Well, he done
5 invited me down to this street with an invitation that
6 he'd kick my old ass.

7 Q. All right. I didn't remember the -- how exactly did
8 he say that invitation. Sorry, about that.

9 A. He said, old man, if you come down to the road, I'll
10 whip your ass. That's pretty much how I remember it and
11 I think that's how I wrote it in my statement.

12 Q. Okay. Tell me what happened once you got out of the
13 car down there?

14 A. Once I got out of the car right here, he continued
15 to say some belligerent things. Like what you going to
16 do now? What you going to do now? So I come off of
17 there, off that little ditch there and come over here.
18 And as soon as I walked up next to him, he does this.
19 Well, me already concerned at what's going on, I tell him
20 to get the hell out of there, but he don't want to go.
21 So the next thing he grabs me -- let me get this pointer
22 pointing here. He grabs me right there and whirls me
23 behind these tress and pushed me off in a ditch. Can I
24 show them?

25 Q. Sure. Sure.

1 A. I'm in a ditch like this.

2 Q. They can't see you laying down. I guess ---

3 A. Let me get up here. I was laying off in a ditch
4 right here. He put his knee in my chest, kicked me in
5 the forehead, and he got down on me and beat me. He
6 didn't fight me. This man beat me. He beat me so bad
7 when I got out of that ditch, I couldn't fight no more.

8 Q. How bad ---

9 A. I'll be sixty-one years old in April. Sixty-one
10 year old fighting a thirty-nine year old man is not an
11 even fight.

12 Q. Now, Mr. Guthrie, Earle, when you say you were in
13 that ditch, were you laying long ways in the ditch or
14 were you laying sideways?

15 A. No, I was folded. My feet was in the street.

16 Q. You ---

17 THE WITNESS: Judge, I'm sorry to do this.

18 That's the only way I can explain it.

19 A. And my head's like this. And the only fighting room
20 I got is to try to hold his hands out of my face. When
21 my wife saw us come out of the trees into the road, I
22 wasn't trying to fight, I was trying to feel my way
23 around because I was done swelled this much that I
24 couldn't see him unless I turned this way. I could not
25 even see him.

1 Q. Now, Earle, when you -- that's a very vivid
2 explanation, by the way. Thank you. But when you
3 started -- this fight started ---

4 A. Yes, sir. Yes, sir.

5 Q. --- I guess how long was it before you got away from
6 the Defendant?

7 A. Well, to be truthful with you, I didn't have a
8 stopwatch.

9 Q. I understand that. I mean, was it ten seconds ---

10 A. And I don't know if anybody ever here has been in a
11 fight, but most of the time when you're fighting, you
12 trying to stay best you can, do the best you can with
13 what you got to do with. A handicapped old fellow that's
14 been suffering and handicapped and on medication and
15 everything, don't need to be fighting a thirty-nine year
16 old man for no reason. I got enough sense to know that,
17 even though I got PTSD.

18 Q. All right. Now, I want you to, I guess, tell me
19 about what injuries you suffered during that fight?

20 A. When I got back up to my wife, I knew I had a broke
21 jaw, maybe two, bottom and top. I told her my head was
22 hurting so bad I couldn't stand it. But I didn't know
23 that was a rupture from the blood brain. It was just
24 stinging like I'd had a bee sting real bad. And so she
25 tried to put a compress on me and asked me did I want to

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1 go to the hospital, want to call the ambulance. I told
2 her, no, I want the police. So the police came almost
3 less than two minutes after I was done go back up to my
4 house. They looked at me. They asked me what happened.
5 We started telling them. I started trying to explain how
6 it was. I didn't know the man's name. They told me they
7 did.

8 MR. CANTRELL: Your Honor, I would object to
9 anything that was told to him.

10 THE COURT: All right. I sustain the
11 objection. Just testify to what you know.

12 THE WITNESS: I apologize.

13 THE COURT: Yes, sir.

14 Q. Now, Earle, after you came out of the ditch and
15 everything and y'all went back to the house, is that when
16 Mr. Nix left?

17 A. Eventually, he did. I don't know exactly when he
18 did leave because I walked on home. I couldn't fight no
19 more.

20 Q. Okay. Who was there at the time of the fighting?

21 A. Who was there at the fighting?

22 Q. Yeah. When the fight ended, who was there?

23 A. My wife was there, coming down to get me. My
24 daughter was at home. She had done walked out into her
25 drive and was walking up there and asking him to go on.

1 Q. Okay. You could hear that?

2 A. Barely, but I heard it.

3 Q. Show me again, just about where that ditch was, if
4 you can see it on this picture?

5 A. Right here is the cluster of trees. They don't show
6 a good picture from a aerial view. They hang out into
7 the road. You can almost see them sticking out to the
8 center lane right there. He was right in behind those
9 trees there, not where anybody could see him good and
10 still antagonizing, you know, what you going to do old
11 man? What you doing to do old man? What you going to do
12 now? I ain't on your property. What you going to do
13 now? So when I step into the street, the next thing I
14 know a fight started.

15 Q. All right.

16 A. That's all I can actually remember to tell you after
17 eighteen months.

18 Q. All right. Now, did you go to the hospital?

19 A. Yes, sir, I did.

20 Q. And how long did -- did you go immediately after the
21 police -- when you got finished with them?

22 A. As soon as the investigator, Mr. Lane Byrum, Byrell,
23 however you say his last name, he took my testimony. He
24 asked me, do you want me to call EMS? I said, no, sir.
25 I'm going to St. Francis. That's where I like to go to

1 the doctor. I only go to the hospital at St. Francis and
2 the Charles -- V.A. Memorial Hospital in Asheville, North
3 Carolina.

4 Q. All right. Is that where y'all went right after
5 that?

6 A. Went straight to St. Francis Hospital emergency
7 room.

8 Q. All right. How long did you stay in there?

9 A. In the emergency room?

10 Q. In the hospital totally?

11 A. I was there twenty-four hours.

12 Q. All right. Tell me about the days after this, how
13 those injuries behaved?

14 A. It took a good while for my face to go down and heal
15 up., I had a lot of bleeding out my nose and had to sleep
16 -- sit up about a forty-five degree angle because when it
17 would drain, it would gag me at night and cause me to get
18 nauseated bad. And so I put up with that probably about
19 six good weeks or eight good weeks, off and on.

20 Q. All right. What about your jaw?

21 A. My jaw, I wear dentures, and since I didn't have
22 them in when the fight was on, and I thank God for that
23 because they choke me anyhow. Well, he broke these two
24 jaws, this jaw, this bottom one and this top one. Well,
25 they couldn't wire me together cause I didn't have no

1 teeth, so I had to just suffer to wait until it healed on
2 its own. And that's not a good feeling at all. It
3 hurts.

4 Q. All right. What about -- I want to talk a little
5 bit -- well, first off, I want to show you, this is
6 State's Exhibit Number 4. Do you recognize that item?

7 A. Yes, sir. That was the tank top I had on that day.

8 Q. All right. Well, what did that shirt look like
9 before the fight?

10 A. Just like a regular old green tank top.

11 Q. Was it clean or dirty or torn?

12 A. Oh, it was clean. I just put it on that morning.

13 Q. Okay. It wasn't a -- didn't have -- the rips and
14 tears, were they there?

15 A. No, sir. Nor the blood was there.

16 Q. All right. Do you know whose blood that is?

17 A. Yes, sir, I do. That's my blood, O negative.

18 Q. Now, I want to talk a little bit about your health.

19 A. Yes, sir.

20 Q. Do you have any disabilities, Mr. Guthrie?

21 A. Yes, sir, I do. I'm a hundred percent disabled
22 veteran, deemed by the United States Treasury Department
23 and Mental Health Clinic. I suffer from PTSD. I was a
24 101st Airborne, first 506 Infantry in Vietnam in 1970.

25 Q. All right. Did you see active combat?

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1 A. Yes, sir, I did.

2 Q. You did? When did you get diagnosed with that?

3 A. Well, like most GIs, we don't really try to seek no
4 help when we come home.

5 Q. All right.

6 A. Because the fact of it is, most men that suffer from
7 PTSD don't want to admit that they have a war mentality.

8 Q. All right. And so did you wait a while before you
9 got checked out for it?

10 A. Oh, Lord, yeah.

11 Q. When did you get checked out?

12 A. The first time I got to see the VA doctors was in
13 August of '08 here in South Carolina. I went down to the
14 outpatient clinic on August Road and they viewed me there
15 and gave me some medication.

16 Q. When did you actually get diagnosed with it?

17 A. Actually?

18 Q. Just the year and the date?

19 A. 2010.

20 Q. All right. Have you been in treatment for that
21 post-traumatic stress disorder since then?

22 A. Yes, I have.

23 Q. All right. Do you feel like you've gotten better
24 with that treatment?

25 A. Yes, sir.

1 Q. How did this incident affect your general well-being
2 as far as your psychology?

3 A. Well, sir, any time the stressors come along,
4 stressors is things that occur that'll cause you to
5 pretty much like shut down or just go numb. You really
6 don't know a whole lot of what's going on mentally
7 because you just kind of shut down. But they treated me
8 for that. I started out on fifteen different
9 medications. I'm down to five now. And that's pretty
10 good considering that I have severe PTSD.

11 Q. Did it get worse after this or did it ---

12 A. It got worse after this fight.

13 Q. It's been about eighteen months.

14 A. Yes, sir.

15 Q. Have you been able to improve since then a little
16 bit, any?

17 A. Well, my psychiatrist sent a letter stating that she
18 thinks this has set me back.

19 MR. CANTRELL: Objection, Your Honor.

20 THE COURT: Yes, sir.

21 Q. Just yes or no?

22 A. No.

23 Q. Okay.

24 A. Repeat the question again, brother?

25 Q. I was going to say, since this incident have you --

1 in the time that's passed, you stated that it got worse?

2 A. Yeah.

3 Q. Has it gotten any better since then?

4 A. No.

5 Q. Now, I want to talk about physical disabilities. Do
6 you have any physical disabilities?

7 A. I got bad motor skills in my left leg. Neuropathy
8 in my left arm and hands. And my feet tingle all the
9 time. And that's from walking through the jungles that
10 was sprayed with Agent Orange to kill out the vegetation
11 where we could hunt the enemy down. I slept in water,
12 I've laid in water. When I pulled duty like in guard and
13 stuff, I stood in water, so the VA deemed me to have that
14 disability.

15 Q. What physical limitations do you have because of
16 that disability?

17 A. I usually don't walk much good after about two
18 hundred, two hundred fifty feet. My legs burn. My feet
19 burn. When I'm at home, I got a lawnmower I ride all
20 over the yard. I don't do any walking outside much
21 except to put feed in the chicken pens and stuff like
22 that. But as far as walking, I'm not a big walker.

23 Q. Is that why on this day you drove up the street
24 instead of walk?

25 A. Yes, sir. That's it.

1 Q. Because of your post traumatic stress disorder, do
2 you try to stay out of stressful situations?

3 A. As much as I possibly can.

4 Q. Because of your physical disabilities, do you try to
5 avoid physical confrontation?

6 A. Yes, sir, I try to avoid it.

7 Q. Why is that?

8 A. Because the fact of it, I don't need to be fighting.
9 I don't have the strength or the stamina anymore. If
10 this would have happened when I'd been forty, it would
11 have been a different story. We wouldn't be here today.
12 It would be like men, shake hands and walk away. But
13 this wasn't just a fight. This was a beating. Two
14 different things. I fought in school, fought GIs in the
15 military, fist fight, put on gloves, anything else. This
16 wasn't a fight. This was a beating. I took a beating
17 that day.

18 Q. When you walked up, drove up the road to confront
19 the stranger in this property ---

20 A. Yes, sir.

21 Q. --- was it your intent to fight him at that time?

22 A. No. It wasn't.

23 Q. When you drove back down the road after he walked
24 down there, was it your intent to fight him?

25 A. No, sir.

1 Q. Why did you go up there?

2 A. To see what he was doing on the property. My
3 daughter and two granddaughters was home. One of my most
4 prideful things is protecting my family. I love my
5 family like I love the Lord. That's how I love my
6 family.

7 Q. So -- and don't let me paraphrase you, but did you
8 go up there out of concern for the safety of your family?

9 A. Yes, sir.

10 Q. No further questions, Earle. Please answer anything
11 Mr. Cantrell has for you?

12 A. Yes, sir.

13 **CROSS-EXAMINATION**

14 **BY MR. CANTRELL:**

15 Q. Mr. Guthrie, based on that, by the time you got --
16 saw fit to drive up to where this gentleman was, you
17 already were in the mode of protecting family, weren't
18 you?

19 A. Pretty much. I first wanted to find out what he was
20 doing there.

21 Q. But you just stated your primary concern, your
22 primary reason for doing anything ---

23 A. To go see that my family was safe, yes, sir.

24 Q. And part of post traumatic stress disorder, you've
25 heard it discussed here, is to be hyper vigilant ---

- 1 A. Sure.
- 2 Q. --- and hyper concerned?
- 3 A. Sure.
- 4 Q. And that shows itself sometimes in how you respond
- 5 to things, doesn't it?
- 6 A. Definitely it does.
- 7 Q. Okay. And how you might talk or speak?
- 8 A. To a certain degree, yes, sir.
- 9 Q. Because your wife has testified that throughout all
- 10 of this, where she was she could not hear most of the
- 11 conversations, but she could hear you tell Mr. Nix to get
- 12 out of here. But she never mentions hearing Mr. Nix
- 13 saying anything about, come on old man, even after he was
- 14 down at the side of the road where she was nearby?
- 15 A. She couldn't hear him from there. We were close
- 16 enough that there was no loud talking. We talked to each
- 17 other like men in the street.
- 18 Q. So he wasn't angry. He wasn't calling you out?
- 19 A. Oh, definitely. He was saying, what you going to do
- 20 now, old man? That's a call-out to me.
- 21 Q. And you responded. You reacted and went down?
- 22 A. I walked over there after I pulled my car down in my
- 23 daughter's yard and walked over to him and told him just
- 24 get on down from here.
- 25 Q. But he was in then, wasn't he?

1 A. Sure he was in

2 Q. Okay. Now, if he'd told you to get out of the road
3 would you have done it?

4 A. If he'd told me get off his property and out of the
5 road and I was near his house or bothering him in any
6 kind of way, I would have been more than glad to go.

7 Q. But if he had just told you to get out of the road,
8 he didn't have any right to do that, did he?

9 A. To tell me to get out of the road?

10 Q. Right?

11 A. He had as much right as I guess I told him.

12 Q. Which was no right at all, right?

13 A. No right at all by the law.

14 Q. Okay. Now, I do think at one point you said he was
15 yelling back at you before you even drove down to where
16 he was?

17 A. After he left the car and started down the driveway
18 he'd do this, what you going to do now old man? What you
19 going to do now old man? But it wasn't in a loud, loud
20 talking voice. Enough to where I could hear it, not ---

21 Q. He was -- I'm sorry.

22 A. Just enough to where I could hear it.

23 Q. Okay. But he was a good ways from you by that
24 point, wasn't he?

25 A. No, sir. Thirty, forty feet maybe. That driveway

1 is probably from up there, down there, is a hundred feet
2 to the road maybe, hundred and twenty-five to where it
3 turns off to my son's house. And Mr. Nix just pretty
4 much wanted me to come into the street. That's the only
5 way I know how to say it.

6 MR. CANTRELL: If I may approach the witness.

7 A. Okay.

8 THE COURT: Yes, sir.

9 Q. Can you identify that?

10 A. Sure.

11 Q. Can you tell us what that is?

12 A. That's the driveway that leads up to my son's
13 property off of

14 Q. And that picture is from

15 A. That's the driveway.

16 Q. I understand. But the picture is taken from right
17 there at the beginning of the driveway ---

18 A. Pretty much.

19 Q. --- at

20 A. Pretty much.

21 Q. And before I even put this up, let me ask you, Mr.
22 Nix did walk back down the drive and leave and get onto
23 didn't he?

24 A. He walked onto but he didn't
25 leave. He just walked straight across the road and

1 stopped at the corner of my driveway, where those trees

2 was that I was showing you on this ---

3 Q. But now he left this road, this driveway?

4 A. Oh, he left that driveway.

5 Q. Okay. Now, this is the driveway and here's the edge

6 of the driveway, and would be right

7 here in this picture?

8 A. Sure. Sure.

9 Q. And were you as far up as this tree or were you
10 further back down?

11 A. No, I was about right there at the trees with my car
12 pulled up off the edge of the grass there.

13 Q. Okay. And he was standing about here?

14 A. A little closer up than that. Going up the drive,
15 yeah. Going up the drive.

16 Q. Okay. And then he started walking back down this
17 driveway?

18 A. Sure.

19 Q. And you say he's yelling at you. Did you yell at
20 him?

21 A. No, just get off the property.

22 Q. Okay. So you did tell him that. How many times
23 would you say altogether?

24 A. Oh, Lord, God, I don't know.

25 Q. And he did, he got off the property?

1 A. Eventually.

2 Q. Okay. As far as you know, Mr. Nix did not know you.

3 Is that right?

4 A. Not that I know of.

5 Q. And you went up and talked to him. If I understood
6 correctly, he wasn't doing what you told him to do and
7 that's when you got out of the car?

8 A. I went up to talk to him. I was in the car. I
9 asked him to leave the property. What was he doing on
10 our property? He said he knew the people that owned the
11 property. He knowed them for years. He fished in the
12 lake. He knew everybody around there pretty much is what
13 he said. But I told him, no, this has been bought for my
14 daughter and them. They own it now. They own the lake.
15 My son owns this house. Together they own seventeen
16 acres right there together.

17 Q. But Ms. Bray does live up that driveway?

18 A. She does live up that driveway.

19 Q. And that road, that gravel road, goes all the way
20 back around to 178, also?

21 A. Yes, sir.

22 Q. Okay. And from the very beginning Mr. Nix told you
23 he was walking laps, exercising?

24 A. Doing something about laps.

25 Q. Okay. Now, when you drove up this driveway or when

1 you went up to see him, did you drive up the driveway?

2 A. Pretty much on the edge of it because right up there
3 it's a little rough. And see how the center of the
4 driveway has got those little humps in it? That scrubs
5 the bottom of my car.

6 Q. So you did go up part of the driveway?

7 A. Well, I went up through there until I could pull off
8 on the edge of the grass, yes.

9 Q. And when you drove back, you came down the grass?

10 A. I came back out the driveway and got on the edge of
11 the grass because I have to run my tires over there to
12 keep from scrubbing on the center of the driveway.

13 Q. Now, your wife said you were driving pretty fast.
14 Would that be your opinion?

15 A. Hell, I don't know how fast is. Fast to me is above
16 fifty-five. That's the law. I don't think I was running
17 that fast. I might have been going thirty.

18 Q. Thirty miles down this driveway towards ---

19 A. Maybe. Maybe.

20 Q. --- where Mr. Nix was?

21 A. Maybe, yes, sir.

22 Q. At one point before you drove off, I believe you did
23 tell him to get the hell out?

24 A. Get the hell off the property.

25 Q. Okay. And at no point -- you were worried,

1 concerned, really fretful about your family, but at no
2 point did you see fit to call the law until after this
3 fight?

4 A. I wasn't on a telephone. I didn't have a telephone
5 in my possession at the moment.

6 Q. Did you have one in your house?

7 A. Probably. My cell phone probably was in there
8 somewhere or in the truck.

9 Q. But you had access to a telephone?

10 A. Sure, if I could have went and found one.

11 Q. But the fact of the matter is you didn't look, you
12 didn't try, you went and confronted Mr. Nix, did not call
13 the sheriff's department?

14 A. Didn't have no time to call the sheriff's
15 department, sir.

16 Q. After you saw him up there you had plenty of time to
17 call them, did you not?

18 A. Didn't have my telephone with me, sir.

19 Q. You got in your car at your house, didn't you?

20 A. Yes, sir. But I didn't have my telephone, sir.

21 Q. Could you have walked in the house and gotten your
22 telephone?

23 A. Probably could, probably not, because half the time
24 I don't know where my phone is and my wife will tell you
25 and the kids will tell you, papa don't keep up with his

1 phone much.

2 Q. But you didn't think it was important enough to look
3 for the phone?

4 A. Mister, at that time I didn't think it was important
5 enough to look for nothing except what was Mr. Nix doing
6 on our property.

7 Q. Because you were mad at him already, weren't you?

8 A. No, sir. I wasn't mad at him a bit.

9 Q. A while ago you told Mr. Cleveland when you came out
10 of the woods, you couldn't fight no more. Is that what
11 you said?

12 A. I was out of breath.

13 Q. Did you say, I couldn't fight anymore?

14 A. I can't fight no more.

15 Q. Okay. You had fought all you could?

16 A. Best I could.

17 Q. Now, you and Mr. Nix are about the same height,
18 aren't you?

19 A. I'm five-eight, weigh about two hundred pound.

20 Q. Okay. Now, when this incident took place the
21 medical records said you weighed two thirty, would that
22 be accurate?

23 A. That probably could. Because I go up and down. On
24 my medication sometimes I put on weight and sometimes I
25 come off weight.

1 Q. So you were a fair amount bigger than Mr. Nix,
2 heavier anyway; right?

3 A. I didn't have a set of scales to weigh Mr. Nix. But
4 Mr. Nix is a lot smaller than he was eighteen months ago,
5 too, sir.

6 Q. I understand. But you were heavier at the time than
7 Mr. Nix?

8 A. I didn't have a scales. I didn't weight Mr. Nix. I
9 don't know how much he weighed.

10 Q. You don't have an opinion?

11 A. No, sir. I figured he was a hundred eighty, two
12 hundred pounds, pretty built up fellow.

13 Q. And you were two thirty?

14 A. I was two thirty.

15 Q. We also heard Dr. Tran say that when you went to the
16 hospital you told them that you got assaulted by somebody
17 that had broken into your son's home?

18 MR. CLEVELAND: Objection, Judge. I don't
19 recall that testimony?

20 THE COURT: I overrule your objection.

21 A. Truthfully, I can't tell you all the things I told
22 Mr. Tran. But if I said that, I probably said that. But
23 I was meaning I was going to check to see if he was going
24 to be breaking into property after he'd done come back
25 the third time and was changed clothes.

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1 Q. Okay. So you don't deny saying that?

2 A. I don't deny not saying it. I just don't remember
3 saying it, but I don't deny that I said it.

4 Q. And that was the thought in your head when all of
5 this was going on, correct?

6 A. Pretty much when you've been banged up, I don't know
7 what a whole lot of thoughts go around in you, but I was
8 in pain. I was suffering. I was in the emergency room.
9 I don't know how I'm supposed to think or act at that
10 point, except getting some help, medical help.

11 Q. And Mr. Guthrie that's what -- when you went up to
12 talk to this person you were looking at, you thought you
13 were talking to somebody that was up to no good?

