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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Charleston County

SC Court of Appeals

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DALTON ELLIS CLARKE,

APPELLANT

APPELLATE CASE NO 2016-000801

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT (dated April 4-8, 2016)	1
OPENING STATEMENT BY MR. SIMPSON	2
OPENING STATEMENT BY MR. KING	12
STIPULATION BY MR. SIMPSON	21
TESTIMONY	
BRADLEY BAKER	
Direct Examination by Mr. Simpson	22
OBJECTION BY MR. KING	25
RULING BY THE COURT	25
TESTIMONY	
BRADLEY BAKER	
Continued Direct Examination by Mr. Simpson	25
Cross-Examination by Mr. King	45
Redirect Examination by Mr. Simpson	62
DANIEL HENNESSEY	
Direct Examination by Mr. Corvey	64
Cross-Examination by Mr. King	86
Redirect Examination by Mr. Corvey	96
BINH TON	
Direct Examination by Mr. Simpson	100
Cross-Examination by Mr. King	122
Redirect Examination by Mr. Simpson	134
PETER DUDINYAK	
Direct Examination by Mr. Simpson	138
Cross-Examination by Mr. King	166
Redirect Examination by Mr. Simpson	184

ANDREW O'HEARN	
Direct Examination by Mr. Corvey	187
Cross-Examination by Mr. King	196
Redirect Examination by Mr. Corvey	199
SARAH WHITE	
Direct Examination by Mr. Simpson.....	200
Cross-Examination by Mr. King	209
Redirect Examination by Mr. Simpson	215
JACOB DUDINYAK	
Direct Examination by Mr. Corvey	217
Cross-Examination by Mr. King	229
Redirect Examination by Mr. Corvey	236
REBECCA RICHARDS	
Direct Examination by Mr. Corvey	239
Cross-Examination by Mr. King	255
Redirect Examination by Mr. Corvey	270
JAMIE LEDWELL	
Direct Examination by Mr. Simpson.....	272
Cross-Examination by Mr. King	279
MADISON MARTINI	
Direct Examination by Mr. Simpson.....	282
Cross-Examination by Mr. King	299
Redirect Examination by Mr. Simpson	308
MATTHEW KEPPLER	
Direct Examination by Mr. Simpson.....	310
Cross-Examination by Mr. King	325
OBJECTION BY MR. SIMPSON.....	332
RULING BY THE COURT	332
TESTIMONY	
MATTHEW KEPPLER	
Redirect Examination by Mr. Simpson	332
ASHLEY NEWELL	
Direct Examination by Mr. Corvey	334
RICHARD BURCKHARDT	
Direct Examination by Mr. Simpson.....	340

Cross-Examination by Mr. King	351
Redirect Examination by Mr. Simpson	364
MARIE TORMOS	
Direct Examination by Mr. Simpson.....	368
Cross-Examination by Mr. King	392
Redirect Examination by Mr. Simpson	393
DIRECTED VERDICT MOTION BY MR. KING	395
RESPONSE BY MR. SIMPSON.....	395
RESPONSE BY MR. KING	397
RULING ON MOTION BY THE COURT.....	397
RESPONSE BY MR. KING	398
RESPONSE BY MR. SIMPSON.....	398
RULING ON MOTION BY THE COURT.....	399
DEFENDANT'S RIGHTS BY THE COURT	399
THE STATE RESTS.....	400
TESTIMONY	
JAQUELINE GLADDEN	
Direct Examination by Mr. King.....	401
Cross-Examination by Mr. Simpson	406
GABRIELLE LEMIEUX	
Direct Examination by Mr. King.....	420
Cross-Examination by Mr. Simpson	424
Redirect Examination by Mr. King	432
ROSALIE FREDERICK	
Direct Examination by Mr. King.....	434
Cross-Examination by Mr. Simpson	442
Redirect Examination by Mr. King	447
DAVID BIANCHI	
Direct Examination by Mr. King.....	449
Cross-Examination by Mr. Simpson	452

JEFFREY CASEY	
Direct Examination by Mr. King	455
Cross-Examination by Mr. Simpson	459
DEFENSE RESTS.....	463
RENEWED MOTION FOR DIRECTED VERDICT BY MR. KING	464
RULING BY THE COURT	465
REQUEST TO CHARGE BY MR. KING.....	466
RESPONSE BY THE COURT	466
RESPONSE BY MR. SIMPSON.....	468
RENEWED REQUEST FOR SELF-DEFENSE CHARGE BY MR. KING.....	471
RULING BY THE COURT	471
CLOSING ARGUMENT BY MR. KING.....	473
CLOSING ARGUMENT BY MR. SIMPSON	486
JURY CHARGE.....	512
RENEWED REQUEST TO CHARGE BY MR. KING.....	527
RULING BY THE COURT	527
JURY NOTES	528
RESPONSE BY THE COURT	532
JURY NOTE.....	534
VERDICT	537
JURY POLL	537
STATEMENT BY MS. HALLMAN	538
STATEMENT BY JESSE BLANTON	539
STATEMENT BY JENNIFER CLARKE.....	540

STATEMENT BY MR. KING	541
STATEMENT BY DONALD SEYMOUR	542
STATEMENT BY CARLY SEYMOUR.....	547
STATEMENT BY MARY SEYMOUR	548
RESPONSE BY MR. SIMPSON.....	549
SENTENCING	554
INDICTMENT	555
STATE’S EXHIBIT NO. 20 (Text Message Screen Shot)	557
CERTIFICATE OF COUNSEL.....	559

1 STATE OF SOUTH CAROLINA)
2) Court of General Sessions
3 COUNTY OF CHARLESTON) Case No. 2015-GS-10-3596
4)
5 STATE OF SOUTH CAROLINA)
6)
7 VS.) Transcript of Record
8)
9 DALTON ELLIS CLARKE,)
10)
11 Defendant.)
12)
13) DATE: April 4 - April 8, 2016
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1 contention as to what the issues in this case are.

2 MR. SIMPSON: Ladies and gentlemen, my name is Chad
3 Simpson. We got to meet briefly during qualifications. It
4 is my honor in this case to represent the State of South
5 Carolina. I am a prosecutor. I work for Scarlett Wilson and
6 this community's solicitor's office here in the Ninth
7 Circuit.

8 I would like to start by starting every trial, sort
9 of echo the sentiments that you heard from the Court, which
10 is to offer on your behalf, of the State, our profound thanks.
11 We are fully aware that y'all have jobs and lives and
12 personal things going on this week and that you probably came
13 this morning maybe kind of hoping you didn't end up where you
14 are sitting right now. But, nevertheless, that's done.
15 That's not going to change. And here you are.

16 And I have been doing this a lot and I will tell you
17 sincerely that I find in speaking with people after they do
18 jury service, that they always find it was quite an honor.
19 And I guarantee you, at Friday happy hour, however you spend
20 your weekend, you will be the best story of all the friends at
21 the end of that week.

22 But I'm certainly not meaning to make light of it.
23 We are here for a very serious matter, serious to the State
24 and community and serious to Mr. Clarke and his family, and
25 incredibly serious to the family of Clinton Seymour and his

1 family, who is present here today.

2 And so on behalf of all of those parties, I thank
3 you for your time and attention this week.

4 April 25th, 2014, was a Friday. And Clinton
5 Seymour, at 27, at the prime of life, had everything going
6 for him, was spending that Friday night like most guys in
7 their mid-20s do. He had a couple of acquaintances he had
8 just started to get to know, guys that he had worked with.
9 One asked him over. A guy named Bradley Baker asked him.
10 And another guy named Daniel Hennessey -- my apologies at
11 these early stages, there are going to be a lot of names.
12 You will get to meet them all. Invited them over, invited
13 Clint over to have some dinner over at Bradley's house.

14 They had that dinner. Friday night, thought, hey,
15 why don't we go out. When you are in Charleston in your
16 mid-20s, where do you go out? You go out on upper King
17 Street.

18 Okay. Clinton Seymour drove. And they went out.
19 They went to, I think, AC's first, maybe another spot and
20 ended up at Stars. Let me tell you something right off the
21 bat about Clinton. Maybe this is just the cynical prosecutor
22 in me, I didn't think this actually existed, I know people
23 talk about it, but Clinton Seymour was truly the designated
24 driver that night. You will hear scientific evidence of
25 that. He was not over indulging. He was sober, rational,

1 responsible, hanging out with Bradley and Dan. They weren't
2 getting out of control either. Keeping it in check. They
3 might have had a couple more drinks than he did, but other
4 than that, they had a responsibility that's incredibility to
5 me. Speaks well for Clinton. It was a pretty normal night
6 for a bunch of guys in their mid-20s, hanging out, talking
7 about the future. Nothing happened, no confrontation in
8 these bars, just a good time, until a bit before closing.

9 They left, again, Bradley, Daniel and Clinton. They
10 left and they were walking back towards their car. And they
11 paused. They paused on the corner of King Street and Morris
12 Street, sort of right there in the heart of the King Street
13 bar and restaurant business district. They paused briefly
14 and sort of took in the scene, because it was Charleston. It
15 wasn't always this way, but that part of town on a Friday
16 night is a scene. It's quite a scene to behold. We are
17 going to talk about that a little bit.

18 Let's pause. Let's leave them there at King and
19 Morris for a second and talk about another group. Because
20 there was another group of people doing very similar things
21 that night, a larger group, sort of coming and going. And
22 you are going to meet a lot of them over the course of the
23 next day.

24 But, importantly, for this stage of the trial, let
25 me introduce you to a couple: Binh Ton, mid-20s age-wise,

1 meeting out with some friends, Peter Dudinyak, Andrew
2 O'Hearn, and the defendant, Ellis Clarke. All friends, been
3 friends for a long time. All out coming downtown at various
4 times and meeting up. Hit a couple of bars. The perception
5 I get, maybe things maybe a little more rowdy than the other
6 group that night. But similar to the other group, before
7 closing time, they began leaving a bar called the Silver
8 Dollar, which is close to the same area.

9 The plan of this group is to all go back to a
10 residence nearby called Percy Street. We will hear about
11 what occurred there later on during the trial. It's going to
12 be important. But we head back to Percy Street, because
13 everybody from their group is trickling out. This group
14 leaves together, Peter, Andrew, Ellis, Binh and the female
15 who's with them named Regina. Regina is intoxicated.
16 Clearly, visibly, obviously, she had over indulged that
17 night.

18 So as this group leaves, Ellis and Peter and Andrew
19 get up ahead and Binh stays with the girl he's with, sort of
20 helping her along. She's intoxicated. And they come to the
21 corner of King and Morris Street. And that's when these
22 things happened. And as they always do on King Street, they
23 happen for the dumbest, most inconceivable reasons.

24 Regina fell over, sort of stumbled, as a person who
25 is really intoxicated does. And she was caught by Bradley

1 Baker, one of the gentleman that Clinton was with that night.
2 Bradley says something to the effect, seeing her condition:
3 Are you okay? Are you sure you are okay?

4 And then he says something he intended, I believe,
5 as harmless: Are you sure you are okay to go with him?

6 Well, Binh hears that: Go with him? Wait. What do
7 you mean by that? What are you trying to say about me? Of
8 course she's okay to go with me. You couldn't even have her
9 in your dreams. What are you talking about?

10 To which Bradley reacts like young people after a
11 couple of drinks do: Can't have her in my dreams? I had
12 your mom in my dreams.

13 Stupid, childish, but verbal, verbal only, sparring
14 on the corner of King Street near two o'clock in the morning.

15 The tone of this verbal sparring elevates though.
16 And then still not physical, then decides he better yell to
17 his friends. So he yells down Morris Street to his friends,
18 Andrew, Peter and Ellis Clarke. They stopped and turned and
19 go run back. When he yells for them, run back to help their
20 friend Binh. And Peter and Andrew, they are amped up. This
21 is an aggressive situation. But they run back, run to their
22 friend's side and apprise the situation, figure out what's
23 going on, hey, what's up? What's going on here?

24 That's how Andrew and Peter react, the evidence will
25 show. Ellis Clarke reacts in a way that, as we stand here in

1 the courtroom today, was merely inconceivable. Ellis Clarke
2 turns and sprints. To Ellis Clarke, it's game on. And he
3 follows down the wall, down Morris Street, and comes up on
4 this group. And what he sees is Bradley and Dan verbally
5 sparring with Binh Ton and Clint. Sober, responsible,
6 disengaged, standing off to the back having nothing to do
7 with any of them. But Clint doesn't see that. Clint doesn't
8 see it coming.

9 And for Ellis Clarke, it is strike first; ask
10 questions later. And he comes with a running blow of such
11 force, swings and hits Clinton Seymour square in the base of
12 his skull with such force that the torque of the blow -- and
13 I'm sorry -- tears arteries in his neck. The force of the
14 blow sends emanating skull fractures throughout the inside of
15 his skull.

16 There is no silver lining to what occurred, but if
17 we could sit on -- find comfort in anything, it's that a blow
18 of that force likely caused Mr. Seymour to become instantly
19 unconscious. And we will hear the other witnesses about how
20 he froze and fell, defenseless, and fell to the pavement.

21 Clinton Seymour would never recover from that blow
22 given to him from Ellis Clarke. He spent some time in a coma
23 and ultimately passed away from that blow.

24 I want to talk about another aspect of the case,
25 because there is another aspect. And I know this is a trial.

1 I would like to get back to the idea of King Street near
2 closing on a Friday night. It's a scene. It's a carnival.
3 And an event like this draws attention from people who are
4 out at 2 a.m. on a Friday night. And so people did turn and
5 see at various times and see this chaotic scene. And once
6 Clinton goes down, it does become a chaotic scene. At that
7 point, people that were just verbal before, a scuffle among
8 these two groups does ensue. But it's Ellis Clarke's
9 violence that takes it from verbal to physical.

10 So police respond. And as you can imagine, they
11 take statements. And as the evidence will show, the
12 statements are all over the place. A guy thinks it's the
13 Asian guy that hit Clint. Some people think it's Peter.
14 Peter is an important part of the story. Peter is a guy that
15 is with Ellis that night. He's 6' 4", lanky. And since he's
16 not in here, he's very goofy looking, a guy that you would
17 see you would recognize immediately. Some people on the
18 street think it's Peter. Some people think it's the Asian
19 guy. Some people say I saw it, but I could not point to
20 anybody.

21 But the police respond. And you don't hear this
22 often from a prosecutor. Police respond and they make a
23 mistake. All of Ellis's friends, including Ellis Clarke, run
24 away like cowards. Peter stays. Peter stays and somebody
25 says, hey, yeah, that's the guy we saw. And Pete gets

1 arrested. But, luckily, a detective is assigned the next day
2 named Richard Burckhardt, and you are going to meet, because
3 when police make tragic mistakes, this is what they do. They
4 look at their job as if a guy is arrested, let me build my
5 case against the guy arrested, and that's not what they are
6 supposed to do. And Richard Burckhardt knows that. Their
7 job is not to build a case against the person that's
8 arrested. Their job is to follow the evidence and get the
9 right person.

10 So you are going to come with me in the next few
11 days and see person by person exactly what the police saw.
12 And now with Peter in jail, the police began, through these
13 people that you will hear from firsthand, to figure out that
14 the person that threw that punch is not Peter. It was Ellis
15 Clarke who ran.

16 And that evidence will build. It might build
17 slowly, but it will build. And at the end, each of you will
18 be convinced of his guilt beyond a reasonable doubt.

19 And what I'm going to ask you to do as we go through
20 that, and we will hear the kind of crazy stories from King
21 Street, as we go through the evidence, what I'm going to be
22 asking you to do is stuff that is not controversial and I
23 think you will be very comfortable with. I'm going to ask
24 you to take the perception of people who are two feet away
25 from an event and weigh it heavier than the perception of

1 people who are 50 feet and 55 feet away from an event.

2 I'm going to ask you to take a perception of people
3 who know all the players involved, who are seeing people they
4 know, you know, imagine your friends and family, I saw my
5 friend Bob do this, that's easy. I'm asking you to weigh
6 that over people pointing out strangers, the guy in the black
7 shirt, that kind of thing.

8 I'm going to ask you to take video evidence, which
9 we are all going to watch, and weigh your own perception over
10 that of what people say they might have seen out there.

11 Now, quick spoiler alert, this video evidence is not
12 going to show the actual event, but it is going to show the
13 events leading right up to it. And although it doesn't show
14 the actual punch, it's very important, and we will talk about
15 that after we all have an opportunity to see it, I'm going to
16 ask you to take a look at some physical evidence, which can't
17 be confused. And, most importantly, I'm going to ask you to
18 take the word of Ellis Clarke, at least the word of Ellis
19 Clarke right after these events. Because when no one
20 understood the gravity of this situation, when knocking a
21 dude out with one punch was something cool, something tough,
22 something that made him feel good, he owned it. And he owned
23 it to several people. And you are going to hear from them.

24 It was only later when it turned out that he found
25 out there was going to be consequences of what he did, that

1 the story shifts and the cover-up begins. And that's what a
2 guilty person does when they know there's going to be
3 consequences, they cover it up. And you will hear about that
4 from Mr. Clarke.

5 Ellis Clarke is not before you today charged with
6 murder. We talked about how the system -- mistakes can
7 happen when police get blinders on someone. Mistakes can
8 happen too when prosecutors, people in my job are
9 over-zealous. We are not asking to you convict Ellis Clarke
10 of murder. We are -- if you already got in your mind, maybe
11 he didn't mean for this to be the ultimate result of that
12 punch, you don't have to consider it. That is not what he's
13 charged with. That is not to say it isn't serious. He's
14 charged with assault, an assault of the highest and most
15 aggravated of natures. And that's a serious offense.

16 We believe at the conclusion of this trial, that you
17 will find him guilty of that charge and you will hold him
18 responsible.

19 I will end my opening remarks in a way I imagine I
20 will be ending my closing remarks. And that is what the
21 evidence is going to show is that what happened, after two
22 years of having listened to this, every time the media talks
23 about this, I want this to be front and center, Clinton
24 Seymour did not die on a brawl on King Street. Clinton
25 Seymour did not die in a fight. Clinton Seymour stood

1 defenseless as he was assaulted by Ellis Clarke. This is not
2 boys being boys. This is not a tragic accident. This is not
3 a twist of fate. But the evidence will show at trial that
4 what happened to Clinton Seymour was a natural result of the
5 decisions made by Ellis Clarke to strike first and ask
6 questions later.

7 And at the end of our case, I'm confident that you
8 will return a verdict of guilty. I thank you in advance for
9 the time and attention over the next several days. Thank
10 you.

11 THE COURT: Mr. King.

12 MR. KING: They had the guy and let him go. It was
13 clear from that opening, but they had the guy and then they
14 let him go. And then they arrested Ellis Clarke. The police
15 arrested another man. The solicitor gave you a lot of names
16 in this trial that maybe you are going to find hard to keep
17 together. But a very important one is Peter, Peter Dudinyak.

18 He was arrested that night, tall guy, and he was
19 pretty tall, over 6 feet, black shirt, khaki pants. He's
20 identified by three witnesses, three independent witnesses
21 who aren't connected to this little group of friends that are
22 going to come in and testify. Three people, those three,
23 identify Peter as the one who punched him. And he was
24 arrested that night.

25 So this is closing time, walking from the bar. And

1 there's -- you are going to hear two different versions of
2 this, of the initial encounter and how it started. These
3 three guys the solicitor is talking about, Bradley Baker,
4 Daniel Hennessey and Clinton, they are not as innocent as
5 they want to make them sound. They are the ones who started
6 the fight.

7 So the drunk girl that the solicitor is talking
8 about, there's Binh Ton, Regina walking down the street.
9 Regina is drunk, stumbled into Bradley Baker. We agree to
10 that. But he holds on to her too long, according to her.
11 She had bruises on her arms the next day, according to her.
12 They had to ask to let her go more than once.

13 And they said something about Binh's mother, but
14 there's two versions of that. State's version: I had your
15 mom in my dreams.

16 Well, there's another version of -- I apologize:
17 I'm going to fuck you and rape your mom.

18 That's what was said that night from Binh and from
19 Regina.

20 When Bradley Baker goes to the police and gives his
21 statement, he's not honest about what started this. I don't
22 understand. Leaves out any comment about the mom. He's
23 pressed by the police more than once, over and over again.
24 They keep going back to this comment, what started it. Binh
25 is not telling the truth. And he eventually, eventually,

1 after a long time, says this version now about had your mom
2 in my dreams. Doesn't say that until they asked him four
3 times.

4 Says he may have put his arm around her. So you've
5 got a guy. He's been drinking too. Woman stumbles into him.
6 He's putting his arm around her, holding her too long. And
7 Binh is a small guy. He's a short guy. And you've got three
8 of them. He holds her too long until they had to demand to
9 let her go. So they are not as innocent as they want you to
10 believe.

11 So now you've got three guys: Bradley Baker, Daniel
12 Hennessey and Clinton Seymour against this little guy, Binh.
13 They are surrounding him. Like I said, they are not as nice
14 as they want you to believe. The reason I say that is
15 because Daniel Hennessey is not honest about how this started
16 either, about the mom comment. They had to drag that out of
17 him.

18 So Binh, small guy, being surrounded by three people
19 who have grabbed his girl, held her too long, put their arm
20 around her, and made a pretty inflammatory statement about
21 his mother, he yells for help. And Ellis does come back.
22 And he was involved. He sees someone going for him, who I
23 believe toward the end, can argue was Daniel Hennessey. He
24 doesn't know -- I think he fought with Bradley Baker too. So
25 there's this fight. But Ellis gets there. He's involved in

1 the fight, may have hit someone, but not the guy who fell
2 down and died. Video doesn't show this. As the solicitor
3 says, it's not going to solve this issue.

4 But Peter is the one who punched him. Solicitor
5 said Ellis ran like a coward. You are going to see the
6 surveillance video. You are going to see who's running. You
7 are going to see Peter running like the coward and Ellis
8 walking.

9 Three witnesses, Gabrielle Lemieux, she was a young
10 psychiatrist student out that night. And she sees it happen.
11 Sees Peter do it. And she goes after him, grabs him. She
12 grabs him and tries to stop and hold him there. And Peter
13 hits her and runs away. She later -- that night, they have
14 Peter, show Peter to her, is this the guy. She says
15 absolutely, that's the guy. Gabrielle doesn't know anybody
16 involved in this. She doesn't know either side. She has no
17 reason to lie or any reason to make anything up.

18 Jacqueline Gladden, she's out that night. She sees
19 it. And she sees Pete throw the punch. She sees Gabrielle
20 Lemieux running over there. She chases Peter down, chases
21 him down the street, pointing him out to police. The police
22 are out there quickly.

23 And the police stop Peter after he runs, you will
24 see on the video. He stops, but he stops when the police are
25 about to catch him anyway, but he's running. So he stops.

1 When the police catch him, they take him back.

2 Jacqueline Gladden is right there: That's the guy.

3 Rosalie Frederick, she's getting off work that night
4 and called 911 trying to help Mr. Seymour. She identifies
5 Peter as the one who threw the punch that night too: Is this
6 the guy who threw the punch? Yes, that's the guy. Three
7 people, none of these three know each other. None of these
8 three people know this side or that side or have any reason
9 to end up with biases, no friendships, no reason at all, and
10 they pick out Peter, tall guy in the black shirt and khaki
11 pants.

12 Now, Daniel Hennessey says later that night that
13 when asked who threw the punch, it was either the Asian guy
14 Binh or the tall guy with the dark shirt that the police
15 arrested. So he narrows it down to Binh or Peter.

16 Now, Peter goes back to the police station. He's
17 arrested that night, the only person arrested that night.
18 They take him back to the police station. And it's reported,
19 they interrogated him and he lies. He tells the police they
20 were all on Wentworth Street or something and nowhere near
21 where they were at. He tells police that there were some
22 guys across the street yelling at him and his brother's
23 girlfriend. Brother is not even there. Brother is over in
24 the car down the street, wasn't involved in any of this
25 scuffle.

1 But he tells the police they were on Wentworth
2 Street, there were some guys across the street yelling at our
3 girlfriends, and he didn't see who hit the man. Talks about
4 his brother being in the mix, and brother not there.

5 Peter -- Binh Ton is Asian. The man they are trying
6 to find out who he saw, the police when they are
7 interrogating him, they are asking him about that. And he
8 denies, I have Asian friends, but none of them were out there
9 that night. He denies Binh was even out there.

10 So he goes to jail and he's charged with assault and
11 battery first degree. And Peter is already in trouble
12 because he's already on bond on two other unrelated charges.
13 So he gets to high bond. He's in double trouble now. He
14 can't get out.

15 Now, back in town, so friends meet back at Percy
16 Street. That's where Ellis goes, kind of a meeting place.
17 Ellis goes back there. People coming in that house 3 a.m.
18 drunk, after this big, exciting event, having this
19 conversation, and Ellis was talking about the fight, being in
20 a fight.

21 And now, whether it's misunderstandings on some
22 people's part or possibly outright falsehoods, they are going
23 to say that he was admitting that he was the one that beat
24 the guy, but that's not right. He hit somebody, but didn't
25 hit this particular guy.

1 So then this is when the conspiracy starts, I guess
2 you want to call it that. How are we going to get Peter out?
3 Peter can't get out of jail. His bond is too high. He's
4 already in trouble. He's arrested for this. We got to get
5 Peter out.

6 So all next day, this was Friday night, spilling
7 into early Saturday morning. So then next morning, none of
8 these people go to the police at night and say, oh, you got
9 the wrong guy, it's really Ellis, he was saying he did it.
10 No one goes to the police that night. The next morning, no.
11 All of that day, no, nobody goes to the police.

12 And Sunday, it's Rebecca, Peter's girlfriend, the
13 guy who was arrested, and she's the one trying to get Peter
14 out, and Peter's brother, they were trying to get him out.
15 And then you have these other friends who get involved. And
16 each one of them may have their own reason for whether they
17 misunderstood something that was said or whether they want
18 Peter out, would rather have Peter out than Ellis out.
19 Whatever reason, they have reasons that they either lie or
20 misunderstood.

21 But two weeks later, these friends sort of trickled
22 in, come in and meet with the police. And now Peter goes
23 back to give another statement to the police. Remember,
24 first time he gives his statement, he gives completely off,
25 obviously not true. This time he meets with the police two

1 weeks later. You know, plenty of time to have talked to any
2 of his friends that were trying to help him get out. And he
3 meets with the police and says it was Ellis.. But even then,
4 he still can't get his story right, because he tells them --
5 he's had two weeks to think about it. He tells them that
6 Ellis ran right past him and hit the guy.

7 But you watch the video. That didn't happen,
8 because Ellis isn't beside Peter. There's another guy beside
9 Peter. There's no way that happened when he's running across
10 the street.

11 Detective Burckhardt takes him and shows him the
12 video. So he's got the story wrong. Shows him the
13 surveillance video, and then he gets the story to match up, I
14 guess, what the surveillance video shows. His charge gets
15 dismissed that day. He goes home. And they arrest Ellis.

16 So I want you to think about -- the solicitor asked
17 you to sort of weigh the same thing -- who's got a reason to
18 lie? Who could have been mistaken? At least three people --
19 they want to identify somebody they know, but three of them?

20 Their witnesses are all involved in this group of
21 friends. There are biases, alliances, misunderstandings.

22 Gabrielle Lemieux, Jacqueline Gladden, Rosalie
23 Frederick, they don't have any stake in this at all. And I
24 understand only one person may have seen something wrong, but
25 three, three that night see Peter do it and identify him that

1 night.