14 A. When I went up to Mr. Nix, I knew he was no good
15 when he said this right here. I'm a good Christian man,
16 but I can walk anywhere I want to. That ain't what the
17 Bible says.

18 Q. Well, I'm glad you brought that up, Mr. Guthrie.
19 Let me ask you this.

20 A. Yes, sir.

21 Q. He said that after you told him that your son that
22 lived in that house was a Christian teacher and ---

23 A. Sure. All of it.

24 Q. So you're the one that brought up the Christianity,
25 not Mr. Nix?

1 A. No, Mr. Nix told me first that he was a Christian.

2 Q. That's not what you testified to earlier, so you're
3 changing your testimony now?

4 A. Wait just a minute. If I said that, then I made a
5 mistake. Because the fact of it is, he told me first he
6 was a good Christian guy and loved the Lord. That's the
7 first two or three words out of his mouth.

8 Q. Okay. So that's your testimony now?

9 A. Yes, sir.

10 Q. Okay. Just lastly, Mr. Guthrie, the majority of the
11 time you had eyes on this man he was on

12 or 178. You may have seen him on some of the property,
13 but the majority of the time he was either on the

14 driveway. But most of the time he was on Mauldin Lake
15 Road or when you went after him the first time, Highway
16 178; is that true?

17 A. Pretty much.

18 Q. And at least two, if not three, separate times you
19 went in his direction instead of -- and he did not come
20 at you?

21 A. Are you talking about on the property or are you
22 talking about down and looking for him?

23 Q. I'm talking about the first time you drove down
24 to go searching for him?

25 A. We just wanted to see if he left the neighborhood?

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1 Q. Okay. Even though it was his neighborhood too?

2 A. Sure. I didn't know that.

3 Q. I understand. The second time was when you went up
4 the driveway ---

5 A. Yes, sir.

6 Q. --- to him?

7 A. Yes, sir.

8 Q. The third time is when you came back down the
9 driveway to him?

10 A. Yes, sir.

11 Q. All three of those occasions, you went to him, not
12 him coming to you?

13 A. Yes, sir.

14 Q. And the last time is he had left that property was
15 on like you had told him he'd better
16 do?

17 A. Yes, sir.

18 MR. CANTRELL: No further questions for Mr.
19 Guthrie.

20 THE COURT: All right. Thank you. Do you have
21 any?

22 MR. CLEVELAND: Very briefly, Your Honor.

23 **REDIRECT EXAMINATION**

24 **BY MR. CLEVELAND:**

25 Q. Earle, based on your encounter with Mr. Nix up until

1 the point where he got in . ---

2 A. Yes, sir.

3 Q. --- were you still concerned with his presence, even
4 though he was standing in the public roadway then?

5 A. Yes, sir, I was.

6 Q. Where was -- where were y'all standing when he
7 grabbed you and threw you in the ditch? Were you in a
8 public roadway?

9 A. We was in the public roadway.

10 Q. And it was your testimony that he was on top of you
11 in that ditch?

12 A. Yes, sir.

13 Q. Were you holding him down in the ditch?

14 A. I wish.

15 MR. CLEVELAND: No further questions, Judge.

16 MR. CANTRELL: Your Honor, just if I could ask
17 one quick question.

18 **RECROSS EXAMINATION**

19 **BY MR. CANTRELL:**

20 Q. You said that he grabbed you in the public roadway?

21 A. Yes, sir.

22 Q. Which would be directly viewable from your property
23 where you and your wife live?

24 A. Negative. Because you cannot see where we was at
25 good from the property. You're not going to show it on

1 that picture. It doesn't even show the trees or the
2 bushes or anything. You see right here? Right there?

3 Q. Yeah.

4 A. Where our driveway is right there?

5 Q. Yes, sir.

6 A. See those trees right there. Mr. Nix took me behind
7 those trees, put me in the ditch, got in on top of me and
8 beat the living crap out of this old man. And then when
9 we come out of the ditch, I wasn't trying to fight him.
10 I was trying to get him off of me. That's what I was
11 trying to do.

12 Q. When y'all were in the road, you were in the road
13 right here?

14 A. Beyond the trees.

15 Q. And your property and where your wife was, was down
16 here?

17 A. Yes, sir. In this neighborhood up in here. Our
18 driveway and our land then, because we had a nice garden
19 here, I ran a tape measure from the corner post to this
20 corner post over here. That yard was three hundred and
21 sixty four feet long.

22 Q. Did you hear your wife testify that she was on this
23 end of the yard when all of this was going on?

24 A. Pretty much. But she couldn't see everything
25 because of the trees.

1 Q. After you were in the trees, correct?

2 A. After I came up out of the ditch is when she could
3 see me better, I believe.

4 Q. Mr. Guthrie, she could have seen you if you were in
5 the road, couldn't she?

6 A. Possibly.

7 Q. Okay.

8 MR. CANTRELL: No further questions, Your
9 Honor.

10 THE COURT: All right. Thank you, sir. You
11 may step down.

12 THE WITNESS: Thank you, sir.

13 THE COURT: You may call your next witness,
14 Solicitor?

15 MR. BUCKNER: The State calls Diane Milton to
16 the stand, Your Honor.

17 THE CLERK: If you would place your left hand
18 on the bible and raise your right.

19 Do you solemnly swear or affirm that the testimony
20 you're about to give in this case to be the truth, the
21 whole truth and nothing but the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you, ma'am. If you would
24 have a seat and state your name for the record, please.

25 THE WITNESS: My name is Diane Milton.

1 DIANE MILTON,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. BUCKNER:

5 Q. Ms. Milton, where do you live?

6 A. At

7 Q. And how long have you lived there?

8 A. May will be two years.

9 Q. So you lived there -- or you moved in there prior to
10 August 25th, 2011?

11 A. Yes, sir.

12 Q. Ms. Milton, are you married?

13 A. I am.

14 Q. How long have you been married?

15 A. Twenty years.

16 Q. And who is your husband?

17 A. Walter Milton.

18 Q. Is he present here in the courtroom?

19 A. He is.

20 Q. And do you have any children?

21 A. We do. We have two daughters.

22 Q. And what are their names?

23 A. Destiny and Emily.

24 Q. And how old are they?

25 A. Eighteen and fourteen.

1 Q. And y'all all live together at that address?

2 A. We do.

3 Q. What do you do for a living, Ms. Milton?

4 A. I am a school teacher. I am employed by the School
5 District of Pickens County and I teach Middle School
6 English.

7 Q. And how long have you been doing that?

8 A. I have been teaching for twelve years. In the
9 district for six.

10 Q. Ms. Milton, who are your parents?

11 A. Earle Guthrie and Rose Guthrie.

12 Q. And are they present here in the courtroom today?

13 A. They are.

14 Q. Where did your parents live on August 25th, 2011?

15 A. At that time they lived directly across the street
16 from us.

17 Q. And about how far is your house from them?

18 A. I say directly. We're in the country. We own about
19 thirteen acres, so ours is kind of diagonally from where
20 they lived.

21 Q. Could they see your property from where they lived?

22 A. They could. And since, at that time, I am a school
23 teacher, I had always asked my parents to keep an on our
24 place, especially with my children being home, being
25 teenagers.

1 Q. Now, I'm going to get straight to the point here,
2 Ms. Milton. Do you remember where you were on August
3 25th, 2011?

4 A. I do. It was an in-service day for teachers so I
5 was at work that morning. And I came home, I think it
6 was around lunchtime. And I saw a gentleman in my yard
7 as I was pulling up to my home, which at first I thought
8 was my husband but then I noticed his truck wasn't in the
9 yard. And it kind of caught me off guard. There's
10 someone in my yard and my daughters are home alone. So I
11 noticed the gentleman, but he never turned around to look
12 at me or anything so I kind of got in the house quickly
13 and checked on my children to make sure they were okay.
14 And asked them have you girls noticed anybody around the
15 house or in the yard? Has the dog been barking? No,
16 mama. So we started going through the, you need to be
17 aware when you're home alone, dah dah. So I just
18 proceeded to go about my day a little alert. I kind of
19 kept checking on the yard to make sure nobody was out
20 there or anything.

21 Q. So you didn't know who that individual was?

22 A. No, I did not know the individual. And then later
23 in the day, my mom called asked me if my husband was
24 home. And I was like, no. She was like, Diane, there's
25 somebody up in your yard. And she said, I was making

1 sure it wasn't Walt. I said, that's weird because there
2 was somebody in my yard earlier today. And she said,
3 well, your daddy's going to go up there and check the
4 situation out and ask whoever it is to leave.

5 Q. So at this point in time when you talked to your
6 mother, how many times had you seen a man walking in your
7 yard?

8 A. I had seen him at that point once. But now that she
9 said somebody was in the yard, that would have been, to
10 my knowledge, twice.

11 Q. Okay. And the man that you saw that first time
12 walking through your yard, was that man the Defendant,
13 Russell Nix?

14 A. Yes, sir.

15 Q. Okay. Explain to the jury what happened from that
16 point forward?

17 A. Okay. Well, my mom called, like I said, and said
18 that dad was going to go over and see who it was and tell
19 them to get out of our property. And I would like to
20 state that because of the fact we own thirteen acres,
21 right beside our home is my brother's, who owns five.
22 Behind his is an older woman and behind her's is a very
23 immaculate home that has like a farm of horses and stuff.
24 So my first thought was, if this gentleman is just
25 walking, you know, to get out of the road and to not be

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1 hit, it just seems like he would have been closer to the
2 edge of our property, but he was very much in the depth
3 of our property. And then going through my brother's,
4 towards my brother's home, I thought well, if he was
5 going to a convenience store or whatever to save himself
6 steps, if there was one there, I might have even
7 understood that. But there was no reason for him to be
8 that far into our property. And that's why it freaked me
9 out a little bit. Anyway, dad was going up there to tell
10 him to leave. And because our property is so huge, we
11 have a barn, we have trees, I had to go into my bathroom
12 to look out because that's the only view from my home
13 that I could see that far up into my yard. And so I saw
14 dad up there at that point, talking to him. And I saw Mr.
15 Nix from behind, looking as if he were frustrated,
16 flailing his arms. I raised the window. I heard noise,
17 but I could not tell you from that distance what I heard.

18 Q. All right. I'm going to stop you right there. When
19 you saw Mr. Nix this time, had his appearance changed?
20 Did he look the same when from when you had previously
21 spotted him?

22 A. Well, when I saw him earlier in the day, I think he
23 had on a white shirt. And at that point, I think he had
24 on a blue shirt, which was kind of odd to me, as well.
25 Anyway ---

1 Q. So you believe that he had on different clothing?

2 A. I do. So I let the window down. I went back into
3 the house and told my daughters, I said, okay, girls,
4 this might not be going down so great because I saw his
5 arms flailing.

6 Q. So how did you feel at this point, Ms. Milton?

7 A. I felt a little bit nervous.

8 Q. For your own self?

9 A. For myself, for my dad, for my children, everybody
10 involved. So at this point, I go from my bathroom back
11 to my kitchen. We have a fairly large house so that took
12 me a little bit. And when I got into the kitchen, I
13 could see down by the road area. And at this point, I
14 could see that my dad's car was down there and my dad was
15 not in the car. So I proceeded to put my shoes and I
16 told my children, do not come out of the house, and I go
17 down by the road. Well, as I'm going down by the road, I
18 see my father's back towards the ditch. And at this
19 time, Mr. Nix is in front of him. As I'm going down
20 there, I see Mr. Nix shove my father into the ditch.
21 Which, the ditch is kind of deep so I couldn't see dad at
22 that point, so I knew he was down. And then I see him on
23 top of my dad. And all I could see -- I couldn't see
24 daddy. I couldn't see a lot from him, all I could see
25 were punches flailing. And at that time ---

1 Q. This is as you're walking down to the road?

2 A. As I'm heading down there. Then I begin to say, go
3 on, get out, you know, leave. I don't remember my exact
4 words but I was trying to persuade him to get on;
5 however, I realized the damage he was doing to my dad at
6 the time and I was kind of afraid for myself to go too
7 close. I'm a lady. He could probably have hurt me as
8 well.

9 Q. So when yelled at Mr. Nix, was he still on top of
10 your dad in the ditch?

11 A. Yes. Yes, sir, he was. And then I said at that
12 point, you know, why are you here? Why are you in our
13 property? I've already seen you once today. You've been
14 here before. Why are you here?

15 Q. Let's go back to what you actually saw. How long
16 was Mr. Nix on top of our dad in the ditch?

17 A. I have no recollection of time. It happened so
18 fast. All I know is, oh, dear, my dad's in the ditch and
19 ---

20 Q. But you saw him punch him multiple times?

21 A. I did. I did see that.

22 Q. And was it loud? Could you hear it?

23 A. I cannot tell -- that was a year and a half ago. I
24 cannot tell you the sounds that I heard. It happened so
25 fast, like I said. I just saw him, obviously, getting

1 the best of my dad.

2 Q. And how were you feeling as you -- when you first
3 saw ---

4 A. I'm still scared. It's me out there with my dad. I
5 don't know this man. He could have turned around and
6 hurt me for all I knew. I feel bad that I haven't done
7 anything to help my dad.

8 Q. So once you saw the Defendant on top of your dad,
9 explain to the jury what took place from the point
10 forward?

11 A. Like I said, I was yelling for him to just go on.
12 And I was asking him why he was there? What was his
13 purpose of even being in our yard, that I had already
14 seen him. And he was just like, I didn't know whose
15 property it was. Who cares whose property it was? Why
16 are you here and especially this far into the yard? Like
17 I said, if he would have been along the edge or if there
18 was a cut-through, if I felt like he had a purpose for
19 being there, I would have, okay, he was just cutting
20 through the yard. There's no reason you should be here,
21 none.

22 Q. What did the Defendant do after you yelled at him
23 multiple times?

24 A. Like I said he was, like, I didn't know who owned
25 the property. Who cares who owned the property. It's

1 posted private property, no trespassing. And when you're
2 asked to leave, leave.

3 Q. What did y'all do after that?

4 A. At the time he kind of stomps down the road, I'm,
5 you know, going oh, no, daddy, are you alive? Are you
6 okay over there? Daddy's covered in blood. And then at
7 the time -- the cops at some point was coming out and we
8 all had to come my home and make a statement.

9 Q. Let me stop you right there. What did Mr. Nix look
10 like once he left your dad, there was no longer a
11 physical altercation going on?

12 A. Just agitated, but he didn't look hurt or covered in
13 blood.

14 Q. You didn't see any visible injuries on Mr. Nix?

15 A. No, sir.

16 Q. What did your father look like once he got out of
17 ---

18 A. My dad was covered in blood. His face is pouring,
19 you know, blood. And like I said, I couldn't -- I feel
20 bad that I didn't do anything to help him, but at the
21 same time, I'm a woman, you know. I tried to keep
22 somewhat of a distance in case I needed to run.

23 Q. So you felt like you were at risk if you have gotten
24 any closer to what was going on?

25 A. Sure.

1 Q. Ms. Milton, we've heard some testimony about various
2 trespassing signs being posted. Can you explain for the
3 jury where those were and whether the Defendant would
4 have noticed them?

5 A. Yes, sir. Like I said, we have about thirteen
6 acres. One part of our property goes on Moorefield
7 Memorial Highway, the frontage. The side of our property
8 goes up The driveway that enters on
9 Mauldin Lake and comes out on Moorefield Memorial, kind
10 of is the perimeter of our acreage before my brother's
11 starts. So we had postage down there. There's about a
12 three-acre pond on the Moorefield Memorial side. We had
13 them posted on both sides there and all along the side on
14 Mauldin Lake.

15 Q. Ms. Milton, as far as your understanding goes, who
16 owns the driveway that leads down to

17 A. We do. The whole driveway is the perimeter of our
18 property. On the opposite side of it begins my brother's
19 property.

20 Q. And Ms. Milton, just to be clear, from what you saw
21 on the day of the incident, the first thing you saw
22 between your father and the Defendant was your father
23 being thrown into a ditch?

24 A. Yes, sir.

25 MR. BUCKNER: No further questions, Judge.

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1 Please answer any questions Mr. Cantrell has.

2 THE WITNESS: Yes, sir.

3 **CROSS-EXAMINATION**

4 **BY MR. CANTRELL:**

5 Q. Ms. Milton, the first time you saw that, that Mr.
6 Buckner was referring to, was after you had come through
7 the length of your home from your bathroom window; is
8 that correct?

9 A. Yes.

10 Q. So you step out and you see this going on. You have
11 no clue what had happened prior to that, do you?

12 A. Right. Only when I come from the bathroom into the
13 kitchen area I looked out. And that's when I saw that
14 the car had moved from this part to the end of the ---

15 Q. Down to

16 A. Yes, sir.

17 Q. But from that point on, you have no clue what
18 happened except when you got out there, that this thing
19 was going on in the ditch?

20 A. Well, when I looked out and saw the car at the end
21 of the road, I still didn't see any altercation. I just
22 saw they were in the road. And that's when I went out.
23 And as I was going down is when I saw him push.

24 Q. Okay. Now, you've heard your mother's testimony.
25 She didn't see any of that. Did you hear her say that?

1 A. I was out there.

2 Q. That she didn't see any of what you just saw?

3 A. I didn't hear that.

4 Q. I'm sorry. You were not in here? I take that back.

5 A. Right.

6 Q. Do you know where she was? Did you see your mother?

7 A. When I saw them fighting, my focus was there. I was
8 wondering, is my dad okay. At some point, and I honestly
9 do not remember when, I saw her at the end of the
10 driveway. And it was probably right when it was all over
11 with, after he was kind of getting up. I remember
12 looking at my dad to see that he was, you know, alive.
13 And then after that, I remember seeing her towards the
14 end of the driveway.

15 Q. Let me ask you about this road. This, that has been
16 admitted as evidence, this shows -- well, I guess you can
17 see it. You see these yellow lines, do you not?

18 A. Yes, sir.

19 Q. Okay. Do you see that this yellow line on the lower
20 side of the driveway goes up the driveway and encompasses
21 Ms. Bray's property.

22 A. I see that.

23 Q. Do you see that?

24 A. Uh-huh (affirmative).

25 Q. So the entire driveway is inside those two yellow

1 lines that lead up to Ms. Bray's property; correct? Is
2 that what you see?

3 A. That's what I see.

4 Q. But, granted, whatever the situation with the
5 driveway, that's what y'all use as a driveway or your
6 brother uses as a driveway?

7 A. My brother uses as a driveway.

8 Q. Now, let me ask you again also about these no
9 trespassing signs. There's currently one down here in
10 your yard; is that right?

11 A. Yes. And there's one out by the corner of the
12 driveway that my brother uses?

13 Q. Right there.

14 A. Yes.

15 Q. Or up here?

16 A. No, no. Down by the Mauldin Lake. Yes, there's one
17 there.

18 Q. I'm going to ask you to show me where it is there or
19 mark where it's supposed to be?

20 A. I don't see one there and it's not where it would
21 have been. It would have been to the right side of the
22 drive.

23 Q. To the right?

24 A. But a little farther over and up.

25 Q. Well, let me ask you this. Regardless of where the

1 signs may have been, regardless of who owned title or had
2 the right-of-way on that driveway, any altercation or
3 physical confrontation you saw between your father and
4 Mr. Nix was on is that right?

5 A. Actually, it was on the opposite side in the ditch.

6 Q. But we're talking about ---

7 A. Which would have been his property that he was
8 renting at the time, yes, sir.

9 Q. It's right down here on

10 A. Yes, sir.

11 Q. So regardless of trespassing signs, Mr. Nix was off
12 of any property that could have conceivably been yours,
13 your brother's, or anybody's?

14 A. Well, no, when they were fighting he would have
15 technically been in my dad's rented property, the man who
16 owns that land.

17 Q. I think your testimony said that everything started
18 in the road?

19 A. When he shoved him, it did. But when he was on him,
20 he was on daddy's property.

21 Q. Let me back up. The question was, when the
22 altercation started, where were both men?

23 A. Okay. In the road. At the edge of the road, near
24 the ditch.

25 Q. Now, you said your mother called you about what she

1 was seeing the first time?

2 A. My mom called to ask if my husband was home because
3 she noticed someone in our yard. And as I stated
4 earlier, they knew my children were home alone that day.
5 So they were watching out for our home and my kids.

6 Q. And did your mom say that she saw a man and that
7 this was -- the very first time she called you, did she
8 say she saw a man and that this was the second time that
9 she'd seen him?

10 A. This was a year and a half ago. I don't remember
11 that detail. I remember my mom calling me and saying, is
12 Walt home? No, mom, he's not. Well, there's a guy in
13 your yard. I thought it might have been him. No, ma'am,
14 my husband's not home. I said, but I saw a guy in my
15 yard earlier today, as well.

16 Q. Let me show you this and just first ask if you can
17 identify it, please?

18 A. Yes. That's my handwriting.

19 Q. So this is your statement?

20 A. The statement that I made, yes, sir.

21 Q. Do you recognize this to be, this as being your
22 statement given to the representative of the sheriff's
23 department?

24 A. Yes, sir.

25 Q. And in this you recount basically everything you've

1 just testified to about the altercation between Mr. Nix
2 and your father. Can I ask you to read -- well, read the
3 first two lines down to right there, everything down to
4 right there?

5 A. Yes, sir. Around lunch I arrived home from school
6 and noticed a man in my yard. He walked up to my
7 brother's property and through the field, which is
8 . My mom called to tell me
9 she saw a man in my yard. In fact, this was the second
10 time she saw him.

11 Q. So the first time she called you, she told you she'd
12 seen this person twice; is that correct?

13 A. I think I was so kind of freaked out that she told
14 me that someone was in the yard, I did obviously write
15 that, but maybe I misunderstood her because I thought I
16 saw him twice, that she had also seen him prior to that
17 moment, as well.

18 Q. And what makes you think this might not be accurate
19 in the first place?

20 A. I'm sorry. What did you just ask me?

21 Q. Well, you just said you may have misunderstood.
22 What makes you think you might have ---

23 A. No, I meant -- I'm saying I may have misunderstood
24 my mom.

25 Q. Okay. And what makes you think that at this point

1 in time, today?

2 A. If you're telling me that she said she had not seen
3 him twice at that point. And I obviously wrote that she
4 said that was the second time she saw him. In my mind, I
5 knew that was two times that he had been seen on my
6 property that day.

7 Q. And, let me back up and ask you. You said you had
8 seen this man going through the yard and just on up --
9 did he go on up the driveway or where did he go?

10 A. No. When I saw him when I came home from school
11 that day, I was pulling in -- not the driveway that's
12 near my brother's side of the property, but this ---

13 Q. (Pointing on exhibit).

14 A. Yes, the driveway you're pointing to. And do you
15 see that barn that has the big metal roof on it right
16 there?

17 Q. (Pointing on exhibit).

18 A. Yes. He was closer to that, but walking towards my
19 brother's property, out in ---

20 Q. (Pointing on exhibit).

21 A. Yes.

22 Q. Okay.

23 A. And that's what I'm saying, it wasn't even as if he
24 was just walking along the edge of the highway or cutting
25 through to something. That's why it kind of freaked me

1 out a little bit. Why would he be this far up into my
2 yard?

3 Q. Did you see where he went?

4 A. I could -- like I said, it's hard to see and I was
5 kind of freaked out so I ran into the house. Because of
6 the barn and because of the trees, you can't see. I did
7 notice him as he was going towards my brother's property,
8 but then I lost sight of him. I couldn't see him
9 anymore.

10 Q. Was there no way for you to see what was going on
11 over at your brother's property at that time?

12 A. Only if I ran back into the bathroom and looked out.
13 But like I said, I never saw him anymore at that point.
14 Did I keep keeping an eye on my yard? Yes, I did all
15 throughout the day because I was kind of paranoid until
16 my mom called again and said, you know, somebody's out
17 there.

18 Q. So the last time you saw him, he was heading up this
19 way towards your brother's house, towards this driveway?

20 A. No, not towards that driveway? More towards his
21 home. Well, the driveway goes all the way around, but it
22 wasn't like towards the end near Mauldin Road.

23 Q. I'm sorry. Down this way or up this way? Which
24 direction was he going? Was he going ---

25 A. No, where you're pointing, I never saw him there.

1 When he was in my field, he was going towards my
2 brother's home, yes.

3 Q. In that direction?

4 A. But -- right. Not towards the road, towards his
5 home. And then I lost sight of him due to the trees and
6 stuff and I never saw him again.

7 Q. And beyond his home is the driveway?

8 A. It was never that far. Yes, beyond there is a
9 driveway.

10 Q. And that driveway leads all the way back around to
11 178?

12 A. No, no, no.

13 Q. Which one, this one?

14 A. The driveway that -- yes, that one leads all the way
15 back around.

16 Q. So he'd not yet reached that driveway?

17 A. He had not yet reached that driveway.

18 Q. And that driveway that comes up in this direction
19 and goes back to 178?

20 A. Yes, sir.

21 Q. Would that, in fact, if we went around and followed
22 that and even came back around to your home, would that
23 make a lap, so to speak? Would that go around almost in
24 a circle?

25 A. Sure.

1 Q. You, if I understood correctly, you didn't hear any
2 of the conversation between your father and Mr. Nix?

3 A. Yes, sir. Like I said, I had the window open. I
4 saw his arms flailing. I heard noise but I could not
5 tell you what was being said.

6 Q. And it's your testimony that you, I presume, got a
7 good look at Mr. Nix after this altercation and he didn't
8 look hurt or damaged or anything?

9 A. I did not see blood on him nor his clothing. But I
10 have to admit, at the same time, I was just making sure
11 he was going away and I didn't need to run. And, also,
12 that my dad was alive.

13 Q. And just very briefly, in closing, because of the
14 situation with your dad and PTSD, have you seen him in
15 situations where he might be agitated or hyper vigilant
16 is one of the terms that we've heard. Have you seen
17 that?

18 A. (Negative nod.)

19 Q. You've just never seen that?

20 A. I can't recall an instant where I've just seen my
21 dad flip out.

22 Q. No, I'm just -- hyper vigilant or agitated, nothing
23 like that?

24 A. I've been married for twenty years. I don't really
25 see daddy a lot. And that's just the truth.

1 Q. So you just have no opinion or no observations about
2 any of that?

3 A. I have no comment.

4 Q. And I'm sorry. One last question. You had just
5 been living on this property for a month or two when this
6 happened?

7 A. No. May and this was in August, and at the end of
8 August at that, so right at four months.

9 Q. Okay. Four months. So you were new to the
10 neighborhood, except for your parents living down the
11 road?

12 A. Sure.

13 MR. BUCKNER: No further questions, Judge.

14 THE COURT: Thank you, ma'am. You may step
15 down.

16 THE WITNESS: Yes, sir.

17 THE COURT: Mr. Foreman, ladies and gentlemen,
18 this will be a good time for us to take a lunch break.
19 I'll ask if you would to be back at two fifteen. I
20 believe we'll have time to get a bite to eat and be ready
21 to proceed back at two fifteen. Let me remind you again
22 not to be discussing the case while you're out and about.
23 Don't let anyone discuss the case with you. We'll be
24 ready to proceed back at two fifteen. Have a good lunch.
25 Everyone else, please remain seated.

1 (WHEREUPON, the jury exited the open court at
2 approximately 1:14 P.M.)

3 THE COURT: All right. We'll be at ease until
4 two fifteen.

5 MR. CLEVELAND: Thank you, Judge.

6 THE COURT: Yes, sir.

7 MR. CLEVELAND: May Ms. Milton be excused?

8 THE COURT: Any objection to Ms. Milton be
9 excused?

10 MR. CANTRELL: No objection.

11 THE COURT: Without objection she may be
12 excused.

13 (WHEREUPON, the court stood at recess for a lunch
14 break.)

15 THE COURT: Are you ready to proceed,
16 gentlemen?

17 MR. BUCKNER: Yes, Your Honor, I believe we
18 are.

19 MR. CANTRELL: Yes, Your Honor.

20 THE COURT: Have the jury come in if they're
21 ready.

22 (WHEREUPON, the jury entered the open court at
23 approximately 2:22 P.M.)

24 THE COURT: Solicitor, you may call your next
25 witness.

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Dean Jones - Direct Examination by Mr. Buckner

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1 MR. BUCKNER: May it please the Court, Your
2 Honor. The State calls Deputy Dean Jones.

3 THE CLERK: Sir, if you would place your left
4 hand on the bible and raise your right.

5 Do you solemnly swear or affirm that the testimony
6 you're about to give in this case to be the truth, the
7 whole truth and nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you, sir. If you would have
10 a seat and state your name for the record, please.

11 THE WITNESS: Master Deputy Dean Jones.

12 **DEAN JONES,**

13 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **DIRECT EXAMINATION**

15 **BY MR. BUCKNER:**

16 Q. Deputy Jones, will you tell the Court what your
17 current occupation is?

18 A. I'm with the Uniform Patrol of Pickens County
19 Sheriff's Office.

20 Q. And how long have you been in that capacity?

21 A. About eleven and a half years now.

22 Q. How long have you worked in law enforcement, total?

23 A. At that time, eleven and a half years.

24 Q. Were you working as a deputy with the Pickens County
25 Sheriff's Office on August 25th of 2011?

1 A. Yes, sir.

2 Q. And did you come into contact with the Defendant
3 Russell Nix on that day?

4 A. Yes, sir.

5 Q. Did you come into contact with the victim, Earle
6 Guthrie, on that day?

7 A. Yes, sir.

8 Q. Where did you come into contact with Mr. Guthrie?

9 A. At -- if I may refer to the CAD, please. 570
10 in Pickens County.

11 Q. Who else was there when you arrived at 570 Mauldin
12 Lake Road?

13 A. I observed Ms. Guthrie and Mr. Guthrie.

14 Q. What was the reason for you coming over to the 570
15

16 A. We received a call of a fight at that location.

17 Q. When you arrived on the scene, what did Mr. Guthrie
18 look like?

19 A. I observed bruising on his left side of his face
20 area.

21 Q. Did he appear to be injured?

22 A. Yes, sir.

23 Q. I'm going to show you what's already been put into
24 evidence, State's Exhibits 2, 3 and 4. Do you recognize
25 those photos?

1 A. Yes, sir.

2 Q. Would you characterize those photos as an accurate
3 representation of what Mr. Guthrie looked like when you
4 arrived on the scene?

5 A. Yes, sir.

6 Q. I'm going to show you State's Exhibit 2. Would you
7 characterize this photo as an accurate representation of
8 what Mr. Guthrie looked like on August 25th?

9 A. Yes, sir.

10 Q. Deputy Jones, when you arrived at the address, did
11 you speak with Mr. and Ms. Guthrie?

12 A. Yes, sir.

13 Q. How did they seem when you arrived there? What was
14 their demeanor like?

15 A. Mr. Guthrie was just kind of subdued, calm a little
16 bit, but Ms. Guthrie was really upset, visibly upset.

17 Q. Was there anyone else that you spoke with while you
18 were there?

19 A. I believe her daughter was there.

20 Q. Diane Milton?

21 A. Diane, yes, sir.

22 Q. Did you speak with Ms. Milton?

23 A. Yes.

24 Q. What did she seem like when you arrived?

25 A. They were very upset.

1 Q. What happened after you spoke -- let me backtrack
2 for just a second. What information did you gather from
3 the Guthries and Ms. Milton while you were at the scene?

4 A. Well, we tried to locate another party and he stated
5 that there was -- the subject that was involved was
6 wearing shorts, blue shirt and a ball cap and had left
7 the area.

8 Q. So what did you do with that information?

9 A. We immediate BOLO'ed that on the radio and
10 immediately got in our vehicles and we went and looked
11 because it had just recently occurred. We may have a
12 chance to locate him.

13 Q. And where did you head based on the information that
14 you had received?

15 A. We drove around the local area, the neighborhood.

16 Q. And what was your next step in your investigation?

17 A. Another officer was familiar with Mr. Nix -- I
18 wasn't familiar with Mr. Nix -- and stated that he might
19 be at that location on Old School Road. So we
20 went to that location.

21 Q. And when you arrived at the address on Old
22 Road, who did you come in contact with?

23 A. The first contact was with his father.

24 Q. And did you come into contact with Russell Nix, the
25 Defendant, while you were at ---

1 A. He stated that he was at the house and he went to
2 get him. Yes, sir.

3 Q. Did you see Mr. Nix, did you see the Defendant when
4 you were there?

5 A. Yes, sir.

6 Q. What was he wearing? Did he match the description
7 that was provided by ---

8 A. Yes, sir, he matched the description.

9 Q. Did you notice any injuries on Mr. Nix when you saw
10 him?

11 A. No, sir, just that he had small scratches on his
12 hand area and I think on his leg.

13 Q. Is the gentleman seated over at the defense counsel
14 table the same man you saw at that residence on that day?

15 A. Yes, sir.

16 Q. Deputy Jones, I'm going to show you what's been
17 marked as State's Exhibit Number 5.

18 A. Yes, sir.

19 Q. Do you recognize that photo?

20 A. Yes, sir.

21 Q. How do you recognize that photo?

22 A. That's a booking photo from the Sheriff's Office.

23 Q. Would you characterize this photo as a fair and
24 accurate description of what Mr. Nix looked like on
25 August 25th of 2011?

1 A. Yes, sir.

2 MR. BUCKNER: Judge, at this time, the State
3 would move Exhibit Number 5 into evidence.

4 MR. CANTRELL: No objection, Your Honor.

5 THE COURT: Without objection Exhibit 5 is
6 admitted and may be ---

7 MR. BUCKNER: Permission to publish to the
8 jury.

9 THE COURT: --- published to the jury.

10 (WHEREUPON, Defendant Exhibit Number 5 was admitted
11 into evidence.)

12 Q. Deputy Jones, it's your testimony that once you
13 arrived at the scene or arrived at the address, Mr. Nix
14 didn't appear to have any injuries on him at that time?

15 A. No, sir.

16 Q. And what was his demeanor like?

17 A. When he came to the door, he appeared excited and he
18 was sweating a little bit.

19 Q. So what did you do with him? Based on the fact that
20 he matched the description provided by the victims, what
21 was the next step in the investigation at that point?

22 A. The next step was to get information from all
23 parties and present to a judge for a warrant.

24 Q. And then what did you do after that?

25 A. We did that. Presented for a warrant from the

1 judge.

2 Q. And was Mr. Nix booked?

3 A. Yeah. The judge issued a warrant on Mr. Nix and
4 then he was arrested subsequently and then booked into
5 the law enforcement center?

6 Q. At which point this photo was taken?

7 A. Yes, sir.

8 MR. BUCKNER: No further questions, Judge.

9 THE COURT: Mr. Cantrell.

10 **CROSS-EXAMINATION**

11 **BY MR. CANTRELL:**

12 Q. It was your testimony there's no redness on Mr.
13 Nix's face?

14 A. No, sir, I didn't observe nothing. I just observed
15 him sweating.

16 Q. Did he tell you he had been walking laps or rounds
17 there?

18 A. I don't recall him stating that.

19 Q. Now, there is several written statements taken in
20 this investigation. Did you take those?

21 A. It was at, I believe, Diane's house, Detective Lane
22 Byers assisted me in taking statements.

23 Q. Okay. So all these statements were taken by Lane
24 Byers, not you?

25 A. Well, the victims. And then I took a statement, I

1 believe, with Mr. Nix. I believe he wrote it on the hood
2 of my vehicle.

3 Q. All right. And you don't remember him telling you
4 that he was walking laps?

5 MR. BUCKNER: Object. Objection, Your Honor.

6 THE COURT: What's your objection?

7 MR. BUCKNER: Hearsay?

8 THE COURT: I overrule your objection.

9 A. I don't recall him stating that he was walking laps.

10 Q. Do you remember him telling you that he walked laps
11 three times?

12 A. Yeah, I remember that.

13 Q. So he did tell you about walking laps?

14 A. He stated three times that he was around that area.

15 Q. Okay. So he didn't deny being around there more
16 than once?

17 A. According to his statement, yes, sir.

18 MR. BUCKNER: Judge, may we approach?

19 THE COURT: Yes, sir.

20 (WHEREUPON, Mr. Buckner, Mr. Cleveland, and Mr.
21 Cantrell approached the bar.)

22 THE COURT: You may ask your next question, Mr.
23 Cantrell.

24 Q. Now, as far as any other statements from any other
25 witnesses, Detective Lane Byers took those?

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1 A. At the victim's daughter's residence, I believe,
2 yes, sir.

3 Q. And is Detective Byers present here today?

4 A. No, sir.

5 Q. You went and interviewed Russell Nix and he was
6 sweating as if he'd been outside; is that correct?

7 A. He appeared excited, yes, sir.

8 Q. And appeared that he'd been involved in something?

9 A. Yes, sir.

10 Q. Some physical activity?

11 A. Yes, sir.

12 Q. And you left at that time after the initial
13 interview?

14 A. Yeah. We gathered the information and it was
15 forwarded to the presiding judge.

16 Q. And -- I'm sorry. Go ahead. To the judge?

17 A. That day.

18 Q. And later that day, did you go back to the residence
19 with a warrant or did someone?

20 A. If I can refer to the CAD?

21 Q. Absolutely, yes, sir.

22 A. There is a supplement that was added for that.

23 Q. Okay. Sure.

24 A. You want the time?

25 Q. Approximately. Yes, if you could?

1 A. It states the supplement at sixteen fifty-eight,
2 which is approximately two minutes to five, Judge Wolf
3 reviewed the facts of the case and issued the warrants
4 against Russell Nix.

5 Q. Now what I'm asking though is when you went back to
6 the Nix residence?

7 A. At seventeen thirty-two, which would be five thirty-
8 two, Russell Nix was arrested then based on those
9 warrants and placed in handcuffs, double-locked,
10 transferred to the law enforcement center for booking.

11 Q. So you had seen him a couple hours or several hours
12 earlier at his residence when you interviewed him the
13 first time?

14 A. Yes, sir.

15 Q. And after five o'clock, you went back with a warrant
16 to arrest him, he was still there?

17 A. Yes, sir.

18 Q. Do you remember what he was wearing the first time
19 you saw him?

20 A. The first time I saw him he matched the description
21 wearing the blue shirt, shorts and a ball cap.

22 Q. Okay. Do you remember what type shoes?

23 A. No, sir.

24 Q. Is it accurate to say that Mr. Nix cooperated with
25 you?

1 A. Yes, sir.

2 Q. He answered your questions?

3 A. Yes, sir.

4 Q. Gave a voluntary statement?

5 A. Yes, sir.

6 Q. And he was still there hours later when you came
7 back to arrest him and take him to jail?

8 A. Yes, sir.

9 Q. Is Mr. Nix's residence approximately a quarter of a
10 mile or so from the incident location?

11 A. Probably approximately. Across the road from 178.

12 MR. CANTRELL: That's all I have, Your Honor.

13 THE COURT: Any redirect?

14 MR. BUCKNER: No further questions, Judge.

15 THE COURT: Thank you, Officer. You may step
16 down. The State may call it's next witness.

17 MR. CLEVELAND: Thank you, Your Honor. May it
18 please the Court. At this time, the State rests.

19 THE COURT: Mr. Foreman, ladies and gentlemen
20 of the jury, I need to take care of a matter of law at
21 this time. So I'll ask you if you'd go back to your jury
22 room just briefly. We'll take care of this and be ready
23 to proceed with the trial of the case. Don't discuss it
24 at this time. If you'll take a short break, we'll call
25 you back in a few moments.

1 (WHEREUPON, the jury exited the open court at
2 approximately 2:46 P.M.)

3 THE COURT: All right. Are there any matters
4 we need to take care of before we settle the record and I
5 talk with your client about his rights, Mr. Cantrell?

6 MR. CANTRELL: Your Honor, at this time, I
7 would move for a directed verdict that the testimony when
8 taken in the light most favorable to the State does not
9 raise questions sufficient to carry on to the jury, that
10 there has not been sufficient testimony as to the
11 allegations.

12 THE COURT: All right. Well, as you know and
13 the Solicitor knows, at this stage, I must view all the
14 evidence in the light most favorable to the non-moving
15 party for the purposes of your motion. And I find there
16 is the existence of sufficient evidence for the jury to
17 make that factual determination and I respectfully deny
18 your motion.

19 Any other legal matters we need to take care of?
20 Otherwise, I'll have you come forward with your client,
21 up to the desk here.

22 MR. CANTRELL: Your Honor, could we have one
23 second?

24 THE COURT: Yes, sir.

25 MR. CANTRELL: Beg the Court's indulgence.

1 MR. CLEVELAND: Judge, defense counsel and I
2 have spoken regarding a stipulation that the Defense
3 brought up that they may want to recall our officer for
4 the purpose of admitting evidence, which are the two t-
5 shirts, the victim's shirt and the defendant's shirt.
6 Just in the essence of time, the State's okay with the
7 stipulation between the parties to admit the items into
8 evidence as these were two shirts, one belonging to the
9 victim, one belonging to the defendant, taken into police
10 custody the day of the event.

11 THE COURT: Would those be marked as State's
12 Exhibits -- one State Exhibit and one Defense Exhibit or
13 how should the court reporter mark those?

14 MR. CLEVELAND: Either Court's Exhibit, one or
15 the other, it really doesn't matter, Judge.

16 MR. CANTRELL: Your Honor, I would suggested
17 possibly as you stated, State's Exhibit Number whatever
18 and then Defendant's Exhibit.

19 THE COURT: Okay. You would agree with that,
20 Mr. Cantrell?

21 MR. CANTRELL: Yes, sir.

22 THE COURT: All right. Well, why don't we --
23 are the items in a bag or something?

24 MR. CLEVELAND: They're bagged up. They're
25 bagged up, Your Honor. And I can present that

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1 stipulation to the jury if you want me to.

2 THE COURT: We need to get those marked now
3 while we're -- that would be a good time to get them
4 marked.

5 MR. CANTRELL: And, Your Honor, with the
6 Court's permission at this time I would -- I know we need
7 to address the Defendant's rights.

8 THE COURT: Hang on just a minute so she can
9 get those marked.

10 (WHEREUPON, State Exhibit Number 6 was marked and
11 admitted into evidence.)

12 (WHEREUPON, Defendant Exhibit Number 8 was marked
13 and admitted into evidence.)

14 THE COURT: Are they sealed?

15 MR. CLEVELAND: They're in a ziplock.

16 THE COURT: Just a ziplock, so they can open it
17 easily?

18 MR. CLEVELAND: I've got some gloves. We can
19 just caution them these things may be contaminated.

20 THE COURT: I'll remind them of that. Help me.

21 MR. CLEVELAND: And if they're just dying to
22 look at them outside of the bag, maybe request from the
23 court, we can hold them up or something out here.

24 MADAM REPORTER: These are being admitted?

25 THE COURT: Admitted by stipulation.

1 Plaintiff's Exhibit Number ...

2 MADAM REPORTER: 6. And 8 for the Defense.

3 THE COURT: 8? Okay. All the exhibits that
4 have been marked for both sides are now in.

5 MR. CLEVELAND: No, there's only ---

6 THE COURT: Defendant's Exhibit 1 was not
7 entered.

8 MR. CLEVELAND: Most Defense Exhibits, I
9 believe, are ---

10 THE COURT: Are not in, okay.

11 MADAM REPORTER: I think Number 2 is the only
12 one that is admitted. Is that right, David; 2 is the
13 only admitted ---

14 THE COURT: 2?

15 MR. CANTRELL: I believe so.

16 THE COURT: Was there something else? Anything
17 else from the State?

18 MR. CLEVELAND: Nothing from the State, Your
19 Honor.

20 THE COURT: Mr. Cantrell?

21 MR. CANTRELL: Your Honor, only that I would
22 request a brief, I guess, recess or additional five
23 minutes of the recess so I can discuss with Mr. Nix about
24 the Court's inquiry as to his testimony and that sort of
25 thing.

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1 THE COURT: Well, before I do that or
2 afterwards?

3 MR. CANTRELL: Before.

4 THE COURT: Before. Okay. Because I was going
5 to give you time afterwards too, to ---

6 MR. CANTRELL: Well, that'll be fine.

7 THE COURT: Let's do it afterwards. I believe
8 -- let's do this and then if he -- if we run into
9 problems we'll take a break. But otherwise, I'll give
10 you a chance to do this afterwards. If you would come
11 forward, Mr. Nix, with your attorney. I just need to go
12 over a few things with you.

13 (WHEREUPON, Mr. Cantrell and Mr. Nix approached the
14 bar.)

15 THE COURT: If you would just stand right there
16 with him. If you would you, please, sir, raise your
17 right hand?

18 Do you swear or affirm the testimony you're about to
19 give me will be the truth, the whole truth and nothing
20 but the truth so help you God?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Nix, I need to go over certain
23 things with you now. If, in my explaining these to you,
24 you have any questions, please, through your attorney,
25 let me know. I'll be glad to explain it in more detail

1 if need be. We're at the stage of the trial now where
2 you can present a defense. You have a right, however, to
3 claim the protections of the United States of America's
4 Constitution. The Fifth Amendment says that no person in
5 any criminal case can be required or compelled to be a
6 witness against himself. We have the same provision in
7 Article I of our State Constitution.

8 Now, what this means is that you can't be required
9 to testify in the case. You have a right to testify in
10 your own behalf, but nobody can make you testify. It's a
11 personal right that you enjoy. Nobody can waive that
12 right but you.