2 I don't have to prove Ellis is innocent under our
3 system the way it works. The State has to prove him guilty
4 beyond a reasonable doubt. I don't have to prove that Peter
5 did it. I think I can. All there has to be is a reasonable
6 doubt that Ellis didn't do it. Three witnesses, reasonable
7 doubt. How do you make three witnesses go away?

8 This is a big day for Ellis. You twelve can correct
9 this mistake. You can right this wrong, prevent an injustice
10 from happening. You are really the only ones now. So don't
11 forget, three witnesses. What we are going to see over the
12 next days and probably a bit later, but there are three. I
13 believe when this is all done, you will find him not guilty.

14 THE COURT: All right. Let me see the attorneys for
15 a second.

16 (Whereupon, a bench conference takes place off the
17 record.)

18 THE COURT: Ladies and gentlemen, we were doing
19 schedule -- the first witness may take some time. I'm going
20 to take a break. I ask you to be back 9:15 tomorrow morning
21 and we will get started. We have a number of witnesses. And
22 I need to let you know that we may be going late this week on
23 some of these cases. Don't worry. I'm not going to
24 challenge your ability to pay attention and things of that
25 nature. But if you have obligations at about five o'clock,

1 review those whenever the attorneys decide to present those
2 to you. Those are in evidence at this time.

3 I also understand before we call our first
4 witnesses, there's a stipulation. You want to do that when
5 you get to your witness?

6 MR. SIMPSON: Yes, Your Honor.

7 THE COURT: The State has a stipulation that the
8 defense has consented to.

9 All right.

10 MR. SIMPSON: Ladies and gentlemen, State's Exhibit
11 3 is the stipulation or agreement -- I hope the rest of the
12 day goes a little better.

13 State's Exhibit 3 is a stipulation or an agreement
14 between the parties. The State and Defense agrees that the
15 time stamp or clock on the following surveillance videos was
16 determined to be wrong. On State's Exhibit 1, which is
17 surveillance video of the corner of King Street and Morris
18 Street, the clock is approximately 1 minute and 55 seconds
19 fast or ahead of actual time.

20 On State's Exhibit 2, the surveillance video from
21 the parking lot alley off Morris Street, the clock is
22 approximately 16 minutes fast or ahead of the actual time.
23 And, again, that's marked and entered for your review at the
24 time you look at this. Thank you.

25 THE COURT: All right. So stipulated by the Defense

1 as well?

2 MR. KING: Yes, Your Honor.

3 THE COURT: All right. We will begin the
4 evidentiary portion with the calling of the State's first
5 witness.

6 MR. SIMPSON: Thank you, Your Honor. The State
7 calls Bradley Baker.

8 BRADLEY BAKER,
9 having been duly sworn, testifies as follows:

10 THE CLERK: Once seated if you could please state
11 your first and last name and spell your last loudly and
12 clearly into the microphone for the record.

13 THE WITNESS: Bradley Baker, B-a-k-e-r.

14 DIRECT EXAMINATION

15 BY MR. SIMPSON:

16 Q. Bradley, good morning. How are you?

17 A. Good. How are you?

18 Q. Doing well. Let's begin by letting the jury know a
19 little bit about you. How old are you?

20 A. 27.

21 Q. Where did you grow up?

22 A. Charleston.

23 Q. What part of Charleston?

24 A. I grew up in West Ashley.

25 Q. Okay. Are you presently employed?

1 A. Yes, sir.

2 Q. And in what capacity?

3 A. I work for Keller Williams Real Estate Company.

4 Q. Did you attend school, attend college?

5 A. Yes. I went to Lynn University in Boca Raton,
6 Florida.

7 Q. Okay. And, again, what is your age currently?

8 A. 27.

9 Q. Obviously, you are aware why you are here today,
10 correct?

11 A. Absolutely.

12 Q. Let me talk little bit about some other individuals
13 that we will be talking about this week. Do you know someone
14 named Daniel Hennessey?

15 A. Yes.

16 Q. And how do you know Daniel?

17 A. We were college roommates.

18 Q. So how long have you known Daniel?

19 A. About eight years.

20 Q. Are you guys close friends?

21 A. Close friends.

22 Q. Also, I know this is more difficult, but did you
23 know an individual name Clinton Seymour?

24 A. Yes.

25 Q. How did you know Clinton?

1 A. Me and Clint were caddies out on Kiawah for a while
2 and became very close friends.

3 Q. And is that in the time you guys were caddying
4 together, is that in the time leading up to the incident that
5 brings us here?

6 A. We were caddying together for a while. And then I
7 stopped caddying and we kept in touch. I mean, I probably
8 talked to Clint on the phone almost every day. He was
9 studying for his Series 6 or 7. I'm not sure which one it
10 was. And I was studying for my real estate exam. And we
11 would talk on the phone and -- I mean, I would say we were
12 tight, tight friends for that small time.

13 Q. How long would you approximate that you knew Clinton
14 before this?

15 A. About seven months.

16 Q. You say you became quite close in that short time?

17 A. Very, very close.

18 Q. You mentioned some exams. What's a Series 6 or
19 Series 7?

20 A. He was studying to become a financial advisor for
21 Merrill Lynch.

22 Q. And you say you guys started working together and
23 you became friends pretty quickly; is that true?

24 A. Yes, sir.

25 Q. What was Clint like, generally?

1 A. Clint was one of the--

2 MR. KING: Objection. Relevance.

3 THE COURT: I will overrule and allow it. Go ahead.

4 THE WITNESS: For a friend, I fell in love with him.

5 And my girlfriend and her friends, Dan, I mean, he was just a

6 person that you want to surround yourself with. Motivated,

7 easy to talk to. Someone you call on the phone and you would

8 just get lost in conversation, motivate you, be there for

9 you, act like -- almost like a big brother. And just

10 all-around great man.

11 BY MR. SIMPSON:

12 Q. Was he older than you?

13 A. He was older than me by about a year and a half, I
14 think.

15 Q. We are going to move now and get to why we are here.

16 We are going to move now to Friday, April 25th, 2014. You
17 recall that day, correct?

18 A. Uh-huh, yeah.

19 Q. Explain to the jury, if you would, just sort of how
20 that day went, how that evening started and what occurred?

21 A. We were at my house. And Dan came over. Clint came
22 over. And we were chatting about if we should go out for the
23 night. And we decided to go out on the town and --

24 Q. Did you eat at your house?

25 A. I believe -- no, I believe I ate before they came

1 over.

2 Q. Okay. And realizing that, you know, times are hard
3 to remember sometimes, but can you approximate sort of the
4 time everybody came over to your house?

5 A. Around seven o'clock maybe.

6 Q. Okay. And you said at some point, you guys decided
7 to go downtown?

8 A. Right.

9 Q. Could you approximate for the jury about what time
10 that could have been?

11 A. Around nine, I believe.

12 Q. And what part of town did you guys head down to?

13 A. We were on King Street, upper King Street.

14 Q. And the plan, I guess, was to go to some bars down
15 there; is that fair?

16 A. Correct.

17 Q. Do you recall where you went?

18 A. Yeah. We went to -- oh, we went to Silver Dollar
19 and then we went to Stars and -- yeah.

20 Q. And was Stars the last place?

21 A. Stars was the last place.

22 Q. Okay. Now, where approximately is Stars in town?

23 A. It's upper King Street.

24 Q. And tell the jury a little bit about -- they are
25 probably familiar. What's upper King Street? What is that

1 area downtown?

2 A. It's -- well, it's kind of like a bar area, a lot of
3 people walking around, going to different bars and drinking.

4 Q. Place would be --

5 A. Young night life. Yeah, pretty much.

6 Q. Are there a lot of people in that area?

7 A. Lots of people there, lots of people walking on the
8 streets.

9 Q. Okay. So you said Stars was the last place that you
10 ended up?

11 A. Correct.

12 Q. At some point, did you guys decide to leave Stars?

13 A. Yep.

14 Q. And how was the evening up to this point?

15 A. It was great. We had a great time.

16 Q. Just hanging out?

17 A. Laughing, laughing.

18 Q. What were you talking about?

19 A. How much we loved life, girls, work, our future.

20 Q. Up to this point, when you guys decided to leave,
21 had there been any sort of confrontations or with other bar
22 patrons, anything like that?

23 A. Not at all.

24 Q. Okay. And when you leave Stars, where were you
25 headed?

1 A. Home.

2 Q. Okay. And where did you park that evening?

3 A. Clint drove and we parked down Morris Street, down
4 Morris Street a little walk.

5 Q. So you do admit you were consuming alcohol that
6 night?

7 A. Yes.

8 Q. How would you describe sort of your level of
9 impairment, level of intoxication when you were leaving Stars
10 that evening?

11 A. I was not considered -- I wouldn't drive, but I
12 wasn't necessarily too drunk to handle myself or even drunk,
13 I would say.

14 Q. On sort of a scale of one to ten, one being, you
15 know, just had had a beer, ten being really intoxicated,
16 where were you sort of put yourself on that scale?

17 A. About a four, five.

18 Q. Okay. Who was driving that night?

19 A. Clint.

20 Q. Any signs of impairment from Clint that evening?

21 A. No, I think he may have been drinking water.

22 Q. And everybody knew he was the driver, right?

23 A. Correct.

24 Q. So when you leave Stars, you say you headed to
25 Morris Street?

1 A. Correct.

2 Q. And tell the jury -- and I may interrupt you from
3 time to time, but this is where everything gets very
4 important. Let's just walk the jury through what occurred.
5 You are walking down King Street?

6 A. We are leaving the bars. The streets are very
7 crowded. And we get to the corner of King and Morris. And a
8 group walks past us. And a drunk, really intoxicated drunk,
9 falls on to me and --

10 Q. I'm sorry. I'm going to be interrupting from time
11 to time. You are right at the corner of King and Morris?

12 A. Somewhere near that area.

13 Q. Okay. And can you describe for the jury best you
14 can this girl? What did she look like that fell on to you?

15 A. A little girl. I thought she may have been in
16 college. And she was obviously very intoxicated. And I'm
17 not sure if she may have been on drugs or not. She fell on
18 to me. And I kind of held on to her. And the gentleman that
19 she was with said to me angrily: You couldn't have her in
20 your dreams.

21 Q. Let me stop you right there. So she fell on to you.
22 When you caught her, were you trying to flirt or pick her up?

23 A. No. The only thing that was going on in my head
24 was, I hope she's okay, she needs to probably get home
25 safely.

1 Q. And, again, did you reach out and grab her or did
2 she fall into you?

3 A. As she was falling, I kind of held her and made sure
4 she was okay. It was pretty quick.

5 Q. Okay.

6 A. I believe.

7 Q. You sort of quickly jumped to something. Did it
8 appear to you that she was accompanied by somebody?

9 A. Yes. She had a gentleman with her.

10 Q. And can you describe best you can that gentleman?

11 A. He was Asian and around like 5' 8" maybe.

12 Q. As best you can recall, how does this -- do you say
13 anything to her when you catch her?

14 A. I don't remember saying anything besides, are you
15 all right?

16 Q. And describe again what was said by this other
17 individual that was with her?

18 A. The other individual that she was with, I'm not sure
19 if it was her boyfriend or whatnot, he said to me, said: You
20 couldn't have her in your dreams.

21 Q. What's his demeanor like? Is he thankful that you
22 caught her?

23 A. No. He just seems like he's pretty upset and angry
24 and mad that she's touching another human.

25 Q. What was your sort of internal reaction to his

1 demeanor?

2 A. I said to him: I had your mom last night.

3 Q. So --

4 A. Firing back at him. Just saying, you know: Relax,
5 I was with your mom last night.

6 Probably shouldn't have said, but I said that.

7 Q. So he's giving it and you are giving it back?

8 A. Giving it back, correct.

9 Q. Now, let's just address this head on. Obviously,
10 things progressed from here. How do you feel today about the
11 comments that you made to them?

12 A. I mean, I don't feel like I should have created a
13 monster and made someone freak out. I thought I would just
14 be like, all right, man, you know, back off, back off, just
15 go your way. You are on King Street. There's no reason to
16 fight in public when there's cops everywhere. There's people
17 everywhere. But this kid that I said that to just started
18 freaking out and yelling and started screaming to his friends
19 that his friends --

20 Q. Let me stop you and slow things down a little bit.
21 Now, in other words, you admit you said to him something
22 about his mother, like: I had your mom?

23 A. Yes.

24 Q. That's sort of giving back to him what he's giving
25 out, correct?

1 A. Yes.

2 Q. Are you proud of your comments that night?

3 A. No.

4 Q. But -- we will go through this very slowly. But
5 once it gets to this back-and-forth, how does he react?

6 A. He's very, very angry. And I'm like kind of like,
7 okay, you know, just whatever, go your way.

8 Q. Sort of the temperature of the situation, does it
9 elevate? Is that the point where it sort of elevates?

10 A. Yes.

11 Q. And you mentioned at this point it's -- you've only
12 mentioned the Asian male. You just kind of got to this.
13 What happens then?

14 A. He yells to his friends.

15 Q. Let me stop you there. In what direction does he
16 yell?

17 A. Down Morris Street. He's yelling at them, I guess
18 to come so they had -- when they were running towards us,
19 they had no idea what they were running for, what they were
20 coming to do, who we were, what we said to him, what we said
21 to his girlfriend.

22 Q. Let me stop you. Best you can remember, you see
23 people running towards where you are?

24 A. Yes.

25 Q. And they are running towards there in response to

1 something?

2 A. They are running because he yelled for them to
3 like --

4 Q. As best you can recall today, what did he yell down
5 the street?

6 A. Maybe, guys, come here, or, yo, whatever, like, I
7 need your help. I don't know.

8 Q. About how many people do you think?

9 A. Maybe four.

10 Q. Is that something that is like perfect in your mind?

11 A. No.

12 Q. So what happened once these individuals come running
13 down the street?

14 A. They come running down and face-to-face with one of
15 the kids.

16 Q. Now, let me stop you right there. So you've already
17 described someone you are face-to-face with, right? Is this
18 the Asian male?

19 A. No. The kid that was in my face was a little bit
20 taller, and taller and lankier. And I believe he punched me.
21 And Dan, my friend, was on the ground with the Asian man.

22 Q. Okay. Let's stop. And we are going to go real slow
23 through this.

24 MR. SIMPSON: Court's indulgence?

25 THE COURT: All right.

1 MR. SIMPSON: I ask the witness to step down.

2 THE COURT: All right.

3 BY MR. SIMPSON:

4 Q. I start by showing you what's been marked and
5 entered as State's 7. Do you sort of recognize the area we
6 are seeing here?

7 A. Yes. This is the corner of King Street and Morris,
8 correct? This is Morris Street. This is King right here.

9 Q. Is this the area we've been sort of discussing with
10 you?

11 A. Yes.

12 Q. Now, you already described to the jury some verbal
13 back and forth between an Asian male; is that correct?

14 A. Correct.

15 Q. Best you can, about where, what area does that
16 occur?

17 A. Like, right in here. (Witness indicates.)

18 Q. And you described that he called -- he was the only
19 male, right?

20 A. Correct.

21 Q. He's talking with you?

22 A. He's the only male.

23 Q. When that's going on, where is Daniel Hennessey?

24 A. Dan? I'm not sure. I'm not sure.

25 Q. And where is Clinton Seymour?

1 A. Clint is not even hearing the conversation I'm
2 having with this guy. I think Clint might be right here at
3 the time, and I'm over here.

4 Q. Is Daniel Hennessey involved in this verbal --

5 A. No.

6 Q. -- jarring with the male?

7 A. No.

8 Q. Is Clinton Seymour?

9 A. No.

10 Q. You described a point in time where this male called
11 for his friends, right?

12 A. Correct.

13 Q. And you said they came running towards the area?

14 A. Yeah. They were running from here, this area,
15 running down the street.

16 Q. Okay. And you approximated the number of people at
17 before four?

18 A. About four, yeah.

19 Q. Now, back then or today, could you identify all four
20 of those people?

21 A. No.

22 Q. And I believe when we left you on the stand, you
23 were talking about one, though, that you think you can
24 describe?

25 A. I could recognize probably the Asian male that I had

1 a confrontation with and the tall guy that was in my face.

2 Q. Describe that guy.

3 A. Just tall, lanky. I believe he did have longer hair
4 back then, but he may not anymore.

5 Q. And you described him as "in your face"?

6 A. Yes.

7 Q. And is it fair to extrapolate from that "in your
8 face" is in front of you?

9 A. Correct.

10 Q. Okay. I show you now what's been marked and entered
11 as State's 8. Do you sort of recognize what we are looking
12 at here?

13 A. Yeah, yeah.

14 Q. Is this just a drawing of what we see here in
15 State's 7?

16 A. Correct.

17 Q. Okay. I'm going to hand you a Dry Erase marker.
18 Once the other group is coming over, how does Daniel
19 Hennessey react?

20 A. He's just confused on what's going on and why they
21 are coming over here, why they are angry.

22 Q. Does it seem to you that he notices them?

23 A. I think he notices them because one of them tackles
24 him on the ground.

25 Q. Well, is he -- where is Daniel Hennessey at that

1 point?

2 A. At that point, he's next to me.

3 Q. Let me ask you to go ahead and write on this. Why
4 don't you draw a circle to where you are?

5 A. Somewhere in this -- I think. (Witness indicates.)

6 Q. Let's go ahead and talk about this. What do these
7 represent here?

8 A. Electrical boxes.

9 Q. And do you remember those that evening?

10 A. Somewhat, yeah.

11 Q. And --

12 A. I think I'm standing here and Dan is standing
13 here.

14 Q. Okay. And where is this Asian male at about this
15 point in time?

16 A. I think he's in Dan's face.

17 Q. Okay. And you say that the people are running over?
18 His friends are running over?

19 A. His friends are running from down here over here,
20 maybe down the street.

21 Q. And you just testified the Asian male is in Dan's
22 face. The tall, skinny individual is in your face?

23 A. Once the fighting took place --

24 Q. Let's not jump ahead to that. We are going to go
25 real slow here. While this is sort of about to happen, where

1 is Clinton Seymour?

2 A. I think Clint is, like, back here, maybe walking
3 over. I don't think he had -- he never knew that there was
4 even a confrontation.

5 Q. Now, to this point, is everything verbal or
6 physical?

7 A. It's all verbal.

8 Q. Okay. What occurs that takes it from the verbal to
9 the physical?

10 A. Well, first of all, Dan -- I got punched in the
11 face.

12 Q. Okay.

13 A. And I didn't throw a punch. Once he punched me, he
14 ran. And then Dan is on the ground. And then all of a
15 sudden, I look in the corner of my eye and Clint is on, like,
16 on the ground. And it just happened so fast.

17 Q. And do you recall -- I know this is a very hectic
18 situation, but do you recall seeing -- can you describe what
19 you saw happen to Clint?

20 A. I just saw at the corner of my eye him just falling,
21 like he was kind of lifeless. And his eyes were kind of just
22 glazed. And I remember seeing him on the ground.

23 Q. And you saw from the periphery, you saw him fall?
24 Okay. At the time you saw him fall, you described two
25 individuals, right? At the time Clinton falls, where is the

1 tall, skinny individual? Is it fair to say he's in front of
2 you?

3 A. In front of me.

4 Q. Say that again.

5 A. He was in front of me.

6 Q. What about the Asian male?

7 A. He's on the ground with Dan.

8 Q. Okay. And that is their position when you see Clint
9 fall?

10 A. Correct.

11 Q. Okay. Describe that fall, if you could, for the
12 jury?

13 A. Just -- I barely honestly saw it. I just kind of
14 saw him fall. I didn't even see who punched him. I just
15 kind of saw him falling and on the ground and --

16 Q. Did he put his hand up? Did he brace himself?

17 A. No, no. He just fell right back.

18 And he walked over not knowing anything with the
19 situation, just like walking over, like, what is going on?

20 Q. I ask that you return to your seat.

21 Mr. Baker, I'm going to draw your attention to that
22 screen that's in front of you. It's going to be on the large
23 screens as well, but you have it in front of you if you want
24 to test it real quick. I believe you can touch an area down
25 at the bottom corner or something, off the picture, and it

1 should mark if at any time you want to circle something or
2 anything of that nature. You could erase it, if that helps
3 you at all.

4 A. Okay.

5 Q. Do you recognize this video?

6 A. Yes.

7 Q. You've seen this before?

8 A. Yes.

9 Q. Is this a depiction, as best that was captured, of
10 the events you just described to the jury?

11 A. I guess it's the only video that we have.

12 Q. And to be clear, does this show any punches or
13 anything like that?

14 A. No.

15 Q. I'm going to ask you, once I play it, what I'm going
16 to do is just kind of play it straight through. We are then
17 going to back up and I'm going to go slower and sort of have
18 you narrate it. Are you comfortable with that? Let me ask
19 you this. Do you recognize yourself in this video?

20 A. Yes.

21 (Video playing.)

22 Q. Mr. Baker, you referred in your testimony earlier to
23 some electrical boxes; is that correct?

24 A. Yes, sir.

25 Q. Do you see those in the video?

1 A. I do.

2 Q. And where are those?

3 A. Right next to where I am standing.

4 Q. And if you could, just sort of circle that for the
5 jury.

6 A. (Witness complies.) I think that's the top of my
7 head.

8 Q. You described a moment when a call is made and
9 people ran for help; is that correct? Do you see anything in
10 this video that would show that?

11 A. I see two, three people actually running right now,
12 one, two, three.

13 Q. Okay. You described kind of a tall, skinny male.
14 Do you see that person in this video?

15 A. (Witness indicates).

16 Q. At the time, out of your periphery that you saw your
17 friend Clint go down, was the tall, skinny male in front of
18 you or behind you?

19 A. In front.

20 Q. Was Clinton Seymour in front of you or behind you?

21 A. Clint was behind me.

22 Q. Was he behind you -- right behind you or behind you
23 with some distance?

24 A. He was --

25 Q. You can use me if you want. Closer?

1 A. No, he was closer -- repeat the question. I'm
2 sorry.

3 Q. Clinton was behind you at the time?

4 A. Correct.

5 Q. And about how far, as much as you can approximate
6 using me? Closer or far?

7 A. Like over there. I'm standing here, facing this
8 way, and Clint is like --

9 Q. Use me. Put me where you want to put me.

10 A. I believe --

11 Q. May the witness come down?

12 THE COURT: Fine.

13 THE WITNESS: If I'm Clint, you are standing right
14 here. (Witness indicates.)

15 BY MR. SIMPSON:

16 Q. And where is this tall gentleman in the mustache
17 standing?

18 A. Right over there.

19 Q. Where is the Asian male?

20 A. The Asian male and Dan are right over here next to
21 the car. You can see that in the picture.

22 Q. So you said Binh and the Asian -- Dan and the Asian
23 male are over by some gardens?

24 A. Correct. I believe they are on the ground, on the
25 ground here.

1 Q. Okay. You've discussed two people, individuals,
2 that you could describe, the Asian male and the tall, skinny
3 white male?

4 A. Right.

5 Q. There are others, correct?

6 A. Correct.

7 Q. But can you provide good descriptions of the others?

8 A. No, I can't.

9 Q. And why is that?

10 A. Because I didn't really see them.

11 Q. Okay. The people you could describe descriptions of
12 you saw because they were in front of you?

13 A. Correct.

14 Q. After this sort of flurry of violence, what occurs
15 then?

16 A. After all that, I mean, yelling. Someone called the
17 cops, the ambulance. Clint is laying there down on the
18 ground. Cops and ambulance get there pretty fast. And Clint
19 goes in the ambulance and I go with him to the hospital.

20 Q. You went to the hospital that night?

21 A. I did.

22 Q. And you gave a statement. Did you cooperate with
23 the police in this investigation?

24 A. Yes.

25 Q. Were you ever able to say -- identify the person

1 that hit Clinton Seymour?

2 A. No.

3 Q. And you said all of these events, that they happened
4 very quickly?

5 A. Very, very quickly.

6 Q. What did these other individuals do after the dust
7 settles, so to speak?

8 A. Which individuals?

9 Q. The tall, skinny male, the Asian male, the other
10 people?

11 A. I have no idea. I heard that the tall, skinny male
12 went to jail and other people went to a party.

13 Q. Well, that's what you heard?

14 A. Right.

15 Q. Did they leave the scene?

16 A. They left the scene, correct.

17 Q. Did you stay?

18 A. I stayed with Clint until he went into the
19 ambulance.

20 Q. And then you went to the hospital?

21 A. Correct.

22 Q. And you cooperated with the investigation best you
23 could?

24 A. Yes, sir.

25 Q. Just to be clear, earlier this evening, had you ever

1 seen any of these people before?

2 A. No, I did not.

3 Q. There's no confrontation earlier that evening?

4 A. Nothing.

5 Q. Was there ever any confrontation between Clint and
6 these guys?

7 A. Not to my knowledge.

8 Q. Ever any -- that night, any sort of verbal exchange
9 between Clint and these guys?

10 A. No, not to my knowledge.

11 MR. SIMPSON: Court's indulgence.

12 BY MR. SIMPSON:

13 Q. Mr. Baker, obviously, I'm not trying to make this
14 more difficult on you, but did you later hear of Clint's
15 condition?

16 A. Yeah.

17 Q. Was that a shock to you personally?

18 A. Yes.

19 MR. SIMPSON: Thank you, Mr. Baker. Answer any
20 questions that Mr. King has for you.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. KING:

24 Q. Mr. Baker, so is it fair to say -- you said things
25 happened pretty quickly that night, right?

1 A. Correct.

2 Q. And you had been drinking, right?

3 A. Correct.

4 Q. So it's possible some of these details you got
5 wrong; is that right?

6 A. Depends which details.

7 Q. We will get to that. So you went to AC's; is that
8 right?

9 A. Yes.

10 Q. You went to Silver Dollar?

11 A. Correct.

12 Q. You went to rooftop at Stars?

13 A. That is correct.

14 Q. And you said you were drinking that night and you
15 were about maybe a four or a five on the scale of one to
16 ten?

17 A. Correct.

18 Q. And y'all closed down the bars, basically, that
19 night, right?

20 A. Yes.

21 Q. You had a designated driver, right?

22 A. Clint.

23 Q. So you didn't have to worry about driving or
24 anything?

25 A. I did not.

1 Q. All right. Now, as far as what started this, you
2 are saying today that this girl fell on to you, correct?

3 A. Correct.

4 Q. Y'all asked if she was okay or something like
5 that?

6 A. Right.

7 Q. And you made this comment about having his mom or
8 the Asian guy having his mom in your dreams, right?

9 A. That was after the fact that he was very angry and
10 saying to me, you couldn't have her.

11 Q. But you said that? You admit you said some kind of
12 comment about his mother that involved sex with his mother,
13 sexual comment, right?

14 A. Yes.

15 Q. And you knew you said that? I mean, you didn't
16 forget you said that? You knew you said that, didn't you?

17 A. I did know I said that, yes.

18 Q. You remember going to the police station April 29th,
19 I think that was maybe Monday, Sunday or Monday, going down
20 to the police station and being interviewed?

21 A. Yes.

22 Q. I think you were interviewed by Detective
23 Burckhardt, Detective Krasowski about 1 p.m.?

24 A. Yes.

25 Q. You didn't tell them -- first time you were telling

1 them what happened, and this is what you said to them, you
2 said --

3 MR. SIMPSON: Objection. May I approach?

4 THE COURT: Yes.

5 (Whereupon, a bench conference takes place off the
6 record.)