13 Now, you may make the decision to testify and if you
14 do so, you'd be subject to the same rules that govern any
15 other witness who testifies. You can be examined and
16 cross-examined on any relevant issue in the case.
17 Furthermore, if you have any prior convictions involving
18 dishonesty or false statements or crimes that are
19 punishable by imprisonment for more than one year, and
20 the Court determines that the probative value of
21 admitting of that evidence outweighs any prejudicial
22 effect to you, then the Solicitor would be able to
23 introduce your criminal record to attack your
24 credibility.

25 Now, your decision to testify has to be made freely

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1 by you and intelligently by you, voluntarily by you, with
2 the knowledge of the protections that you enjoy under the
3 Constitutions of South Carolina and the United States.

4 Also, you must be aware, intelligently and freely be
5 aware of the consequences that result in your decision to
6 testify. Mr. Nix, you may decide not to testify. And if
7 you decide not to testify, I'm going to instruct the jury
8 they cannot give that fact any consideration whatsoever
9 that you exercised that right. Be absolutely no
10 prejudice to you because you chose to exercise your right
11 not to testify. Now, whether you testify or don't
12 testify, that's left entirely up to you. You can
13 certainly talk with you attorney. You can talk with
14 family, with friends. But ultimately that's a decision
15 that you and you alone will have to make. Do you
16 understand what I've explained to you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions of me?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. If you would, just
21 return with your attorney to your table. We'll, in a
22 moment, take a short break and give you a chance to go
23 over that further with him.

24 For the purposes of him making that decision, is
25 there any prior convictions for which the State would

1 intend to use to impeach his credibility?

2 MR. CLEVELAND: Yes, Your Honor. The
3 convictions the State would put forth to impeach the
4 Defendant involving dishonesty or false statements are as
5 follows: In 2004, he was convicted of four counts of
6 grand larceny, one thousand to five thousand dollars in
7 value; four counts or five counts of burglary in the
8 third degree. And I believe that's four counts. Three
9 counts of petit larceny.

10 Moving forward to 2005, he had three counts of third
11 or subsequent property offense. I cannot tell which
12 enhancement charge that was based upon his NCIC. In
13 2007, he had a shoplifting conviction. In 2008 there was
14 a petit larceny conviction. 2009 there was a third --
15 again, another third or subsequent property conviction.
16 Those are the charges that the State -- and in 2012,
17 receiving stolen goods, which I believe he was convicted
18 in Greenville County. I have his NCIC here, Judge.
19 Unless it's pending, Your Honor, the State would not
20 attempt to go forward on the receiving stolen goods.
21 Quite frankly, he's been in jail all of 2012. So --
22 because he was transported over there. I don't know how
23 that would have worked. The State would like to be heard
24 on the basis for its -- legal basis for entering those
25 cases in at the appropriate time, Your Honor.

1 THE COURT: All right. Solicitor, I'll be glad
2 to hear from you.

3 MR. CLEVELAND: Judge, as the Court is well
4 aware, Rule 609(b) provides groundwork for using prior
5 convictions to impeach any witness on trial, including
6 the Defendant. In this case, I'm referring to *State*
7 *versus Cooper*. This can be cited at 386 S.C. 210 or 687
8 S.E.2d 62. This is a South Carolina Court of Appeals
9 case from 2009 and is still being reported as good law.

10 In a nutshell, the case hinges in a murder trial on
11 whether burglary and housebreaking convictions are able
12 to be used to impeach the Defendant on. And I'm quoting
13 a passage from page 200 -- page 222 of the South Carolina
14 cite page. It says, after considering -- let me jump
15 forward. It says, the judge did allow the defendant's
16 convictions for housebreaking and larceny to be admitted
17 for impeachment purposes because they are crimes of
18 dishonesty that weigh on the Defendant's credibility.
19 The probative value of the convictions outweigh the
20 prejudicial effects. This case was a murder/armed
21 robbery case. The judge did not allow in a robbery
22 conviction because it was too close to the crime for
23 which he was on trial.

24 Here we are hearing an assault case. There's no
25 similarity. I don't feel -- the State doesn't feel that

1 there is a substantial outweighing of probative value
2 because there's no, there's no similarity in the crimes
3 we seek to impeach him on. But it does heavily go to the
4 Defendant's credibility because those are crimes of
5 dishonesty. And we think the jury is entitled to hear
6 that if he chooses to take the stand.

7 THE COURT: Mr. Cantrell, anything you wish to
8 say about the offenses?

9 MR. CANTRELL: Your Honor, I would believe that
10 specifically the offenses, the property enhancement
11 offenses, are not specific enough for us to -- for there
12 to be a finding that they are admissible. I believe,
13 based on case law and the Rule that I have to admit the
14 grand larceny and burglaries probably are. But I do
15 believe that any property offense enhancement would not
16 necessarily fall within the Rule. So I believe the 2004
17 offenses, the 2008 I think are larcenies, would probably
18 be the only ones that I believe do fall within the Rule.
19 And that are not otherwise unduly prejudicial that take
20 them out of the Rule.

21 MR. CLEVELAND: To that, Your Honor, I don't
22 wholly disagree with Mr. Cantrell as far as, I guess, a
23 third property offense. But the State would simply
24 request that that those could be referred to as felony
25 convictions for the purposes of impeachment or felonies

1 involving dishonesty.

2 MR. CANTRELL: I would stand by my previous
3 argument. I'm not sure those are specific enough to be
4 allowed.

5 THE COURT: Do you have any idea of what those
6 charges are?

7 MR. CLEVELAND: Judge, I can go look in our
8 system and try to determine what those charges were. If
9 we can figure out what the underlying charges are ---

10 THE COURT: The grand larcenies and the
11 burglaries, the receiving stolen goods was out by the
12 State?

13 MR. CLEVELAND: Yes, Your Honor.

14 THE COURT: There was four each of the grand
15 larcenies and burglaries in '04?

16 MR. CLEVELAND: There was actually five
17 burglaries. I was correct in my first statement and then
18 three petit larcenies. So for a total of twelve
19 convictions, 2004.

20 THE COURT: You're taking the position that
21 petit larcenies come in because they're crimes of
22 dishonesty?

23 MR. CLEVELAND: Yes, Your Honor. I think Rule
24 6(b) is clear, insomuch as regardless of punishment, if
25 the crime involves dishonesty. I don't think the one-

1 year rule -- it's not what we're relying on. We're
2 relying on sub-section (b), which is crimes of any
3 punishment.

4 THE COURT: All right. I'll look over this
5 Cooper case. I think there'll be some obviously that
6 will be used for impeachment purposes. I believe you can
7 talk with your client sufficiently about that, Mr.
8 Cantrell.

9 MR. CANTRELL: Yes, sir.

10 THE COURT: And I'll certainly let you know
11 what, more specifically, I will rule on when we come back
12 from the break, okay?

13 MR. CANTRELL: All right, sir.

14 THE COURT: Let's take a short break.

15 MR. CANTRELL: Thank you, Your Honor.

16 (WHEREUPON, the court stood at recess for a short
17 break.)

18 THE COURT: I'm going to allow the State to use
19 the prior -- 2004 prior convictions. I think there were
20 four grand larcenies and five burglaries, felonies, to
21 impeach the Defendant if he chooses to testify, as well
22 as using the shoplifting charge in 2007 as far as an
23 impeachable offense. The others, the petit larceny of
24 '08, the petit larceny of '04, I'll disallow the property
25 offenses because we have no -- nothing on the record as

1 to exactly what they were. I'm not allowing those, as
2 well.

3 I'll be glad to hear from either one of you as to my
4 ruling on that. I don't even know if he's going to
5 testify, but if he does testify that's my ruling.
6 Anything from the defense?

7 MR. CANTRELL: Nothing, Your Honor.

8 THE COURT: From the State?

9 MR. CLEVELAND: Nothing, Your Honor.

10 THE COURT: All right. Are we ready for the
11 jury to come back?

12 MR. CLEVELAND: The State's ready, Your Honor.

13 THE COURT: Are you going to put up a defense,
14 Mr. Cantrell?

15 MR. CANTRELL: Yes, sir.

16 THE COURT: All right. Have the jury come in,
17 please.

18 (WHEREUPON, the jury entered the open court at
19 approximately 3:45 P.M.)

20 THE COURT: All right. Mr. Cantrell, you may
21 present your defense.

22 MR. CANTRELL: Your Honor, we would ask that
23 Bruce Nix be called in and sworn.

24 THE CLERK: Sir, if you would place your left
25 hand on the bible and raise your right.

1 Do you solemnly swear or affirm that the testimony
2 you're about to give in this case to be the truth, the
3 whole truth and nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you, sir. If you would have
6 a seat and state your name for the record, please.

7 THE WITNESS: Bruce Nix.

8 BRUCE NIX,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. CANTRELL:

12 Q. Now, Mr. Nix, are you related to this gentleman
13 here?

14 A. That's my son, yes, sir.

15 Q. And does he live with you?

16 A. (No verbal response).

17 Q. Does he live with you?

18 A. Yes, sir.

19 Q. And that's a reminder. You make sure you hear me.
20 If you don't, you tell me. And you be sure and speak up
21 loud and clear also, okay. And on the day of August
22 25th, 2011, was he living with you?

23 A. Yes, sir.

24 Q. Was he born and raised in your home?

25 A. Yes, sir.

1 Q. And where is your home?

2 A. .

3 Q. And that is right off of Highway 178?

4 A. 178, two miles out of town, on the left.

5 Q. And is it almost directly across 178 from Mauldin
6 Lake Road?

7 A. Yes, sir. I can see everything on that road.

8 Q. All right, sir. And on the date we're talking
9 about, do you remember that date? Do you remember what
10 went on that day?

11 A. Yes, sir.

12 Q. And was Russell there? Was Russell at home?

13 A. Yes, sir.

14 Q. Now, did Russell have any habits that involved
15 getting outside and doing anything in particular?

16 A. He done a lot of walking.

17 Q. Would he call that his walking laps or walking in
18 the neighborhood, walking laps?

19 A. Well, yeah. Sometimes he would go toward Easley and
20 sometimes he'd go toward the other way.

21 Q. All right, sir. Was it uncommon for him to do that?

22 A. Sir?

23 Q. Was it uncommon for him to walk like that?

24 A. No. No.

25 Q. And on August the 25th, did he in fact get out and

1 walk?

2 A. Yes, sir.

3 Q. You were home, I assume?

4 A. Yes, sir.

5 Q. And did he do that more than once? Did he walk,
6 come back, get out and walk again?

7 A. I think he might have walked once before that. I
8 took a nap.

9 Q. All right, sir. And do you remember him leaving and
10 then coming home and things being different?

11 A. Yes, sir. He told me he went for a walk. And then
12 when he come back I was out under the carport and ---

13 Q. Now, when he left to go walking, was everything
14 okay?

15 A. Yes, sir.

16 Q. And was -- again, was this just a normal activity
17 for him?

18 A. Yes, sir.

19 Q. When he came back, what did you notice?

20 A. The whole left side of his face and head, red
21 whelps, his neck had red whelps all over it, bruises on
22 it, even down into here on his shoulder.

23 Q. All right, sir. And how about his shirt?

24 A. It was tore. I don't remember whether it was all
25 the way off or not, sir.

1 Q. And so it appeared that he'd been injured?

2 A. Yes, sir. I asked him what happened. I thought he
3 might have been hit by a car.

4 Q. I don't know if you can see that very well or not,
5 but was it this side of his face that was injured, there
6 in that area?

7 A. Yes, sir. Left-hand side, all the way up to his
8 head up through here, all the way down. And even on his
9 neck. Real red around through it.

10 Q. All right. And I believe you indicated his shirt
11 was torn?

12 A. Sir?

13 Q. You indicated his shirt was torn also?

14 A. Yes, sir. I actually don't remember whether it was
15 all the way off or -- but I could see his chest right in
16 here.

17 Q. Okay. Shortly after that, did someone from the
18 sheriff's department come out?

19 A. Three cars.

20 Q. Okay. And did one of them, in fact, talk to
21 Russell?

22 A. Yes, sir. All three of them did.

23 Q. So there were three officers there?

24 A. Yes, sir.

25 Q. Did they leave after that and Russell was still at

1 home?

2 A. Yes, sir.

3 Q. Did they come back, one of them or some of them come
4 back later in the day?

5 A. Yes, sir.

6 Q. What happened then?

7 A. That's when they arrested him.

8 Q. Okay. And he stayed home that entire time?

9 A. Yes, sir, he did not leave the house anymore.

10 Q. I don't believe I have any further questions.

11 Answer any questions the Solicitor may have.

12 MR. CLEVELAND: No questions from the State.

13 THE COURT: Thank you, sir. You may step down.

14 MR. CANTRELL: Your Honor, I would ask that
15 Russell Nix step up and be sworn, please, sir.

16 THE COURT: All right. Come around and be
17 sworn, please, sir.

18 THE CLERK: Sir, if you would place your left
19 hand on the bible and raise your right.

20 Do you solemnly swear or affirm that the testimony
21 you're about to give in this case to be the truth, the
22 whole truth and nothing but the truth, so help you God?

23 THE WITNESS: Yes, sir.

24 THE CLERK: Thank you, sir. If you would have
25 a seat and state your name for the record, please.

1 THE WITNESS: Russell E. Nix.

2 RUSSELL NIX,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. CANTRELL:

6 Q. Russell, how old are you?

7 A. Forty-one.

8 Q. And where are you from?

9 A. Pickens, South Carolina.

10 Q. And you were born and raised here?

11 A. Yes, sir.

12 Q. And, in fact, you were born and raised at this
13 residence where Bruce Nix lives, right?

14 A. Yes, sir.

15 Q. And what type work have you done? What type work do
16 you do?

17 A. Pre-fab metal buildings.

18 Q. Do you have any family, other -- well, I'm sorry.
19 This is your father?

20 A. Yes, sir.

21 Q. And this lady?

22 A. My mother.

23 Q. Do you have other family in the area?

24 A. My daughter.

25 Q. Okay. How old is your daughter?

1 A. Nineteen.

2 Q. Any other family or children, grandchildren?

3 A. No, sir. We have a grandchild on the way.

4 Q. The area that we're talking about where you live, is
5 that where you were raised there?

6 A. Yes, sir.

7 Q. And is that the neighborhood you played in or roamed
8 in when you were a child?

9 A. Yes, sir.

10 Q. And is that the neighborhood that you still get out
11 and walk in?

12 A. Yes, sir.

13 Q. Russell, let me stop there and ask you some
14 questions very directly and pointedly. Have you had
15 problems in the past that caused you to have criminal
16 arrests?

17 A. Yes, sir.

18 Q. In 2004, did you have numerous criminal arrest?

19 A. Yes, sir.

20 Q. And were you charged with burglary?

21 A. Yes, sir.

22 Q. Were you charged with grand larceny?

23 A. Yes, sir.

24 Q. Were you subsequently, in 2007, charged with a
25 shoplifting?

1 A. Yes, sir.

2 Q. Can you tell the jury what was going on with you
3 over those years or even years prior to that?

4 A. I had a serious drug addiction.

5 Q. What type drug?

6 A. Heroine, opiates.

7 Q. And you were on these substances for some time; is
8 that correct?

9 A. Yes.

10 Q. Does that have any direct correlation to your
11 criminal convictions?

12 A. You mean the cause?

13 Q. Yes, sir?

14 A. Yes, sir.

15 Q. And you started to say readily. Maybe readily is
16 not the right word, but you do acknowledge that you did
17 have those issues and that you had those arrests and
18 convictions; is that correct?

19 A. Yes, sir.

20 Q. Now, do you fight the addiction to heroine?

21 A. Yes, sir.

22 Q. Tell us, is there -- are there some things that you
23 try to do that you've been taught, that you try to do
24 yourself to fight that addiction?

25 A. Yes, sir. In IOP classes, which is a re-entry

1 program, it teaches us to exercise. We've got to replace
2 the time that we use drugs with something positive
3 instead of negative.

4 Q. So exertion, physical exertion, walking, is that
5 your primary program, so to speak?

6 A. Yes, sir.

7 Q. On a given day, given good weather, what sort of
8 walking would you say you would normally do?

9 A. Maybe ---

10 Q. Just on an average day when you would walk, what
11 would you do, where would you walk, that sort of thing?

12 A. Just different places, different routes. I get
13 tired of the same thing over and over and over.

14 Q. Did you normally walk in your neighborhood there at
15 Church Road?

16 A. Yes, sir. I have no license. I can't go nowhere,
17 so ...

18 Q. Did your walks ever take you into the area we're
19 talking about here today?

20 A. Yes, sir.

21 Q. Is that an area that you're familiar with?

22 A. Yes, sir.

23 Q. How familiar? How long have you been familiar with
24 that area?

25 A. Thirty years.

1 Q. And so we're talking about childhood?

2 A. Yes, sir.

3 Q. Did you know the people in that area over the years?

4 A. Yes, sir.

5 Q. Did your walks take you off to roadways into unpaved
6 roads or wooded areas?

7 A. Yes, sir, in the middle of the day when the
8 traffic's bad.

9 Q. 178 is not a road to do a lot of walking on, is it?

10 A. I would -- yes, sir, I would agree with that. Yes,
11 sir.

12 Q. And do you know most of the people in that area?

13 A. Yes, sir.

14 Q. You've seen this plenty of times. Is this one of
15 the areas where you would do some walking?

16 A. Yes, sir.

17 Q. Now, your home is down this way, below this red
18 marker; is that right?

19 A. Yes, sir.

20 Q. 178 and you're just across the road, off of 178?

21 A. Yes, sir.

22 Q. And is this an area that you would walk in?

23 A. Yes, sir.

24 Q. Have you done that over the years?

25 A. Yes, sir.

1 Q. Now, this is the gravel road that's been discussed.

2 Do you know whose house this is?

3 A. Yes, sir.

4 Q. Who is that?

5 A. Rosemary Busby.

6 Q. And do you know anyone else that lives there or do
7 you ---

8 A. I know her son lived there. His name is Clint.

9 Q. Do you know the other people in this area?

10 A. I know the Howards. And I know Johnny Humphrey used
11 to live right there, the house to the left of that. The
12 Howards live in the next house. And Ricky Howard's daddy
13 lives in a trailer right there. And the next house would
14 be the Gilstraps. And the next house is where my daddy's
15 father used to live.

16 Q. Now, do you know who used to live in this property?

17 A. J.L. Banks. He built that house.

18 Q. Lived there for a long time?

19 A. Yes, sir.

20 Q. Did you know them well?

21 A. Yes, sir.

22 Q. Did you walk their property?

23 A. Yes, sir.

24 Q. On the date that this incident took place, did you
25 know for sure who owned or lived in that property?

1 A. I thought J.L. Banks still owned it.

2 Q. Was there anything unusual about the route you took
3 or the walking you did that day at all, anything
4 different from the normal?

5 A. Not to me there wasn't.

6 Q. Now, you've heard testimony, so I'm just going to
7 ask you, can you tell us what went on when you met up
8 with Mr. Guthrie over here near this gravel drive?

9 A. Yes, sir. We just -- he came up in his car and just
10 said that, what was I doing there? Asked me what I was
11 doing.

12 Q. Was that the first thing he said?

13 A. Yes, sir.

14 Q. Okay. And how did he say it or what words did he
15 use to the best of your recollection?

16 A. He wasn't angry yet. He just, you know, he was just
17 -- he just ask me what was I doing there and why was I
18 walking up the gravel road.

19 Q. Did that surprise you?

20 A. Yes, sir.

21 Q. What happened next? Did you answer him?

22 A. Yes, sir.

23 Q. What did you tell him?

24 A. I told him I had been walking laps. That used to be
25 the old Carson place, is what I'm familiar with it with

1 when J.L. Banks owned it.

2 Q. What did he say then?

3 A. He said that -- by then got out of the car and said
4 that his daughter had purchased it and his son.

5 Q. What next?

6 A. He just approached me and told me that I needed to
7 get off the property. And I said, well, you know, that's
8 fine. I will. And then he starts getting belligerent
9 and angry and started cussing me. And I said, why are
10 you cussing me, you know, I'm going to leave your
11 property. Why are you cussing me? Why are you talking
12 to me this way? And I mean, I just started walking back
13 down the gravel road.

14 Q. Did that get you down to

15 A. Yes, sir.

16 Q. And did you go across

17 A. Yes, sir.

18 Q. While you're walking down what is
19 Mr. Guthrie doing?

20 A. He is driving in the grass behind me. You know, I
21 could hear his car.

22 Q. Down here?

23 A. Yes, sir, but not down the road. It was at an
24 angle.

25 Q. What button ---

1 THE COURT: Is it dead?

2 Q. You can point with this. It's the little red
3 button.

4 A. I was walking down through here and I stopped here
5 and he was coming this way. But he didn't come straight
6 down. He come at an angle this way, like right here.

7 Q. And where did he come out on

8 A. He walked out on the road.

9 Q. All right.

10 A. He parked about right here. And he walked out on
11 the road right here.

12 Q. And was that in front of you? Had you gotten down
13 that far on yet?

14 A. We got about, about the same time, yeah. He was in
15 front of me.

16 Q. And, I'm sorry. Did you say he parked his car on
17 the upper side of the road?

18 A. Yes, sir. Right here.

19 Q. All right. Got out. And did he walked across the
20 road immediately?

21 A. Yes, sir.

22 Q. What happened then? What was discussed then?

23 A. That I should go on down the road.

24 Q. Is that what you were doing?

25 A. Yes, sir, I was. I was walking in the road.

1 Q. And tell us the conversation. He told you to go on
2 down the road. What did you say?

3 A. I told him I was going on down the road. That's
4 what I'm doing. Because I wasn't up here anymore. He
5 told me to get off his property from here. And so I
6 walked here. And he said I needed to go on down the
7 road. Well, I was going down the road.

8 Q. What happened after he told you that?

9 A. He become real belligerent and cursing.

10 Q. What happened then?

11 A. He approached me, real angry, and I asked him to
12 please, please quit stepping in front of me and
13 approaching me. You know, please, please. And he
14 approached me again and he kicked me in the stomach. And
15 that's when we stepped off to the side. He hit me in the
16 face. And when I stepped off the side of the road here
17 is when we went into the ditch with my back to the barbed
18 wire fence. And there's a barbed wire fence right here.
19 And I couldn't retreat no more. There's a ditch there
20 and there's a barbed wire fence behind me. I was trying
21 to back up but I couldn't. There was no -- I couldn't go
22 no further. There was a barbed wire fence.

23 Q. Now you heard Ms. Guthrie say you stepped back and
24 he stepped towards you as you stepped back away from the
25 road. Is that the time we're talking about?

1 A. Yes, sir.

2 Q. Did you end up on the ground at that time?

3 A. Yes, sir. As we come into the ditch and he was
4 charging, we both fell in the dirt.

5 Q. After he kicked you and then hit you, did you hit
6 him?

7 A. Yes, sir.

8 Q. How many times would you say you hit him?

9 A. Two.

10 Q. And what area of his body did you hit?

11 A. In the face.

12 Q. Okay. And is -- the two of you falling down in the
13 ditch, what happened next after that?

14 A. We wrestled around in the ditch. I assume that's
15 how my shirt got torn. His shirt was torn, just
16 wrestling.

17 Q. Any more real punches thrown after that?

18 A. No, sir.

19 Q. What happened -- now, you're rolling around in the
20 ditch, wrestling at this point. What happened after
21 that?

22 A. We got up into the road. And there was a car coming
23 down the road, so we was about in the middle of the road.
24 So we had to step out of the road to actually let -- the
25 car had stopped and then it had to go on by.

1 Q. What did you do next?

2 A. I proceeded to go around him and walked back down

3

4 Q. So when you went around him, you walked back down
5 the road and towards your house?

6 A. Yes, sir.

7 Q. Now, you've heard some testimony that your arms were
8 up in the air or something, several times. What was that
9 about? Can you tell me?

10 A. Up here, it was when I was apologizing for making
11 him so upset for being on his property. I didn't realize
12 that it was his property and I was just telling him I'm
13 sorry. I don't know why you're so mad. I'm going to
14 leave your property.

15 Q. Okay. And you did?

16 A. Yes, sir.

17 Q. Were you surprised or taken off guard by the fact
18 that he got angry as quickly as he did?

19 A. Yes, sir.

20 Q. Did you ever call him out, as he said, or threaten
21 him or encourage him to come out and fight you?

22 A. No, sir.

23 Q. Did he cuss you?

24 A. Yes.

25 Q. More than once?

1 A. Yes, sir.

2 Q. Did it escalate or did it get worse and worse as it
3 went along? Did he just -- once he started, did he just
4 keep staying angry or get angrier?

5 A. Not really until he got down to the road. Because,
6 you know, there was a little while from here to here, up
7 here he was in the car. And then he got out and it got
8 worse. And then he started his talking and it got to
9 cussing and then it got to hollering. You know, he was
10 hollering at me and screaming. And I was just trying to
11 tell him, I'm sorry, you know. I don't know why you're
12 talking to me this way.

13 Q. You take these walks as kind of like therapy?

14 A Yes, sir.

15 Q. Were you looking for trouble that day?

16 A. No, sir.

17 Q. Prior to him striking you, hitting your chest and
18 face, did you go towards him? Did you strike him? Did
19 you threaten him in any way?

20 A. No, sir.

21 MR. CANTRELL: One second, Your Honor.

22 Q. Was there anything else you need to tell this jury
23 about this incident? Is that everything that happened
24 that day?

25 A. Yes, sir, that's it.

1 Q. And I'm sorry. I did not ask you. You walked back
2 home and the sheriff's department came up?

3 A. Yes, sir.

4 Q. And you talked to the officers?

5 A. Yes, sir.

6 Q. Told them what happened?

7 A. Yes, sir.

8 Q. Did you leave home at all or did you stay there?

9 A. Yes, sir, I stayed home.

10 Q. Were you arrested later in the day?

11 A. Yes, sir.

12 Q. When you were arrested, did they take your shirt?

13 A. Yes, sir, it's evidence. Yes, sir.

14 Q. They took that as evidence?

15 A. Yes, sir.

16 Q. How much did you weigh at that point in time,
17 approximately?

18 A. Maybe a hundred sixty-five, sixty-eight pounds.

19 Q. And was Mr. Guthrie a larger person than you?

20 A. Yes, sir.

21 Q. Did you notice or was there anything obvious to you
22 that would make you think that he could not walk or his
23 legs were affected in anyway?

24 A. No, sir.

25 Q. You were just walking laps?

1 A. Yes, sir.

2 Q. I don't have any further questions. Answer any
3 questions the Solicitor may have.

4 A. Yes, sir.

5 **CROSS-EXAMINATION**

6 **BY MR. CLEVELAND:**

7 Q. When did you call the police, Mr. Nix?

8 A. When did I call the police?

9 Q. Yes, sir. When did you call the police?

10 A. No, sir, I didn't.

11 Q. So is it true that you were, according to your
12 testimony, stalked and viciously attacked by this fifty-
13 nine year old man here and you never called to report
14 anything?

15 A. No, sir.

16 Q. You testified you were friends, knew J.L. Banks
17 really well.

18 A. Yes, sir.

19 Q. But isn't it true that J.L. Banks had not lived or
20 owned that property in approximately four months when
21 this happened?

22 A. I'm not sure.

23 Q. Well, you just said you were good friends with J.L.
24 Banks. If he ---

25 A. I said that I knew that he owned it.

1 Q. Okay. But, no, I believe -- is it not true you
2 testified you knew him really well?

3 A. I did know him really well.

4 Q. But you didn't know that they had moved or sold
5 their land right next to your house for four months?

6 A. No, sir.

7 Q. You testified you were walking laps. Is it common
8 practice for you to change clothes in the middle of your
9 exercise routine?

10 A. Yes, sir.

11 Q. Why is that?

12 A. Because after the second lap, the third time that I
13 was going to go around, my shirt was soaking wet and I
14 had a problem with chafing in a soaking wet shirt.

15 Q. Okay. So you put on a new shirt to go out and get
16 sweaty again; is that your testimony?

17 A. Yes, sir.

18 Q. Now, in these -- you testified you walk off the road
19 when the traffic's bad; correct?

20 A. (Affirmative nod).

21 Q. There's bad traffic on 178?

22 A. Yes, sir.

23 Q. Wouldn't you agree that is
24 essentially a side road that just runs through a
25 neighborhood?

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1 A. Yes, sir. But the traffic, they don't travel as
2 fast.

3 Q. Well, but you agree with me that it's not a very
4 busy street, is it?

5 A.

6 Q. Yes?

7 A. No, sir.

8 Q. So, if it wasn't a very busy street, why couldn't
9 you just walk down the side of the road?

10 A. Because it was August at one thirty. Right down
11 through here, this part of the road is covered with
12 shade. If you go up through here to right here, and you
13 get to right here, all the way down this hill right here,
14 it's covered with shade until you get over on 178. And
15 it's just a little bit cooler when you can cross 178 and
16 there's a patch of grass. It's about twelve maybe
17 fifteen feet wide and I can get back down.

18 Q. Whoa, whoa, whoa. I'm not interested in that. What
19 I'm interested in is this area right here. Right in
20 here.

21 A. Yes, sir.

22 Q. It's not traffic and you said there was shade. Why
23 can't you walk down the side of the road?

24 A. I did. I walked down the side of the road to right
25 here and then I made this circle. There's a circle.

1 Q. So it's your testimony you were never in this yard?
2 That you walked down the side of the road, made this
3 corner and walked up this street right here?

4 A. No, sir. No, sir. I cut through this yard one
5 time. My first lap I cut through it coming down this
6 way, because I walked this way the first time.

7 Q. Okay. And you didn't have permission to be in that
8 yard, correct?

9 A. No, sir.

10 Q. So it's your testimony, that according to you, it's
11 okay to trespass on someone else's land for the sake of
12 your exercise routine; is that correct?

13 A. No, sir.

14 Q. Well, what was your thought?

15 A. I didn't know that they had purchased the land. I
16 thought it was still J.L. Banks' land.

17 Q. Well, you knew that he had purchased the land as
18 soon as Earle Guthrie told you, when he pulled up on the
19 side there?

20 A. Yes, sir. And then I removed myself from his
21 property.

22 Q. Isn't it true that you told Earle Guthrie that you
23 were going to see a friend up this way, towards 178?

24 A. No, sir.

25 Q. You said in these classes you take, drug addiction

1 recovery, that they teach you to do positive things to
2 replace your time; is that correct?

3 A. Yes, sir.

4 Q. Is arguing with strangers one of these positive
5 things they teach you to do in your spare time?

6 A. I wasn't arguing with Mr. Guthrie.

7 MR. CANTRELL: Your Honor, I would object.
8 He's getting argumentative.

9 THE COURT: Overruled.

10 Q. How about fighting with strangers, is that one of
11 the positive things they teach you to place your drug
12 use?

13 A. When they attack me.

14 Q. Okay. When they attacked you. Isn't it true that
15 Mr. Guthrie was in his car, sitting in his car still, and
16 he told you that his family owned that land, that you
17 needed to leave, you could have turned around and walked
18 away and left, in any number of directions?

19 A. No, sir, not any number because he said he owned
20 this right here and I couldn't be on the property. I had
21 to come back down this way.

22 Q. I'm not talking about permission-wise. I'm talking
23 about physical restraint. You're an able-bodied young
24 man, correct?

25 A. Yes, sir.

1 Q. Could you have gotten away from this angry old man
2 in any given direction for your personal safety at that
3 point in time?

4 A. Yes, sir. I did. I walked down this road. I got
5 to the 178 because I didn't want to get back onto his
6 property to go back down to to my
7 house.

8 Q. All right. And when you got down here and you saw
9 him coming towards you, as you testify, isn't it true you
10 could have run away in any given direction at that point
11 in time?

12 A. Yes, sir.

13 Q. But you didn't, did you?

14 A. No, sir, I was walking. I was off of his property.

15 Q. Okay. I'm confused.

16 A. Yes, sir.

17 Q. In your testimony with Mr. Cantrell you said it went
18 from talking to arguing, then to yelling and then to
19 cussing. Was all of that going on while you were
20 walking?

21 A. No, sir. He had already got in the car. All of
22 this happened before he got back in his car and I was
23 proceeding down this road and he was coming this way.
24 Actually, I thought that it was over with until he parked
25 his car right here and come back out into the road and

1 confronted me right here. I thought it was done. That's
2 why I wasn't running away.

3 Q. Well, I -- clarify me if I'm wrong. I understand
4 the context of your conversation at the top of the hill,
5 but when you got to the bottom of the hill, you testified
6 that you were just talking at first, then arguing, then
7 yelling with him. He'd gotten belligerent again and
8 started cussing you again. Was that your testimony?

9 A. Yes, sir.

10 Q. Is that all while you were walking away?

11 A. No, sir. I wasn't yelling at him, no, sir.

12 Q. But he was yelling?

13 A. Yes, sir.

14 Q. So it's your testimony that this man was yelling at
15 you for doing exactly what you told him to do -- what he
16 told you to do, get away from his property?

17 A. Yes, sir. He was telling me to go on down the road.
18 I was off of his property. He was telling me -- shooin'
19 me down the road. Go on down the road.

20 Q. You would agree with me that it's a legitimate
21 concern when he knew his family was at home alone, the
22 females in his family were home alone in that house, that
23 there was a stranger roaming around the property?

24 A. Yes, sir. I just don't understand why he didn't
25 call the police.

1 Q. Well, you said yourself -- where is this? How far
2 out of town?

3 A. Two miles.

4 Q. All right. And how far away were you from that
5 house?

6 A. My house?

7 Q. No, from this house, where is daughter lives and
8 where his son lives?

9 A. Right here, at the first confrontation.

10 Q. A hundred feet, a couple hundred feet tops?

11 A. No, sir. No, sir, it's further than that.

12 Q. Further than that? A hundred yards ---

13 A. No, sir. No, sir. It's maybe three hundred yards.

14 Q. So is it you're wondering why he didn't call the
15 police as opposed to just asking a stranger to get off
16 his property. Is that what you're testifying now?

17 A. No, sir. Yes, sir. Yes, sir.

18 Q. Okay. Now, you testified earlier that you hit Mr.
19 Guthrie twice, two times?

20 A. Yes, sir.

21 Q. You also testified that your shirt got ripped when
22 you were rolling around wrestling, I believe you said, in
23 the ditch?

24 A. Yes, sir.

25 Q. So it's not your testimony that Mr. Guthrie ripped

1 your shirt, correct?

2 A. No, sir, we was wrestling.

3 Q. Okay. So you and Mr. Guthrie were wrestling in the
4 ditch and that's when your shirt got torn?

5 A. Yes, sir.

6 Q. Is that when Mr. Guthrie's shirt got torn?

7 A. I can't be positive about that, but I would assume
8 so. Yes, sir.

9 Q. All right. Now, I want to show you what's been
10 marked as State's Exhibit Number 3. You've been sitting
11 in the trial so I know you've seen this already.

12 A. Yes, sir.

13 Q. Testimony earlier revealed that was Mr. Guthrie
14 moments after this altercation. And further testimony
15 was to the injuries that he sustained. It's your
16 testimony that you hit him two times and that's all you
17 did to injure him?

18 A. Yes, sir.

19 Q. Was he injured when he came up to you the first time
20 you saw him?

21 A. No, sir.

22 Q. He parked his car right here and you were already
23 walking down the street when he got out of the car,
24 correct?

25 A. Yes, sir. But it was more down toward the road,

- 1 right around here.
- 2 Q. Okay.
- 3 A. And I was walking right here.
- 4 Q. All right. So the road's about twenty-five feet
5 wide, wouldn't you agree, plus the right-of-ways and
6 everything?
- 7 A. Yes, sir.
- 8 Q. This man, according to your testimony, had already
9 been belligerent and yelling and cussing at you despite
10 you doing exactly what he asked you to do, was coming at
11 you again. Why didn't you just run away?
- 12 A. Because he cut me off. He beat me down here. I
13 testified that we made it here at the same time. It
14 wasn't like he was coming behind me. He was coming from
15 in front of me, this way right here, at an angle.
- 16 Q. That's fine. What about this way?
- 17 A. That's not the way my house is.
- 18 Q. Well, at this point in time ---
- 19 A. I was trying to get to my safe point, my safe house.
20 I was trying to my safe. I have a right to be safe in my
21 house, too. That's where I was trying to get.
- 22 Q. You do. I'm not disagreeing with you about that,
23 Mr. Nix. All I'm saying is, is there is at least one man
24 and you see him get out of the car all the way across the
25 road. There are two directions you could have ran off,

1 don't you agree?

2 A. Yes, sir.

3 Q. And don't you agree that you were indeed trespassing
4 on his family's property?

5 A. When he confronted me, no. The two times before,
6 yes. But when he confronted me, no. I was on this
7 gravel road.

8 Q. Do you own that gravel road?

9 A. No, sir.

10 Q. Did you have expressed permission to be on that
11 road?

12 A. I did from J.L. Banks, yes, sir.

13 Q. Well, J.L. Banks doesn't own that property anymore,
14 you're aware of that?

15 A. I wasn't aware of that then.

16 Q. Were you aware ---

17 A. I apologize. I'm sorry.

18 Q. --- that his family owns all that property?

19 A. Yes, sir, I am now.

20 Q. So you agree with me then that you were trespassing
21 when you were on that gravel road, as well? It was not
22 your property and you did not have express permission to
23 be there?

24 A. Yes, sir.

25 Q. So you agree that this whole difficulty that started

1 this argument is your fault, partially at least, for
2 trespassing on the property?

3 A. No, sir, I don't agree.

4 Q. Okay. Would you agree with me that none of this
5 would have happened, that no one had any reason to be
6 alarmed, if you'd simply stayed on the public road where
7 you're allowed to be?

8 A. None of this would have happened if he hadn't come
9 out in the road and jumped on me.

10 Q. That's not my question, Mr. Nix. My question was if
11 you'd stayed on the public road, no one would have had
12 any reason for alarm or you would have been committing no
13 wrong, trespassing on anybody's property?

14 A. Yes, sir.

15 Q. Now, Mr. Cantrell talked a little bit about your
16 prior troubles going back. And in 2004, wasn't it, in
17 fact, nine separate felony convictions that you were
18 convicted of?

19 A. Yes, sir.

20 Q. And moving forward to 2007, don't you agree, some
21 years later, you were convicted of shoplifting; is that
22 correct?

23 A. Yes, sir.

24 Q. And would you agree with me that that is a crime of
25 dishonesty? That's involving something dishonest that

1 you did?

2 A. Yes, sir. Yes, sir, I admitted all of that. I
3 wrote statements and told him that.

4 Q. And your testimony here today to this jury is that
5 you did everything Mr. Guthrie told you to do and he
6 simply brutally attacked you?

7 A. Yes, sir.

8 MR. CLEVELAND: No further questions, Judge.

9 THE COURT: Any redirect?

10 MR. CANTRELL: No questions, Your Honor.

11 THE COURT: All right. Thank you, sir. You
12 may step down.

13 MR. CANTRELL: Your Honor, at this time, by
14 stipulation we are going to publish, so to speak, the
15 shirts of both parties.

16 THE COURT: Both items have been admitted into
17 evidence as Exhibit 6 and Exhibit 8, I believe?

18 MR. CLEVELAND: Yes, Your Honor. We would just
19 like to put on the record it is the basis of the
20 stipulation that State's Exhibit Number 6, this bag
21 containing a green shirt, that is the shirt that the
22 victim, Mr. Earle Guthrie, was wearing on the date in
23 question. And that Defendant's Exhibit Number 8, this
24 bag containing a blue shirt, that is the blue shirt that
25 Mr. Nix was wearing on the date in question.

1 THE COURT: Very well.

2 MR. CANTRELL: Your Honor, I do wish to take
3 them out and show them to the jury.

4 THE COURT: Whatever y'all desire to do. If
5 you'd like to display them, that will be fine.

6 MR. CLEVELAND: I think we've got some gloves
7 downstairs, Judge.

8 THE COURT: Okay. Do you have any other
9 testimony to present?

10 MR. CANTRELL: No. That concludes the case for
11 the Defendant, Your Honor.

12 THE COURT: And anything in reply?

13 MR. CLEVELAND: Nothing in reply, Your Honor.

14 THE COURT: All right. I'll tell you what,
15 while we're getting gloves just to handle this, I'll let
16 you go back and take a break, a short break, and then
17 we'll call you back in just a few moments. Don't discuss
18 the case, as I've told you. We'll call you back in just
19 a few moments.

20 (WHEREUPON, the jury exited the open court at
21 approximately 4:24 P.M.)

22 THE COURT: All right. What we'll do is while
23 we're getting the gloves -- the Clerk's office has some.
24 I don't know if y'all have some yourselves. But we'll
25 get the gloves here and we'll just wind up for the day by

1 showing the shirts. If each of you want to hold a
2 particular shirt or ever how y'all want to do that to the
3 jury ---

4 MR. CLEVELAND: Well, I think whoever is the
5 glove man should carry ---

6 THE COURT: I don't know how many pair you're
7 going to have; that will be fine. And then we'll break
8 for today. And then hopefully this afternoon we'll have
9 time to talk about charges and verdict forms and so on.
10 Obviously, we aren't going to charge the jury at this
11 late date. When we get that, we'll do that and then
12 we'll take care of the legal matters we have.

13 (WHEREUPON, the Court stood at recess for a short
14 break.)

15 THE COURT: Okay. While the jury's out, is
16 there anything else we need to do, other than what I've
17 proposed? We show that and dismiss the jury until nine
18 o'clock in the morning and we'll have the closing
19 statements and instruction then. And this afternoon
20 we'll work out our requests for charge and so forth.

21 MR. CLEVELAND: Yes, sir.

22 THE COURT: Okay.

23 MR. CANTRELL: That's fine.

24 THE COURT: All right. Have them come in if
25 they're ready.

1 THE BAILIFF: Yes, sir.

2 (WHEREUPON, the jury entered the open court at
3 approximately 4:33 P.M.)

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen, as you heard the attorneys, the exhibits have
6 been marked and admitted. They're going to just
7 basically publish those to you and show those to you.
8 The Solicitor has agreed to do that on behalf of both
9 parties. If you would, just show the two shirts. You
10 can show them front and back. If any of the jurors need
11 to see them more thoroughly you can just ask them and
12 he'll accommodate you.

13 MR. CLEVELAND: This is Defense Exhibit Number
14 8.

15 THE COURT: If you would, just make sure both
16 ends of the jury can see that, Solicitor.

17 MR. CLEVELAND: This is State's Exhibit Number
18 6.

19 THE COURT: Mr. Foreman, ladies and gentlemen,
20 I told you earlier we have different stages of the trial.
21 And, of course, we're now at the stage where the
22 attorneys are going make a closing statement to you and
23 then I'll instruct you on the law. I think the hour that
24 we have approached now, I think it will best for us to
25 just wait until in the morning to do all of that rather

1 than break part of it up tonight and have my instruction
2 tomorrow. So if you'll be back at nine o'clock in the
3 morning, we'll be ready to proceed at that time with the
4 last parts of the trial. Let me remind you again, you've
5 heard all of the testimony. The case is not over yet.
6 The attorneys haven't addressed you and I certainly
7 haven't instructed you on the law. So that process that
8 we're in is still on-going and the commitment that you've
9 made to each party still in force. I'm confident that
10 you'll maintain the purity of that process overnight. I
11 know you're going to have curious family members who are
12 going to want to know all about what your day was like,
13 want to share it and what the testimony sounded like, all
14 of those things. Ladies and gentlemen, you've made a
15 high commitment and that commitment includes you not
16 discussing this with anyone, including fellow jurors, as
17 I've told you. Tomorrow after this case is completed,
18 you'll have plenty of opportunity to share your full
19 experience of jury service this week with your family,
20 loved ones, your business associates. But while the case
21 is still in progress is not the time to do that. So I
22 remind you again the importance of that, that you just
23 tell the individual you can't talk about the case. I've
24 instructed you not to talk about the case. You need to
25 fulfil that obligation.

1 I've also mentioned before, and perhaps some of you
2 have heard and some of you have not, the Chief Justice of
3 the Supreme Court of South Carolina has issued an order
4 that all Trial Judges such as I must share with jurors
5 who are empaneled in a jury box. And that is that while
6 you're hearing a case, you're not to in anyway have any
7 kind of communication or posting of any social media.
8 You're not to be sharing your thoughts with anyone about
9 that. You're not to do any kind of research of the
10 internet or archived thing, to look at words that you
11 maybe have heard from the doctor or otherwise, what that
12 means. That would be improper for you to do. You have
13 heard the evidence from this courtroom. The attorneys
14 will wrap it up for you tomorrow. It would be improper
15 for you to try to do any kind of independent research,
16 ride by the scene, anything like that. You refrain from
17 that. That's the instruction of the Chief Justice and
18 I'm sure you'll abide by that. You have high commitment
19 to these parties and I'm confident that you'll fulfil
20 that during the course of this trial, including the
21 conclusion of it tomorrow.

22 I hope you have a good evening, ladies and
23 gentlemen. We'll be ready to start back at nine o'clock
24 in the morning. If you'll be back in your jury room at
25 that time, we'll be ready for the closing statements.

1 You're dismissed at this time.

2 Everyone else, please remain seated.

3 (WHEREUPON, the jury exited the open court at
4 approximately 4:40 P.M.)