7 THE COURT: Overruled. Go ahead.

8 BY MR. KING:

9 Q. This is the question, I guess. Didn't you say this
10 to Detective Burckhardt that night? And this is when you
11 first start describing what happened. "And we left and it
12 was around, I guess, closing time at the bar. About to get
13 into Clint's car. We were on the corner of King and Morris.
14 There was guy and a girl that pass us. The girl was -- had
15 to have been wasted."

16 Do you remember saying that?

17 A. Yes.

18 Q. "She fell on to me and I asked her, are you okay?
19 And the girl -- the guy that she was with must have gotten
20 offended, you know, his girl and he got kind of angry. And I
21 just wanted to make sure the girl was all right."

22 And this quote, "Do you know that guy? You just
23 going to go home with him, just stuff like that."

24 Right?

25 And then you say, "He somehow got really mad and

1 called over his buddies."

2 So first time you described it to Detective
3 Burckhardt, you didn't say anything about the comment about
4 the mother?

5 A. I left the part out where I said something about his
6 mom.

7 Q. You weren't honest with Detective Burckhardt?

8 A. I just left it out. My friend had just passed away.
9 I was nervous. I didn't know why I was there. I didn't know
10 why I felt like I was being interrogated. I was pretty
11 scared. Didn't gather my thoughts.

12 Q. You know somebody died, right?

13 A. Right.

14 Q. And there was a police investigation?

15 A. Right.

16 Q. And you know that the police need information to try
17 to investigate that crime, right?

18 A. Absolutely.

19 Q. And you want to help the police investigate that
20 crime, right?

21 A. Yes.

22 Q. So when you went there, you were willing to -- you
23 were willing to tell them whatever they wanted to know,
24 right?

25 A. And I eventually did tell them everything that I

1 know.

2 Q. You did? We will get there. Now, somebody asked
3 you again a little bit later, do you remember saying this?
4 Detective says, "What did you say after that? Are you okay?
5 Are you going to go with this guy, or how did this unfold?"

6 And you said, "I was just like, you know this guy,
7 kind of thing? He got pretty offended. And I honestly don't
8 know why. He could have walked away. Nothing would have
9 happened."

10 Right? Do you remember saying that?

11 A. Yeah.

12 Q. You said, honestly, you said, he got offended.
13 Honestly, I don't know why, right?

14 A. Right.

15 Q. But you did know why, right? You said something
16 about his mother?

17 A. I did, yeah.

18 Q. And the police keep asking you, coming back to this
19 issue, because, again, they want to have as much as
20 information as they can to investigate this crime, right?

21 A. Right.

22 Q. So they keep asking you again. They ask you again.
23 Do you remember saying this? Detective says, is the anything
24 you might have said --

25 A. Sir, I remember this whole situation. I lied to

1 them. I said to them that -- you know, I didn't tell them
2 the whole truth. And then I eventually said, yes, I did, I
3 said something about his mother, that's when I got mad. So,
4 yes.

5 Q. Right. We are reading through that. This is the
6 third they asked you and you've gone over to the police
7 investigating the crime what happened. Did you say this, is
8 there anything -- detective asked, "Is there anything you
9 might have said to the girl?"

10 Nothing you said.

11 "Jokingly? Nothing to the girl?"

12 "No."

13 Detective says, "Anything to him or about the girl,
14 or did you say anything that might have been misconstrued
15 that you know of?"

16 And you said, no. Right? That is when you are
17 still lying to the police, right?

18 A. And then right after that I told them that, yes, I
19 did say something to them.

20 Q. Okay. Right after that you didn't. Right after
21 that, do you remember saying this? There was a reference
22 about jokes being said or something like that. And you said,
23 "I saw that on the news, yeah."

24 Detective says, "Can you tell us a little bit more
25 about that?"

1 And you said, "There wasn't really jokes said. It
2 was just him getting mad for no reason."

3 Do you remember saying that?

4 A. Uh-huh.

5 Q. And detective said, "Was there anything that was
6 said that could have taken offense other than this girl, the
7 jealousy issues, anything at all?"

8 And you said, "Nothing to my recollection," right?
9 Is that what you said?

10 A. Uh-huh.

11 THE COURT: Excuse me, is that a yes?

12 THE WITNESS: Yes, yeah.

13 BY MR. SIMPSON:

14 Q. Detective says, "You didn't personally say
15 anything?"

16 You said, no.

17 Detective says, "No mama jokes or anything like
18 that? Does that ring a bell?"

19 And you said, "He may have said something."

20 You said, he said something about a mama. Do you
21 remember that? "He may have said something like -- I don't
22 even remember, honestly."

23 Detective says, that's him saying -- him like
24 getting mad. Detective says -- do you remember saying all of
25 this?

1 A. Yes.

2 Q. Detective says, "Let me put it to you this way. Is
3 it your estimation that his aggression with this Asian guy
4 was a direct result of his gal falling into you?"

5 And you said, "That's how I saw it."

6 Okay. So, still, that's fourth time they've asked
7 you to come back to this issue asking about it and you lied.
8 Right?

9 Okay. They asked you again. Do you remember
10 saying -- detective said, "Did you say anything to the Asian
11 guy about the girl, like, fuck you, or, I'm going to fuck
12 your mom, or anything like that?"

13 And you said, I said, "Fuck off. Don't be starting
14 shit."

15 Do you remember saying that?

16 A. If I said -- if it's written down there, I'm sure
17 it's what I said. I don't necessarily remember saying
18 that.

19 Q. The detective asked you, "Did you say you were going
20 to fuck his mother or rape or fuck his mother?"

21 And you said, "No, that was never said."

22 Right?

23 A. That was never said, no.

24 Q. He said, "Anybody say that?" And you said no. And
25 he said, "Did Dan make that comment?"

1 "No, never anything to that extent, even close."

2 Right?

3 A. Uh-huh.

4 Q. So you are still not telling them what you are
5 saying today you said, right? That's the fifth time you've
6 lied to the police, right?

7 A. Right.

8 Q. Looked them right in the eye and lied to him?

9 A. Well, I told them the truth.

10 Q. Right. Now we are getting to the sixth time.
11 Detective is coming back in again. He's like, "Real quick,
12 man. That interaction you had after the girl fell down or
13 fell into you or touched you or whatever, I know it's hard.
14 If you can't do it, you can't do it. But if we can try to go
15 through everything you said during that interaction."

16 They keep coming back to you because they know you
17 are not telling the truth. Right?

18 A. Right.

19 Q. And that's when you finally said "couldn't have her
20 in your dreams" comment?

21 A. Correct.

22 Q. You put your arm around this girl?

23 A. I was just trying to keep her up. I don't know if I
24 put my arms around her, but I was just trying to make sure
25 she wouldn't fall.

1 Q. You said you did put your arm around her, or just
2 don't remember? You may have?

3 A. I don't remember. I was just trying to keep her
4 from not falling.

5 Q. I think detective asked something about that. And
6 you said, "Maybe, I don't remember if I did, it's a
7 possibility, I put my arm around her and said are you okay."

8 So there's possibility you put your arm around her,
9 this guy's girl, right?

10 A. Sure.

11 Q. You didn't see who punched Mr. Seymour, did you?

12 A. No.

13 Q. And you never -- you've never identified anybody
14 from the scene, have you?

15 A. No.

16 Q. And so you are saying that you recognized -- you
17 remember there was a guy that got arrested. Do you remember
18 that, right after the accident, and it was in the news?

19 A. That's the reason, because I saw in the news.

20 Q. So you knew who that person was? You saw, knew that
21 was the tall guy you are talking about. Now you are seeing
22 this in front of your face, right?

23 A. Right.

24 Q. But when you are talking to the police, I don't
25 think you told them all that. They asked you -- you had the

1 opportunity to see television, the man that was arrested, and
2 you said, uh-huh. And said, I saw a picture of him, right?
3 Because you did, you saw a picture of that guy. And he said,
4 did you see them out there that night? And you said, I think
5 so. You know, I don't -- detective keeps talking. So that
6 night you weren't sure, right?

7 A. No.

8 Q. And you can't be sure because it happened so fast,
9 right?

10 A. Correct.

11 Q. Now, you saw Daniel Hennessey go after the Asian
12 guy; is that right?

13 A. I didn't see Daniel go after anybody. I saw the
14 Asian guy go after Daniel.

15 Q. Okay. You didn't tell the detective: I think Dan
16 may have went after one after they hit him; I tried to pull
17 him off Dan.

18 You didn't tell the detectives that after Clint was
19 hit, Dan went after the Asian guy? You don't remember that?

20 A. I may have said that, but that's not what I meant
21 going after, like trying to keep -- trying to get the guy off
22 of Dan, that was on top of Dan.

23 Q. You were punched in the face?

24 A. Yes.

25 Q. You don't know who punched you?

1 A. I believe I know who it was.

2 Q. You told the detectives that night when he said,
3 "Who punched you in the face," you said, "I don't remember.
4 I couldn't even tell you."

5 Do you remember saying that?

6 A. Yeah. And then you see pictures of all these people
7 on the news and stuff and things kind of -- you reflect on
8 what happened and you kind of remember. I believe it was the
9 tall kid, tall, lanky kid.

10 Q. So you guys started this, right? You guys didn't
11 start this whole thing?

12 A. Did the people that punched Clint even know why they
13 punched him?

14 THE COURT: Sir, you need to answer the question.
15 Okay? Just answer the question. You don't get to ask the
16 questions.

17 BY MR. KING:

18 Q. You and your friends didn't start this whole thing?

19 A. I believe my friends had nothing to do with this.
20 It was me and the Asian kid that were having conversation.
21 And my friends didn't have any conversation with him, nor did
22 Clint, nor did them. So it was between me and another guy.
23 He wanted to fight me. He should have just came after me
24 instead of messing with everyone else.

25 Q. So you started this? Did you start this?

1 A. I don't think I started it. I didn't say the first
2 words. I don't think I started anything. I didn't throw a
3 punch. I didn't grab a girl or do anything. A girl fell
4 into me.

5 Q. You didn't hold on to her longer than you should
6 have and the Asian guy is telling you to let her go?

7 A. I don't believe he even said that. If I would have
8 let her go, she would have fallen on her face. She was
9 drunk, like, extremely drunk, maybe on drugs.

10 Q. Clinton was not a small guy, right? He was an
11 athletic guy, right?

12 A. Yeah.

13 Q. He was standing next to you?

14 A. He was not standing next to me, no.

15 Q. He was near you?

16 A. Sure.

17 Q. Daniel Hennessey, is he a small guy?

18 A. No, he's not.

19 Q. So there were three of you, you, Daniel and Clinton.
20 How big did you say the Asian guy was?

21 A. I don't know. I don't know.

22 Q. He was small? He was a smaller guy?

23 A. He was not big.

24 Q. You weren't honest with the police about how this
25 thing all started, right? You admitted that?

1 A. Correct, yeah. And then I told them the truth and
2 in the same sit-down.

3 Q. You've lied, like, five or six times about it. You
4 know, that's the thing.

5 MR. SIMPSON: Objection, Your Honor. Asked and
6 answered.

7 THE COURT: Sustained.

8 BY MR. KING:

9 Q. Isn't the reason you weren't honest with the police
10 about what you said that night and what happened, you called
11 Clinton's mother and father, or they called you after this
12 happened?

13 A. I talked to Clinton's father the next morning and he
14 told me that Clint was gone.

15 Q. Did his father want answers?

16 A. We talked later.

17 Q. And the reason you are not being honest about what
18 happened that night, is you don't want to have to tell
19 Clinton Seymour's father that you started this, right, that
20 this is your fault?

21 MR. SIMPSON: Objection.

22 THE WITNESS: I wouldn't say it's necessarily my
23 fault, but--

24 THE COURT: Hold for a second. What's your
25 objection?

1 MR. SIMPSON: He's asking the witness to
2 characterize events that are speculated.

3 THE COURT: Overruled. I will allow it. Go ahead.

4 BY MR. KING:

5 Q. I will repeat the question again. You haven't been
6 honest about how this all started because you don't want to
7 have to tell Clinton Seymour's father that you started this,
8 that this is your fault? Right?

9 A. I wouldn't necessarily say that.

10 Q. You weren't looking for a fight that night?

11 A. No.

12 Q. Right?

13 A. Nor did I even fight.

14 Q. You weren't being aggressive at all?

15 A. No. I didn't throw a punch. I was yelling the
16 whole entire time: Why would you even want to fight on King
17 Street where there's cops everywhere? Just stupid.

18 Q. Do you remember on the surveillance video, I think
19 they showed it to you at the police station, do you remember
20 watching that?

21 A. Yeah.

22 Q. And did you see yourself in that --

23 A. With my hands up, like, what are these kids doing
24 here? Why are you yelling at your friends to come fight us.

25 Q. That's not I'm asking about. That is not what it

1 looks like. Looks like you are doing this?

2 A. Not at all.

3 Q. You are not saying, bring it on?

4 A. Not even close.

5 MR. KING: Beg the Court's indulgence.

6 THE COURT: All right.

7 BY MR. KING:

8 Q. I'm going to show you part of the surveillance
9 video. Do you see that? I want you to watch when the guys
10 start running across the street.

11 (Video playing.)

12 BY MR. KING:

13 Q. That's not you?

14 A. Yeah, that's me, but I'm saying, what are you guys
15 doing? I literally was yelling --

16 Q. What are you guys doing? Isn't that what you are
17 saying: What are you guys doing? Does that make any
18 sense?

19 A. Yes, that makes sense. Like, why would you call
20 your friends to come over and fight us in the middle of the
21 street when you don't even know why you are coming over here.
22 Not even words were being spoken, punches were being thrown.
23 They didn't even know what was going on, know why the Asian
24 was mad, had any clue.

25 Q. You weren't saying, bring it on?

1 A. No.

2 MR. KING: No further questions, Your Honor.

3 THE COURT: Redirect.

4 MR. SIMPSON: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. SIMPSON:

7 Q. Mr. Baker, could you describe to this jury how it
8 makes you feel when Mr. King says that this is your fault?

9 A. I mean, yes, I've said some words I shouldn't have
10 said, but I thought that we would walk away afterwards. I
11 was scared to tell the cops. I felt like I was being
12 interrogated, like I was going to be arrested. I was
13 nervous. I shouldn't have lied. That's messed up. I did
14 lie to them.

15 Q. Do you feel guilty about the words you said that
16 night?

17 A. I don't. I feel bad that this happened, but I feel
18 that none of it should have happened.

19 Q. Do you feel that the response was appropriate to a
20 little bit of verbal jarring on King Street?

21 A. I felt like maybe -- I said it in my statement, we
22 should have just gone our separate ways and none of this
23 would have happened. And interactions happen all the time.
24 Words are spoken. People --

25 Q. Let's be clear on something. The Asian male, was he

1 angry at you before the comment about your -- his mother.

2 A. He was mad because the girl fell on to me.

3 Q. Oh, and let's talk about this big, you know,
4 offensive thing that Mr. King wanted to know. You said that
5 you might have had your arm over the shoulder? Why was that?
6 To keep her from what?

7 A. Falling.

8 Q. Okay. But it's your fault that this happened, I
9 suppose? Do you feel like what happened to Clinton Seymour
10 was your fault?

11 A. No.

12 Q. But when you go -- and you've been honest with this
13 jury -- and you sit down with the police, you are a little
14 hesitant and a little guilty about some of the words that you
15 spoke that night; is that fair?

16 A. Yes.

17 Q. And you give a version of the events where you
18 describe everything that occurred?

19 A. Yes.

20 Q. But you hold back a little bit?

21 A. I left out some --

22 Q. On one specific comment you hold back?

23 A. Yes.

24 Q. In that same meeting that we are talking about, do
25 you eventually tell the police that that's what you said?

1 A. I do.

2 Q. Have you been honest and truthful with this jury
3 here today?

4 A. I have been.

5 Q. And when you see your friend Clinton Seymour go
6 down, is he in front of you or is he behind you?

7 A. He's kind of to the side of me.

8 Q. Clinton Seymour?

9 A. Clint. When he falls, he's kind of to the side of
10 me.

11 Q. Okay. And where is the tall, skinny, white male?

12 A. In front of me.

13 Q. Okay. At the moment Clinton Seymour goes down?

14 A. Yeah.

15 THE COURT: All right. Sir, you may step down.

16 State can call your next witness.

17 MR. CORVEY: The State calls Daniel Hennessey.

18 DANIEL HENNESSEY,

19 having been duly sworn, testifies as follows:

20 THE CLERK: If you will please state your first and
21 last name and spell your last loudly and clearly a month the
22 microphone?

23 THE WITNESS: Daniel Hennessey, H-e-n-n-e-s-s-e-y.

24 DIRECT EXAMINATION

25 BY MR. CORVEY:

1 Q. Good afternoon, Mr. Hennessey. Let's just start for
2 a little bit, just tell the jury a little bit about you:
3 Where you are from; how old you are, what you do.

4 A. My name is Dan Hennessey. I'm from Connecticut.
5 I've lived in Charleston for the last two years. Coming here
6 for about eight years. I started my own insurance and risk
7 management business in the last year and a half. And that's
8 the short of it.

9 Q. All right. So you've been in Charleston about two
10 years?

11 A. Yes, sir..

12 Q. What brought you to Charleston?

13 A. My college friend, Bradley Baker. We went to Lynn
14 University in Boca Raton, Florida together.

15 Q. He was up here, so you just kind of decided to --

16 A. Yeah. Our freshman year we met. And I started
17 coming up here that spring after, and fell in love with the
18 place. And I said I always wanted to move here. And when my
19 family moved from Connecticut, it just made sense. And
20 that's how I made my way up here several years later, just
21 from coming here a lot and liking it.

22 Q. And then I want to ask you about Clinton Seymour.
23 How did you know Clinton?

24 A. I met Clint through Bradley. We met as a result of
25 Bradley introducing us.

1 Q. How would you kind of describe your relationship
2 with Bradley and Clinton at the time of the incident?

3 A. Bradley is one of my really close friends. And we
4 have been friends for several years, since college. And
5 Clint I had known him for a month or two. Clinton and
6 Bradley worked up at Kiawah together. And Bradley always
7 used to say, he's like, man, when you move here, you've got
8 to meet my buddy Clint, and kept talking about Clint. And
9 so, you know, I met him one day. And prior to him passing
10 away, you know, I had known him for a month or two. And so
11 that's how the introduction happened.

12 Q. Then let's kind of fast-forward to Friday, April
13 25th, 2014. Do you remember that day?

14 A. Yes.

15 Q. What were your guys' plans that day?

16 A. We had -- I believe Bradley, or whoever had said,
17 come on out. At the time I was actually living with Bradley,
18 because this is when I first moved to Charleston. I stayed
19 with him for a few months while I got settled here. So he
20 called up Clint and said, come on over, we will hang out.
21 And so Clinton came over. And the night started that we were
22 just hanging out at Bradley's house.

23 Q. And just for the jury, how the plans evolved, what
24 did you end up doing?

25 A. So, we got there. And we may have had a beer there,

1 just hung out, because he lives right near the water. So we
2 were hanging out by the water. And we were just, I don't
3 know, just shooting the breeze. And we decided that we would
4 go downtown for a couple hours, and we did so. So, I mean,
5 just hanging out at his house, decided to go downtown.

6 Q. Let's fast-forward to there. So you decide to go
7 downtown. I know now, almost two years later, the times can
8 be tough, but about what time you guys head downtown?

9 A. Call it nine, nine o'clock, give or take.

10 Q. And then once getting downtown, what do you guys do?
11 How does the night progress from there?

12 A. We went to -- I think we started off at AC's. And I
13 just remember that specifically, just because somebody told
14 me that it was a Pittsburgh place, and figured Clint being a
15 Pittsburgh guy, would want to check it out. And from there,
16 we went to the Silver Dollar briefly. And then we finished
17 the night at Stars. And then we were heading home.

18 Q. And then while you guys were out that night, were
19 you just primarily still shooting the breeze with each
20 other?

21 A. Yeah. I mean, it wasn't -- I wouldn't call it a
22 party night by any means. Clint was driving. That was kind
23 of the plan from the get-go. So he wasn't -- none of us were
24 getting -- particularly not him just because he was driving.
25 And I would describe it as a pretty relaxed evening. And,

1 you know, we only had -- at least me -- maybe four or five
2 drinks over the course of much several hours.

3 Q. Just generally, I mean, if one is one beer and ten
4 is very drunk, where would you kind of put yourself in
5 relation to that scale?

6 A. One or two maybe.

7 Q. So kind of pretty tame, not wild?

8 A. Very much so.

9 Q. When you guys were out, prior to the incident why we
10 are here, any problems, any interactions with anybody?

11 A. No. Actually, we were kind of to ourselves. And it
12 was pretty relaxed. It was funny, when we were leaving, I
13 remember all the girls like really liked Clint. He was a
14 good-looking guy. And I just remember right before we left,
15 there was a bachelorette party, and they all kept coming up
16 to Clint when we were trying to leave, you know, but it was
17 just pretty relaxed night.

18 Q. So you guys decided to head home. It's about
19 closing time. And plan is to just go home from there?

20 A. Yeah.

21 Q. So this kind of gets us up to the point where maybe
22 things start happening. And just kind of slowly, with as
23 much as detail as you can, can you describe for the jury how
24 things progressed from there. And I may stop you a few times
25 to clarify anything.

1 A. Sure. So we left Stars. And we were walking, I
2 guess it would be north on King Street and just regular pace.
3 And we got to -- I believe it was Morris. And we are
4 standing around. And we just stopped to look around. And I
5 guess we determined that it was just time to go. I mean,
6 everything was clearing out.

7 Q. Let me stop you there. So you guys just kind of
8 paused for a moment, take in the scene, and then head on your
9 way?

10 A. Yeah. Well, that's where we stopped because that's
11 the turn we would have gone to turn back to his car. And
12 then so, I'm standing there with Clint. Bradley is in the
13 general proximity to us. And all of a sudden, I turn around
14 and I see this Asian guy. And he's just-- something spurred
15 his energy, I guess. And he just -- this guy just starts
16 going like nuts, I mean, nuts.

17 Q. Let me kind of back you down. So is Bradley -- I
18 guess you guys are now on Morris Street?

19 A. Corner of Morris and King.

20 Q. Is Bradley a little farther down Morris Street than
21 where you and Clint are standing?

22 A. We are all within, you know, a body's length, I
23 would say, just over.

24 Q. At the point this happened, you -- to you, you
25 didn't really know what had transpired that would have made

1 this guy this angry?

2 A. No. This guy -- I turn around and he's just -- I
3 thought somebody had pushed him or something. You know,
4 nothing happened, like because he was far away -- you know,
5 far away enough from us. I don't know what would have
6 spurred him to go crazy. It was literally like he -- you
7 know, like somebody hit him with a car or something. He was
8 going absolutely berserk. I couldn't explain it as far as
9 why.

10 Q. Did you notice a girl out there with him as well?

11 A. Yes, there was a girl that was walking with him.

12 Q. Did you notice her stumble or anything like that?

13 A. I noticed that they were linked, but other than
14 that --

15 Q. Now, without specifically going into necessarily
16 what was said, was there an exchange between he and Bradley
17 at all?

18 A. I know Bradley had said something at the time, but I
19 didn't know who it was really directed to, if anybody. I
20 thought it could have been direction to us, like he was
21 screwing around with us. I don't know. But, you know, he
22 said something and that's when the guy went crazy.

23 Q. And was -- you know, I guess in relation to the
24 Asian, how was Bradley's demeanor?

25 A. I think we were all pretty shocked. I think if you

1 would have looked at everybody's face, we just were wondering
2 like -- the guy like had a screw loose or something. He went
3 0 to 60 as far as being fired up in a second.

4 Q. So after seeing this guy kind of get heated 0 to 60,
5 what did you do?

6 A. I was just trying to figure out what went on, you
7 know, what really could have happened to the point where this
8 guy was getting that upset and irritated.

9 Q. Did you make any efforts to try to calm him down at
10 all?

11 A. I first looked at him and I'm like, what's wrong
12 with you? What are you doing right now? And, again, I
13 couldn't really figure out why this guy was going so nuts.
14 And I don't remember verbatim what I said. But my general
15 thought was, you know, calm down, what are you doing, you
16 know, move, leave, go away.

17 Q. You go your way and we will go our way, like, no
18 harm, no foul?

19 A. Yeah. We were hoping that this would just calm
20 down. And nothing I said or did seemed to work.

21 Q. Now, what about Clint; did he get involved with the
22 Asian guy at all?

23 A. No. I think Clint was just as stunned. I remember,
24 like, looking at everybody and just, like, we are all looking
25 at this guy like, what is wrong with you, like, you've got to

1 calm down. Clint especially, I think he just didn't know --
2 I didn't really know -- he didn't know what was going on.

3 Q. Now, at some point did other guys enter this sort of
4 argument?

5 A. Well, this guy started coming at us, like, getting
6 up in our face and --

7 Q. Whose face, in your face?

8 A. In my face and, I mean, generally looking probably
9 at us. And we are trying to diffuse the situation. And it
10 got to where he's yelling at me, looking at me. And then I
11 start seeing what I assume were his friends coming over,
12 people from across the street.

13 Q. From across Morris Street?

14 A. Yeah.

15 Q. And so at the corner of my eye, he's still just
16 going absolutely nuts. From my periphery, I see two or three
17 people that are coming diagonal. And I'm looking around
18 and --

19 Q. Let me stop you there. At this point, you see those
20 guys coming over. Was it just words? Was anything -- you
21 know, any punches thrown or any shoves made?

22 A. No, not -- I mean, it wasn't until I see them out of
23 the corner of my eye, this guy is starting to get close to
24 me, you know, as far as me, he wants to grab me. I think the
25 girl was trying to grab him. And so he's in front of me.

1 Clint is behind all of us.

2 Q. Yeah. I think the position here is very important.

3 MR. CORVEY: Your Honor, would you mind if he steps
4 down?

5 THE COURT: As long as he's by the microphone.

6 BY MR. CORVEY:

7 Q. So at this point, you guys are now on Morris Street;
8 is that fair to say?

9 A. Yeah, I mean, I guess we would technically about
10 around that corner.

11 Q. Okay. So I'm going to show you what's marked and
12 entered as State's 7. And just generally for the jury, can
13 you kind of describe what this depicts?

14 A. Yeah. This is King Street. This is a restaurant on
15 the corner. And this is Morris. And we were in this general
16 area right here. (Witness indicates.)

17 Q. So you guys were just kind of right in this corner
18 right here on Morris Street right off King?

19 A. Yes.

20 Q. I'm now showing you what's been marked and entered
21 as State's 8. And it's just a diagram of what the satellite
22 picture depicts. So if you could for the jury generally
23 describe where you are, where Daniel is, where Clint is,
24 where kind of all the players here that you were describing
25 are. And feel free to mark on here as you are describing.

1 A. So, I would say I was here. Bradley was here.
2 Clint was back here. The Asian guy was somewhere right here.
3 Might have been up a little farther, but --

4 Q. Closer to these boxes?

5 A. Closer to the boxes, but our general positioning was
6 I would say somewhat like this. I think the girl was
7 somewhere over here off to his side. I think she was trying
8 to pull him back maybe a little bit. And then I saw -- out
9 of the corner of my eye, I see people coming over this
10 direction. So that's kind of where we were all standing.

11 Q. Okay. So as people are coming over to your
12 direction, I mean, eventually they get to where you guys are
13 standing?