5 THE COURT: All right. Any matters we need to
6 take care of as far as the law, requests for instructions
7 or otherwise?

8 MR. CLEVELAND: Looking ---

9 THE COURT: I'm assuming the defense is seeking
10 a self-defense charge?

11 MR. CANTRELL: Yes, Your Honor.

12 THE COURT: Excuse me, Mr. Cleveland, I didn't
13 mean to interrupt you.

14 MR. CLEVELAND: No, you're okay, Judge. I was
15 just going to say, I'm looking over a couple of things.
16 I have a few requests.

17 THE COURT: Requests for charge. Anything
18 else?

19 MR. CANTRELL: The only other one that I'm
20 quite frankly looking at this time is, and I meant to ask
21 if you would have -- if this was in your charges, a stand
22 your ground type charge. Stand your ground or Castle
23 doctrine type charge. In this case, since there's been
24 testimony as to the parties being in the roadway,
25 discussions of, as of retreat. The confrontation,

1 conflict and where it took place, I believe that would be
2 a reasonable charge."

3 THE COURT: You don't have a proposed charge on
4 that, Mr. Cantrell?

5 MR. CANTRELL: I do not. I can have one for
6 you shortly. I apologize.

7 THE COURT: All right. I'll check the statute
8 and its applicability in this case.

9 MR. CLEVELAND: I would object to it, just on
10 that ground, I don't believe it's applicable. I think
11 the last case I read briefly on the Castle Doctrine, the
12 standard grounds was the *Cornell Arms* case, it happened
13 in Columbia. It came out of the Supreme Court about
14 2011. I think that altercation occurred on the front
15 steps of the apartment complex and they said that wasn't
16 within the curtilage. I think that this -- the new
17 Castle Doctrine is pretty clear. It's within the home,
18 within the place of business or automobile. I don't
19 think it applies in this case.

20 THE COURT: Well, I'll certainly look at that,
21 Mr. Cantrell, and I'll be glad to hear from you tomorrow.

22 MR. CLEVELAND: I certainly don't know how it
23 would apply to this case because he didn't own any of the
24 property that he was ---

25 THE COURT: That's why I'll be glad to hear

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1 from Mr. Cantrell tomorrow as to any justification for
2 charging that.

3 MR. CLEVELAND: I also would request a charge,
4 Judge, if I could. I thought I had the case right in
5 front of me. I must have stuck it somewhere else. There
6 is a case that says while in a public roadway both
7 parties, if engaged in an altercation, have a duty to
8 retreat if self-defense is claimed. I think it goes
9 along with the standard self-defense claim. I just
10 didn't -- it just seemed like it was summary of what
11 happened on this case. But I really think it's all
12 rolled into a standard self-defense charge. I understand
13 the Court's obligation to charge self-defense in these
14 instances when it's raised or requested by the Defense.

15 THE COURT: I'll be glad to look at that case
16 if you can give it to me. Commenting on the public road,
17 I'll decide on that. I'll certainly charge prior record
18 of the Defendant would be limited only for impeachable
19 purposes. Of course, all of the other charges as far as
20 credibility of witnesses, presumption of innocence,
21 reasonable doubt, direct and circumstantial evidence, if
22 there was any identification issue here. Anything else,
23 gentlemen?

24 MR. CLEVELAND: Again, I've personally read
25 this case and it is *State versus Strickland*. This is a

1 2010 case heard by the Court of Appeals of South
2 Carolina. It's 697 S.E.2d 681. It addresses the use of
3 a language as being at fault in bringing about the
4 difficulty. And it just states that it is a question for
5 the jury. I just want some leeway as far as arguing that
6 and anything else -- it simply states that the victim
7 told the Defendant to shut his expletive mouth. And the
8 Court agreed that they believed that language might
9 reasonably have been expected to bring about the
10 difficulty and was a question for the jury. So maybe a
11 charge, something like a factor such as language and
12 behavior could be considered as bringing about the
13 difficulty.

14 THE COURT: Well, that's standard language in
15 self-defense per se, is the Defendant must be without
16 fault in bringing on the difficulty. Is that what you're
17 talking about?

18 MR. CLEVELAND: Yes, Your Honor. I ---

19 THE COURT: That'll certainly be in the charge
20 on self-defense.

21 MR. CLEVELAND: Factors such as language. Not
22 necessarily, you know, having started the fight or threw
23 the first point. You know, there's other factors. I
24 guess language could be considered as one of the factors
25 disproving self-defense by showing the person using

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1 language brought about the difficulty.

2 THE COURT: I'll charge the law that I have on
3 self-defense. That'll include that. Be without fault
4 and difficulties. Anything else, gentlemen?

5 MR. CANTRELL: Nothing from the Defense, Your
6 Honor.

7 MR. CLEVELAND: Nothing from the State, Judge.

8 THE COURT: I'll see y'all at nine o'clock in
9 the morning.

10 (WHEREUPON, the Court stood at recess for the day.)

11 **March 1, 2013**

12 (WHEREUPON, Court convened with all parties present
13 and the following proceedings were had.)

14 THE COURT: Could I see the lawyers here just
15 for a moment.

16 (WHEREUPON, Mr. Cleveland, Mr. Buckner and Mr.
17 Cantrell approached the bar.)

18 THE COURT: Let me -- I'm sorry. I forgot to
19 do this. Do y'all want to look over the verdict form to
20 make sure it's in proper order.

21 MR. CLEVELAND: The indictment number is 2012-
22 GS-39-2627, but other than that ---

23 THE COURT: Instead of 2627?

24 MR. CLEVELAND: No, it's 2012, not ---

25 THE COURT: Oh, '12 instead of '11?

1 MR. CLEVELAND: Yes, Your Honor. The County of
2 Pickens should be at the top.

3 THE COURT: Instead of Greenville, okay. We'll
4 get those fixed.

5 MR. CLEVELAND: But as far as the substance of
6 it ...

7 THE COURT: We'll change the date and change
8 the county. All right, sir.

9 All right. I reviewed your requests for charge from
10 yesterday. And I've read more than once the statutory
11 law on the protection of persons and property, Section
12 16-11-410, those cases or sections that follow. And in
13 light of the *State v. Duncan* case, I decline to charge
14 your request, Mr. Cantrell, but your request is noted for
15 the record.

16 MR. CANTRELL: Thank you, Your Honor.

17 THE COURT: The charge -- particularly 16-11-
18 440(c). I read *Duncan* to forbid me from charging that.
19 I think it's a jury issue for a factual determination.
20 Are there any requests for lesser included offense? I'm
21 showing you the charge sheet and I wanted to verify that.
22 From the State?

23 MR. CLEVELAND: None from the State, Your
24 Honor.

25 THE COURT: From the Defense?

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1 MR. CANTRELL: None, Your Honor. Mr. Nix and I
2 talked about that fairly extensively and we would request
3 no lesser included.

4 THE COURT: All right. Are y'all ready to
5 address the jury, gentlemen?

6 MR. CLEVELAND: The State's ready, Your Honor.

7 MR. CANTRELL: Yes, Your Honor.

8 THE COURT: All right. Bring them in if
9 they're ready.

10 THE BAILIFF: Yes, sir.

11 (WHEREUPON, the jury entered the open court at
12 approximately 9:26 a.m.)

13 THE COURT: Good morning, Mr. Foreman, ladies
14 and gentlemen. We're now ready to proceed with the
15 closing statements of the attorneys. I've told you
16 throughout that what these attorneys have to say to you
17 is not evidence. I urge you, nevertheless, to listen
18 carefully as they address you in their closing. I'm
19 confident that each of them can give you valuable insight
20 and perhaps help you as you deliberate. A little later,
21 after they've addressed you, I'll then instruct you on
22 the law. The case will be yours to decide.

23 Mr. Cantrell, you can address the jury in your
24 closing.

25 MR. CANTRELL: Thank you, Your Honor, may it

1 please the Court. Mr. Cleveland, Mr. Buckner.

2 **CLOSING STATEMENT**

3 **BY MR. CANTRELL:**

4 Ladies and gentlemen, I'll start off again by
5 thanking you and I won't take all the time to give you
6 the things I did yesterday. But please understand that I
7 do reiterate that we've got too much, too many important
8 things going on here not to take this seriously and not
9 to appreciate your jury service. And that is a very
10 valuable service, one of the most valuable things you can
11 do and I mean that sincerely. Not just because I'm
12 standing here in front of you, but that is important. I
13 hope you've taken that from your week here in General
14 Sessions Court.

15 I will remind you of a couple of things, but I will
16 tell you, and the Judge will remind you of this that,
17 again, what the attorneys say is not evidence. And it
18 would be just far too presumptuous of us to think we can
19 tell you what to decide or we can tell you how to think.
20 And, in fact, that would be the undoing of the jury
21 system if we were able to do that. So I do want to
22 remind you of some things, ask you to consider some
23 things. But nobody's going to tell you how to think or
24 tell you what to do. But we remind you and I'll
25 certainly have a request for you at the end of this. But

1 I wanted to just mention some things.

2 First of all, the Judge will tell you and remind
3 you, also, that all defendants are presumed innocent. As
4 I told you at the beginning, 'Mr. Nix sits there an
5 innocent man. It's the responsibility of the State, as
6 Mr. Buckner acknowledged, to prove guilt in any case
7 beyond a reasonable doubt. That is what must be done in
8 this case, also. The other thing is you make that
9 determination based on the law as Judge Welmaker gives it
10 to you and your decision, your judgment, on the facts.
11 You are the judges of the facts based on the evidence and
12 testimony you have heard.

13 And now some of those reminders and some of those
14 things I want to ask you to consider when you step back
15 into that jury room, to consider as part of your
16 deliberation in reaching a verdict, which speaks the
17 truth. Which is, in fact, the definition of the word or
18 the derivative word for verdict. And I apologize; I'm
19 going to be reading a little bit of this because I don't
20 want to miss anything. I apologize, but I can't do that
21 if I don't have these on. So let me just mention a few
22 things. And one is, simply stated, we would not be here
23 today but for the conduct of Mr. Guthrie in this case.
24 Mr. Nix was in this area, admittedly, by everyone,
25 probably, three times. He left that area every time.

1 Twice, didn't even know he was being watched. But he
2 left and did his laps. The third time he left when he
3 had been requested or ordered or told to leave the area.
4 Mr. Nix was leaving. Mr. Nix was on his way out. Prior
5 to any incident happening. We have been told that
6 individuals that suffer from PTSD, as Mr. Guthrie does,
7 can be suspicious, on guard, hypervigilant is a word that
8 is used frequently. We know, based on his wife's
9 testimony, there have been anger issues. And that his
10 actions can appear unpredictable or a little erratic from
11 time to time. That's simply a fact in this case. That's
12 what you have heard from virtually everyone involved in
13 this case.

14 Mr. Nix himself had lived in this area his entire
15 life, about a quarter of a mile away from these homes of
16 the Guthries. He'd walked in this area frequently. He
17 played in this area as a little boy. And if you think
18 back, if you were fortunate enough to live in the same
19 area for most of your childhood or even most of your
20 adulthood, think about how familiar you are, how
21 comfortable you are. It's home. It's your area that you
22 wander around and walk in if you're lucky enough to have
23 an area like that, as this was, out in the country. And
24 Mr. Nix did that, had done that in his adult life and had
25 recently been doing that a great deal. He knew just

1 about everybody in this area. He knew who used to live
2 in this house and was not even sure they weren't still
3 there. He knew the other people in the area by name.
4 His grandfather had built and lived in a house shortly up
5 the street. So this was an area that he was totally
6 familiar with and comfortable with and comfortable
7 walking in. And there's no controverting the fact that
8 that day he was simply walking. Three times, walking his
9 laps. It was therapeutic for him. He was a recovering
10 heroin addict. It's not easy to admit, but he's going to
11 tell you the truth when he's on the witness stand. It's
12 not easy to admit that you have had that issue. And that
13 because of that issue you've done a lot of things you
14 wish you'd not done. But he acknowledged that. Very
15 difficult, but he was on the witness stand. He was going
16 to be honest with you and tell you about those
17 circumstances.

18 Again, that's why he was walking. This is an area
19 that he's comfortable in. It's therapeutic and it is
20 helpful to him. He had absolutely no reason in doing
21 that to create a problem or to be involved in any
22 problem. He had no reason whatsoever to feel like he was
23 trespassing on property of someone that would be offended
24 or threatened by him. He did not even know the people,
25 these people who were people living in this residence.

1 And he certainly was not looking for trouble. He had no
2 bone to pick with anybody that day.

3 Mr. Guthrie on the other had is prone to be
4 hypervigilant. He is prone to see trouble more so than
5 the rest of us and in situations where we would not. And
6 I would submit to you that that is what happened.

7 I will have to say and just admit to you that it's
8 sad, it's unpleasant to talk about any condition that
9 anybody has, whether it's a heroin addiction, whether
10 it's PTSD, which is significant and a regrettable
11 situation, particularly for the Veteran that acquired
12 that, as happened in this case. That is not fun for
13 anyone in this courtroom. It shouldn't be. It shouldn't
14 be pleasant. But it cannot be ignored. It cannot be
15 used as a basis for convicting someone of assault and
16 battery of a high and aggravated nature based on
17 sympathy, based on concern, based on regret. The only
18 way to return a verdict is to find someone guilty beyond
19 a reasonable doubt based on what you hear. No one has
20 any pleasure discussing any of these issues. But you do
21 base your verdict on what you hear.

22 And the testimony of the State's witnesses, the
23 Guthries. Their daughter was a bit confusing, I would
24 submit to you. Why do you send someone that is suffering
25 from PTSD, someone that is hypervigilant, maybe

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1 hypersensitive, into this situation that Mr. Guthrie went
2 into. We've heard, well, they're out in the country.
3 Well, they are out in the country, but they're less than
4 two miles from the Pickens County Sheriff's Department.
5 They have telephones. They have access to telephones.
6 Could have had access to telephones. We're suspicious.
7 Somebody's out here. Come check. If you're concerned
8 about the safety of someone up the street in that home,
9 young girls, your daughter, you go to that home, check on
10 them, call the sheriff's department. You don't confront
11 somebody. You don't start out by following them down the
12 road the first time before they ever even know your
13 concern. You call the sheriff's department if you're
14 going to take appropriate methods.

15 So it's confusing as to why things were handled the
16 way it was by any of those -- the people involved. Also,
17 ask yourselves, who really saw what happen? Mr.
18 Guthrie's wife did not see the fight at all. The only
19 thing she saw is them coming out of the woods fighting
20 each other. You have no testimony or no evidence from
21 Ms. Guthrie whatsoever as to who hit who, particularly
22 who hit who first or what was said. The only thing Ms.
23 Guthrie heard was her husband yelling; nothing that Mr.
24 Nix said. So it's confusing as to why Mr. Nix should be
25 convicted of assault and battery of a high and aggravated

1 nature. So Ms. Guthrie saw nothing about the fight. She
2 did see her husband following this man, coming back down,
3 pursuing him after Mr. Nix left and was on Mauldin Lake
4 Road. She saw all of that. She did not see the fight
5 and does not know what happened.

6 The Guthrie's daughter didn't see the beginning of
7 the fight. She didn't know what was said by who or what
8 was said to each person. She also told you that Mr. Nix
9 looked fine. Where we had an officer who brings in here
10 a T-shirt that is almost torn completely half in two that
11 Mr. Nix was wearing. But you were told Mr. Nix looked
12 fine. You also heard, when asked about her father's
13 condition, implied that there were none, she had not see
14 any evidence of that. But the simple fact is we've heard
15 a lot of testimony about that. You know that Mr. Guthrie
16 has said that he was trying to protect the family. But,
17 again, why choose this way to do it. The hypervigilance,
18 being on guard, made him take some of the actions that he
19 took. That includes following this young man. That
20 includes pursuing him. As I said at the very beginning,
21 we would not be here had that pursuit never happened, had
22 they let Mr. Nix continue to walk down the road as he had
23 done two times before; we would not be here today; there
24 would not be this situation. There's been talk about
25 trespass and trespass signs and this, that and the other.

1 And I think there's some question about that. Were there
2 signs? What were the signs? Was there intent to
3 trespass on property that this gentleman had walked on
4 for years? But in the end, what difference does it make
5 because everything that allegedly took place as far as
6 any injuries or assault was on after
7 Mr. Nix said, I'm leaving. You say it's your property,
8 you or your son's property, I'm leaving. But he was not
9 allowed to.

10 And I would submit, even though there's this dispute
11 between Mr. Guthrie and Mr. Nix as to who hit who first,
12 there's no dispute as to the rest of it. Mr. Nix did
13 walk down that gravel driveway the last time, did walk
14 out into Mr. Guthrie did pursue him
15 and started yelling at him again. That is what is stated
16 by both Mr. Guthrie and Ms. Guthrie, and to a certain
17 degree by their daughter. So if there are some things
18 that are uncontroverted, all of those uncontroverted
19 facts verify that Mr. Nix was the pursued. He's the one
20 that was trying to leave and was not allowed to and the
21 fight ensued.

22 One thing I will mention about the hypervigilance
23 and the mindset of Mr. Guthrie is he was overly
24 concerned, overly stressed, hypervigilant, to the point
25 that he told the people in the ER that he was attacked by

1 someone that broken into his son's home, which is nowhere
2 near accurate. That shows, I believe, the state of mind,
3 what he was thinking or what he was reacting to. That
4 caused him to overreact. That caused him to pursue and,
5 I believe, to initiate the fight, to initiate the
6 assault. That is stated in the medical records. Some
7 things you don't know. We've heard from one officer of
8 the Pickens County Sheriff's Department testified that he
9 came, he was there. He, in fact, talked to Mr. Nix, who
10 cooperated completely. He took the shirt into his
11 possession. He went back out. I think he said he was
12 the one, but someone went back out hours later and
13 arrested Russell Nix at the same place he'd interviewed
14 him. But you were not able to hear or have the benefit
15 of the testimony of Detective Byers who came out and
16 actually took the statements then and there, on the spot,
17 of the Guthries and their daughter. We don't have the
18 benefit of his input or his recollection of what
19 happened. So you don't have that. So there's some
20 things you don't have also.

21 And lastly, I will ask you to put it all together.
22 When you deliberate, I would ask you to look at what is
23 often called in the court system, the totality of the
24 circumstances. Would this have happened had Mr. Nix not
25 been pursued, confronted on a public roadway? Would this

1 have happened if they'd just let him walk away? You're
2 going to be concerned about the injuries. I would be. I
3 think they are significant. I think they are substantial
4 injuries. But these are injuries that occurred in a
5 fight that was initiated and created by the behavior of
6 Mr. Guthrie. Mr. Nix said he may have hit Mr. Guthrie
7 twice. Dr. Tran said that these injuries could have been
8 created by just one blow. Whether it's a lucky blow or
9 if he just accidentally hit it right, but when it's a
10 blow in a fight that was created by the other individual,
11 it happens. So the simple fact of the matter is when you
12 look at assault and battery of a high and aggravated
13 nature, we wouldn't be here if the injuries weren't
14 substantial. But the responsibility is still for the
15 State to prove Mr. Nix guilty. And he is not guilty if
16 he was pursued, if he was not allowed to continue down
17 the road, if he was stopped, threatened and himself hit
18 by this other individual. When you get back to the
19 courtroom (verbatim), you do have to ask yourself, I'm
20 really ready to convict Russell Nix for assault and
21 battery of a high and aggravated nature based on
22 everything that I have heard, based on all the
23 circumstances.

24 Again, I don't think the Solicitor and I certainly
25 am not going to tell you what to do. I'm going to ask

1 you to review all of the circumstances. I'm going to ask
2 you to take into account how they happened. I'm going to
3 ask you not to, as much as it might feel better to or you
4 might consider rendering a verdict based on sympathy or
5 compassion for someone who, my guess is, you might see
6 those pictures again. You don't find one person guilty
7 because of that sort of evidence. You find them guilty
8 because there's evidence that proves to you beyond a
9 reasonable doubt. And the only two people that actually
10 saw, knew what happened, have testified. And they both
11 say the other hit first. But it's not denied that it was
12 a fight between the two of them. And it's not denied
13 that Mr. Guthrie pursued Mr. Nix to that point. And
14 based on that, I do ask that you return a verdict of not
15 guilt. Thank you.

16 THE COURT: Solicitor, you may address the
17 jury.

18 MR. CLEVELAND: Thank you, Your Honor. May it
19 please the Court, Mr. Cantrell.

20 CLOSING STATEMENT

21 BY MR. CLEVELAND:

22 Mr. Foreman, ladies and gentlemen of the jury, we
23 would not be here today but for the actions of Mr.
24 Russell Nix. That is very clear. Because Russell Nix
25 inflicted serious bodily injury on Mr. Guthrie, which is

1 at the heart of this trial.

2 Now, the defense just spoke to you and he asked you
3 to render a verdict based upon the fact that Mr. Nix
4 would be found not guilty if he was pursued and if Mr.
5 Guthrie struck a blow or went after him. And ladies and
6 gentlemen, I submit to you that is not a correct
7 statement of the law. And that is not what you are here
8 to decide. What you are here to decide is based upon the
9 facts of this case and the law as the Judge will give
10 you.

11 Now, I want to start out by saying I do not envy the
12 position you sit in. Rendering a judgment on a fellow
13 citizen is no easy task. And it is a very high calling
14 for you to sit here. But I was present in the courtroom
15 and I watched each of you when you took the oath to try
16 the case based upon the law and the facts and render a
17 verdict that speaks the truth. And that law, which you
18 will use to render a verdict, based upon the facts you've
19 heard in testimony, come from the Judge. Now, in a
20 moment I'm going to go through my take on it. If I say
21 anything different from what the Judge says, please defer
22 to the Judge. He is the master of the law in this
23 courtroom, just as y'all are the sole masters and sole
24 triers of the fact.

25 A couple of things I want y'all to consider when

1 considering the facts of this case. There's been two
2 different stories up here, obviously, different accounts
3 of events, some different. And the reason why we have
4 jurors like yourself is because oftentimes different
5 things -- different takes of events come out of different
6 people's mouths on the witness stand. That's where, as
7 Mr. Buckner said, your common sense is your most valuable
8 tool that you take into the jury room. Because your --
9 one of your main tasks is assessing the credibility of
10 the testimony, each and every bit of the testimony, that
11 comes from that witness stand. You can choose to believe
12 all the testimony of a witness. You can choose to
13 believe none of the testimony of a witness. You can
14 believe some things a witness says and disregard others,
15 or any combination thereof. That is solely within your
16 purview and solely within your duty back in the jury
17 room. The Judge will tell you that at the end of the
18 case. And how your common sense kind of rounds that out
19 is assessing the credibility of every witness. Does a
20 witness have a bias? Does a witness have a motive to
21 testify the way they did? Does the witness have a dog in
22 the fight? You can use the fact, if you assess it
23 credible or you assess it worthy, that Mr. Nix is a
24 convicted felon, if that might have some bearing, some
25 impact on his credibility, I would say, that he's been

1 convicted of a crime of dishonesty, admitted it to the
2 Court, shoplifting. You can consider the fact that he's
3 the one sitting on trial and is to face judgment for this
4 crime.. You can consider that when you consider his
5 testimony. Likewise, his father. Likewise you can
6 consider what dog in the fight any of the State's
7 witnesses may have had. Vietnam Veteran that was
8 brutally beaten and really has no dog in this fight,
9 other than to come in and tell the truth.