14 A. Yes.

15 Q. And then what happens at that point?

16 A. So, my instinct, this guy is trying to come at me.
17 And I see people out of my periphery just coming around
18 and --

19 Q. Did you think you guys were kind of getting
20 surrounded almost?

21 A. Yes. My first instinct was to determine what was
22 going on. Obviously, you look who's in front of you. Then
23 you see who is to the side of you.

24 Q. What about to the side of you; did you see anybody
25 who you recognized to the side of you where you could

1 distinctly remember?

2 A. Yeah. I mean, I guess the guy that was
3 originally --

4 Q. The guy originally arrested?

5 A. Right.

6 Q. What did he look like?

7 A. He was tall, skinny, white male. And then the Asian
8 guy --

9 Q. Is still in front of you?

10 A. Still in front of me. And when I -- this happened
11 like -- there was no time. These guys had no interest in --

12 Q. Let me ask you specifically about the tall, skinny,
13 white male you were talking about. When he first got on
14 scene, got up close to you guys, is that right when every
15 happened? Did he come up and punch anybody?

16 A. I mean, I think his first reaction was to come over,
17 you know. We had people coming in like this. I don't know
18 what his intention was. I mean, he was coming over
19 initially. I think it was, obviously, to maybe help his
20 friend or -- these guys -- there's no way these guys knew
21 what was going on.

22 Q. When he came over, was he stopped? Was he in front
23 of you?

24 A. He was off to the side of me so he stopped in the
25 general side position of me, like right --

1 Q. Would it be fair to say he would be in front of
2 Bradley, basically, or kind of the side of you in front of
3 Bradley?

4 A. That would be definitely safe to say.

5 Q. And while this happens, Clint is behind you?

6 A. Yeah.

7 Q. And during this entire incident, not necessarily up
8 to this point, is Clint behind you and Bradley?

9 A. Yes.

10 Q. So as the friends get across the street, kind of
11 take it up from there.

12 A. So, I'm taking a mental note. When I tell you this
13 happened probably in 10 seconds or -- there was no talking or
14 anything. This guy is coming at me, the Asian guy. The
15 tall, white male, he's come from the side of me. And I turn
16 around and to take a mental picture of, is there somebody
17 coming from behind us? And I turn my head and I see Clint
18 get punched. And Clint is just sitting there like -- again,
19 this whole time, he's got a look of surprise on his face.
20 His hands are down by his side. And we are surrounded now.
21 And that's -- I turn around and I see him get hit in back
22 side of the head --

23 Q. So if I can stop you. Safe to say he didn't see it
24 come?

25 A. No. We are all kind of shocked because he was

1 behind us. He didn't have anybody in front of him. I think
2 he was just kind of startled, like, thinking what's going on
3 right now. And he literally had his hands by his side and
4 trying to make an assessment, I would guess, of what was
5 going on. I'm making more of one, because I have somebody
6 coming at me and to the side of me and we are getting
7 surrounded. I turn around. And then I see him get hit. And
8 at that point, I turn forward and I try to get out of --

9 Q. Let me stop you right there because I want to kind
10 of have the time this all happened. I want to be pretty
11 clear where everyone is and what happens. So why don't you
12 come over here and be you and I will be Bradley and you kind
13 of generally, with me, just tell me where Bradley was in
14 relation to you.

15 A. So the Asian guy is here. So this is -- the Asian
16 guy looking at me. I would say Bradley might have been a
17 little bit right here and the tall, white male that came
18 across --

19 Q. He was in front of you guys here?

20 A. Over here on the side of me. I can clearly see him
21 in my side.

22 Q. So you said you were in back, so--

23 A. Yeah. I see people coming across the street.

24 Q. If Mr. Simpson is Clint, where would -- have him
25 come over here.

1 A. I would say he's probably right -- (witness
2 indicates).

3 Q. So this is the general kind of layout at the time
4 you were talking about?

5 A. Yeah. I mean, it was enough to where I could turn
6 around and see him out of the corner of my eye get hit.

7 Q. Okay.

8 A. And because he's looking at me. I think he's ready
9 to swing at me. These guys are coming over. And I look
10 back, and as I look back to see what's going on, I see him
11 get hit.

12 Q. So pausing there, you then -- just briefly describe.
13 You look forward because you think the Asian guy is
14 approaching you?

15 A. Well, I think everybody is. We are -- we were
16 getting surrounded. I wanted to see if somebody was coming
17 behind me. And I look back, and that's where I saw Clint.
18 He was just standing there. Like, his eyes are wide open
19 because he doesn't -- he doesn't know what's going on. And
20 he's literally, like, standing there in almost shock. And he
21 gets hit right in the side of the head. And I just -- I
22 literally see his face go white. And he just drops to the
23 ground. You know, he starts like buckling.

24 I guess I didn't fully see everything, because at
25 that time everybody started coming at me. And --

1 Q. So at the moment that you saw Clint get struck and
2 you look forward, where is the Asian guy in relation to you?

3 A. He's still in front of me. I would imagine he's at
4 that point trying to come at me. All I remember is once I
5 saw Clint get hit and his face turn white, you know, he
6 started buckling a little bit.

7 Q. That's the moment -- you described that. And the
8 tall gentleman you described, is he still over the side of
9 you, in front of you?

10 A. Yes. From that point, it just -- that kind of
11 really put everything into my motion, because, obviously, my
12 friend gets hit. I've got somebody that's coming at me in
13 front of me. I've got somebody from the side of me. So my
14 natural instinct is to try to get out of, you know, this
15 surrounding that I'm in.

16 Q. Let's pause there. I think that's a good stopping
17 point to pick back up what happened.

18 So you were just saying that you are now looking
19 forward to try to kind of get out from this surrounding. So
20 go forward with that.

21 A. So immediately then, I see him get hit. And I think
22 that that throws everything into a complete -- you know,
23 that's when everything really erupted from a physical
24 standpoint. And, like I said, I went forward. And when I
25 went forward, I don't know if you can kind of see it on the

1 picture, but there's flowerbeds that are built in. They are
2 like granite flowerbeds And the restaurant was under
3 construction. So there was nothing actually in there except
4 for dirt and cement.

5 Q. You are talking about this flowerbed in the diagram?

6 A. Yes. These are all concrete and granite flowerbeds.
7 And I get pushed. You know, when I try to go forward, then
8 the Asian guy grabs me and I grab and push him. And then I
9 get thrown into the bed. And at that point, there were
10 probably two other people that, you know, got on top of me,
11 from what I could gather, because I was getting punched and
12 kicked. You know, I was trying to just cover myself. I
13 assume it was at least one other person, just because I don't
14 know how punching and kicking at the same time would be --

15 Q. You are not sure -- other than the Asian guy, you
16 are not sure who else was around?

17 A. No, but I'm pretty confident there was another
18 person that was on top of me at some point during, you know,
19 all of this, because I was definitely bigger than the guy.
20 It would have taken another person, I'm guessing, to get me
21 into the bed.

22 Q. Bigger than the Asian guy, you mean?

23 A. Yeah.

24 Q. So after this is going on, does that kind of break
25 up fairly quickly?

1 A. Well, so there was a period where -- I mean, I
2 couldn't tell you how long it was -- where I, for a good
3 maybe 10 seconds, I have people on me, kicking and punching
4 me inside up against the flowerbed. And then, you know,
5 either the cops started coming or they just decided to get
6 out of there. So when I'm in the bed, I finally, you know,
7 when I feel there's nobody else around me, that's when I look
8 up and kind of come to and get my bearings. And I see Clint
9 on the ground. And I see a bunch of bystanders trying to
10 help out, trying to help out, you know, the whole situation.

11 And I see somebody taking off down the street. So I
12 get up and I start heading towards that direction. And then
13 I see a cop come around from the corner. And it looked like
14 they had grabbed somebody. And then I had a lot of people
15 coming up to me. I went over to check on Clint and Bradley.
16 You know, Bradley's nose got broken. And so I was just
17 making sure everybody was okay.

18 And, you know, there were people coming up and
19 trying to tell me, you know, I got their numbers and their
20 plates. And the ambulance came for Clint.

21 Q. So the ambulance comes. From the point the
22 ambulance comes, you know, what happens to you?

23 A. I'm just trying to -- Clint is laying there. And
24 there's people around trying to help. And, you know,
25 obviously, the cops had been called. I think multiple people

1 were probably on their phone. I might have tried to call the
2 cops. And so he's laying there. The ambulance shows up and
3 all the paramedics and cops. And there's witnesses that are
4 kind of waiting around. And then at that point, you know,
5 they get -- Clint is, like, immobile. He's just laying
6 there. And I think the EMTs did whatever it is that they do,
7 put him on the board.

8 Q. And he went to the hospital at that point?

9 A. Yeah.

10 Q. Did you end up going to the hospital?

11 A. Yeah. They originally took me to M.U.S.C., but I
12 guess it was busy. And so they couldn't get me in, so they
13 took me to Roper.

14 Q. Okay. And once there, did the police end up coming
15 there to talk to you?

16 A. Yes.

17 Q. And before we kind of touch on that briefly, I want
18 to show you what's been entered as State's 4 and 5.

19 MR. CORVEY: Your Honor, may I approach?

20 THE COURT: Yes.

21 BY MR. CORVEY:

22 Q. Take a look at that and tell me if you recognize
23 what those are.

24 A. Well, that's me. I take it, it was me in the
25 hospital.

1 MR. CORVEY: May I publish this to the jury?

2 THE COURT: All right.

3 BY MR. CORVEY:

4 Q. So you describe when you were in the flowerbed, that
5 you were struck. I'm showing you what's been entered as
6 State's 4. So this is a picture of you?

7 A. Yes.

8 Q. It looks like you have a knot over your eye.

9 And then I'm showing you State's 5. It looks like
10 you kind of have some swelling on the other side of your face
11 as well.

12 A. Yeah, and then my arms, my legs were cut up too.

13 Q. So, you know, we mentioned that the police came and
14 spoke with you at the hospital. Do you remember talking to
15 them?

16 A. Yes.

17 Q. Do you remember that night about what you said to
18 them with regard to the incident?

19 A. Yeah. I mean, when they came in, it was probably an
20 hour after I -- not even after I had been admitted, I was
21 being treated. And they are coming -- I didn't know what to
22 make of it. I didn't know what happened to Clint or anything
23 at that point. I didn't know where Bradley was. I was at
24 the hospital trying to figure out what was going on. And
25 they are treating me.

1 And at one point, Bradley's girlfriend showed up to
2 try to -- she was going to give me a ride home after I was
3 done.

4 Q. Safe to say, it's still pretty chaotic, confusing
5 time for you?

6 A. Yes.

7 Q. And at that point, do you remember if you were able
8 to tell the officers who you thought hit Clinton that night?

9 A. They were asking me questions about who I could
10 identify and who I saw and who was involved, you know,
11 general questions about who got hit.

12 Q. And were you able to identify anyone with them?

13 A. The Asian guy and the tall, white male.

14 Q. So you don't have any specific memories regarding
15 the other folks that were out there that night?

16 A. Yeah.

17 Q. Other guys.

18 A. I know there were other people, but as far as me
19 being able to honestly point other people out, those are the
20 only two I could point out.

21 Q. And so I just want to get back to, you are not sure,
22 sitting here today, who hit Clint?

23 A. No.

24 Q. He was behind you at the time he was hit?

25 A. Yes. I saw him -- I saw a fist go into his head.

1 Q. And you also testified that about the moment that
2 happened, you turned back around, the Asian guy was directly
3 in front of you?

4 A. Yes.

5 Q. And the tall, white guy you described is over here
6 to your right?

7 A. Yes.

8 Q. And Clinton was behind you the whole time?

9 A. Yes.

10 Q. Now, I want to ask you briefly. You already
11 described a minute earlier, said you saw them running off and
12 you went up to point someone out to police?

13 A. Yes, I saw one of the guys running up the street.

14 Q. Was that the tall, white male?

15 A. Yes.

16 Q. When you were pointing him out to the police, were
17 you pointing him out to say, that's the guy, or that was the
18 guy --

19 A. Well, I didn't -- there were a bunch of bystanders
20 that already tried to follow everybody. You know, once I saw
21 that a cop had grabbed him, I didn't really -- at that point,
22 he's -- you know, somebody got him and it will get figured
23 out. And then, you know, somebody came up to me and gave me
24 a car description. And at that point, I told them to go tell
25 one of the cops.

1 MR. CORVEY: Court's indulgence. That's all I have
2 for right now. Please answer any questions Mr. King has.

3 THE COURT: All right. Cross-examination.

4 Excuse me. Let me see the attorneys for one second.

5 (Whereupon, a bench conference takes place off the
6 record.)

7 THE COURT: All right. Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. KING:

10 Q. Mr. Hennessey, you said that Clinton was facing --
11 or you stood up here, right, when you were kind of
12 demonstrating, so you are talking about this is down Morris
13 Street?

14 A. Yes. We are all --

15 Q. Y'all facing --

16 A. Bradley and Clint are facing down Morris, not
17 towards King.

18 Q. And you said you saw some guys running diagonally
19 across the street, right?

20 A. From Morris towards us, facing us, coming towards
21 us.

22 Q. You said diagonally; is that right?

23 A. Coming from the diagonal, yes.

24 Q. From across Morris Street?

25 A. Yes.

1 Q. Okay. So Clinton would have been facing down Morris
2 Street? His right side would have been facing across the
3 street, right?

4 A. His right side would have been -- yes. He was
5 looking straight, more or less, down that general direction.

6 Q. Down Morris Street?

7 A. Yes.

8 Q. You are on the left sidewalk?

9 A. Yes.

10 Q. You said guys were coming diagonally?

11 A. Yes.

12 Q. Right? And you said he was hit right here?

13 A. He's looking straight down Morris. He was hit, yes,
14 in this general area.

15 Q. In the direction of across the street, right; across
16 the street side, not against the wall?

17 A. Yeah. He got hit on the other side of the -- he was
18 on the wall side.

19 Q. Right. And his left side is facing the wall? I
20 think we've gone over this. His left side is facing that
21 wall, right?

22 A. Yes.

23 Q. Guy is coming diagonally, and he's hit here.

24 (Indicating.)

25 A. Yeah. He's facing forward -- he gets hit somewhere

1 around here. (Indicating.)

2 Q. At some point, you went after the Asian guy or you
3 approached, went towards the Asian guy?

4 A. Well, he was up in my face. And then Clint kept
5 getting hit, kind of got the physical end of things going,
6 because nobody had really started anything physical until
7 that happened.

8 Q. And then when that happened, did you go after the
9 Asian guy?

10 A. Yeah. I tried to get out of -- we were surrounded.
11 So I tried to get out and clear out of the way.

12 Q. Did you go after the Asian guy?

13 A. I guess, yeah, that would be fair to say, but --
14 yes.

15 Q. And you didn't get punched in the eye as you were
16 going toward the Asian guy?

17 A. I would imagine I did, given the picture. I mean,
18 it happened pretty quick. I know I was hit several times.
19 That wasn't because of the sidewalk. That was from
20 somebody's hand or foot.

21 Q. The swelling of the eye?

22 A. Yes.

23 Q. You think you could have gotten punched there?

24 A. Definitely.

25 Q. Definitely didn't hit your head on the sidewalk?

1 Somebody punched or kicked you?

2 A. I'm sure my face scraped on the sidewalk as well,
3 but there was a foot. I guess you can call it a foot, a
4 kick, you know, kick, punch, and probably getting pushed up
5 against the concrete or granite. My arms and legs were all
6 cut up too. So everything, I will say, would be fair to
7 say.

8 Q. As far as what started this, did you hear something
9 about somebody's mom, somebody's mother?

10 A. After the fact, I found out that that's what was
11 said, but I don't know who it was directed at. Like I said,
12 it could have easily -- the way I understood what could have
13 transpired was as a result of -- it could have been directed
14 at one of his buddies, Bradley saying something.

15 Q. Did you hear anything?

16 A. I heard him say something. I didn't find out until
17 after the fact that that was said. So --

18 Q. He was saying something to the Asian guy?

19 A. I don't know who it was directed at.

20 Q. You just heard him say something, right?

21 A. We were all talking. So the three of us were, you
22 know, shooting the breeze. So it could have been anything
23 directed at us.

24 Q. Do you remember -- I think you testified about this,
25 you went to the hospital that night, correct?

1 A. Yes, sir.

2 Q. And do you remember Detective Casey, a police
3 officer coming to the hospital and interviewing you right
4 there?

5 A. There were two people.

6 Q. Detective Casey and Detective Bailey, correct?

7 A. Could have been.

8 Q. And they interviewed you right there in the
9 hospital; is that right?

10 A. Right.

11 Q. And you weren't drunk, you said. So you remember
12 what happened at that interview? You weren't too drunk to
13 remember, right? And you remember you told those two
14 detectives, you said, me and Clint and Bradley were walking
15 back, we were just shooting the breeze, and Bradley made a
16 joke at me. And we were walking and some guys were walking
17 by and made some kind of mama joke to me. He's my best
18 friend..

19 So what you told them was that Bradley made a mama
20 joke to you, and that they just overheard it as they were
21 walking by?

22 A. That's what I assumed when this transpired. Like I
23 said, I didn't find out about all the other things prior to
24 the girl falling into Bradley or anything of that nature.

25 Q. And you are not just being vague about it because

1 you guys started this fight and made some pretty bad
2 comments?

3 A. No, no. I mean, like I said, it wasn't -- I didn't
4 think that there was any serious animus towards anybody.
5 It's not like I heard him scream in the middle of the street,
6 you know, anything that would have or should have caused any
7 kind of uproar.

8 Q. So he just -- Asian guy just went berserk, right?

9 A. Yeah.

10 Q. For no reason?

11 A. I don't know the guy. I don't know his temperament.

12 Q. You testified that you were only able to identify
13 two people out of this -- out of all of this, correct?

14 A. Yes, sir.

15 Q. One was the Asian guy, right?

16 A. Yes, sir.

17 Q. Binh. We call him the Asian guy, Binh?

18 A. Binh.

19 Q. And the tall, skinny, white male with the dark
20 T-shirt, six-foot plus, darker hair, right, the guy that the
21 police first arrested that night?

22 A. Yes.

23 Q. Did they show you him that night and you picked him
24 out and said, that's one of the guys? Do you remember?

25 A. I can't remember, no.

1 Q. But you are sure that that's the two -- so we know
2 who we are talking about -- Asian guy and the white guy that
3 got arrested, tall guy that got arrested that night?

4 A. Yes, I can identify them both.

5 Q. And let me go back to that interview at the
6 hospital, all right, where you weren't drunk. This just
7 happened, like, within an hour or so maybe. It's fresh in
8 your mind. And the police, they asked you, detective asked
9 you, who struck your friend? Right? And do you remember
10 saying, I believe it was the Asian guy. It was either -- I
11 believe it was either the Asian gentlemen or the tall, white
12 guy, one of those two, those two were the first in our
13 general direction, closest to us. Do you remember saying
14 that?

15 A. Yeah, something of that nature. We will call it
16 that if that's what is on the--

17 Q. I need exactly what you said.

18 A. Well, if you read it, that's probably verbatim what
19 I said then.

20 Q. That's why I need answers. I will read again: Who
21 struck your friend?

22 I believe it was the Asian guy. And then a few
23 minutes, it was either I believe it was either the Asian
24 gentleman or the tall, white guy, one of those two. Those
25 were the first two to be in our general direction closest to

1 us.

2 Those are the exact words you said when they asked
3 you who struck Clint?

4 A. Yes. Well, did they ask me who struck Clint or who
5 struck Bradley?

6 Q. Well --

7 A. Because --

8 Q. When the police are interviewing you, who are they
9 looking for?

10 A. I don't --

11 Q. Do you remember saying this happened, after you made
12 that comment: It was either the Asian guy or the tall, white
13 guy.

14 Detective said: So one of them hit your friend and
15 he fell.

16 And you said: He fell immediately. And that gets
17 the point when they were coming after.

18 All right. So you were talking about Clinton; is
19 that right?

20 A. Yeah, I believe. I don't have that in front of me,
21 but if you want to read it again.

22 Q. Would it help you if you read it, if you saw it?

23 A. Sure.

24 Q. Just in writing?

25 A. If I may say, the context is pretty important here.

1 I mean, I was still in the process of being treated. You
2 know, this happened in a matter of, we will call it, a
3 minute, minute and a half, everything from, you know, 45
4 seconds. And I'm in the hospital being treated. And they
5 are trying to condense these questions down into me. I can
6 barely see. I'm all cut up. And they are coming in and
7 asking me these questions.

8 And, you know, I know they needed to find this stuff
9 out, but I don't know if -- you know, I'm trying to make
10 sense of everything while this was going on was difficult,
11 but if you want to --

12 MR. SIMPSON: Beg the Court's indulgence. If I may
13 approach.

14 (Dft. Exh. 1, Daniel Hennessey's statement, was
15 marked for identification.)

16 Q. I'm going to show you Defense Exhibit 1 for ID.
17 Read the page and see if that refreshes your memory?

18 A. From the top?

19 Q. Yeah.

20 A. "Kind of, trying to protect myself, I couldn't
21 identify them other than the Asian gentleman."

22 MR. CORVEY: Wait.

23 MR. KING: I'm sorry. Read it to yourself. Just to
24 see if it refreshes your memory about what you said that
25 night.

1 BY MR. KING:

2 Q. Is that refreshing your memory at all?

3 A. Yeah.

4 Q. You were talking about Clinton, right? You are
5 talking about the one that hit your friend. He fell. He
6 fell immediately. You are talking about Clinton, right?
7 That's who they are asking you about, the guy that was in the
8 hospital, who hit that guy, right?

9 A. Yep.

10 Q. So you narrowed it down to two people right after
11 the accident. When you weren't drunk. You narrowed it down
12 to the Asian and that tall, white guy, right?

13 A. Yeah, at the hospital, that's what I said.

14 Q. Okay. Then do you remember you met with the police
15 later, right?

16 A. Yeah.

17 Q. April 29th, 2014, 11:20 a.m., down at the police
18 station?

19 A. Yes.

20 Q. You met with Detective Burckhardt and Krasowski?

21 A. Yep.

22 Q. And do you remember then when Detective Burckhardt
23 asked you: Did the Asian guy drop it, or, no?

24 And you said: I don't know, because he got hit from
25 the side there. I don't know how he could have done it.

1 A. Right.

2 Q. Because he's engaging you up front, right?

3 A. Yes.

4 Q. So first being at the hospital, you narrowed it down
5 to two people, white guy or Asian guy, tall white guy or
6 Asian guy, right?

7 A. The people I could identify.

8 Q. No. According to your statement, they asked you:
9 Who punched him?

10 Not just who was out there. Do you remember --
11 isn't that what you said?

12 A. Yes.

13 Q. You narrowed it down to two people who hit Clinton,
14 Asian guy, tall, white guy that got arrested, right? Then
15 second interview, you eliminated the Asian guy; is that
16 right?

17 A. Yeah.

18 MR. KING: No further questions.

19 THE COURT: All right. Redirect?

20 MR. CORVEY: Briefly, Judge.

21 REDIRECT EXAMINATION

22 BY MR. CORVEY:

23 Q. So, I want to get back to this first interview you
24 guys talked about at the hospital. You testified earlier
25 that you weren't that intoxicated, but you had been beaten

1 up. Are you getting treated?

2 A. Yeah. I mean, the nurse -- I believe they had
3 nurses coming in while they were trying to talk to me. They
4 had me hooked up, I think, you know, to whatever machines.

5 Q. And between all that, the detectives are talking to
6 you?

7 A. Yes.

8 Q. Safe to say, it's kind of confusing what's going on?

9 A. Very much so..

10 Q. After you had a chance to kind of reflect on what
11 happened, piece it back together, did things become a little
12 bit more clear to you?

13 A. Yeah. I actually had time to stop and take note of
14 what actually just happened.

15 Q. Instead of being asked questions while nurses are
16 treating you, you can barely see, you are bleeding, you are
17 shocked about what just happened.

18 Okay. So when you went back and talked to
19 detectives a few days later, safe to say you were in a much
20 better place to answer their questions and kind of reflect
21 about everything that happened?

22 A. Yes.

23 Q. And when you were back there, did you end up telling
24 detectives who hit him, or did you say, I can't tell you who
25 threw the punch?

1 A. I said, I can't identify who threw the punch. I
2 don't know who did it. I saw a connection -- somebody's hand
3 make a connection to the back side of his head.

4 Q. Still here today, you are not sure who threw the
5 punch?

6 A. No.

7 Q. Okay. Now, you are fairly sure about where people
8 were positioned. So I do want to talk a little bit about
9 that. You testified earlier that at the moment that you saw
10 Clinton get struck, the Asian guy, Binh, is basically right
11 in front of you, correct? And the taller, white male you
12 identified, Peter, he's kind of in front of you to your side,
13 if I can call it your two o'clock; is that fair?

14 A. Yeah.

15 Q. Okay. So at any point, while all of this was
16 happening, when Binh is in front of you and Peter is behind
17 you, did you see this guy hit you? Did you see him hit
18 Bradley?

19 THE COURT: Ask your questions again.

20 Q. Did you see him hit you?

21 A. No.

22 Q. Did you see him hit Bradley?

23 A. No.

24 Q. Could he have hit Clint?

25 A. Yes. If he was there, yes, he could have, because I

1 didn't see him hit either one, me or --

2 Q. Last thing I just kind of want to touch on, and I
3 think it's important, earlier you testified that you didn't
4 see Clinton -- you didn't think he saw it coming?

5 A. He definitely didn't see it coming.

6 Q. So it came from behind him?

7 A. Yeah, or outside of his periphery where he didn't
8 see it.

9 Q. So you didn't see someone run across the street and
10 hit him? It came from behind him on the sidewalk?

11 A. Yes, yes, definitely.

12 MR. CORVEY: No further questions.

13 THE COURT: All right. You may step down.

14 Ladies and gentlemen, I think we are going to go
15 ahead and take our break for the morning. We will take a
16 15-minute break. Give you an opportunity to take a break,
17 get a drink. Do not discuss the case at this point in time.
18 Don't conduct any independent investigation. We will have a
19 short break and bring you out in a little bit. Thank you
20 very much.

21 (Whereupon, the jury leaves open court at 11:32
22 a.m.)

23 THE COURT: All right. Before we recess, anything
24 further from the State at this point?

25 MR. SIMPSON: No, Your Honor.

1 THE COURT: Anything further from the State?

2 MR. SIMPSON: No, Judge. Thank you.

3 THE COURT: Anything further from the Defense?

4 MR. KING: No, Your Honor.

5 THE COURT: Let's bring the jury in.

6 (Whereupon, the jury returns to open court at 12:01
7 p.m.)

8 THE COURT: Ladies and gentlemen, welcome back. We
9 are ready to resume the trial of the case.

10 Mr. Simpson, you can state and call your next
11 witness.

12 MR. SIMPSON: Thank you, Your Honor. The State
13 calls Binh Ton.

14 BINH TON,
15 having been duly sworn, testifies as follows:

16 THE CLERK: If you could please state your first and
17 last name and spell your last loudly and clearly into the
18 microphone for the record.

19 THE WITNESS: My name is Binh Ton. Last name is
20 T-o-n.

21 DIRECT EXAMINATION

22 BY MR. SIMPSON:

23 Q. Mr. Ton, good afternoon.

24 A. Good afternoon.

25 Q. We've met before, correct?

1 A. Yes, sir.

2 Q. Before we even start talking about you and who you
3 are, I want to get something out of the way. Are you happy
4 to be here today?