10 Now, that's very important because the law in this
11 case is a bit complicated. I'll acknowledge that. I'm
12 going to try to boil it down to you, but you have to
13 choose which testimony you want to believe and how you
14 apply it to that law. And ladies and gentlemen, I submit
15 to you that when you apply the credible testimony in this
16 case, when you apply even the uncontested facts of this
17 case, that you will agree with the State and you will
18 return a verdict of guilty on Mr. Nix.

19 Now, Mr. Nix is charged with the offense of assault
20 and battery of a high and aggravated nature. Now, again,
21 the Judge will instruct you on the law. This is my
22 understanding of the law. If you hear it different from
23 the Judge, please take it from him. But to constitute
24 the offense of assault and battery of a high and
25 aggravated nature, a person must unlawfully injure

1 another person and great bodily injury results because of
2 that or that injury and that act was accomplished by
3 means likely to produce great bodily injury or death.
4 Now, in a nutshell, that boils down to they had no
5 justification to conduct the assault. They injured
6 another person, in this case, Earle Guthrie. And that as
7 a result of that injury, a serious bodily injury or a
8 great bodily injury occurred or the act was accomplished
9 by a means to. Dr. Tran testified that the deep brain
10 bleed, the hemorrhage that Mr. Guthrie suffered because
11 of the trauma he encountered in this assault was life
12 threatening. The definition of great bodily injury,
13 you'll get from the Judge, goes something like this.
14 It's an injury that creates a substantial risk of death.
15 The doctor testified to you that those injuries are life
16 threatening. Fortunately, in this case, Mr. Guthrie
17 survived. I think we can all be thankful for that or
18 else we'd be here in a different kind of trial today.
19 But the fact of the matter is, is that element number
20 three, great bodily injury results has been proven by the
21 State and that was uncontested by the Defense. Also, if
22 you say, well, I'm still a little fuzzy on that brain
23 bleed. This was a deep brain bleed and it was caused by
24 the strikes and blows enacted by Mr. Nix. You can say,
25 okay, even if I thought that that might not quite be a

1 great bodily injury, he certainly hit him with enough
2 force to cause that deep brain bleed. And that certainly
3 was means that could have produced death, life
4 threatening injury, or great bodily injury. So ladies
5 and gentlemen, I submit to you that the State has proven
6 beyond a reasonable doubt element three of this crime.

7 Element two, it's simple, injured another person.
8 Again, that fact is uncontested by the Defense and the
9 State's witnesses. Mr. Nix engaged in a fight and
10 assaulted Earle Guthrie. Broke his jaw, he broke his
11 orbital bone of his eye and he caused that deep brain
12 bleed hemorrhage. That is an injury and that element of
13 the crime is uncontested.

14 Element number one, unlawfully. I'll submit to you
15 that just about every time you injury someone and cause
16 injury to this level, it is unlawful unless you have some
17 type of legal justification. And the only legal
18 justification that Mr. Nix could engage in this case,
19 could bring forward, and what the Judge will charge you
20 on, isn't if he was pursued as the defense said. It
21 isn't if Mr. Guthrie struck the first blow. The law that
22 you must apply to Mr. Nix is the law of self-defense in
23 South Carolina. And that is a little different, I would
24 imagine, of what your normal idea of what self-defense
25 is. See, self-defense in South Carolina is a very

1 powerful thing. It allows a citizen of this State to
2 either kill or seriously injure someone else, without any
3 type of legal ramifications. And the way the law
4 justifies that is it is basically an absolute last
5 resôrt. This, ladies and gentlemen, is the law on self-
6 defense in South Carolina as I understand it. Again, the
7 Judge will charge you on this law. If he says anything
8 different than what I do, please take it from the Judge,
9 but this is my understanding. I believe that this is the
10 way it will go.

11 If the Defendant is to claim self-defense -- and
12 this is the State's burden to disprove this, and I
13 willfully accept that burden -- the Defendant must comply
14 with these requirements. First off, they must be without
15 fault in bringing about the difficulty. Now, that isn't
16 without fault bringing about the fight. That isn't
17 without fault bringing about the argument or the
18 altercation. The language is difficulty, ladies and
19 gentlemen. That means that they are completely without
20 fault in bringing about the situation that led to the
21 assault. Also, it says without fault, not less at fault,
22 not a little bit at fault. Completely without fault.
23 For the Defendant to invoke self-defense in South
24 Carolina and say that they were justified, and Mr. Nix to
25 say he was justified in beating Earle Guthrie and

1 breaking his skull and his jaw, he would have to be
2 completely without any fault.

3 Now, ladies and gentlemen, there is uncontested
4 testimony that Mr. Nix was trespassing on the property.
5 There was testimony from the State that all the family
6 members were concerned and that when he came back the
7 third time with a different appearance, that's
8 uncontested, coming through the property, is that's when
9 Earle finally confronted him, as to figure out who he was
10 and what he was doing on their land. Without fault?
11 Ladies and gentlemen, I think not.

12 Now, the second prong is he was in actual danger,
13 imminent danger, which means right away, right then,
14 facing danger of losing his life, of losing his life or
15 sustaining serious bodily injury or believed he was in
16 such danger. Now, was he ever? Based on the testimony,
17 his testimony or the State's in any type of danger of
18 losing his life or sustaining serious bodily injury.
19 Earle Guthrie wasn't armed. He didn't carry a shotgun up
20 there to scare him off the property. He didn't wield a
21 knife. There's no testimony of anything other than
22 discussion. To the Defendant, there's no evidence he was
23 in actual imminent danger of losing his life or believed
24 that he was in such danger. He simply testified -- even
25 if you believe him at his word, that Earle confronted

1 him, nothing rising to the level of being actually in
2 imminent danger of losing his life.

3 And the third prong of self-defense, had no other
4 probable means of avoiding the danger. Not some probable
5 means, not a better way to get out of it, no probable
6 means of avoiding the danger. By Mr. Nix's own
7 testimony, when he was up here at the top of the
8 driveway, I asked him, when you were right here, could
9 you have walked out through there? He said, well, Mr.
10 Guthrie said I couldn't. I said, no, that's not what I
11 was asking. For your personal safety, were you impeded,
12 could you have run away? He said, yeah, he could have.
13 He admitted he's an able-bodied young man. Down here on
14 the road, he admitted in his own testimony, both lanes of
15 traffic were clear when Mr. Guthrie was coming at me. He
16 could have run away either way. Again, an able-bodied
17 young man. He had been running laps. He was in good
18 shape. Walking laps. He could have gotten away. There
19 was probable means for him to avoid the danger. He could
20 have walked away from this situation, ladies and
21 gentlemen. Even if you take him at his word, which I
22 submit to you is not credible evidence, but looking at
23 this, favoring the defense, it's the State's position
24 he's still guilty of this crime because under no
25 interpretation of his testimony could Mr. Nix claim self-

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1 defense under the laws of South Carolina, which means
2 that this assault was unlawful.

3 Now, you'll notice there's a big bold and here. I
4 don't have to prove every one of these. I think we have.
5 But I don't have -- if I prove any one of these elements
6 of self-defense, then self-defense is out the window, it
7 is no defense and this assault was unlawful and that's
8 what I submit to you happened, ladies and gentlemen.
9 Now, there is a note here at the bottom. If he wasn't in
10 actual imminent danger, he would have had to believe he
11 was in actual imminent danger. And that belief was,
12 again, where your common sense comes in. A normal
13 prudent person of ordinary courage would have thought
14 that he was justified in doing the exact same assault
15 based upon the circumstances. Ladies and gentlemen, no
16 self-defense. This assault was unlawful. I want to go
17 through -- y'all were diligent. I know you were. I just
18 want to point out a couple of points in the testimony
19 that I thought was noteworthy, going to the credibility
20 of some of the things that came out. When Mr. Nix took
21 the stand he testified that he did exactly what Earle
22 told him to. But he also testified that when Earle first
23 approached him in his car, that he wasn't mad yet, but he
24 began to get belligerent. You have to ask yourself, is
25 that reasonable? Is that credible evidence even with

1 someone with an affliction like Mr. Guthrie has, post-
2 traumatic stress disorder, if he's not provoked, why
3 would he continue to escalate in anger if the Defendant
4 did exactly what he told him to do? He said he
5 apologized to him and that's what he was doing when he
6 waved his hands in the air. An apology, waving his hands
7 in the air as seen by his wife and as testified to by Mr.
8 Guthrie. Not credible, ladies and gentlemen. Mr. Nix
9 testified that he wrestled in the ditch with Mr. Guthrie.
10 We pulled this out of the bag yesterday. If y'all want
11 to do it again, let us know. We'll get some gloves here
12 for you. I want y'all to look at the back of this shirt.
13 Look at the front of this shirt. Does this look like a
14 shirt -- where are the mud and the grass stains? If
15 you're wrestling and rolling around in a ditch, what does
16 your common sense tell you, ladies and gentlemen? You're
17 going to get dirty. The shirt's probably going to look a
18 little more like this one. Torn, dirty, battered.
19 Again, evidence that doesn't hold water to a reasonable
20 person. Mr. Nix said he was kicked in the stomach, stuck
21 in the face, beaten by Mr. Guthrie and that he, when
22 pushed, hit him twice. Two hits was his testimony. I
23 don't know what type of strength Mr. Nix possesses, other
24 than the fact that he admitted he was an able-bodied
25 young man, but if you believe two hits caused all these

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1 injuries, two jaw injuries, broken bone around the eye,
2 deep brain hemorrhage, all this redness, apparent shoe
3 print, as Ms. Guthrie testified to, on his head, I don't
4 think that's credible and I don't think it holds up.
5 Whereas, you oppose the injuries, the hits and the
6 beating that Mr. Nix said he received. You'll have the
7 pictures back in the jury room, ladies and gentlemen,
8 that's for you to decide. And his father's testimony
9 also, said, when he came in he looked like he'd been hit
10 by a car. He didn't call the police. Had just been
11 brutally beaten and assault and pursued, run-off, went
12 home; didn't go to the hospital or anything. No
13 testimony about that. The Guthries. Mr. Guthrie,
14 beaten, bleeding. The family already upset from having a
15 stranger on their property, then calling the police,
16 going to the hospital. Ladies and gentlemen, who is the
17 aggressor and who is the victim in this case? The
18 State's position, it is clear.

19 Now, the Guthries, I think when you weigh the
20 testimony, when you think about this as reasonable
21 people, what happened on that day was exactly as they
22 testified to. They saw a stranger coming through their
23 property. Ms. Diane Guthrie (verbatim) was at home with
24 her two daughters alone. Ms. Guthrie, without being
25 aggressive or anything, called and checked to see if was

1 her husband or anyone. Found out it wasn't. That it was
2 a man who'd been there twice. They rode down the road to
3 go see where he was because they were concerned for their
4 own safety. On the third time he came back, by then he'd
5 changed his appearance and he was coming the other
6 direction. Would that cause a reasonable person to be on
7 guard? What would a reasonable person do in that
8 situation, ladies and gentlemen? And even -- there was
9 much to be made about, well, Mr. Nix, once he was
10 confronted by Mr. Guthrie, ran to the gravel road and
11 then went to the public highway. He got off the
12 property. He did what he said. Ladies and gentlemen, I
13 know we've all been around children who kind of like to
14 push our buttons a little bit. That seems the analogy of
15 telling the child not to touch something. And we've all
16 seen them say, I'm not touching it. I'm not touching it.
17 That's the same thing as Mr. Nix was doing. He stepped
18 out in the road. But would a reasonable person, would
19 that really alleviate their concern, this person who'd
20 been aggressive and who had made a big deal when he was
21 told he was trespassing and didn't simply leave. He just
22 walked in the road. Would that make a reasonable person
23 feel that their family is safe, that they withdraw, that
24 they could stop right then, that he was done. I submit
25 to you that is a reasonable and that is a reasonable

1 circumstance of events as to what happened. Four months
2 Diane had been living there and in one day sees Mr. Nix
3 come around three times. I appreciate the fact -- I grew
4 up here in the County. I've been here thirty years. I
5 appreciate the fact that Mr. Nix has been in the same
6 spot for all of his life and is comfortable with the
7 area. But his comfort with the area, his familiarity
8 with the area, still gives him no right to lawfully
9 trespass. And it's not like they bought the property the
10 day before that. They'd been there for four months. Mr.
11 Nix thought it was. He said he could walk anywhere he
12 wanted to. He'd been doing it his whole life. Who were
13 these people to tell him to leave? Now, I didn't know
14 they didn't own the property. Mr. Banks didn't own the
15 property. I was comfortable walking on it is no defense.
16 And, again, it goes to the fact that he is responsible
17 for bringing about this difficulty.

18 Mr. Guthrie, there was some testimony about his post
19 traumatic stress syndrome. But what did Ms. Guthrie say?
20 She's known and been married twenty-six years to him.
21 When she saw him confront the Defendant, she was proud of
22 him because he didn't fly off the handle. He didn't jump
23 out after him. He didn't assault. Like I said, he
24 didn't go up there with a knife or a shotgun or anything
25 like that. He was instructing him to get off the

1 property, being patient with him, in her observation.
2 Mr. Nix refused to comply. And to hear Mr. Guthrie
3 testify, he called him out. Told him come out in the
4 street or he would whip his you know what, which is
5 interesting because by Mr. Nix's own testimony, he said
6 at first he had come down through this way. And on this
7 third lap that he was doing, he was going back up this
8 way. If he could walk anywhere he wanted to, if he
9 didn't want fight him, why didn't he just keep on going
10 up. He'd already been told he was on private property.
11 You know, he could have just gone up the way he wanted
12 to, if he wanted to find it. But, no, he walked out in
13 the street, right at the corner of Mr. Guthrie's
14 driveway, right where he saw him come from, and said,
15 what you going to do now, old man. Again, responsible
16 for bringing about this difficulty.

17 Now, I don't think there would be any doubt that if
18 the Guthries had known how this was going to turn out,
19 had they known it would end the way it did, that they
20 might have done things differently. But they didn't.
21 They reacted the best they knew how, looking out for
22 their family, for the safety. And the end result was
23 that Russell Nix beat Mr. Guthrie, loud pounding, as his
24 wife testified she could hear. Made her sick. Threw him
25 down in the ditch, on his chest, as Mr. Guthrie said,

1 beating him in his face. Does this look like a fair
2 fight, ladies and gentlemen? Does this look like an
3 altercation that Mr. Guthrie started something that was
4 evenly matched and fought? Again, no probable means of
5 avoiding the difficulty when Mr. Guthrie's down in the
6 ditch and he's on top of him, he could have got up and
7 walked away. It's not just the first blow that you have
8 to prove self-defense on. You don't get carte blanche to
9 do whatever you want once you think you can invoke self-
10 defense. Every single strike in the altercation is
11 subject to self-defense. If you are justified in the
12 first couple that someone is disabled and you keep after
13 it, then self-defense goes away and you are unlawfully
14 assaulting someone and you are guilty.

15 Now, again, I want to speak on the burden in this
16 case. It's beyond a reasonable doubt. It's not beyond
17 any doubt. There are very few things we know in this
18 life with absolute certainty and the law doesn't require
19 that, ladies and gentlemen. All it requires is that the
20 State prove this case to an extent to where you are
21 firmly convinced that the Defendant violated the law of
22 assault and battery of a high and aggravated nature.
23 That he unlawfully injured another person and great
24 bodily injury resulted. It's kind of like a puzzle,
25 ladies and gentlemen. You don't need every single piece

1 of the puzzle to see what the picture is. And in this
2 case, the picture at the end of the day, applying and
3 putting the facts of this case with the law that you have
4 to apply as given from the Judge, I'm going to ask you to
5 return the only verdict the facts support in this case;
6 is that Russell Edward Nix is guilty of assault and
7 battery of a high and aggravated nature. Thank you.

8 **CHARGE**

9 **BY THE COURT:**

10 Mr. Foreman, ladies and gentlemen, it is now my
11 responsibility to instruct you on the law of the case.
12 Let me remind you that in this case the charge, of
13 course, is assault and battery of a high and aggravated
14 nature. The fact that the Defendant has been arrested,
15 charged and indicted, that's not evidence in the case and
16 can't be considered by you as evidence of any guilt,
17 doesn't create any presumption or any inference of guilt.
18 The indictment is merely the formal written instrument by
19 which the case is brought before this Court for
20 disposition.

21 Now, the Defendant has entered a plea of not guilty
22 to the indictment and that plea places the burden on the
23 State to prove his guilt. A person charged with
24 committing a criminal offense in South Carolina is never
25 required to prove himself innocent. That's an important

1 rule of law. In a criminal trial, no matter how serious
2 the charge may be, the one charged will always be
3 presumed innocent of that crime for which the indictment
4 was issues unless guilt has been proven by evidence
5 satisfying you of that guilt beyond a reasonable doubt.
6 Presumption of innocence doesn't end when you begin your
7 deliberations. It accompanies the Defendant throughout
8 the trial until you've reached a verdict of guilt based
9 on the evidence satisfying you of that guilt beyond a
10 reasonable doubt. Presumption of innocence isn't a mere
11 legal theory. It's not just a legal phrase. It is a
12 substantial right to which every Defendant is entitled
13 unless you, the jury, are satisfied from the evidence of
14 the Defendant's guilt beyond a reasonable doubt.

15 You may ask yourself, what is a reasonable doubt in
16 the law? A reasonable doubt is the kind of doubt that
17 would cause a reasonable person to hesitate to act. Now,
18 some of you in the past may have served on a jury. You
19 served on a civil case and you were told by the judge
20 that it was only necessary to prove a fact was more
21 likely true than not true by what was called the greater
22 weight of the evidence or the preponderance of the
23 evidence. In criminal cases, the State's proof is more
24 powerful than that. It must be beyond a reasonable
25 doubt. That would be proof that leaves you firmly

1 convinced of the Defendant's guilty. There's very few
2 things in this world that we know with absolutely
3 certainty and in criminal cases the law doesn't require
4 proof that overcomes every possible doubt. If, based
5 upon your consideration of the evidence, you are firmly
6 convinced that the Defendant is guilty of the crime
7 charged, then you must find the Defendant guilty. If, on
8 the other hand, you think there's a real possibility that
9 the Defendant is not guilty, you must give him the
10 benefit of that doubt and find him not guilty.

11 Now, you and I have had certain duties to perform
12 during the trial. And as the Trial Judge, it's been my
13 responsibility to preside over the trial of this case, to
14 rule on the admissibility of evidence offered during the
15 trial. You're to consider only the competent evidence
16 before you. You're to consider the testimony that was
17 presented from the witness stand, the exhibits that were
18 made part of the record, any stipulation of the counsel.
19 I also have the additional duty to charge you the
20 applicable law in the case. As the Presiding Judge, I'm
21 the sole judge of the law. It's your duty as jurors to
22 accept the law and apply the law just as I state it to
23 you. You may already have an idea of what the law is or
24 a notion about what the law ought to be in a case such as
25 this. If you have such an idea and it's in conflict with

1 what I now tell you the law is, you must abandon such an
2 idea because under your oath; you've sworn to accept the
3 law and apply the law exactly as I state it to you.
4 Every case that's tried in this courtroom before a jury,
5 that jury becomes the sole and exclusive judge of the
6 facts in a case. A Trial Judge can't intimate or state
7 or comment on or make any statement whatsoever to a trial
8 jury about the facts in a case. Since you, the jury, are
9 the sole judge of the facts, you're not to infer from
10 what I've said during the progress of the trial, any
11 rulings I've made on the admissibility of evidence or
12 otherwise, anything I say to you now in the course of
13 this instruction to you, that I have an opinion about the
14 facts. I don't have an opinion about the facts. The Law
15 of South Carolina, our Constitution in South Carolina,
16 prohibits a Trial Judge from having an opinion about the
17 facts. That's solely a matter for you to determine. You
18 decide the effect, the value, the weight, and the truth
19 of the evidence presented during this trial.

20 Normally, in a trial, there's two types of evidence.
21 There's direct evidence and circumstantial evidence.
22 Direct evidence is the testimony of a person who claims
23 to have actual knowledge of a fact, such as an
24 eyewitness. It's evidence which immediately establishes
25 the main fact to be proved. Circumstantial evidence is

1 proof of a chain of facts and circumstances that would
2 indicate the existence of a fact. It's evidence which
3 immediately establishes collateral facts from which the
4 main fact may be inferred. Circumstantial evidence is
5 based on inference and not on personal knowledge or
6 observation.

7 Now, the law makes absolutely no distinction between
8 the weight or the value to be given either direct
9 evidence or circumstantial evidence, nor is there a
10 greater degree of certainty required for circumstantial
11 evidence than for direct evidence. You should weigh all
12 the evidence in the case and after weighing that evidence
13 if you're not convinced of the guilt of the Defendant
14 beyond a reasonable doubt, you must find the Defendant
15 not guilty.

16 Now, ladies and gentlemen, of necessity, you must
17 determine the credibility of the witnesses who've
18 testified in this case. Credibility simply means
19 believability. It becomes your duty as jurors to analyze
20 and evaluate the evidence and determine which evidence
21 convinces you of its truth. In determining the
22 credibility of witnesses who've testified in the case,
23 you can believe one witness over several witnesses. You
24 can believe several witnesses over one witness. At your
25 discretion, ladies and gentlemen, you can believe part of

1 the testimony of a witness and you can reject the
2 remaining part of the testimony of that very same
3 witness. You can believe the testimony of a witness in
4 its entirety. You can reject the testimony of a witness
5 in its entirety. You can consider whether any witness
6 has exhibited to you any interest or bias or prejudice or
7 other motive in the case. You can consider the demeanor,
8 the appearance of the witness while on the witness stand.
9 You can ask yourself, was that witness straight forward
10 or hesitant in answering? Was the testimony of that
11 witness consistent or inconsistent? How did the witness
12 come to know the facts to which that testimony was
13 offered? Was the testimony of a witness strengthened or
14 weakened by other evidence in the case? It's solely your
15 prerogative, ladies and gentlemen, to determine the
16 credibility of the witnesses.

17 Now, I mentioned to you earlier that the rules of
18 evidence ordinarily would not permit a witness to testify
19 to opinions or conclusions, but there is an exception to
20 this rule for witnesses that we call expert witnesses.
21 And a witness who, because of the education and
22 experience, has become an expert in some art or science
23 or field or calling, may state an opinion as to relevant
24 and material matters which the witness claims to be an
25 expert; he may also state the reasons for that opinion.

1 Now, you should consider an expert opinion received into
2 evidence in the case, and like all other evidence, give
3 it the weight that you think it deserves. If you decide
4 the opinion of an expert is not based on sufficient
5 education and experience or you conclude that the reasons
6 given in support of that opinion are not sound or the
7 opinion is outweighed by other evidence, you can
8 disregard that opinion entirely. An expert witness
9 testimony is to be given no greater weight than that of
10 any other witness merely because the witness is an
11 expert. Furthermore, you're not required to accept an
12 expert's opinion, even though it may be uncontradicted.

13 Now, in order to establish criminal liability,
14 criminal intent is required. It must be proven by the
15 State beyond a reasonable doubt. Criminal intent is
16 always a matter that must be determined by a jury from
17 the circumstances surrounding the situation. There's no
18 way to prove intent to a mathematical certainty. There's
19 no way that medical science can dissect a person's brain
20 and determine what that person had in mind. So the law
21 says that criminal intent may be inferred from the
22 circumstances shown to have existed. It's not necessary
23 to establish intent by direct and positive evidence, but
24 it may be established by inference in the same way as any
25 other fact, taking into consideration the acts of the

1 parties and all the facts and circumstances of the case.
2 Criminal intent's a mental state. It's a conscious
3 wrongdoing. It's up to you to determine what the
4 Defendant intended to do based upon the circumstances
5 shown to have existed.

6 Now, in this trial you've heard evidence that the
7 Defendant has been convicted of a crime other than the
8 one for which the Defendant is now on trial. This
9 evidence may be considered by you if you conclude it to
10 be true, only in deciding whether the Defendant's
11 testimony is believable, and for no other purpose. You
12 must not consider the Defendant's prior record as any
13 evidence of the Defendant's guilt of the charge that
14 we're trying today in this case.

15 Now, the charge is assault and battery of a high and
16 aggravated nature. And under the Statute of South
17 Carolina, a person commits this offense if a person
18 unlawfully injures another person and great bodily injury
19 to another person results; or the act is accomplished by
20 means likely to produce death or great bodily injury.

21 Now, great bodily injury means that bodily injury
22 which causes a substantial risk of death, or which causes
23 serious permanent disfigurement, or protracted loss or
24 impairment of the function of a bodily member or an
25 organ.

1 The Defendant has raised the defense of self-
2 defense. Self-defense is a complete defense. And if it
3 is established, you must find the Defendant not guilty.
4 The State has the burden of disproving self-defense by
5 proof beyond a reasonable doubt. If you have a
6 reasonable doubt of the Defendant's guilt after
7 considering all the evidence, including the evidence of
8 self-defense, then you must find the Defendant not
9 guilty. On the other hand, if you have no reasonable
10 doubt of the Defendant's guilt after considering all the
11 evidence, including the evidence of self-defense, then
12 you must find the Defendant guilty.

13 And the following elements are required to establish
14 self-defense. First of all, the Defendant must be
15 without fault in bringing on the difficulty. If the
16 Defendant's conduct was the type which was reasonably
17 calculated to and did promote an assault, the Defendant
18 would be at fault in bringing on the difficulty and would
19 not be entitled to an acquittal based on self-defense.

20 The second element of self-defense is that the
21 Defendant was actually in imminent danger of death or
22 serious bodily injury or that the Defendant actually
23 believed he was in imminent danger of death or serious
24 bodily injury. Now, if the Defendant was actually in
25 imminent danger, it must be shown that the circumstances

1 would have warranted a person of ordinary firmness and
2 courage to strike the blow to prevent death of serious
3 bodily injury. If the Defendant believed he was in
4 imminent danger of death or serious bodily injury, it
5 must be shown that a reasonably prudent person of
6 ordinary firmness and courage would have had that same
7 belief.

8 Now, in deciding whether the Defendant actually was
9 or believed he was in imminent danger of death or serious
10 bodily injury, you should consider all the facts and
11 circumstances of the crime, including the physical
12 condition, characteristics of the Defendant and the
13 victim. It's for you to decide whether the Defendant's
14 fear of imminent danger of death or serious bodily injury
15 was reasonable, it would have been felt by an ordinary
16 person in the same situation. The relative sizes, ages,
17 weights of the defendant and the victim may be considered
18 in deciding the apparent or actual need for force in
19 self-defense and the amount of force needed.

20 The final element of self-defense is that the
21 Defendant had no other probable way to avoid the danger
22 of death or serious bodily injury than to act as the
23 Defendant did in this particular incident. A person
24 cannot be required to make an exact calculation as to the
25 degree or amount of force which would be needed to avoid

1 death or serious bodily harm; therefore, in self-defense,
2 the Defendant has a right to use the force needed to
3 avoid death or serious bodily harm. Force used in self-
4 defense does not have to be limited to the degree or
5 amount of force used by the victim. The Defendant has
6 the right to use so much force as appeared to be
7 necessary for complete self-protection, and which a
8 person of ordinary reason and firmness would have
9 believed to be needed to prevent death or serious bodily
10 harm.

11 Now, Mr. Foreman and ladies and gentlemen, there's
12 two possible verdicts you can reach in this case, either
13 guilty or not guilty. I've prepared a verdict form and I
14 believe it will be self-explanatory. Each of those
15 choices are listed. There's no significance, of course,
16 in the way they're listed. One has to be listed before
17 the other, Mr. Foreman, the appropriate block to either
18 check, not guilty or guilty, sign your name as Foreperson
19 on behalf of your fellow jurors, date the form and we'll
20 receive it back here in the jury room. Your verdict must
21 be a unanimous one. All twelve of you must agree on the
22 verdict, but it cannot be based upon sympathy or
23 prejudice or emotion or any other consideration not in
24 evidence in the case. And let me remind you, you're free
25 to ask me any question concerning the law that I've given

1 you. Remember, however, it is impermissible for me to
2 answer any questions you have regarding the facts of the
3 case. All the evidence is in. You'll have that in your
4 jury room, those documents. It's your duty to determine
5 the facts as the sole fact finders.

6 I'm going to ask you at this time, ladies and
7 gentlemen, if you would, go back to your jury room.
8 Don't start your discussions just yet. There's a final
9 matter of law I need to take care of with the attorneys,
10 after which, hopefully, we'll send the verdict form back
11 with the exhibits with instructions for you to begin your
12 deliberations then. But for right now, don't start your
13 deliberations. You may retire to your jury room.

14 (WHEREUPON, the jury exited the open court at
15 approximately 10:25 A.M.)

16 THE COURT: Any exceptions to the charge from
17 the State?

18 MR. CLEVELAND: None from the State, Your
19 Honor.

20 THE COURT: From the Defense?

21 MR. CANTRELL: None, Your Honor.

22 THE COURT: All right. If y'all will make sure
23 all the exhibits are in order, look over our verdict
24 form, make sure it's in proper form with the corrections,
25 then we'll tell the jury to begin their deliberations.

1 If you'll have the alternate come out and tell them
2 they can start their deliberations.

3 THE BAILIFF: Yes, sir.

4 THE COURT: We'll excuse the alternate, and
5 then we'll be at ease until we hear from our jury.

6 (WHEREUPON, the verdict form and exhibits were
7 delivered to the jury at 10:27 a.m., at which time
8 the jury began their deliberations.)

9 THE COURT: Ms. Roberts, thank you very much
10 for your service. Your fellow jurors withstood it so you
11 won't have to be here. You're welcome to stay with us if
12 you'd like. You're free to go if you'd like. If you
13 need a statement for your employer, Mr. Welborn can take
14 care of that for you down at the clerk's office. Okay.
15 Thank you for your service. We appreciate it so much.

16 THE JUROR: Yes, sir. Thank you.

17 THE COURT: All right. We'll be at ease until
18 we hear from our jury. We'll take a short break.

19 (WHEREUPON, court stood at recess awaiting the
20 verdict of the jury.)

21 THE COURT: All right. I understand the jury
22 has reached a verdict. I know we've got folks in the
23 audience that -- some of whom may have an interest in the
24 case. We're going to certainly make sure everyone
25 respects the jury's verdict. Don't know what it may be.

1 It may bring pleasure to some and stress to others. But
2 whatever that verdict will be, we're going to accept it.
3 If anyone feels they have such emotion that they have to
4 make an outcry either way, this would be the time to
5 remove yourself from the courthouse. We're not going to
6 have any kind of outburst from anyone. I know that we
7 are emotional people and we may want to express
8 ourselves, but this is not the time to do that when the
9 jury announces their verdict. So if you feel like you
10 can't control your emotions, this would be the time to
11 remove yourself from the courtroom. You can come right
12 back in after we get the verdict. If anyone feels they
13 can't contain themselves.

14 All right. Everyone is ready for the verdict then.
15 Anything from the State before the verdict?

16 MR. CLEVELAND: Nothing from the State, Your
17 Honor.

18 THE COURT: From the Defense?

19 MR. CANTRELL: Nothing from the Defense.

20 THE COURT: Have them come in, Mr. Schumacher.

21 THE BAILIFF: Yes, sir.

22 (WHEREUPON, the jury entered the open court at
23 approximately 11:23 A.M.)

24 THE COURT: Mr. Foreman, I understand the jury
25 has reached a verdict; is that correct?

1 THE JUROR: We have, sir.

2 THE COURT: Is it a unanimous verdict?

3 THE JUROR: Yes, sir, it is.

4 THE COURT: If you would, please, hand the
5 verdict form to the bailiff.

6 All right. Mr. Clerk, you may publish the verdict.

7 THE CLERK: This is case number 2012-GS-39-
8 2627, the State versus Russell Edward Nix. We, the jury,
9 unanimously find the Defendant, Russell Nix, as to the
10 charge of assault and battery high and aggravated nature,
11 guilty. Is this your verdict and still your verdict, so
12 say you all by raising your right hand?

13 (WHEREUPON, all jurors' right hands were raised.)

14 THE CLERK: Thank you very much.

15 THE COURT: All right. Is there anything we
16 need to take care of from the jury before they're
17 discharged? From the State?

18 MR. CLEVELAND: Nothing on behalf of the State,
19 Your Honor.

20 THE COURT: From the Defense?

21 MR. CANTRELL: Nothing, Your Honor.

22 THE COURT: Ladies and gentlemen, thank you
23 very much for your service this week and in this case.
24 It's been a pleasure for me to work with you. You may
25 not have a chance to serve as a juror again in your life,

1 and I hope this has been an educational week for you.
2 You've been a conscientious group, a good group for me to
3 work with. I've been honored to have that opportunity.

4 You may remember from Monday that one of the
5 exemptions you have is that you don't have to serve as a
6 juror more than once every three calendar years. I hope
7 if you get called in the next two years, you'll not want
8 to claim that exemption but you'll want to waive it. I'm
9 sure that if you ever find yourself not sitting in the
10 jury box, but sitting at one of these tables either
11 accused of some criminal offense or perhaps a civil
12 matter with a contract dispute going on between you and
13 someone else, you'd certainly want good conscientious
14 jurors sitting in that box deciding the facts of your
15 case. I appreciate that.

16 You've fulfilled a valuable service to your
17 community. We don't often have an opportunity to
18 participate in our government. Some of you may be
19 fortunate enough one day to run for the legislature or
20 the United States Congress, Senate, get to pass laws such
21 as the ones we've dealt with. But unless you've held
22 that position you won't be able to legislate. We can
23 contact our representatives and senators, tell them what
24 we think the law ought to be or how laws ought to be
25 changed, but we can't vote. Same with the Executive

1 Branch of government. Unless you get to be mayor of your
2 town or governor of our State or some capacity to execute
3 those laws, you'll never have that opportunity. But the
4 third branch of government, the Judicial Branch, you've
5 directly participated in. You've been a judge this week
6 and you've fulfilled your duty well and I appreciate that
7 so much.

8 Some of you may need a statement for your employer
9 to verify that you've been on jury service. If that's
10 the case, please just stop by the clerk's office.
11 They'll have that for you. You're dismissed at this
12 time. I will ask the Foreman, if you would, please, sir,
13 to remain in the hallway. The clerk has another document
14 for you to sign. Otherwise, you're free to go. Thank
15 you very much for your service and I hope you have a good
16 weekend. Everyone else, please remain seated while the
17 jury departs.

18 (WHEREUPON, the jury exited the open court at
19 approximately 11:29 A.M.)

20 THE COURT: While we're waiting for the clerk,
21 are there any matters we need to take care of before
22 sentence is imposed?

23 MR. CLEVELAND: None on behalf of the State,
24 Your Honor.

25 MR. CANTRELL: Your Honor, only to renew on the

1 record the objections previously made.

2 THE COURT: All of your objections are noted
3 and respectfully declined.

4 All right. If you'd come forward with your client,
5 Mr. Cantrell.

6 (WHEREUPON, Mr. Cantrell and the Defendant
7 approached the bar.)

8 THE COURT: I'll be glad to hear from the State
9 first. Anything you want to offer, Mr. Buckner or Mr.
10 Cleveland?

11 MR. CLEVELAND: One moment, Your Honor. Thank
12 you, Your Honor. May it please the Court. Mr. Nix has
13 been in jail since October the 6th. I believe that is
14 five hundred and thirteen days, plus two days he spent on
15 this charge. Those charges, he currently has pending two
16 burglary second violents, a third or subsequent property
17 offense, a petit larceny, a grand larceny and the
18 trespass charge that originally accompanied this warrant,
19 that we did not try at this date.

20 THE COURT: What's the date of those charges?

21 MR. CLEVELAND: October 6th is when he was
22 arrested, I believe, or September 30th was once incident
23 date. October 5th was the other incident date.

24 THE COURT: In 2010?

25 MR. CLEVELAND: 2011.

1 THE COURT: 2011, okay.

2 MR. CLEVELAND: These were approximately a
3 month after this incident occurred. He got out on bond.

4 THE COURT: Obviously, I won't be considering
5 those. I just wondered if they were, you know, ten years
6 ago or something pending or not.

7 MR. CLEVELAND: No, and I guess what I'm
8 getting at is he was in jail. I don't have a good
9 argument. I'm not going to oppose him getting credit for
10 that time served.

11 Your Honor, his criminal record goes back to 1995.
12 Possession of controlled substance; '96, possession of
13 controlled substance; '97, driving under suspension; '98,
14 assault and battery; 2001, assault and battery; 2003,
15 grand larceny times four, burglary third degree times
16 five, petit larceny times three. In 2005, he got three
17 third or subsequent property offenses. He was arrested
18 at least for assault and battery again in 2004. I don't
19 really know the disposition of that charge. A
20 shoplifting charge in 2007; a petit larceny in 2008;
21 driving under suspension and another petit larceny, a
22 failure to appear, a third property offense in 2009; a
23 habitual traffic offender charge and a failure to stop
24 for blue light charge.

25 Your Honor, the Defendant is forty years old now

1 with a criminal record going back to 1995. That was when
2 he turned the age of an adult. He's been a criminal
3 offender mostly in Pickens County for his entire life. I
4 might also add that there were at least arrests in
5 Georgia for shoplifting, three counts; burglary, tools,
6 three counts and criminal trespass, three counts in 2010.
7 I didn't have that when we had our conference on his
8 prior record earlier; that's from Georgia NCIC. He has
9 been trouble to this community. He's admitted drug use
10 and drug addiction. His behavior appears to be
11 escalating from burglaries and third degree, now he's
12 charged with burglary second violent. I think part of
13 that is based on enhancement for his prior burglaries.
14 This was a senseless, avoidable assault on a gentleman
15 much older than him and more disabled, which he could
16 have very easily lost his life on the injuries that he
17 suffered. The jury certain concurred that it was a
18 serious bodily injury or at least that the assault was
19 accomplished by means that could have caused that serious
20 bodily injury as the charge states.

21 Given the nature of the offense, his prior history,
22 the apparent escalation in violence, going from the
23 simple assaults that he's been charged with before to
24 this vicious assault, the State truly thinks that in this
25 case the maximum sentence would not be unwarranted. This

1 is a twenty-year charge. We acknowledge that it is
2 violent and serious, but I think that would certainly be
3 appropriate in this case, Your Honor.

4 I've spoken with the victim. He does not wish to
5 address the Court. He just wanted me to say thank you to
6 the Court and the jury for this proceeding and giving of
7 their time.

8 THE COURT: All right. Thank you, Solicitor.
9 Mr. Cantrell, I'll be glad to hear from you and certainly
10 your client or anyone else.

11 MR. CANTRELL: Your Honor, I will not rehash
12 what you've been hearing for the last day and a half.
13 You have heard everything pertaining to this case. I
14 will disagree with Mr. Cleveland. He said this was
15 senseless and avoidable. I would disagree with that, but
16 I would defer to your judgement on the testimony you've
17 heard, not only from Mr. Nix, but from the other
18 witnesses as to how avoidable or to the total
19 circumstances surrounding this incident. Mr. Nix has
20 admitted here in court to heroine addiction, not that
21 that explains it away but that tells you the history of
22 his criminal conduct. I disagree that it's escalating if
23 you want to consider the fact that he had committed a
24 series of serious offenses in '04 and '05. I see no
25 escalation after that. More offenses, more heroine

1 addiction. But, again, Your Honor, in this particular
2 situation, the testimony speaks for itself. Mr. Nix did
3 not attempt to flee, did not -- did, in fact, cooperate
4 with law enforcement. Interviewed hours later, was still
5 at home, ready to be arrested, as they decided to do.
6 And he cooperated. Throughout this trial, yesterday and
7 today, he's cooperated completely with me. He testified
8 in what I believe was a forthcoming manner. Two
9 witnesses that actually know what happened testified,
10 differed in their point of view. And, admittedly, the
11 jury accepted the other point of view. But all of the
12 circumstances in this case, Your Honor, I would submit do
13 not warrant the maximum punishment. He's been found
14 guilty. He expects to be punished. He expects a
15 sentence. But I would ask the Court to consider a more
16 appropriate sentence. And, for that matter, one that
17 might include substance abuse treatment because, again,
18 that's what he's been battling all along. I believe that
19 would be appropriate.

20 His mom and dad, I think, are here. I'm not sure if
21 they -- oh, okay. His dad is here. I don't know if he
22 wishes to speak. I don't know if Russell wishes to
23 speak. But I would ask the Court to take into account
24 all those circumstances and request a substantial lesser
25 sentence than the maximum.

1 THE COURT: Mr. Nix, anything you want to tell
2 me?

3 THE DEFENDANT: Yeah. I'd just like to
4 apologize to Mr. and Mrs. Guthrie for the things that I
5 done.

6 THE COURT: How old were you when you started
7 using drugs, Mr. Nix?

8 THE DEFENDANT: Twelve.

9 THE COURT: What kind of drug did you use
10 first?

11 THE DEFENDANT: Marijuana.

12 THE COURT: Everybody in agreement with the
13 five hundred fifteen days served?

14 MR. CANTRELL: I believe that's correct.

15 MR. CLEVELAND: I believe that's correct. It
16 was five eleven ---

17 THE COURT: So it's five thirteen.

18 MR. CLEVELAND: Well, and he did two days on
19 this sentence before he bonded out, so two more days is
20 five fifteen.

21 THE COURT: Five fifteen. I'm certainly going
22 to recommend the ATU program. I hope that you can get
23 some help with your drug addiction, Mr. Nix.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: This is case 2012-GS-39-2627. The

State of South Carolina -vs- Russell Edward Nix (2012-GS-39-02627)
Russell Nix - Cross Examination by Mr Cleveland

280

1 sentence of the Court is Defendant be committed to the
2 State Department of Corrections for a period of twenty
3 years, provided upon service of a hundred and forty
4 months. The balance is suspended. Placed on probation
5 for five years. Have substance counseling as needed
6 there, random alcohol and drug testing. And give him
7 credit for five hundred fifteen days time served. ATU is
8 recommended while incarcerated. Wish you the best, sir.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. We'll be in recess for
11 about ten minutes.

12 MR. CLEVELAND: Thank you, Your Honor.

13 MR. CANTRELL: Thank you, Your Honor.

14

15 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing
6 is a true, accurate, and complete transcript of record of
7 all the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Pickens County, South Carolina,
10 on the 28th day of February, 2013.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 June 20, 2013

16

17

18

19

Circuit Court Reporter

1 CERTIFICATE OF REPORTER

2

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9 in the Circuit Court for Pickens County, South Carolina,
10 on the 27th day of February, 2013.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 June 15, 2013

16

17

18

A handwritten signature in cursive script that reads "Susan Danette Hanks". The signature is written in black ink and is positioned above a horizontal line.

19

Circuit Court Reporter

WITNESSES

Dean Thomas Jones

Pickens County Sheriff's Office

8/25/2011

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 12-31-1971

SS# 251-35-8307

ACTION OF GRAND JURY

TRUE BILL

Date:

NOV 20 2012

Foreperson of Grand Jury

VERDICT

Guilty

Denise Meadows

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-39-^{JLB} 2627

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 20 2012

TERM 2012

THE STATE

vs.

RUSSELL EDWARD NIX

Indictment for

3411

ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE

VIOLATION § 16-03-0600(B)(1)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

INDICTMENT FOR
 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
 NATURE

At a Court of General Sessions, convened on

NOV 20 2012

the Grand Jurors of Pickens

County present upon their oath:

That RUSSELL EDWARD NIX did in Pickens County on or about the 25th day of August 2011, unlawfully injure Naaman Earle Guthrie whereby the victim suffered great bodily injury or the act was accomplished by means likely to produce death or great bodily injury. This is in violation of 16-03-0600 of the South Carolina Code of Laws (1976) as amended.

TRUE COPY

Harold P. Williams
 CLERK OF COURT
 PICKENS COUNTY, S.C.

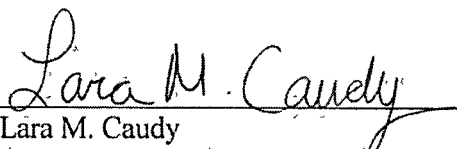
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

John Buchanan
 SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 26, 2013


Lara M. Caudy
Appellate Defender

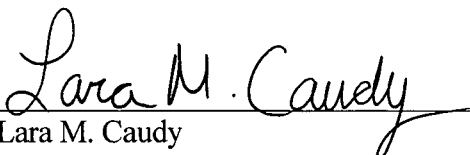
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 26, 2013


Lara M. Caudy
Appellate Defender

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(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

NOV 26 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RUSSELL EDWARD NIX,

APPELLANT

APPELLATE CASE NO. 2013-000522

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of November, 2013.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 26th day of November, 2013.

Palmer

(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.