5 A. Let me tell you, I'm really happy to be here today.

6 Q. Are you being a bit sarcastic with me?

7 A. I am.

8 Q. Is this a difficult process for you to talk about?

9 A. Yes, sir.

10 Q. Okay. Nevertheless, even though it is difficult, is
11 it your intention today to follow the oath you just took and
12 be honest with this jury and the people present in the
13 courtroom?

14 A. Yes, sir.

15 Q. All right. Having covered that, let's hear a little
16 bit about you, if you don't mind. Where are you from?

17 A. Vietnam.

18 Q. Where did you grow up?

19 A. Here in Charleston.

20 Q. What area in Charleston?

21 A. Mount Pleasant.

22 Q. Where did you go to high school?

23 A. I went to Wando.

24 Q. Do you have any children?

25 A. I do.

1 Q. And that's somewhat recent development in your life,
2 isn't it?

3 A. Yes, sir.

4 Q. And how many?

5 A. I have two.

6 Q. Boys or girls?

7 A. One of each.

8 Q. Congratulations, by the way. That's a big deal, I
9 know.

10 A. Thank you.

11 Q. Went through it myself recently.

12 I want to ask you some names to just have you sort
13 of let us know if you know these people and how long you've
14 known them. We will start with what I am sure is tough. Do
15 you know the gentleman sitting at the far right of this table
16 here?

17 A. Yes.

18 Q. Who is that?

19 A. Ellis.

20 Q. And how long have you known him?

21 A. On and off a few years.

22 Q. On and off for a few years. Okay. Fair to say you
23 were friends at a time in your life?

24 A. Yes, sir.

25 Q. What about an individual named Peter Dudinyak, do

1 you know him?

2 A. Yes, sir.

3 Q. And how long have you known him?

4 A. I've known him since I moved here, so 16 years.

5 Q. And could you answer that question again? How long
6 have you known Pete?

7 A. I've known Peter for about 17 years.

8 Q. Okay. And is Peter a friend of yours as well?

9 A. Yes, sir.

10 Q. Does Peter have sisters and brothers?

11 A. One of each.

12 Q. And who is that?

13 A. Jake and sister sitting back there. I just can't
14 think of her name right now. Kelly. Kelly.

15 Q. I should have asked you --

16 A. Sorry, Kelly.

17 Q. I should have asked you as well. Do you have any
18 sisters and brothers?

19 A. I do.

20 Q. How many?

21 A. Brother and sister.

22 Q. And what are their names?

23 A. My little sister's name is Yen and my little
24 brother's name is Min.

25 Q. And they all grew up in Mount Pleasant with you?

1 A. Yes, sir.

2 Q. Tight family?

3 A. Yes.

4 Q. What about a girl named Regina, Regina Harding, do
5 you know her?

6 A. I do.

7 Q. And describe to the jury sort of your relationship
8 with her, your history with her.

9 A. Well, she was in my ESO, which is English as a
10 second language class, back in high school. So that's how I
11 know her.

12 Q. Now, were you always really good friends or did you
13 sort of know each other in high school?

14 A. We weren't really good friends, but, yeah, just had
15 class together.

16 Q. We may come, through the course of your testimony,
17 to other individuals too. I just want to sort of get to know
18 a few names. You know why you are here today, correct?

19 A. Yes, sir.

20 Q. If we can, we are going to go ahead and get right to
21 that. I want to you to describe, starting from early that
22 evening, your night on Friday, April 25th, 2014, to the jury.

23 A. So --

24 Q. We are starting at the beginning.

25 A. All right. So I got off work that day. Regina and

1 I was meeting up.

2 Q. Where do you work?

3 A. At that point, I was working at -- in Walmart at a
4 nail salon. So I got you off work. I met up with Regina.

5 Q. And you had already explained that you went to high
6 school with Regina. Had you seen her in a long time?

7 A. I had not. So I was working there in Walmart. So I
8 run into her in there and we just start talking. So I had
9 not seen her in a while. I believe she moved away, so ...

10 Q. Was this a date scenario or kind of just hanging
11 out?

12 A. Just hanging out.

13 Q. Okay. Were you interested in her at all
14 romantically? Not trying to pry.

15 A. Oh, sure.

16 Q. And what did you do when you got off work?

17 A. Well, we met up, and we had a couple of drinks. And
18 I guess we went downtown to the Silver Dollar.

19 Q. And who all -- were you meeting some people at the
20 Silver Dollar at that time?

21 A. It was quite a bit of people there.

22 Q. And if you could, just -- I know it's been a while,
23 but if you could just name the people that you remember that
24 were there that night?

25 A. Me, Regina, Ellis, Peter, Jay, Andrew, Becca --

1 Q. What's Andrew's last name?

2 A. I'm not sure. I'm not sure.

3 Q. You said Becca. I didn't mean to interrupt.

4 A. Becca, Sarah. There was quite a bit of people
5 there, just the people that I remember.

6 Q. And what bar was this again?

7 A. Silver Dollar.

8 Q. And where is the Silver Dollar?

9 A. Morris, somewhere downtown.

10 Q. Okay.

11 A. I'm not familiar with the names and stuff like that.

12 Q. Is it sort of that bar district downtown where
13 everything is?

14 A. Midtown.

15 Q. So good time at Silver Dollar?

16 A. Sure.

17 Q. Anything of note happen there, any drama or anything
18 of that nature, or just a normal night?

19 A. Just a normal night out.

20 Q. Now, at some point, you decided to leave the Silver
21 Dollar?

22 A. Yes.

23 Q. And why, for starters?

24 A. Just to go. It was getting close to closing time.
25 It was around two o'clock.

1 Q. It was getting close to that two o'clock cut-off
2 when you decided to leave? And who did you leave with?

3 A. I was walking with Regina, but we all kind of left
4 together, all just left the bar heading back to Mount
5 Pleasant.

6 Q. When you say "we all", who are you referring to
7 then?

8 A. Me, Regina, Peter, Ellis, Jay, everyone that I just
9 named.

10 Q. Okay. At this point in time, you had been drinking
11 that night, right?

12 A. Yes, sir.

13 Q. Were you intoxicated?

14 A. I was buzzing, yeah.

15 Q. Okay. So we've been asking everyone just say scale
16 of one to ten, if an one is one beer and a ten is just
17 hammered, where about on that spectrum?

18 A. Seven, eight.

19 Q. You would say you were about a seven? And you are
20 with Regina, correct?

21 A. Correct.

22 Q. You know, again, nobody is meaning to embarrass
23 anybody here, but we have to ask, what level of intoxication
24 did you perceive Regina to be in?

25 A. I'm not sure.

1 Q. Did she seem impaired to you at all when you were
2 leaving the Silver Dollar?

3 A. She was, yeah.

4 Q. Okay. Again, I'm not trying to embarrass anyone.
5 Fair to say she had been drinking that night as well?

6 A. Correct.

7 Q. At this point I want to ask you, just as slowly as
8 possible, I may have to interrupt from time to time just to
9 stop you, but describe to this jury what occurred as you guys
10 were leaving the Silver Dollar.

11 A. So as we were walking down the street, Regina
12 tripped up and fell into one of the five guys that was
13 standing on the corner.

14 Q. Did you know these guys?

15 A. I don't.

16 Q. And you say they were on a corner?

17 A. Yes, sir.

18 Q. Okay. She tripped and fell into them, one of
19 them?

20 A. Correct.

21 Q. And what did that guy do that she fell into?

22 A. He was holding on to her and was making a joke about
23 it, saying that, look, there's an angel just fell out of the
24 sky.

25 Q. Okay. You perceived him to be getting a little

1 flirty with her?

2 A.. He was holding on to her.

3 Q. How did that make you feel?

4 A. Well, you know, I asked him to let her go, you know.
5 And he wasn't doing it.

6 Q. And that sounds like something that would make
7 someone angry; is that fair to say?

8 A. Correct.

9 Q. Were you angry at him?

10 A. I was pretty mad, just, you know, just let the girl
11 go.

12 Q. Did you let him know that you were mad?

13 A. No, I didn't sit there and say, hey, I'm really mad;
14 I did not.

15 Q. Did he say something to you that made you mad?

16 A. He did. He was threatening -- excuse me, excuse my
17 language. He was threatening to fuck her and rape my mom.
18 And asked me what was I going to do about it.

19 Q. Sounds like an occurrence that would make anyone
20 justifiably upset, correct? Were you upset?

21 A. I was.

22 Q. You mentioned that you perceived this to be a group
23 of about five guys, correct?

24 A. Yes, sir.

25 Q. And you are there with Regina, correct?

1 A. Yes, sir.

2 Q. Where are your guys, so to speak, for lack of a
3 better word, at that point?

4 A. They were across the street from me. So we were
5 standing on this side of the street and they were a bit ahead
6 of me.

7 Q. The way you are perceiving the situation is, it's
8 just you against more than one guy; is that fair to say?

9 A. Correct.

10 Q. But you know you have friends nearby?

11 A. Correct.

12 Q. So what do you do?

13 A. Well, I yelled out for help. You know, I yelled
14 out. And at that point, Peter, Ellis and Andrew ran over.

15 Q. To help?

16 A. Right.

17 Q. And what happened then? What did you observe then?

18 A. One of -- well, as they were running over, one of
19 the gentlemen on the other side got in my face, you know, and
20 asked me what I was going to do, you know, oh, you are going
21 to call your friend over. And at that point, I guess, yeah,
22 I called out for help. And my friend ran over. And Ellis
23 just hit one of the dude that was standing there in my face.

24 Q. When Ellis hit this dude, how did the dude react
25 that Ellis hit?

1 A. He fell.

2 Q. Did he go directly down?

3 A. He fell to the ground, yes, sir.

4 Q. Did it seem like he was bracing his fall?

5 A. I did not focus. I wasn't focusing in on that, so I
6 don't know.

7 Q. But he went down and was out for the rest of the --

8 A. I don't know, sir. I don't know.

9 Q. Fair enough. But you observed Ellis come up, hit,
10 and the guy went down?

11 A. Yes, sir.

12 Q. What happened then, from your perspective?

13 A. Everyone was sort of fighting. And I just remember
14 the biggest guy on that side run towards me and attack me.

15 Q. Okay. I want to stop you and ask you an important
16 question. The guy that came towards you was not the guy that
17 Ellis had hit, correct?

18 A. Correct.

19 Q. And you guys kind of tangle up? He came to you and
20 you guys tangled up?

21 A. He picked me up and threw me in the bushes. And
22 that's all I remember. I don't remember much of the
23 fighting. It was just all really happened really fast.

24 Q. Happened quickly, right? If I showed you a -- if
25 the answer is no, it's fine. If I showed you a picture of

1 the person's face --

2 A. Honestly, I would not recognize him.

3 Q. Okay. Okay. Again, there was a guy sort of engaged
4 with you. And when the dude went down, he came at you and
5 took you into the bushes, right?

6 A. I don't remember the detail of it.

7 Q. But the guy that would have come and engaged with
8 you was not the guy that Ellis hit?

9 A. Correct.

10 Q. You just said to the jury that all of this happened
11 pretty quickly, right?

12 A. Yes, sir.

13 Q. Let me stop you there. It's not my intention to
14 make you uncomfortable, but to come in and say that you saw
15 Ellis hit the guy and the guy went down, is that the easy
16 thing for you to come in to say?

17 A. No, it's not.

18 Q. Is that because Ellis is your friend?

19 THE COURT: You need to give a verbal response?

20 THE WITNESS: Correct.

21 BY MR. SIMPSON:

22 Q. Did you see at any time in the course of the
23 evening -- you mention that Peter was there, right?

24 A. Yes, sir.

25 Q. Did you see Peter knock anyone out that night?

1 A. No, I did not.

2 Q. Did you see Andrew knock anybody out that night?

3 A. No, I did not.

4 Q. So you had said to the jury this all happened very
5 quickly?

6 A. Yes, sir.

7 Q. When all that was clear, you said you went into sort
8 of the planter boxes, the bushes; is that fair?

9 A. Correct.

10 Q. And what happened then?

11 A. I kind of blacked out a little bit when he slammed
12 me to the ground. And when I got back up, I pushed him off
13 me. And that's when I saw Peter was standing there. And
14 there was this girl hitting Peter, pointing a finger and
15 saying, it's him, it's him, it's him.

16 Q. Let me stop you right there. This girl is really
17 loudly pointing at Peter and saying, it's him, it's him, it's
18 him. What do you think she means when she's saying it's him?

19 A. I have no idea. I was unconscious, just waking up.

20 Q. Say if I was standing on King Street and just turned
21 around to see what was going on, I would say see some girl
22 pointing at Peter screaming, it's him, it's him?

23 A. Right.

24 Q. Did you see Peter knock anybody else out that
25 night?

1 A. I didn't.

2 Q. From what you did perceive, was she right when she's
3 saying it's him?

4 A. I have no idea. She was just getting into his face.
5 And I just came over to him and got her out of the way.

6 Q. Let's take the jury through that. You get up and
7 you go over. She is physically grabbing Peter?

8 A. I'm not sure. I just remember she was all in
9 Peter's face.

10 Q. And so what did you do?

11 A. I just tell her, gently told her to come on, get out
12 of the way. I helped Peter get out of the way, and I left.

13 Q. Was Peter trying to kind of get her out of the way
14 too?

15 A. I wasn't sure.

16 Q. Did Peter hit that girl?

17 A. I'm not sure. I don't believe so.

18 Q. Okay. Did you see Peter --

19 A. No, I did not.

20 Q. -- be inappropriately physical with that girl at
21 all?

22 A. I did not.

23 Q. And where -- what happened from there?

24 A. Well, I got to -- I was parked a couple steps from
25 the incident. I got to my car. And I don't remember exactly

1 who was driving to get to my car, but I remember there were
2 people trying to get into my car. And I did not allow anyone
3 to get in my car. So I drove away. And I got to the stop
4 sign.

5 Q. What car were you in that night?

6 A. Lexus.

7 Q. Like an SUV?

8 A. SUV, yeah. So I got to the stop sign and I sat
9 there for a second to catch up what was going on. And I make
10 a right turn and I stop again. And I decided to go park in a
11 parking lot and go back to the scene.

12 Q. And what did you find when you got back to the
13 parking lot?

14 A. Well, I got back there because, you know, I didn't
15 want to leave the people that come with me down there. So
16 when I got back there, I saw Jake and Sarah in the parking
17 lot.

18 Q. Jake is Peter's brother?

19 A. Yes, sir.

20 Q. And Sarah is a female that he was with that night?

21 A. Yeah.

22 Q. Were they alone in the parking lot?

23 A. I'm not sure who else was there. That's just what I
24 remember.

25 Q. Did you pick them up?

1 A. No, I stood there and talked to them for a second.
2 And Peter was across the street getting arrested. So I don't
3 know why, but I decided to walk over there. I got about
4 halfway and Regina told me that Peter was getting arrested,
5 don't go over there. At that point, I turned back around and
6 went back in my car.

7 Q. Okay. Where did you go from there?

8 A. I was going to go back to Mount Pleasant, but I'm
9 not sure, someone asked to go pick up Becca. So I did went
10 and picked up Becca and went back to Mount Pleasant.

11 Q. I know you don't recall the exact -- do you recall
12 the exact address that you picked up Becca from?

13 A. The address?

14 Q. Yes..

15 A. No, I don't.

16 Q. Was it a house, apartment, a business?

17 A. It was a residence.

18 Q. A residence? Downtown?

19 A. Downtown.

20 Q. And where do you all go from downtown?

21 A. We went to -- from there, I'm not sure if I drop
22 anyone off, but I know that we went back to Andrew's house.

23 Q. Did you talk to Ellis at all that night?

24 A. I did not.

25 Q. Did you have any contact from Ellis after this event

1 occurred?

2 A. Right after?

3 Q. That's my question.

4 A. I'm not sure if the day after or -- I'm not sure
5 which day, but I did.

6 Q. Can you describe that contact again slowly. I might
7 interrupt you, but describe the nature of that contact to the
8 jury after this occurred.

9 A. When I met up with Ellis?

10 Q. Yes.

11 A. I went over to his apartment. And we were just --

12 Q. Did you just decide to go over there or were you
13 asked over there?

14 A. I was asked.

15 Q. By whom?

16 A. Ellis.

17 Q. And you went there?

18 A. Yes, sir.

19 Q. And what transpired when you got to Ellis's
20 apartment?

21 A. We were just talking. He wanted to hit me in my
22 face.

23 Q. Let's be -- did you know why he wanted to hit you in
24 your face?

25 A. No.

1 Q. He didn't describe to you sort of -- he didn't call
2 you over there just to jump you?

3 A. He didn't call me over there to jump me, but I hang
4 out for a little while, and he asked to hit me in my face.
5 And I did not allow that to happen.

6 Q. And he didn't explain to you why he wanted to hit
7 you in your face?

8 A. No, he did not.

9 Q. That seems like a very odd request that you wouldn't
10 have asked, why do you want to hit me in my face?

11 A. Well, he didn't explain it. I did ask him.

12 Q. What was your understanding of the "why" part?

13 A. So it looked like self-defense.

14 Q. Did you both know that Peter was in jail at this
15 point?

16 A. I did.

17 Q. And is it fair to say that among the friends that
18 you were talking about, that you perceived that it was fair
19 that Peter was in jail at this time?

20 MR. KING: Objection. Speculation.

21 THE COURT: What?

22 MR. KING: Speculation.

23 BY MR. SIMPSON:

24 Q. To you, personally.

25 THE COURT: Overruled.

1 BY MR. SIMPSON:

2 Q. To you personally did you perceive that that was a
3 fair thing for Peter to be jail at this time?

4 A. At the beginning, I didn't know what -- I didn't
5 know why Peter was in jail. But when I got the news that it
6 was an assault, I did not know who got hurt or what. I
7 didn't know what happened, you know. I didn't know that
8 someone died. I didn't know any of that. So I'm not sure
9 how to answer that.

10 Q. Okay. Ellis contacts you. You think it may have
11 been the next day, but you are not sure, right?

12 A. Right.

13 Q. Soon afterwards, though?

14 A. Right.

15 Q. Ellis asks you to come to his house; is that
16 correct?

17 A. Correct.

18 Q. And he -- explain how this happened. He
19 propositioned you, like, please let me punch you in the face?
20 He obviously didn't jump you, right?

21 A. Right.

22 Q. So how did he make that proposition to you?

23 A. I don't remember exactly how he did.

24 Q. Just to back up. You saw Ellis punch a person and
25 you saw that person go down?

1 A. Correct.

2 MR. SIMPSON: Court's indulgence.

3 THE COURT: All right.

4 BY MR. SIMPSON:

5 Q. Mr. Ton, I apologize, I left something out. There
6 came a time where you did go to the police, correct?

7 A. Correct.

8 Q. And what was your intention in going to the police?

9 A. Because they asked me to, so I just ...

10 Q. You got a call from them?

11 A. Correct.

12 Q. Were you 100 percent forthright with the police
13 right when you walked in the door?

14 A. From what I can remember, from what I can remember.

15 Q. Did you walk in and say, Ellis knocked a guy out?

16 A. I did not want to, but ...

17 Q. Again, we will talk about this. This is hard,
18 right?

19 A. Right.

20 Q. And it's difficult to come in, even -- when it's a
21 friend of yours; is that fair?

22 A. Very.

23 Q. And so when you went to speak with the police, you
24 gave them a statement; is that correct?

25 A. Yes, sir.

1 Q. Were you 100 percent forthright with them right from
2 the jump, right from the get-go, or did they have to sort of
3 dig a little?

4 A. They sort of had to dig a little.

5 Q. But, ultimately, were you honest with them?

6 A. From what I can -- I told them everything that I
7 could remember. And a lot of it, honestly, I just don't
8 remember.

9 Q. Now, did they ever ask you about this contact the
10 day after?

11 A. They never did.

12 Q. They never did? And you didn't offer that up to
13 them, correct?

14 A. Right.

15 Q. Was that offered to us in a meeting that took place
16 between us later?

17 A. Yes, sir.

18 Q. But when you took the stand at the very beginning,
19 you took an oath, right?

20 A. Did I what?

21 Q. Right when you sat down, you took an oath to be
22 honest and truthful, correct?

23 A. Yes, sir.

24 Q. Are you trying your best today to these people to be
25 honest and truthful with them?

1 A. Yes, sir.

2 Q. Did Ellis Clarke ask if he could punch you in the
3 face the next day or --

4 A. I'm not sure if it was the next day or the
5 following. I don't remember exactly which day.

6 Q. Was it your understanding that request, at the very
7 least, had something to do with this case?

8 A. Ask that again.

9 Q. That request that he punch his friend in the face,
10 that had something to do with what had happened?

11 A. Yes, sir.

12 MR. SIMPSON: Court's indulgence.

13 THE COURT: All right.

14 MR. SIMPSON: Mr. Ton, thank you for being here.
15 Please answer any questions that Mr. King has.

16 THE WITNESS: Okay.

17 CROSS-EXAMINATION

18 BY MR. KING:

19 Q. Mr. Ton, you testified that you saw Ellis punch
20 somebody; is that correct?

21 A. Correct.

22 Q. You don't know who he punched?

23 A. I do not know who he punched.

24 Q. Couldn't identify who that person is?

25 A. No.

1 Q. So what started all of this you said was Regina fell
2 into one of the guys, right?

3 A. Correct.

4 Q. They were holding on to her, grabbing on to her,
5 wouldn't let her go?

6 A. They were holding on to her, correct.

7 Q. Do you remember if Regina had bruises the next day?

8 A. She said she had bruises on her arm from it.

9 Q. And you told them to let her go?

10 A. Correct.

11 Q. Did you say it more than once?

12 A. I have.

13 Q. Do you remember how many times you told them to let
14 her go?

15 A. I don't know.

16 Q. More than once though?

17 A. More than once.

18 Q. They didn't let her go?

19 A. They did not.

20 Q. And you said they made that comment about your
21 mother, right?

22 A. Right.

23 Q. He didn't say: I had your mother in my dreams?

24 Is that what he said to you?

25 A. No, no, he did not say that.

1 Q. He said something a lot worse?

2 A. He said what I said earlier.

3 Q. Right. Did you just go berserk for no reason?

4 A. Did I just go what?

5 Q. Berserk for no reason?

6 A. I'm not sure of that term that you just used.

7 Q. Did you just get really angry and act crazy for no
8 reason?

9 A. I did not.

10 Q. Were they being -- you said you thought there were
11 five other guys or something out there, right?

12 A. Correct.

13 Q. Did you feel they were being aggressive with you?

14 A. I wouldn't say aggressive, but I felt threatened.

15 Q. You felt threatened. Okay. Did they come at you at
16 some point? Did -- one of them came at you in a threatening
17 way; is that right?

18 A. Correct. He got in my face. He got in my face,
19 yes.

20 Q. How tall are you?

21 A. Are how tall am I?

22 Q. Yes.

23 A. 5' 6", 5' 7".

24 Q. How much do you weigh?

25 A. 150 pounds.

1 Q. Are these guys bigger than you, same size, smaller?

2 A. I will say they were bigger than me, I'm sure.

3 Yeah, they were.

4 Q. So you testified that you've known Peter for 16
5 years?

6 A. About 16, 17 years, yes, sir.

7 Q. You've known him a long time?

8 A. I've known him since I first moved here to the US.

9 Q. So one of your oldest friends in the United
10 States?

11 A. Correct.

12 Q. Do you know Peter's girlfriend at the time?

13 A. Yes, I do.

14 Q. Remember?

15 A. Yeah, Becca.

16 Q. Becca was like a sister to you?

17 A. She was. She and my sister are really good friends,
18 so she is like a sister to me.

19 Q. And you said you've only known Ellis on and off for
20 a few years?

21 A. Correct.

22 Q. So you are testifying you saw Ellis punch a guy,
23 correct?

24 A. Correct.

25 Q. But you are not saying that Ellis is the guy that

1 punched the guy, the guy who ended up dying? Are you saying
2 that today?

3 A. I don't know. To this point, I mean, I don't know
4 who -- I mean, I don't know.

5 Q. Because if you knew Ellis did it, you would have
6 went and told the police to try to help Peter, wouldn't you,
7 because Peter was in jail?

8 A. I didn't -- ask that question again.

9 Q. If you knew for sure that Ellis is the guy who
10 punched the man who died, you would have told that to the
11 police, right?

12 A. Like I said, I didn't know who passed away. I just
13 heard that one of the guys was in a coma and eventually
14 passed away.

15 Q. So you went to the police, I think it was that
16 Monday, April 28th, about 3:30, before you had to go to work;
17 do you remember that?

18 A. I'm not sure of the date, the exact date and the
19 exact time.

20 Q. But you remember meeting with Detective Kosarko down
21 at the police station?

22 A. I am not sure of his name, but I remember meeting
23 with the detectives.

24 Q. And didn't you tell Kosarko -- or didn't you tell
25 that officer at that meeting that you saw Ellis hit a guy who

1 was coming after you, and then you were attacked, and then
2 you were out? Does that sound about right?

3 A. Correct.

4 Q. So --

5 A. A guy got tackled into the bushes I know about
6 afterwards, yes.

7 Q. So did you tell Kosarko that you saw Ellis hit a guy
8 who was coming after you, and then you were attacked, and
9 then you were out, like knocked out, something like that?

10 A. Something like that.

11 Q. You told Kosarko this, that Ellis comes over, hits
12 the dude that's coming after you? That is what the detective
13 said. And you said, that's right. Do you recall that?

14 A. Correct. Not the person who came after me, that
15 tackled me to the bushes. It's the person I said earlier
16 that got in my face.

17 Q. Okay. He hit the guy who was all up in your face?

18 A. Correct.

19 Q. And you don't remember -- the guy that you saw Ellis
20 hit, you didn't see what happened to him afterwards?

21 A. Correct. Well, he fell to the ground, but I did not
22 see if he was moving around or unconscious. I did not see
23 any of that. I just know that he dropped to the ground.

24 Q. You don't know whether he stayed on the ground or
25 ended up getting right back up? You don't know?

1 A. I don't know.

2 Q. And did you get knocked out at some point?

3 A. I did.

4 Q. Go out?

5 A. I did.

6 Q. You didn't hear Ellis brag about knocking somebody
7 out that night?

8 A. I did not.

9 Q. Or saying that he hit the guy and Peter didn't?

10 A. I did not.

11 Q. Now, you said after this happened, you were parked
12 on Morris Street, is that right, your car?

13 A. I'm not sure of the exact name of that street, but I
14 parked on the street that the incident happened.

15 Q. And some of your other friends were over in another
16 parking lot, right, where Ellis was parked?

17 A. Yeah. I parked on the side of the street. And the
18 parking lot is right there.

19 Q. Now, so after all of this was over, you went back
20 over to that parking lot and met up with Jake and Sarah; is
21 that correct?

22 A. Correct.

23 Q. And Ellis wasn't there too at that time?

24 A. I'm not sure. I just -- I don't remember.

25 Q. Ellis may have been there at that time?

1 A. Correct.

2 Q. So you are testifying today, for the first time
3 you've said something that you've never told, I guess,
4 anybody other than the solicitor about this, Ellis wanting to
5 punch you in the face, right?

6 A. Correct.

7 Q. You never told that to the police before?

8 A. I did not. I did not tell that to the detective the
9 first time because he never asked that before. But the other
10 day, when I went to see the detective the other day, last
11 week --

12 Q. Last week?

13 A. -- he did ask, so I did told him.

14 Q. Okay. So you bring that up last week?

15 A. Correct.

16 Q. Two years after this happened, the first time to
17 anybody?

18 A. Correct.

19 Q. And what you are testifying to is that Ellis called
20 you up to come over to his house?

21 A. Yes, sir.

22 Q. And said, let me punch you in the face?

23 A. Yes, sir.

24 Q. No explanation?

25 A. Didn't happen directly like that, but he did not

1 call me over, as soon as I walk in the door, let me punch you
2 in the face, but he did ask me that.

3 Q. Let me punch you in the face?

4 A. Correct.

5 Q. But nothing else was said about it, about why or
6 anything like that, right?

7 A. He did. I said, why? He said, so it looked like it
8 self-defense.

9 Q. Now you are saying he did say it would look like
10 self-defense?

11 A. I asked, and he did say that. He didn't say, let me
12 punch you in the face so looked like self-defense. He asked
13 me, let me punch you in the face. I said, why? And then he
14 said, so it looked like it was self-defense.

15 Q. So you end up leaving from downtown, right?

16 A. Correct.

17 Q. After this is over, in your car?

18 A. Yes, in my dad's Lexus.

19 Q. Okay. Dad's Lexus. And do you remember downtown
20 who got in the car with you when you left downtown?

21 A. It was me, Regina, Andrew, Jay, Sarah, and I believe
22 that's it. And we went and picked up Becca.

23 Q. Are you sure you didn't go to Mount Pleasant and
24 Becca called and you went back and got her?

25 A. I'm not sure.

1 Q. Is that possible?

2 A. Is that possible?

3 Q. Yes.

4 A. I don't remember. I just remember going to get
5 Becca.

6 Q. Where did you go in Mount Pleasant?

7 A. Where did I go after picking up Becca? Back to
8 Andrew's house.

9 Q. You never went to your sister's house?

10 A. Andrew at that time was living with my sister.

11 Q. Okay. So that's the same thing as your sister's?

12 A. Same thing as my sister's house.

13 Q. Did you ever go into the, you know, that Percy Percy
14 Street address where Madison Martini lived? Do you know that
15 place downtown?

16 A. I don't recall it.

17 Q. Do you remember where you picked Becca up from?

18 A. I do not know.

19 Q. Did you go inside or did she just come out and get
20 in your car?

21 A. She just come out and get in the car.

22 Q. Do you know if -- and Jake was with you?

23 A. Correct.

24 Q. He was with you the whole time? He didn't go in
25 Percy Street?

1 A. I don't remember.

2 Q. Was he in the car with you, together with you the
3 whole time from the time you left downtown, picked Becca up,
4 and went back to Mount Pleasant, went to Mount Pleasant?

5 A. Who, Jake?

6 Q. Yeah.

7 A. Like I said, I don't remember if he step out of the
8 car and went and got Becca or Sarah did. I don't remember.
9 I just remember bringing him back to Mount Pleasant.

10 Q. Do you remember Jake getting in the car and riding
11 with Ellis at any point that night?

12 A. Ask that again.

13 Q. Do you remember that night when you were driving
14 around, going to pick Becca up -- let me ask you this. Where
15 was Ellis afterwards when you went to pick up Becca? Where
16 was Ellis?

17 A. I'm not sure.

18 Q. You don't know if Jake got in the car and rode with
19 Ellis back to Mount Pleasant?

20 A. I don't. I just remember having a bunch of people
21 in my car. Honestly, I'm not exactly sure who all got in my
22 car after we left the parking lot.

23 Q. Was Ellis ever in your car; do you know that?

24 A. Ellis? I don't think he was ever in my car.

25 Q. Because you told the detectives when you met with

1 them --

2 A. I think he was trying to get in my car. I think he
3 was one of the ones that was trying to get in my car right
4 after the incident happened, and I did not allow it.

5 Q. So Ellis was not in the car on any ride back to
6 Mount Pleasant, with you in your car, your dad's Lexus?

7 A. He did not.

8 Q. And you've been convicted of burglary in the third
9 degree back on May 24th of 2005; is that right?

10 A. Trespassing.

11 Q. You weren't convicted of burglary in the third
12 degree?

13 A. I thought it was trespassing that I got.

14 MR. KING: Beg the Court's indulgence.

15 THE COURT: All right.

16 MR. KING: If I may approach.

17 (Dft. Exh. 2, Binh Ton's conviction, was marked
18 for identification.)

19 BY MR. KING:

20 Q. I'm going you what's been marked as Defense Exhibit
21 2?

22 A. What is that?

23 Q. If you look at it and see if you ever remember
24 seeing that before? Is that your signature right there?

25 A. Yes.

1 Q. Says you are pleading guilty to burglary third
2 degree?

3 A. I thought it got dropped to trespassing because it
4 was by other that got charged with -- I got in trouble that
5 night.

6 Q. Does that say trespassing or burglary third degree?

7 A. Says burglary third.

8 MR. KING: That's all the questions I have.

9 THE COURT: All right. Redirect.

10 MR. SIMPSON: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. SIMPSON:

13 Q. Last thing Mr. King left with, let's talk about that
14 document he showed you. That was something that happened in
15 2004?

16 A. I'm not sure. It was a long time ago.

17 Q. How old are you today?

18 A. I'm 29.

19 Q. About 16, 17 years old when that happened?

20 A. Yes, sir.

21 Q. Does that sound about right?

22 A. Yeah.

23 Q. That was a long time ago, right?

24 A. Correct.

25 Q. Not even a senior in high school, it would seem to

1 me?

2 A. What's that?

3 Q. High school age back in shenanigans?

4 A. I'm not sure, but I remember-- I remember it was --

5 Q. Group of kids you, said right.

6 Q. Well, we don't need to dwell on it. We will move
7 on.

8 But let's get to something that was sort of
9 insinuated that is actually relevant to this, which would be,
10 was there some point in time where all you guys got together
11 and decided to enter into a conspiracy to frame Mr. Clarke?
12 Is there some meeting you guys had where you decided to lie?

13 A. No.

14 Q. Are you here today lying on behalf of anybody?

15 A. No.

16 Q. So your testimony, as you said, has been honest with
17 this jury?

18 A. Correct.

19 Q. Mr. King asked you about this previous statement
20 that you gave to the police. And you remember that. We've
21 discussed it, correct?

22 A. Right.

23 Q. Does it sound like you might have said: Ellis ran
24 up and hit the kid that was coming after him, and the guy
25 fell immediately.

1 Does that sound right?

2 A. Yeah.

3 Q. Could you describe to this jury what you mean when
4 you said "the guy fell immediately" when he was hit?

5 A. Well, he just dropped to the ground.

6 Q. Ellis hit and he went boom, down?

7 A. Right.

8 MR. SIMPSON: Mr. Ton, thank you for your time.

9 THE COURT: All right. You may step down.

10 Ladies and gentlemen, it's a good time for us to go
11 ahead and break for lunch. I'm going to excuse you to go to
12 lunch. It's 10 to 1. Let's be back at -- I will give you
13 until 2:30. Please be back at 2:30. Do not discuss the
14 case. Do not do any independent investigation into the case.
15 I hope everybody has a good lunch and we will see you back
16 then.

17 Everyone else remain seated while the jury is
18 excused.

19 (Whereupon, the jury leaves open court at 12:46
20 p.m.)

21 THE COURT: All right. Anything from the State
22 before we recess for lunch?

23 MR. SIMPSON: No, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. KING: No, Your Honor.

1 THE COURT: All right. We will be in recess until
2 2:30.

3 (Luncheon recess was taken.)

4 THE COURT: Mr. Simpson, anything from the State
5 before we proceed?

6 MR. SIMPSON: No, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. KING: No, Your Honor.

9 THE COURT: All right. Let's go ahead and bring the
10 jury in.

11 (Whereupon, the jury returns to open court at 02:33
12 p.m.)

13 THE COURT: Ladies and gentlemen, welcome back. I
14 hope everyone had a good lunch. We are ready to resume the
15 trial of this case.

16 Mr. Simpson, call your next witness.

17 MR. SIMPSON: Thank you, Your Honor.

18 The State calls Peter Dudinyak.

19 PETER DUDINYAK,

20 having been duly sworn, testifies as follows:

21 THE CLERK: If you could please state your first and
22 last name and spell your last loudly and clearly into the
23 microphone for the record.

24 THE WITNESS: Peter Dudinyak, D-u-d-i-n-y-a-k.

25 DIRECT EXAMINATION

1 BY MR. SIMPSON:

2 Q. Peter, good afternoon.

3 A. Good afternoon.

4 Q. How old are you?

5 A. 28.

6 Q. And where do you live?

7 A. I live in Mount Pleasant, off of Mathis Ferry Road.

8 Q. Did you grow up here in Charleston?

9 A. I did; I was born and raised.

10 Q. Any siblings, brothers and sisters?

11 A. I have a younger brother and younger sister.

12 Q. What are their names?

13 A. Jake and Kelly Dudinyak.

14 Q. Tell the jury a little bit about your family. Are
15 you close type of thing?

16 A. Yes. My brother and sister and I are very close.
17 We do a lot of things together, go on a lot of vacations
18 together.

19 Q. Mr. Dudinyak, have you ever been in trouble for
20 violence before?

21 A. No, sir.

22 Q. Would you consider yourself a violent person?

23 A. I do not, no, sir.

24 MR. KING: Your Honor, objection. Improper
25 character evidence.

1 THE COURT: Sustained.

2 MR. KING: Move to strike.

3 THE COURT: Strike last answer from the witness.

4 BY MR. SIMPSON:

5 Q. So lifetime resident of Charleston?

6 A. Yes, sir.

7 Q. Where did you go to school?

8 A. I went to Mount Pleasant Academy for elementary
9 school and Moultrie Middle School, Wando High School.

10 Q. Graduate from Wando?

11 A. Yes, sir.

12 Q. Are you currently employed?

13 A. I am.

14 Q. In what capacity?

15 A. I worked for a construction company called Village
16 Restoration Custom Homes.

17 Q. Full-time work?

18 A. Full-time work, yes, sir.

19 Q. Doing well?

20 A. Yes, sir.

21 Q. Let me ask you, if I could, about some other people.

22 And you just let me know if you know who I'm talking about.

23 Do you know a -- you mentioned Jake, right?

24 A. Yes, sir.

25 Q. That's your brother?

1 A. Yes, sir.

2 Q. Do you know the individual seated at the end of the
3 table here?

4 A. Yes, sir.

5 Q. And who is that?

6 A. That's Ellis Clarke.

7 Q. And tell the jury, how long have you known Ellis?

8 A. Known Ellis for a long time. We go back 15 years.

9 Q. 15 years?

10 A. 15 years or so.

11 Q. Fair to say that you had a close friendship with
12 Ellis Clarke?

13 A. Yes, sir.

14 Q. And you know why you are here today, correct?

15 A. Yes, sir.

16 Q. Is that difficult for you?

17 A. Yes, sir.

18 Q. Considering your relationship?

19 A. Yeah, I would say so.

20 Q. Happy to be here today?

21 A. Not happy for the circumstances, but ...

22 Q. So let's get to it then. I want to take you back to
23 Friday evening, April 25th, 2014. What were you just
24 generally up to that night? What were your plans for the
25 weekend?

1 A. Went down to Señor Tequila to get some foods.

2 Q. Señor Tequila, what is that?

3 A. That is a Mexican restaurant in Mount Pleasant off
4 of Coleman Boulevard.

5 Q. Who is "we"?

6 A. I had met some other friends there, but Ellis, my
7 brother, Jake and Sarah had met us up there while we were
8 maybe finished eating.

9 Q. And who's Sarah? We've got a lot of names going on.

10 A. Sarah is Jake's girlfriend at the time.

11 Q. So part of your group at Señor Tequila's is your
12 brother's Jake, his girlfriend at the time, Sarah, and
13 Ellis?

14 A. Yes, sir.

15 Q. And did you eat there?

16 A. I did.

17 Q. Were you all drinking there?

18 A. I may have had a beer there while I was eating.

19 Q. And after Señor Tequila, what did you guys do?

20 A. We headed downtown to meet up with some other
21 friends at the bars.

22 Q. Again, we will play the game again. What friends do
23 you remember meeting downtown and where?

24 A. It was Becca. We were all meeting --

25 Q. Becca, do you know a Becca's last name?

- 1 A. Becca Richards.
- 2 Q. Who, back in 2014, who is Becca Richards to you?
- 3 A. Becca Richards was my girlfriend.
- 4 Q. She's meeting you downtown?
- 5 A. Yes, sir.
- 6 Q. Who else?
- 7 A. Madison Martini, Jamie Ledwell.
- 8 Q. Who are Madison and Jamie?
- 9 A. They are friends of Becca.
- 10 Q. Did you know where Madison lived at that time?
- 11 A. Percy Street.
- 12 Q. Where is Percy Street?
- 13 A. Percy Street is downtown, right around the corner.
- 14 It's -- I believe it's off of King Street, or off of Spring
- 15 Street.
- 16 Q. That is a downtown Charleston house?
- 17 A. Yes, sir.
- 18 Q. Go on. You said Jamie.
- 19 A. Jamie Ledwell. It was a couple of other -- Matt
- 20 Keppler was there.
- 21 Q. Who was Matt Keppler?
- 22 A. Matt Keppler was Madison Martini's boyfriend at the
- 23 time.
- 24 Q. Did you know Matt Keppler well?
- 25 A. Not very well, no, sir.

1 Q. And you said you all met this group where?

2 A. We met at Midtown.

3 Q. And where is Midtown?

4 A. Midtown is on King Street.

5 Q. How did your evening go from there?

6 A. We had a couple of beers there. Then we all decided
7 to switch locations and go to the Silver Dollar.

8 Q. Silver Dollar, where is that?

9 A. That is on King Street as well.

10 Q. Okay. Sort of this whole group we've been talking
11 about moved over?

12 A. Yes, sir.

13 Q. How was the night going? Fun night?

14 A. Yeah, it was a fun night, just normal, fun night.

15 Q. Any kind of drama? Any sort of --

16 A. No, sir, no drama.

17 Q. Up to this point?

18 A. Not up to that point, no, sir.

19 Q. Are you out looking for a fight?

20 A. No, sir.

21 Q. Is that something you wanted to do that night?

22 A. No, sir.

23 Q. Did the evening progress where there was a time
24 where you left Silver Dollar?

25 A. Yes, sir. They were getting close to shutting down.

1 And usually they call last call on King Street around like
2 1:45, 1:40, depending on the size of the crowd.

3 Q. Was it around that time that sort of the group
4 decided to leave?

5 A. Yes, sir.

6 Q. And what was sort of the plan among you and your
7 friends?

8 A. Plan was to go back to Percy Street to Madison
9 Martini's house.

10 Q. You told the jury you were drinking that night?

11 A. Yes, sir.

12 Q. If you could at this point, we've been given the
13 scale, one being a beer, ten being incredibly intoxicated?

14 A. I would say five.

15 Q. You would say you were about a five?

16 A. About a five.

17 Q. So were you falling over or anything?

18 A. No, sir.

19 Q. Did you have a pretty clear head?

20 A. Yes, sir.

21 Q. And I believe you mentioned you had eaten that
22 night?

23 A. Yes, sir.

24 Q. So as this plan comes up, y'all go back to Percy,
25 does everyone just leave at the same time?

1 A. No, sir. Everyone kind of staggered out different
2 groups. Becca and Jamie had left before. I believe they got
3 a bike taxi back to Percy Street.

4 Q. Becca, your girlfriend?

5 A. Becca, my girlfriend.

6 Q. And Jamie?

7 A. And Jamie, her friend, had left before us. My
8 brother Jake and his girlfriend Sarah had walked a little bit
9 before us too. That's when Andrew O'Hearn was also with us
10 that evening.

11 Q. Let me stop you there. I think that's that a new
12 name. Andrew, who is Andrew?

13 A. Andrew O'Hearn is a friend of ours as well who
14 happened to be downtown. I'm not 100 percent sure how he got
15 downtown, but he was there with us when we left the Silver
16 Dollar.

17 Q. You knew Andrew?

18 A. Yes, sir.

19 Q. Ellis knew Andrew?

20 A. Yes, sir.

21 Q. Who was leaving with you from the Silver Dollar?

22 A. Leaving with me was myself, Ellis, Andrew and Binh
23 Ton and Binh Ton's girlfriend.

24 Q. Okay. So Binh is with a girl?

25 A. Binh is with a girl.

1 Q. Do you know that girl he's with?

2 A. I did not know her, no, sir.

3 Q. Sort of giving that one to ten scale, anything about
4 that girl you remember at the time you were leaving?

5 A. She seemed pretty intoxicated at the time.

6 Q. Okay. And you've been around people while they were
7 drinking before?

8 A. Yes, sir.

9 Q. How did she seem to you to be, from your
10 perspective, zero to ten?

11 A. I would say maybe a seven.

12 Q. Okay. You are leaving. How does sort of the night
13 progress from there?

14 A. We were walking. We decided to walk back to Ellis's
15 car. And we were going to get in his car and drive to
16 Percy Street.

17 Q. Where was Ellis's car parked?

18 A. Ellis's car was parked on Morris in a parking lot
19 behind office buildings.

20 Q. Morris Street sort of intersects King Street?

21 A. Yes, sir.

22 Q. And who all was sort of riding with Ellis, or at
23 least the plan then?

24 A. The plan was, it was myself, Ellis, Andrew, my
25 brother Jake and his girlfriend Sarah.

1 Q. But you had already mentioned Jake and Sarah --

2 A. They had already walked ahead of us. I believe they
3 were going to meet us at the car.

4 Q. Okay. Obviously something occurred.

5 A. Yes, sir.

6 Q. Right? Can you explain to the best of your
7 recollection to this jury, from your point of view only, how
8 did things unfold as you get to King and Morris Street?

9 A. We got to King and Morris. We crossed over to
10 Morris Street. Binh was straggling a little bit behind us
11 with his girlfriend, or the girl he was with. I'm not sure
12 what had taken place between what was said when they were
13 back there. But I heard Binh yell for help.

14 At that point, we all kind of stopped to turn around
15 and see what was going on, saw some commotion. And just out
16 of instinct, went back over there to see what was going on.

17 Q. What did you do? You say we went back over there
18 out of instinct to see what was happening --

19 A. Myself, Ellis and Andrew.

20 Q. You, Ellis and Andrew?

21 A. Yes.

22 Q. Let's start with you. What do you do when you get
23 back to that corner?

24 A. When I get up to the corner, I see two people
25 engaged with Binh, you know, in a verbal argument.

1 Q. It's your friend Binh?

2 A. Yes, sir.

3 Q. And two people engaged with one another?

4 A. Yes, sir.

5 Q. Okay. Do you know these people?

6 A. I do not.

7 Q. Have you ever seen them before?

8 A. No, sir.

9 Q. Do you know what started this whole thing at that
10 time?

11 A. At that time, no, sir, I do not.

12 Q. So do you just run up and start swinging?

13 A. No, sir, I didn't throw a single punch.

14 Q. So what do you do when you get up there?

15 A. Assess the situation, just kind of trying to see
16 what was started this whole thing in the first place.

17 Q. Now, was this kind of an amped-up situation, though?

18 A. Yes, I think tensions were high, you know, just they
19 were in a verbal argument.

20 Q. And you could perceive that when you are going over
21 there?

22 A. Yeah. Yes, sir.

23 Q. Let's move on now to what you witnessed, best as you
24 can. What about this fellow Andrew that's with you?

25 A. Andrew was behind me. He was not far behind me,

1 but, you know, he was standing behind me.

2 Q. Did you see Andrew approach and just start swinging?

3 A. No, sir.

4 Q. Okay. Now, let's get to Ellis. What did you
5 observe of Ellis Clarke of this situation?

6 A. I saw Ellis run by me and swing and hit a running
7 punch on a man that was standing there.

8 Q. This man that was standing here, was he one of the
9 two that you saw engaged with Binh?

10 A. No, sir.

11 Q. It was a third guy?

12 A. Yes, sir.

13 MR. SIMPSON: Court's indulgence. I ask the witness
14 to step down.

15 THE COURT: Yes.

16 BY MR. SIMPSON:

17 Q. So do you recognize what we are looking at here?
18 Does this make sense to you?

19 A. Yes, somewhat.

20 Q. This is King Street here. Morris Street connects
21 here. So what area is this, generally speaking? What area
22 is this sort of interaction with Binh Ton?

23 A. This is right on the corner of Morris and King,
24 right here. I can't really tell from that.

25 Q. Showing you what's been marked and admitted as

1 State's 13 and 14, have you seen these before?

2 A. I have, yes, sir.

3 Q. Okay. And let's do this.

4 A. So this is right here.

5 Q. This is Morris Street?

6 A. Yep. King Street is right here.

7 Q. You said you saw Ellis Clarke run past you?

8 A. Yes. When we were standing right here at the
9 electrical boxes.

10 Q. You can just point to that, if you want.

11 A. We were standing by the electrical boxes. Parking
12 lot over here. So when we ran back, we were standing by the
13 electrical boxes by the street. At which point, Ellis came
14 running down the side of the wall right here.

15 Q. When you say side of the wall, you mean the wall of
16 the building?

17 A. The wall of the building, right there.

18 Q. But it was the wall of the building he ran
19 alongside?

20 A. Yes, sir.

21 Q. And what -- you can run to your seat. What did he
22 do when he arrived again?

23 A. He swung a punch.

24 Q. Okay. And you said this was against not one of the
25 individuals?

1 A. Not one of the individuals that was in with Binh.

2 Q. But a third individual standing there?

3 A. Yes, sir.

4 Q. Where was that third individual standing?

5 A. He was standing back behind the other two
6 individuals.

7 Q. And how did the -- physically, how did that person
8 respond that Ellis's hit?

9 A. He hit the ground immediately.

10 Q. Appear to you -- did he brace himself as he was
11 going down?

12 A. I did not see him brace himself, no, sir.

13 Q. Again, did you know any of these people?

14 A. No, sir.

15 MR. SIMPSON: Court's indulgence.

16 BY MR. SIMPSON:

17 Q. Prior to this strike by Mr. Clarke, was the
18 situation that you were involved in verbal or physical?

19 A. Before the individuals hit, it was not physical. It
20 was more verbal.

21 Q. Okay. And what part -- generally speaking, what
22 part of the person's body, that third person standing back
23 there, what part was struck on that person's body?

24 A. His head.

25 Q. Do you mean like square on the nose?

1 A. Side back of the head.

2 Q. Did the person appear to have even seen this coming?

3 A. No, sir.

4 Q. Was he up like this or --

5 A. No, sir.

6 Q. How would you describe his body position at the
7 time?

8 A. He was -- I think he was just trying to assess the
9 situation as well. He wasn't involved in any verbal
10 arguments. I think he was just watching.

11 Q. Not trying to put words in your mouth, but I believe
12 earlier you described it as sort of a running hit?

13 A. Yes, sir.

14 Q. Had also the force of movement behind it?

15 A. Yes, sir.

16 Q. Before we move on, I want to draw your attention to
17 the screen in front of you. This is going to be on the
18 larger screen as well. I believe you pointed this out in the
19 stills that you had seen. Do you recognize this?

20 A. Yes, sir.

21 Q. Is this the area that we are discussing here?

22 A. Yes, sir.

23 Q. I'm going to sort of go frame by frame. Okay. You
24 said at some point you are called back and you guys run to go
25 help a friend?

1 A. Yes, sir.

2 Q. Do you recognize these two individuals here?

3 A. Yes, sir. That is myself and Andrew O'Hearn.

4 Q. Do you know who this individual is here?

5 A. Yes, sir. That's Ellis.

6 Q. Progressing forward. All right. We've seen another
7 individual sort of enter the picture here. Do you know who
8 this is?

9 A. Binh Ton.

10 Q. That's Binh?

11 A. It looks like Binh.

12 Q. And here we have -- you can sort of see a person's
13 head here. Do you know that person, or did you know that
14 person that night?

15 A. No.

16 Q. Now, you're facing these people that you don't know,
17 correct?

18 A. Yes, sir..

19 Q. And you described a wall that Ellis ran down?

20 A. Yes, sir.

21 Q. Is that -- I'll get in line with that. You are
22 facing these people there. Is that wall down to your right
23 side or left side?

24 A. Facing in the picture, it would be to my right
25 side.

1 Q. Okay. Is that the wall you are talking about?

2 A. Yes, sir.

3 Q. And can we see that wall in this video?

4 A. No, sir.

5 Q. Okay. If I could draw your attention back to that
6 corner, you said this individual behind Binh and you, who is
7 this?

8 A. Appears to be Andrew O'Hearn.

9 Q. Andrew, again, sort of went off camera and came back
10 on?

11 A. Yes, sir.

12 Q. Briefly you see sort of a blond female come into the
13 picture there, in the circle now?

14 A. Yes.

15 Q. Who is that?

16 A. That would be the girl that Binh Ton was with that
17 evening.

18 Q. You don't know her well?

19 A. I do not, no, sir.

20 Q. So I believe you stated again the situation, while
21 heated, was not physical until that guy went down that Ellis
22 hit?

23 A. Yes, sir.

24 Q. What happened once that guy went down?

25 A. Once he went down, there was shoving, pushing. It

1 all happened really fast.

2 Q. Okay. In fact, this whole event occurred very
3 quickly, right?

4 A. Yes, sir.

5 Q. And once sort of, I guess, the dust cleared, so to
6 speak, what was going on?

7 A. Well, individual's on the ground. Ellis had looked
8 at me and said, run, dude. So him and I turned around and
9 started making our way back on Morris Street to his car in
10 the parking lot.

11 Q. Okay. Do you remember any sort of female yelling at
12 you?

13 A. There was somebody yelling at me saying that I was
14 the one who swung the punch, but I had no idea who that
15 individual was. I've never seen her before.

16 Q. Okay. But was she being pretty loud about it?

17 A. As far as I can remember, she was pretty loud about
18 it.

19 Q. You said you guys -- Ellis said, run, dude, run, and
20 you went with him?

21 A. Yes, sir.

22 Q. Where were you guys headed?

23 A. We were heading back to his car. It was in the
24 parking lot behind the bars.

25 Q. Did you sort of make that corner to turn the corner

1 to his car?

2 A. Yes, we did.

3 Q. And what occurred then?

4 A. The police yelled stop.

5 Q. And when the police yelled stop --

6 A. I stopped immediately.

7 Q. And what did Ellis do?

8 A. At which point, I was put on the ground and arrested
9 and Ellis walked -- just kept walking.

10 MR. SIMPSON: Court's indulgence.

11 BY MR. SIMPSON:

12 Q. You've seen a second video of you as well, have you
13 not?

14 A. Yes, I have.

15 Q. Were you able to identify the people in that
16 video?

17 A. Yes, sir.

18 Q. Mr. Dudinyak, while this is loading, the police, you
19 said, just grabbed you and it was cuffed and go?

20 A. Yes, sir. Yes, sir.

21 Q. On scene there, was there a big effort to get your
22 side, a version of the events at that point?

23 A. No, sir.

24 Q. We are going to let my co-counsel get this ready and
25 I will have an opportunity to talk about that later.

1 A. Okay.

2 Q. But you did eventually get taken to the police
3 station; is that correct?

4 A. Yes, sir, I did.

5 Q. Now, did you punch the person that went down that
6 night?

7 A. No, sir.

8 Q. Did you see Ellis Clarke punch that person?

9 A. Yes, sir.

10 Q. Did you know that night -- I want to really take you
11 -- take us inside your head, though, that night. Did you
12 have any idea whatsoever, when you are at the police station
13 that night, that this was going to be the sort of event that
14 would lead us to a setting like we are in today?

15 A. No, sir, not at all.

16 Q. Did it even occur to you for a second that someone
17 could be even really seriously injured?

18 A. No, sir.

19 Q. But all you know is, they are grabbing you and
20 taking you down there?

21 A. Yes, sir.

22 MR. KING: I object to leading.

23 THE COURT: All right. Stop leading.

24 BY MR. SIMPSON:

25 Q. Were you completely forthcoming with the officers

1 that night?

2 A. No, sir, I was not.

3 Q. Let me break it down a little bit more. Were you
4 completely forthcoming and truthful with the officers about
5 what you did that night?

6 A. Yes, sir.

7 Q. Were you completely truthful and forthcoming with
8 the officers about what Ellis did that night?

9 A. No, sir.

10 Q. Did you have any idea of the stakes of the
11 situation?

12 A. I had no clue.

13 Q. So please explain to this jury, why are you not
14 being completely forthright about Ellis's activities that
15 night?

16 A. At that point, I was looking out for a friend. I
17 didn't realize the seriousness of the situation. I had
18 assumed that it was just another fight that had broken out,
19 which I've seen many times before on King Street.

20 Q. Again, you told the jury this when you sat down.
21 How far do you go back with Ellis Clarke?

22 A. We go back a long time. I would say about 15 years.

23 Q. Does he know your family?

24 A. Yes, sir.

25 Q. Does he know your brother?

1 A. Yes, sir.

2 Q. Does he know your mother?

3 A. Yes, sir.

4 Q. And your sister?

5 A. Yes, sir.

6 Q. Has he been to your house?

7 A. Yes, sir.

8 Q. Have you guys had good times together?

9 A. Yes, sir.

10 Q. Have you had bad times together?

11 A. Yes, sir.

12 Q. And is that something easy to determine today, I
13 believe, to snitch on somebody that you've shared this sort
14 of experiences with?

15 A. No, sir.

16 Q. I want to take you back to the video. I see two
17 individuals rounding this corner. Do you see this?

18 A. Yes, sir.

19 Q. Now, if you could circle -- do you know who those
20 two individuals are?

21 A. Yes, sir.

22 Q. And who are they?

23 A. Myself and Ellis.

24 Q. Is there a mark to where you are?

25 A. I'm sorry?

1 Q. Mark -- I'm sorry, it's a touch screen.

2 A. (Witness complies.) That was me and that's Ellis.

3 Q. You sort of break into a little trot right there?

4 A. Yes, sir.

5 Q. And you testified Ellis was, like, let's go, run,
6 dude?

7 A. Yes, sir, let's get to this car.

8 Q. And when these officers turn around, what do they
9 say?

10 A. They tell me to stop.

11 Q. And you are off camera there, but did you stop?

12 A. Yes, sir.

13 Q. Another view, again, who is this in this blue shirt?

14 A. Ellis.

15 Q. You stopped?

16 A. Yes, sir.

17 Q. And I just jumped ahead a little bit, but you are
18 back here with the police?

19 A. Yes, sir.

20 Q. Okay. Jumping ahead, you admit you were not
21 truthful with the police that night?

22 A. Yes, sir.

23 Q. And you even mentioned some sort of made-up story,
24 right?

25 A. Yes, sir.

1 Q. And when you were asked, you are telling the jury
2 right now, that story was not true?

3 A. No, sir.

4 Q. And you go to jail that night?

5 A. I did.

6 Q. And you are allowed to communicate with people in
7 jail, right?

8 A. Yes, sir.

9 Q. Explain to the jury sort of over the course of the
10 coming days what happens that sort of makes you rethink?

11 A. Well, again, I did not realize the seriousness of
12 the situation when I was being questioned by the detectives
13 the night that that happened. And then when I got -- when I
14 was incarcerated, I saw on the news, because we were able to
15 see the TV. I've seen how serious it was getting that he was
16 in a coma and that he had later on passed. And I felt
17 terrible. I knew that, you know, the truth had to come out,
18 and it had to be done.

19 Q. And at that point, did you arrange to go tell the
20 police the other story?

21 A. Yes, sir.

22 Q. On the night this occurred, do you deny hitting
23 anybody?

24 A. Yes, sir.

25 Q. Okay. And, in fact, you are insistent on one point,

1 right?

2 A. Yes, sir.

3 MR. KING: I object to prior inconsistent
4 statement.

5 THE COURT: What was your question again?

6 MR. SIMPSON: I will rephrase.

7 BY MR. SIMPSON:

8 Q. You made a request, a specific request of the police
9 that night, correct?

10 A. Yes, sir.

11 Q. And that came from you?

12 A. Yes, sir.

13 Q. And what was that request?

14 A. To take pictures of my hands.

15 MR. SIMPSON: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes.

18 BY MR. SIMPSON:

19 Q. Show the witness what was marked for ID only State's
20 15. Do you recognize that photograph?

21 A. Yes, sir.

22 Q. And what is that a picture of?

23 A. That is a picture of both of my hands.

24 Q. Is that from the night this happened?

25 A. Yes, sir.

1 Q. How long after this -- as much as you can
2 approximate, how long after this incident was this photograph
3 taken of you?

4 A. My watch says six o'clock, so four hours.

5 MR. SIMPSON: Your Honor, at this time, the State
6 would seek to admit State's 15.

7 THE COURT: Any objection?

8 MR. KING: No objection, Your Honor.

9 THE COURT: All right. State's Exhibit 15 admitted
10 into evidence without objection.

11 (S-15, Photo, was received in evidence.)

12 BY MR. SIMPSON:

13 Q. You end up being questioned about somebody being hit
14 that night?

15 A. Yes, sir.

16 Q. And you say that, you need to take a picture of my
17 hands?

18 A. Take a picture of my hands, yes, sir.

19 Q. Why did you want him to take a picture of your
20 hands?

21 A. To show them I didn't have any marks or bruises on
22 my hands.

23 Q. Because you've testified you didn't know the
24 severity of that night?

25 A. Yes, sir.

1 Q. But you knew that you were being accused of hitting
2 somebody?

3 A. Yes, sir.

4 Q. And you did not want to sell a friend down the
5 river?

6 A. No, sir. I did not want to say that Ellis had done
7 it, because I didn't realize the seriousness of the
8 situation.

9 Q. You later do arrange to speak to the police again?

10 A. Yes, sir.

11 Q. At that point, do you inform them that you did, in
12 fact, witness Ellis --

13 A. Yes, sir.

14 Q. And, again, we are here today, and this is a serious
15 situation, you understand that?

16 A. Yes, sir.

17 Q. You've taken an oath, correct?

18 A. Yes, sir.

19 Q. And laying it all on the line today?

20 A. Yes, sir.

21 Q. Did you witness Ellis Clarke throw the punch to hit
22 that gentleman?

23 A. I did.

24 Q. And where on his body did it land?

25 A. It hit him in the back of the head.

1 Q. Did he appear to be ready for this coming?

2 A. No, sir.

3 Q. How did he react to that punch?

4 A. How did he react? He went down immediately,
5 unconscious.

6 Q. Real quick, just because I think he will probably
7 ask, you've been in a little trouble before, right?

8 A. Yes, sir.

9 Q. That involved some marijuana?

10 A. Yes, sir.

11 Q. Tiny amount of cocaine?

12 A. Yes, sir.

13 Q. All right. That's illegal, right?

14 A. Yes, sir.

15 Q. While something like this is going on, are those
16 sort of things in your mind?

17 A. No, sir. I mean, it's a pending -- it's pending,
18 but ...

19 Q. This is a bit more serious, right?

20 A. Absolutely.

21 Q. Let me also ask you before its implied, at any point
22 after this happened, is there some sort of big conspiratorial
23 group meeting where everybody decided to lie and frame Ellis
24 Clarke --

25 A. No, sir.

1 Q. -- to help you?

2 A. No, sir.

3 Q. But you admit that initially that night, you were
4 trying to help your friend?

5 A. I was, yes, sir. That night I was.

6 MR. SIMPSON: Court's indulgence.

7 THE COURT: All right.

8 MR. SIMPSON: Please answer any questions that Jason
9 has.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. KING:

13 Q. Mr. Dudinyak, you are left-handed; is that right?

14 A. Yes, sir.

15 Q. Ellis is right-handed?

16 A. I believe so, yes, sir.

17 Q. Solicitor asked you about those charges. You have
18 pending possession with intent distribute marijuana, right?

19 A. Yes, sir.

20 Q. And you know that's a felony that carries up to five
21 years in prison?

22 A. I do.

23 Q. And you are charged with misdemeanor possession of
24 cocaine, and that carries up to three years in prison?

25 A. Okay.

1 Q. And those were pending before even this happened,
2 right?

3 A. Yes, sir.

4 Q. And they stayed pending? Still pending; haven't
5 been resolved yet?

6 A. Yes, sir.

7 Q. And you've met with Mr. Simpson, I guess, in
8 preparation for this trial?

9 A. Yes, sir.

10 Q. How many times would you say you met with him
11 previously?

12 A. One time in person, but we talked over the phone,
13 three e-mails.

14 Q. You know that same office he's working for is
15 prosecuting that five-year felony and three-year misdemeanor,
16 right?

17 A. I did not know that.

18 Q. You don't know where those charges that are in this
19 courtroom?

20 A. I know they are pending, but my lawyer and I were
21 going to handle that after this.

22 Q. And is there a solicitor on that case that you know
23 of?

24 A. I don't know who the name would be.

25 Q. Is it in another county, Berkeley County?

1 A. No, sir, it's Charleston County.

2 Q. It's in Charleston County. So it's in this
3 courthouse?

4 A. Yeah, I believe so.

5 Q. And he works in this courthouse?

6 A. Okay.

7 Q. Right?

8 A. Yeah.

9 Q. Okay. So the same solicitor's office that is in
10 this courtroom is prosecuting those two drug charges,
11 right?

12 A. Right.

13 Q. That night you were wearing black shirt and khaki
14 pants; is that right?

15 A. Yes, sir.

16 Q. How tall are you?

17 A. 6' 4".

18 Q. How much do you weigh?

19 A. 165, 170.

20 Q. So when you are out there that night and people are
21 describing the tall guy with the black shirt, that's you,
22 right? I mean, you were the tall guy out there with the
23 black shirt?

24 A. Yes, sir.

25 Q. I'm not confusing you with anybody else when someone

1 is referring to that, right?

2 A. Yes, sir.

3 Q. You were out drinking that night, right?

4 A. Yes, sir.

5 MR. KING: Beg the Court's indulgence.

6 THE COURT: All right.

7 MR. KING: May I approach, Your Honor?

8 (Exh. D-3, Photograph, was marked for
9 identification.)

10 Q. I'm going to show you what's been marked as
11 Defendant's Exhibit 3 for identification.

12 A. Okay.

13 Q. Do you recognize that?

14 A. I do.

15 Q. Was that taken that night?

16 A. Yes, sir, it was.

17 Q. Is that you?

18 A. That is me.

19 MR. KING: Your Honor, I would move to admit
20 Defendant's Exhibit 3.

21 THE COURT: Any objection?

22 MR. SIMPSON: No, Your Honor.

23 THE COURT: Objection, Defendant's Exhibit 3 is
24 admitted into evidence without objection.

25 (D-3 is moved into evidence.)

1 BY MR. KING:

2 Q. That basically is you having a good time, right?

3 A. Yes, sir.

4 Q. Kind of taking some pictures, everybody is laughing,
5 having a good time?

6 A. Good natured fun.

7 Q. You testified that you saw Ellis throw that punch?

8 A. Yes, sir.

9 Q. Hit the guy who died, right?

10 A. Yes, sir.

11 Q. You said he ran past you, right?

12 A. Yes, sir.

13 Q. Can you explain that a little bit more? How did he
14 hit him?

15 A. Well, it was a running hit. He ran by me. We were
16 all --

17 Q. You are standing by those sort of electrical
18 boxes?

19 A. Yes, sir.

20 Q. Did he run to your right side or left side?

21 A. He would be on my right side.

22 Q. And can you demonstrate? How did he throw that
23 punch?

24 A. Ran up, swing, running, full sprint right here, or
25 on this side.

1 Q. Okay. Which side?

2 A. It would be this side, I believe.

3 Q. This side?

4 A. I believe, yes, sir.

5 Q. Left side?

6 A. Left side.

7 Q. So I guess it would be the side facing -- there's a
8 wall right here and then there's across Morris Street, as I'm
9 standing, I'm looking down Morris Street?

10 A. Right.

11 Q. I'm standing where the other guys would have been
12 standing, Baker and Hennessy and Mr. Seymour?

13 A. Right.

14 Q. If I'm Mr. Seymour, he was hit on this side?

15 A. Somewhere back in the head back here. I wouldn't
16 necessarily say -- I didn't necessarily see what side.

17 Q. You said left side a minute ago. I'm just trying to
18 get at it. Could it have been the left side?

19 A. It could have been the left side, yes, sir.

20 Q. That's what you said originally when I asked the
21 question a minute ago.

22 A. Okay.

23 Q. You gave a statement that night. You've talked
24 about it. You got arrested and went down to the police
25 station. You were interviewed by Detective Bailey. Do you

1 remember that?

2 A. Yes, sir.

3 Q. You lied to Detective Bailey, right?

4 A. Yes, sir.

5 Q. He asked you what happened, right? And this is what
6 you told him: We went to Midtown. Then we went down to
7 Silver Dollar. Then we left the Silver Dollar. On the way
8 back to the car, we got approached by six gentlemen across
9 the street who came at us.

10 Right? Do you remember saying that?

11 A. Yes, sir.

12 Q. That's not what happened, is it?

13 A. No, sir.

14 Q. You actually came across the street?

15 A. Yes, sir.

16 Q. And you know police officers -- did you notice he
17 was kind of asking you the same questions over and over again
18 and going back? So he asked you again, and do you remember
19 saying this: We were probably heading Wentworth when
20 somebody started following us?

21 A. I mean, I may have said that. If it's on there, I
22 am sure I did say it.

23 Q. People were all over the place. Wentworth is
24 nowhere --

25 A. No.

1 Q. You weren't on Wentworth?

2 A. No.

3 Q. "People were all over the place. People started
4 yelling at us. Yelling at our girls, yelling at our
5 girlfriends and, like, four dudes approached us."

6 Do you remember saying that? That's not what
7 happened?

8 A. No, sir.

9 Q. He asked you yet again and you give another
10 description. Do you remember saying this, "Some guy started
11 yelling and stuff to Becca and Sarah across the street. They
12 came across the street. It was three black guys, about four
13 white dudes. And they came across the street. There were
14 people walking to and from King Street. I don't know what
15 was said. I turned around, ran back and tried to stop people
16 from fighting."

17 Do you remember saying that?

18 THE COURT: You've got to give a verbal response.

19 THE WITNESS: Yes, sir.

20 BY MR. KING:

21 Q. So you are telling them -- you are telling Detective
22 Bailey that three black guys and four white dudes, I guess
23 they were -- some guy was yelling at Becca and Sarah, and
24 then three black guys, four white dudes came across the
25 street. But that sentence, but that's not true?

1 A. No, sir.

2 Q: Three times, you told a lie already, right, to
3 Detective Bailey? That is three times you said something
4 that's not true?

5 A. Yes, sir.

6 Q. All right. And then do you remember Detective
7 Bailey, he's trying to tell you honesty is going to get the
8 furthest. And you say, I'm being straight honest with you, I
9 swear to God. He said, okay, you've got nothing to lie
10 about. Do you remember saying that?

11 A. Yes, sir.

12 Q. You were able to look at Detective Bailey to his
13 face, lie and say, swear to God? You did that, right?

14 A. Yes, sir.

15 Q. And then you kept on repeating that story, right?
16 Do you remember saying this: No, these people were yelling
17 at our girlfriends while they were across the street on the
18 other side of the King Street. Yelling at them. There were
19 hundreds of people on King Street. They were yelling at my
20 girlfriend.

21 Saying what?

22 Just saying like, hey, baby, hey baby, hey baby.

23 Next thing you know, they came across the street and started
24 talking shit, started freaking out. And next thing I know,
25 somebody is on the ground.

1 Right? You said that?

2 A. Yes, sir.

3 Q. And Detective Bailey specifically asked you who
4 threw the punch, didn't he? But you denied throwing the
5 punch, right?

6 A. Yes, sir.

7 Q. He asked you who threw the punch? And you said: I
8 have no idea. I was looking at my girlfriend. I was looking
9 at Becca, making sure she was okay.

10 Right?

11 A. Yes, sir.

12 Q. Becca wasn't there?

13 A. No, sir.

14 Q. Do you remember Detective Bailey asking you about
15 any Asian friends?

16 A. He may have.

17 Q. Do you remember him saying: You have an Asian
18 friend? His name is Binh Ton, right?

19 A. Yes, sir.

20 Q. And he was out there that night?

21 A. Yes, sir.

22 Q. Do you remember him asking you: Do you have any
23 Asian friends?

24 No, sir. And you said, I mean, I have Asian
25 friends, but none of them were with me.

1 Do you remember saying that?

2 A. Yes, sir.

3 Q. You deny Binh Ton was even out there, right?

4 A. Yes, sir.

5 Q. And you told Detective Bailey that Jake was in the
6 mix, right?

7 A. Yes, sir.

8 Q. That's not true. Jake was waiting at the car,
9 right?

10 A. Yes, sir.

11 Q. You said: Jake was literally right behind me. And
12 next thing I knew, dude is on the ground. I see Jake going
13 back over there, so I ran back over there.

14 None of that is true?

15 A. No, sir.

16 Q. Detective Bailey specifically asked you about Ellis.
17 Do you remember that?

18 A. Yes, sir.

19 Q. That night? You said: I didn't see Ellis. I did
20 not see Ellis. I was look at my brother. I was looking at
21 my girlfriend.

22 You said that?

23 A. Yes, sir.

24 Q. Detective Bailey asked if your brother hit the guy.
25 Do you remember that? And you said: I did not see Jake hit

1 anyone. As far as anyone else out there, Ellis I have no
2 idea.

3 You said that, right?

4 A. Yes, sir.

5 Q. So, that's basically the story you were telling
6 Detective Bailey that night?

7 A. Yes, sir.

8 Q. Police took your clothes, I guess?

9 A. Yes, sir.

10 Q. You ended up having to wear kind of like a paper
11 suit or something and went to jail?

12 A. Yes, sir.

13 Q. And you were charged with assault and battery in the
14 first degree?

15 A. Yes, sir.

16 Q. And that was a felony that carried up to 10 years;
17 is that right?

18 A. I guess, sir.

19 Q. So you are in jail. You've been arrested on felony
20 assault?

21 A. Yes, sir.

22 Q. You've already got two other drug charges pending
23 out there, right?

24 A. Yes, sir.

25 Q. So did that affect your bond? You had a pretty high

1 bond, right?

2 A. Yes, sir.

3 Q. \$250,000?

4 A. Yes, sir.

5 Q. You couldn't make that?

6 A. No, sir.

7 Q. You are stuck in jail?

8 A. Yes, sir.

9 Q. Did you like it in jail?

10 A. No, sir.

11 Q. Pretty bad, right?

12 A. Yes, sir.

13 Q. Anybody visit you while you were at the jail?

14 A. Yes, sir.

15 Q. You got visitation there?

16 A. Yes, sir.

17 Q. Who came to see you?

18 A. My mom, my brother and my sister, friends, my boss.

19 Q. Becca?

20 A. Becca.

21 Q. How soon did they come to see you, like right away
22 you could get visitation?

23 A. Yes, sir.

24 Q. So you talked to them?

25 A. Yes, sir.

1 Q. And you knew there were people out there seeing
2 Ellis throwing a punch?

3 A. Yes, Your Honor.

4 Q. You were hearing that at least through Becca?

5 A. Yes, sir.

6 Q. So you sit in jail really for a couple of weeks,
7 until about May 12th, right?

8 A. Yes, sir.

9 Q. Do you remember that being May 12th?

10 A. Yes, sir.

11 Q. You got out of jail that day, right?

12 A. I did.

13 Q. So you went in on April 26th, and you got out on May
14 12th?

15 A. Yes, sir.

16 Q. So you had that long before you went and met back
17 with the police and then gave them a second statement,
18 right?

19 A. Yes, sir.

20 Q. And when you met with Detective Burckhardt, you were
21 expecting your -- maybe your bond to get reduced or
22 something? You were expecting something good was going to
23 happen, right?

24 A. Yes, sir.

25 Q. So today you are saying -- I will talk about that in

1 a minute. But what you are saying today is, you saw that
2 video where you are running across the street, right?

3 A. Yes.

4 Q. And you are already there sort of in the mix when
5 you are saying Ellis runs past you and hits the guy, right?

6 A. Yes.

7 Q. Ellis runs past you to the right and hits the guy?

8 A. Yes.

9 Q. But that's not what you told Detective Burckhardt
10 when you first met with him on May 12th, correct? Do you
11 remember saying this? This is May 12th. You've had a couple
12 of weeks to think about it, right?

13 A. Yes, sir.

14 Q. You are meeting with Detective Burckhardt and your
15 lawyer?

16 A. Yes, sir.

17 Q. And you are giving him the truthful statement,
18 right?

19 A. Yes, sir.

20 Q. You told him: I walked down to the Silver Dollar.
21 My brother was already walking ahead of us. I was walking
22 with Ellis. We were coming up on a fight that was broken
23 out. And at that point, I saw it was my friend Binh Ton that
24 had been in the altercation. And at that point, Ellis ran by
25 me, hit the guy. I ran up trying to break up the fight,

1 which at that point turned into chaos. Got thrown to the
2 ground. Got back up. And Mr. Seymour was already on the
3 ground when I ran up.

4 When I ran up, Mr. Seymour was already on the
5 ground; do you remember saying that?

6 A. Yes, sir.

7 Q. So you are telling him first that Ellis ran past you
8 and hit the guy, and you hadn't even got in the mix yet? You
9 hadn't even gotten there, right? Is that what you are
10 telling him?

11 A. Yes, sir.

12 Q. But that's not what that the video shows, does it?

13 A. No.

14 Q. Never shows Ellis running past you before you get to
15 the mix, right?

16 A. Right.

17 Q. And you also -- you told Detective Burckhardt that
18 Ellis took off and you just walked away, right?

19 A. Yes, sir.

20 Q. But the video you are actually the one running,
21 right?

22 A. Yes, sir.

23 Q. And you stop because the police officer was right on
24 your heels, right?

25 A. Yes, sir.

1 Q. Not because -- you stopped because they had you,
2 right?

3 A. I'm sorry?

4 Q. You stopped, not because the police were yelling,
5 but they were right on top of you, right?

6 A. They said stopped, so I stopped.

7 Q. But when they said stop, that one cop was almost
8 right up on you anyway?

9 A. Yes, sir.

10 Q. So you might not have stopped if you had a little
11 more of a lead on that police officer?

12 A. I would stop, yes, sir.

13 Q. All right. And then you were talking about the
14 police officers keep asking you the same thing over and over
15 again, right? And you hadn't seen the video at this point,
16 right? When you were first in that --

17 A. No, sir.

18 Q. He, at some point later, took you in a room and
19 showed you the surveillance video?

20 A. Yes, sir.

21 Q. So he asked you again. Isn't this what you said,
22 before you saw the surveillance video: So Ellis runs in
23 front of me. Hits dude. Hit the ground, Mr. Seymour. I
24 followed him. When I got to the confrontation, Mr. Seymour
25 was on the ground. There were some people that ran in trying

1 to break up the fight at that point. And I got thrown on the
2 ground over there.

3 So that's two times that you told Detective
4 Burckhardt that Ellis ran past you before you got to the
5 confrontation, right?

6 A. Yes, sir.

7 Q. And that when you got there, Mr. Seymour is already
8 on the ground, right?

9 A. Yes, sir.

10 Q. But today you are saying that you ran up to this
11 confrontation and then Ellis runs past you and hits the guy,
12 right?

13 A. Yes, sir.

14 Q. That's different than what you told Detective
15 Burckhardt two times in your meeting on May 12th, after
16 you've had two weeks to think about all of this, right?

17 A. Yes, sir.

18 Q. It's then that Detective Burckhardt takes you out of
19 the interview room and lets you watch that surveillance
20 video, right?

21 A. Yes, sir.

22 Q. So the story you are telling today is after you've
23 already seen that surveillance video, right?

24 A. Yes, sir.

25 Q. You never said what you are saying today before you

1 saw that surveillance video, did you?

2 A. No.

3 Q. That same day, May 12th, that you told Detective
4 Burckhardt Ellis did it, you got out of jail?

5 A. Yes, sir.

6 Q. Your charge got dismissed?

7 A. Yes, sir.

8 Q. And you don't want to go back to jail?

9 A. No, sir.

10 Q. You don't want to get recharged, right?

11 A. No, sir.

12 Q. And you still have those two drug charges to deal
13 with, right?

14 A. Yes, sir.

15 Q. And I'm assuming you are hoping for a good result
16 when all of this was done, aren't you?

17 A. Yes, sir.

18 MR. KING: That's all the questions I have.

19 THE COURT: All right. Redirect.

20 REDIRECT EXAMINATION

21 BY MR. SIMPSON:

22 Q. Peter, all that is trying to say you are lying
23 today. Are you lying today?

24 A. No, sir.

25 Q. And on this meeting in May, you say: I saw one of

1 my friends Binh Ton and Ellis ran by me and hit the guy?

2 MR. KING: Object to prior inconsistent statement.

3 THE COURT: Excuse me.

4 MR. KING: I'm objecting to prior inconsistent
5 statement.

6 THE COURT: It's the same.

7 MR. SIMPSON: May I approach?

8 THE COURT: Yes.

9 (Whereupon, a bench conference takes place.)

10 THE COURT: Overruled. Go ahead.

11 BY MR. SIMPSON:

12 Q. My point being, what Mr. King was categorizing for
13 you as different is the same, correct?

14 A. Correct.

15 Q. Ellis ran by you and hit the guy?

16 A. Yes, sir.

17 Q. Is that your testimony today?

18 A. Yes, sir.

19 Q. Is that the truth?

20 A. Yes, sir.

21 Q. Did you hit Mr. Seymour?

22 A. No, sir.

23 Q. Now, as to the first story, we heard all kinds of
24 stuff that you said?

25 A. Yes, sir.

1 Q. And you told this jury right out that's not true?

2 A. Yes, sir.

3 Q. And you've known Binh for a really long time?

4 A. Yes, sir.

5 Q. Were you trying to protect Binh that night when you
6 were talking to the police?

7 A. Yes, sir.

8 Q. You knew Ellis for a really long time?

9 A. Yes, sir.

10 Q. Were you trying to protect your friend sitting right
11 here that night when you said those things?

12 A. Yes, sir.

13 Q. And that first statement was completely rubbish,
14 correct?

15 A. Correct.

16 Q. And it was rubbish given to protect your friends?

17 A. Absolutely.

18 Q. Then you go back and give another statement, which
19 was that you saw Ellis run by you and hit the individual that
20 fell?

21 A. Yes, sir.

22 MR. SIMPSON: Court's indulgence.

23 Mr. Dudinyak, thank you. I have no further
24 questions.

25 THE COURT: All right. You may step down. The

1 State can call their next witness.

2 MR. CORVEY: Thank you, Your Honor. The State calls
3 Andrew O'Hearn.

4 ANDREW O'HEARN,
5 having been duly sworn, testifies as follows:

6 THE CLERK: If you can, please, state your first and
7 last name and spell your last loudly and clearly into the
8 microphone.

9 THE WITNESS: Andrew O'Hearn, O-'-H-e-a-r-n.

10 DIRECT EXAMINATION

11 BY MR. CORVEY:

12 Q. Good afternoon, Mr. O'Hearn. Just to start out, I
13 want to learn a little bit about you for the jury's sake.
14 Where are you from?

15 A. Mount Pleasant.

16 Q. How old are you?

17 A. 26.

18 Q. What do you do for work?

19 A. Landscaping.

20 Q. How long have you been doing that?

21 A. Off and on for about six years or so.

22 Q. Born and raised in Mount Pleasant?

23 A. Yes.

24 Q. Now, we've heard about a lot of names. But just
25 generally, you know the group of people who were involved in

1 this from Mount Pleasant. How long have you known that group
2 of people? And at various points, we may highlight certain
3 people. Just generally, how long have you known that group?

4 A. About six years or so.

5 Q. Six years or so. I guess we might as well get right
6 into it, you know, why you are here. Do you remember the day
7 of Friday, April 25th, 2014?

8 A. Some of it.

9 Q. Some of it? At least the day part?

10 A. Yes, yes.

11 Q. Why don't you go ahead and tell the jury what you
12 were doing that day and kind of plans leading into that
13 night.

14 A. I worked that day. And after that, I ended up going
15 out to Red's.

16 Q. Who did you meet up with at Red's?

17 A. Binh and his girlfriend at the time.

18 Q. Would that be Regina Harding?

19 A. Yes, I think so.

20 Q. And you go meet them at Red's. I know times can be
21 tough two years later, but, generally, about what time did
22 you meet up with them at Red's?

23 A. About 7-ish, I think so.

24 Q. Do you guys start drinking there?

25 A. Yes.

1 Q. I don't ask that to only embarrass you. It's a
2 Friday night. And then from Red's, where do you guys end up
3 transitioning?

4 A. We went downtown.

5 Q. Where downtown did you guys go?

6 A. I'm not sure. I think we went to Silver Dollar.

7 Q. Silver Dollar, is that where you guys spent the rest
8 of the night?

9 A. Yes, yeah, that I remember, yes.

10 Q. And when you guys went down to Silver Dollar, did
11 you meet up with some people?

12 A. Yes.

13 Q. Who did you meet up with down there?

14 A. Met up with Jake and Ellis and Jamie and Becca, I
15 think.

16 Q. Big group of people?

17 A. Big group of people, yes.

18 Q. And the defendant Ellis was there?

19 A. Yes.

20 Q. How long have you known Ellis?

21 A. Six years or so.

22 Q. And you guys are friends, or were?

23 A. Yes, yes.

24 Q. So I imagine this is difficult for you. Do you want
25 to be here?

1 A. No.

2 Q. We appreciate it. So you guys go out. Before
3 everything got kind of crazy, how would you describe the
4 night?

5 A. I don't have very good memory of that day.

6 Q. Well, let's touch on that. Why don't you have a
7 good memory of that?

8 A. I drank quite a bit.

9 Q. And we've done this with a lot of witnesses. And
10 it's not meant to embarrass you at all. But we talked about
11 one being a beer or two to ten being very drunk. If you kind
12 of had to place yourself in there, where would you put
13 yourself?

14 A. I would say probably a nine. I don't remember much
15 after a certain point.

16 Q. And so, I mean, would it be fair to say that you
17 just kind of have bits and pieces about what kind of
18 transpires next?

19 A. Yes.

20 Q. Well, let's jump right into that. Do you remember
21 what brought about you guys leaving from the Silver Dollar?

22 A. No, I don't.

23 Q. Getting late, maybe close to bar time?

24 A. Yeah. I'm not sure. I don't remember exactly the
25 reason.

1 Q. And do you remember who you left with, though?

2 A. I left -- I think group of guys -- I think I left
3 with Pete. I'm not exactly sure who was all --

4 Q. Exactly there?

5 A. Right.

6 Q. But you do remember who ended up later being
7 involved in a little altercation?

8 A. Yeah, from what I heard.

9 Q. And who were those people?

10 A. Binh, Ellis and Pete.

11 Q. So safe to assume that might have been who you left
12 with, or probably who you left with? You may not, but do you
13 remember specifically what the plan was after you guys left,
14 or where you guys were headed when you were heading back
15 where the cars were?

16 A. I can't tell you exactly. I don't remember.

17 Q. I may -- just best you can, for the sake of the
18 jury, kind of walk us through what you do remember happening.
19 And I may stop you and ask a few questions here or there.

20 A. I remember leaving. I mean, I remember a group,
21 bigger people around, I guess, where everything happened.
22 But I don't have very well visual memories.

23 Q. Do you remember there being an altercation of sorts?

24 A. I guess, yeah. I know it happened. I don't really
25 have a visual memory of seeing it.

1 Q. Let me ask you this. You do remember that you met
2 with police in this case?

3 A. Yes.

4 Q. And you gave a statement?

5 A. Yes.

6 Q. Would reviewing some of that help your memory here
7 today?

8 A. It probably would, yes.

9 MR. CORVEY: Your Honor, may I approach?

10 THE COURT: Yes.

11 BY MR. CORVEY:

12 Q. I'm going to hand you a transcript of your
13 statement. Starting on page 10, read a few pages to
14 yourself. Let me know once you have a better memory.

15 Are you clear on that?

16 A. Yes.

17 Q. So as you guys are leaving, there's an altercation.
18 You don't remember specifically what happened in the midst or
19 who did what in the altercation; is that fair to say?

20 A. Yes.

21 Q. But as the dust kind of settles, so to speak, do you
22 remember Binh coming up to you?

23 A. Yes.

24 Q. And what did he say?

25 MR. KING: Objection. Hearsay.

1 THE COURT: Sustained.

2 MR. CORVEY: I think this kind of goes to an excited
3 utterance, if I can lay a foundation for it.

4 THE COURT: Come up here.

5 (Whereupon, a bench conference takes place off the
6 record.)

7 THE COURT: I sustain the objection.

8 BY MR. CORVEY:

9 Q. So moving forward, there's this altercation, and you
10 end up leaving. Safe to say you don't really remember much
11 the rest of the night, but you end up back in Mount
12 Pleasant?

13 A. Yes.

14 Q. So let's fast-forward then to the next day. What do
15 you remember once you wake up the next day?

16 A. I mean, obviously, people talking about what
17 happened last night.

18 Q. Did you at any point that morning get a call from
19 the defendant, Mr. Clarke?

20 A. Yes, I did.

21 Q. Can you describe for the jury that process that you
22 end up talking to Mr. Clarke?

23 A. We were trying to recap what happened. And, I mean,
24 I would say, I guess, that's it, just trying to recap and
25 come up with what we remembered from last night.

1 Q. Were you guys trying to get the story straight?

2 A. I didn't have a story. I didn't remember what
3 happened. Just seemed like --

4 Q. What Mr. Clarke was trying to do?

5 A. I don't remember exactly it. I just remember
6 talking about the night.

7 Q. Did he tell you what he did that night?

8 A. Yes.

9 Q. What did he say that he did?

10 A. Said he hit somebody.

11 Q. Did he say he knocked somebody out?

12 A. I'm not positive. I think so.

13 Q. You think so? And this was on a phone call the next
14 morning, give or take around noon some time?

15 A. Yes.

16 Q. And it was with the defendant?

17 A. Yes.

18 MR. CORVEY: Beg the Court's indulgence.

19 THE COURT: All right.

20 BY MR. CORVEY:

21 Q. Now, would it refresh your recollection a little bit
22 to see what you said to detectives when you met with them
23 that weekend about your conversation with Mr. Clarke if you
24 read some of your statement?

25 A. Sure.

1 Q. I'm handing you statement starting on page 20. Sort
2 of, again, read to yourself a page or two.

3 A. Okay. I kind of recall just saying that a few guys
4 hurt Binh, or something along those lines.

5 Q. And he called you in and first thing he said was
6 self-defense?

7 A. I don't think it's the first thing he said, but
8 that's --

9 Q. What he was going towards?

10 A. Yes.

11 Q. And then he said that he knocked a kid out?

12 A. Yes.

13 Q. And to you, when you told detectives, you got the
14 sense he was trying to get the story straight?

15 MR. KING: Objection, leading.

16 THE COURT: Sustained.

17 BY MR. CORVEY:

18 Q. In your opinion, what was the purpose of that call?

19 A. I don't know if it was trying to get a story
20 straight or if it was just recapping the night before. I
21 mean, I don't know. I'm not sure what the purpose was
22 exactly.

23 Q. But you are clear that he told you he knocked a kid
24 out?

25 A. Yes.

1 MR. CORVEY: No further questions at this time.

2 Please answer any that Mr. King has.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. KING:

6 Q. Mr. O'Hearn, this was Saturday morning you said you
7 got this phone call?

8 A. Yes, sir.

9 Q. Now, at this point, people still don't really know
10 what all happened; is that right? It's still kind of unclear
11 what all happened, how serious it was; is that right?

12 A. Yes, sir.

13 Q. And you are saying today that Ellis called you and
14 said he knocked the guy out, right?

15 A. Yes, yes.

16 Q. Do you know who he said he knocked out?

17 A. No.

18 Q. He didn't call and say, I knocked out the guy who
19 died?

20 A. No.

21 Q. Or who was in the hospital, or anything like that,
22 right?

23 A. No.

24 Q. Just saying -- and when the solicitor asked you the
25 first time, you said that he hit a guy, right?

1 A. Right.

2 Q. And then I think he was asking you about knocking
3 him out and you said, I think so, I'm not positive. So is it
4 possible that Ellis just called you and said, we got in a
5 fight last night? Is that possible?

6 A. It's possible, possible.

7 Q. And you said -- they are trying to talk about
8 getting the story right. You said he could have just been
9 calling you recapping the night, right?

10 A. Yes.

11 Q. When you went down to the police station, do you
12 remember going down there and giving them that statement?

13 A. Yes.

14 Q. That was Monday, 4/28/14, right?

15 A. Yes, I think so.

16 Q. And if Ellis had called you on the phone and you
17 admit being the one who knocked that guy down and died,
18 wouldn't you have gone to the police and made some effort to
19 get there before that Monday, Monday night?

20 A. Probably, yes. Probably, yes.

21 Q. When you get there -- you've seen the surveillance
22 video, right?

23 A. I've seen frames of it just printed out. I haven't
24 seen the -- but, yeah, I got the idea.

25 Q. What did you do that night? Where were you?

1 A. When --

2 Q. Yeah, when this commotion is going on, where were
3 you? How are you related to this whole thing?

4 A. I don't have visual memories, really. It looks like
5 me in the video walking close to the area, but I'm not sure.

6 Q. Doesn't show you and Peter running together over to
7 the scene, getting right in that mix?

8 A. It looks like it. I wouldn't say in the mix, but
9 the area.

10 Q. Do you need to see the video again?

11 A. No.

12 Q. So you admit you ran pretty much along with Peter
13 and got right in the mix of that scuffle, whatever was going
14 on? You weren't standing off in the distance watching it
15 happen; is that right?

16 A. That's what it looks like.

17 Q. But that's not what you told the police when you met
18 with them, right? When you met with the police, you told
19 them, I remember seeing the scuffle probably 20 yards to the
20 right where I was, seen all of this happened, started walking
21 back across the street. Binh runs up to me and he's like, we
22 got to go.

23 So you were kind of putting yourself away from the
24 whole situation about 20 yards away, right?

25 A. From what I remember at the time. I don't have good

1 memory of that night.

2 MR. KING: Those are all the questions I have.

3 THE COURT: All right. Redirect.

4 REDIRECT EXAMINATION

5 BY MR. CORVEY:

6 Q. So Mr. King was just asking you about what you said
7 or the context of the phone call the next day. And just,
8 again, I want to be very clear. When you met with police,
9 you told them that Ellis told you that he hit the kid, right?
10 And kind of told them four different ways. You said that you
11 told him: I heard that you hit the kid. I did. Is that
12 right?

13 A. Yes.

14 Q. You told them that Ellis told you that he knocked
15 the kid out, right?

16 A. Right.

17 Q. And you also said that he said he knocked one kid
18 out but you are not sure if he said he hit more?

19 A. Yes.

20 MR. CORVEY: No further questions.

21 THE COURT: All right. You may step down.

22 Ladies and gentlemen, I think we are going to go
23 ahead and take our afternoon break right now. Take about
24 15-minute break. Give you an opportunity to stretch your
25 legs, use the restroom.

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SARAH WHITE,

having been duly sworn, testifies as follows:

THE CLERK: State your first and last name and spell your last loudly and clearly into the microphone.

THE WITNESS: Sarah White, W-h-i-t-e.

DIRECT EXAMINATION

BY MR. SIMPSON:

Q. Ms. White, good afternoon.

A. Hi.

Q. Is it easy for you to be here this afternoon?

A. No.

Q. Is this the kind of situation you would ever -- we've got some tissues up there. Take your time. Okay?

A. Okay. Sorry.

Q. Is this the kind of thing you thought you would ever be involved in?

A. No, sir.

Q. I just want to start with basic questions about you, who you are. Do you live in Charleston?

A. Yes.

Q. How old are you?

A. 23.

Q. 23?

A. Yeah.

Q. And how long have you lived in Charleston?

1 A. My whole life.

2 Q. And what do you do currently?

3 A. I'm about to graduate from College of Charleston in
4 studio art.

5 Q. In what?

6 A. Studio art.

7 Q. Did you recently have some of your art displayed?

8 A. Yes, sir.

9 Q. I understand that you are pretty emotional, so we
10 will get right to the point.

11 A. I'm sorry.

12 Q. No, it's okay. Do you know someone named Jake
13 Dudinyak?

14 A. Yes.

15 Q. How do you know that person?

16 A. I used to date him two years ago.

17 Q. Okay. Were you aware back then that he had a
18 brother?

19 A. Yes.

20 Q. And what's his brother's name?

21 A. Peter Dudinyak.

22 Q. Okay. And how long did you know these gentlemen?

23 A. I've known them probably since like my senior -- no,
24 my sophomore year of high school.

25 Q. How long did you date Jake Dudinyak?

1 A. Like, three months.

2 Q. Okay. During this incident, was that three months?

3 A. Yes.

4 Q. Do you have any hard feelings toward Jake or Peter?

5 A. No.

6 Q. Okay. But are you still sort of socially involved
7 with them?

8 A. Not really, honestly.

9 Q. Do you see them much these days socially?

10 A. Sometimes in the same eateries and bars and stuff
11 like that, but I don't really go out like I used to.

12 Q. Okay. I know this is difficulty, but do you
13 recognize the gentleman seated to the right of this table?
14 And who is that?

15 A. Ellis Clarke.

16 Q. Okay. And do you know who that is?

17 A. (Witness indicates in the affirmative.)

18 Q. How do you know him?

19 A. He was Jake's friend.

20 Q. If you need to stop --

21 A. He was Jake and Peter's friend. Go ahead. Sorry.

22 Q. Were you ever close friends with Ellis Clarke?

23 A. Not really.

24 Q. You said that you are not -- you don't see Jake and
25 Peter socially a whole lot anymore; is that correct?

1 A. No, sir..

2 Q. Are you here today to lie on behalf of Peter?

3 A. No.

4 Q. Okay. Are you here to lie on behalf of Ellis?

5 A. No.

6 Q. Just here to give your side of what happened?

7 A. Say what I saw, what I heard.

8 Q. Okay. So let's get to that. And, again, if you
9 need to stop at any time, that's fine. To the evening of
10 these events, what was sort of the plans for that evening,
11 and how did that night unfold?

12 A. We were going to go out downtown, have drinks and go
13 home.

14 Q. With whom?

15 A. I was with Peter, Ellis, Jake, Becca, Madison and
16 Matt. And Matt's -- that's what I remember. Other people
17 were there obviously, but ...

18 Q. Now, did your evening start down on King Street or
19 did you go anywhere else before?

20 A. We went to Midtown, which is on King Street. I
21 mean, from what I remember, we were on King Street the entire
22 night.

23 Q. Do you remember how you got downtown?

24 A. We drove.

25 Q. Do you remember who drove that night? If you don't

1 remember something --

2 A. Honestly, I could try to say I remember, but off the
3 top of my head, I don't.

4 Q. Okay. And I think you mentioned being at the Silver
5 Dollar that evening?

6 A. Yes. We went there after Midtown from what I
7 recall.

8 Q. And at some point, did you leave the Silver
9 Dollar?

10 A. Yeah, at the end of the night.

11 Q. Okay. When you say end of the night --

12 A. Like closing time, everyone was leaving.

13 Q. And you mentioned a large group you were with, but
14 who did you leave with?

15 A. I just remember us all going at the same time, but
16 me and Jake were walking together.

17 Q. Okay.

18 A. Apart. We ended up apart from everyone else.

19 Q. And were you and Jake apart behind or ahead of
20 everyone else?

21 A. I remember being ahead.

22 Q. Okay. Let me be clear. You understand that some
23 sort of altercation occurred that night, right?

24 A. Yeah.

25 Q. Let's keep it simple. Did you witness or see any of

1 that?

2 A. I didn't see a thing. I didn't see anything.

3 Q. Okay. Where were you headed when you left the
4 Silver Dollar?

5 A. We were going to go back to the car.

6 Q. Do you remember approximately where the car was
7 parked?

8 A. It was parked in -- off King by -- I'm sorry. I'm
9 bad at locations. I should know better. But it's like
10 across the street. It's a parking area.

11 Q. One of those off-King parking?

12 A. Yeah.

13 Q. So you and Jake, ahead of everyone, you get to this
14 parking space, you get to the parking lot?

15 A. Yes, sir.

16 Q. And what occurs then? Everybody steps behind you or
17 what?

18 A. Me and Jake are talking. We are kind of waiting for
19 everyone.

20 Q. Is everyone just right behind you or --

21 A. No, they are taking awhile. We are kind of
22 wondering why.

23 Q. And who is the first person to come back to that
24 parking place?

25 A. I just remember that I saw Ellis run up.

1 Q. And to the best of your recollection, what does
2 Ellis say when he runs up to the car?

3 A. "I just knocked two dudes out." This is what I
4 don't remember specifically. It was two dudes or one dude, I
5 don't remember, but "I knocked someone out."

6 Q. Knocked someone out, we've got to go. And you don't
7 remember if he said it was two guys or one guy?

8 A. I don't remember.

9 Q. Did you jump in the car with him and leave?

10 A. No. I'm sorry. It's kind of hard to remember.

11 Q. Did he mention what was going on with anybody else
12 at that time?

13 A. Well, he told us what happened, that there was a
14 fight. And I remember I was sitting in the parking lot and I
15 was, like, there's been a fight, we have to -- they were
16 picking on our friend Binh.

17 Q. Let's not talk so much about what anyone said other
18 than Ellis. You are talking about what Ellis said or other
19 people?

20 A. Well, this is just Ellis, yeah.

21 Q. Okay. And he said that in the course of these
22 events, he knocked either one or two guys out, and y'all
23 needed to go? And you were with Jake, right?

24 A. Uh-huh.

25 Q. What about physically, do you remember noticing

1 anything physically that Ellis was doing as he came up to the
2 car?

3 A. I just remember him rubbing his hand.

4 Q. Rubbing his hand as if -- could you just demonstrate
5 to the jury.

6 A. (Witness indicates).

7 Q. Sort of just kind of rubbing it like this; is that
8 fair?

9 A. Yeah.

10 Q. Okay. How did Jake respond to what Ellis had to
11 say?

12 A. He was like really upset, because he's like, oh, my
13 gosh, my brother.

14 Q. And did Ellis tell you what was going on with his
15 brother?

16 A. Uh-huh.

17 Q. What did he say?

18 A. That his brother -- that Peter was behind. And,
19 honestly, I kind of -- I don't want to say something and then
20 it not be true.

21 Q. No, that's --

22 A. I don't remember everything clearly, but he
23 mentioned how the cops had caught him.

24 Q. Peter?

25 A. Or -- yeah, like, he was left behind and, like, he

1 was just giving us what he had -- what Ellis had seen.

2 Q. Okay. So did you and Jake stay there at the parking
3 place or what did Jake do?

4 A. Well, I sat in the parking lot for, I don't know, it
5 felt like 45 minutes. I can't tell you how long it was. I
6 wasn't checking my watch, but he went back to go see what was
7 going on. And I sat there.

8 Q. Who went back, Jake?

9 A. Jake did.

10 Q. And you say you sat there, what did Ellis do?

11 A. I honestly --

12 Q. Did he sit there patiently and wait with you?

13 A. I don't remember. I don't remember. I just
14 remember feeling alone.

15 Q. Is it possible you were alone?

16 A. Like in a dark parking lot sitting there.

17 Q. Were you sitting there alone?

18 A. Yeah. No one was sitting next to me, from what I
19 remember.

20 Q. Did you ever walk back over to the area?

21 A. No, I didn't want -- I didn't want to get
22 involved.

23 Q. Did you ever just walk in that direction?

24 A. Yeah, I walked a little, like, I walked a little bit
25 towards it, then walked back, but I didn't get close enough

1 to see what was going on and all the drama.

2 Q. And you've been truthful with us today, right?

3 A. Yes, sir.

4 Q. And you've heard from Ellis Clarke himself say, I
5 just knocked someone out?

6 THE COURT: You need to give a verbal response.

7 THE WITNESS: Yes, I heard Ellis Clarke say, I
8 knocked dudes out.

9 BY MR. SIMPSON:

10 Q. And witnessed him rubbing his hands?

11 A. And witnessed him rubbing his hand.

12 MR. SIMPSON: Thank you. Please answer any
13 questions Mr. King has for you. Thank you.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. KING:

17 Q. Ms. White, you testified that you didn't see this --
18 you didn't see the fight. You didn't see anything, right?

19 A. No, sir.

20 Q. You have no idea what really happened?

21 A. No.

22 Q. You rode with Ellis that night, is that right, when
23 you first started to go out, when you first went out?

24 A. Yeah.

25 Q. Do you remember where you went first?

1 A. I recall going to Midtown first.

2 Q. Do you remember anything about Señor Tequila's?

3 A. What?

4 Q. Señor Tequila's?

5 A. Oh, yes. Yes, we did go there first. I'm sorry.

6 It was so long ago.

7 Q. Did you go there and meet Peter there? Do you
8 remember that?

9 A. Uh-huh.

10 Q. So do you know what time that was?

11 A. Like maybe 7 or -- 7.

12 Q. 7? Peter is already there?

13 A. Yes.

14 Q. Peter is already drinking?

15 A. I guess. I mean, I wasn't -- I'm not really paying
16 attention to that.

17 Q. Jake and Peter are brothers, right?

18 A. Yes, sir.

19 Q. From what you knew of them, were they close?

20 A. Yes, sir.

21 Q. How would you describe them, very close, just, you
22 know, kind of friends? Were they --

23 A. They fight a lot, but, I mean, they are close
24 brothers. I mean, I don't have a sibling, so I don't really
25 relate, but they are tight, I guess, yeah.

1 Q. So you are saying you were waiting in the car after
2 you've left the bars and Ellis ran up to you, right?

3 A. Yes, sir.

4 Q. And you said you are not sure if he said if "I
5 knocked two dudes out" or if "I knocked a guy out", right?

6 A. Yes.

7 Q. He didn't tell you who he knocked out, did he?

8 A. No.

9 Q. Do you remember meeting with the police and giving a
10 statement?

11 A. Yes, sir.

12 Q. Was that on May 9th, 2014?

13 A. I don't remember.

14 Q. You didn't go right after this to the police,
15 though, did you?

16 A. The day after, no, but in the next week or so.

17 Q. May 9th doesn't sound like a day you might have gone
18 down there? Is it possible it's May 9th?

19 A. Sure. Yeah. I don't remember.

20 Q. And you remember meeting with a detective there,
21 Richard Burckhardt, or meeting with somebody at the police
22 station?

23 A. Yes, sir.

24 Q. You told them that Ellis ran up and said, "I knocked
25 two dudes out?"

1 A. Well, then that's what it was. If it was two years
2 ago, if I said that, I'm not a liar, then that's what I
3 said.

4 Q. Okay. If you said back then, "I knocked two dudes
5 out," you think that's what Ellis said?

6 A. Yeah, I mean, I guess, yeah.

7 Q. Jake was right there?

8 A. Uh-huh.

9 Q. He heard it all?

10 A. Yes.

11 Q. When you get flustered, does your memory escape you?

12 A. Sometimes.

13 Q. In your statement when you were talking to Detective
14 Burkhardt, you said, "When I got flustered, my memory escapes
15 me. When I get nervous, I get blocks;" is that right?

16 A. Yeah.

17 Q. Is it possible that you might not exactly remember
18 what was said that night?

19 A. I know for a fact that he said "knocked dude out", I
20 can tell you that right now.

21 Q. You said a minute ago "knocked two dudes out"?

22 A. Two dudes out, dudes, plural. "I knocked someone
23 out," that was said.

24 Q. Do you know -- after that, Jake ran back to the
25 scene, is that right, ran back to check on his brother?

1 A. Yes, sir.

2 Q. And eventually, people come back and you leave that
3 parking lot. Do you remember how you left that parking lot?

4 A. I just remember hopping in a car and I -- it was
5 either Binh was driving or Ellis was driving, but I'm not
6 going to talk about something I can't on the spot tell you
7 word for word is true if my mind is that foggy, but I got in
8 a car and we drove away.

9 Q. Do you remember getting in the car and that you
10 drove to Mount Pleasant? Is that right?

11 A. Yeah.

12 Q. Did you go -- do you know who Madison Martini is?

13 A. Uh-huh.

14 Q. Did you go to Madison Martini's house that night?

15 A. No, because that's downtown, or it was downtown at
16 the time.

17 Q. How about Jake, was he with you the whole night?

18 A. I think we separated eventually, but I will be
19 honest, I don't remember after getting in the car, like,
20 time. I had been drinking that night. I wasn't drunk. At
21 that time, I was not, but I don't remember though. Just for
22 time, I don't remember what happened two years ago.

23 Q. Do you remember telling Detective Burkhardt when he
24 asked you how did you get home, you said, "We went in Binh's
25 car," Binh Ton's car?

1 A. Okay, then that's what it was. Okay.

2 Q. He said: Okay. You drove back to Mount Pleasant.
3 Who rode with Binh?

4 You said, Yes, to Mount Pleasant. We went back to
5 Yen's house.

6 That's Binh's sister.

7 A. Yeah, yeah.

8 Q. Is this ringing a bell?

9 A. Yes, sir.

10 Q. And he said: Who all rode in Binh's car when you
11 left downtown?

12 And you said: Me, Andrew, Jake, Binh's girlfriend,
13 and I don't know Binh.

14 A. Yes, yes, that's accurate.

15 Q. Did you go back downtown that night? Do you
16 remember going back and picking up Becca?

17 A. I don't remember that right now.

18 Q. But you were never at Percy Street with -- Madison
19 Martini's house?

20 A. No.

21 Q. Was Jake there?

22 A. I don't think so.

23 Q. Because you told Detective Burkhardt he was in the
24 car with you when y'all drove back to Mount Pleasant?

25 A. Yeah, but I don't know if he got a ride back there.

1 But with me at that moment, no, he was not at Madison's
2 house. In the car with me and Binh and everyone else.

3 Q. I just want to make sure. When you left that
4 parking lot, you didn't get in the car and go to Madison
5 Martini's house?

6 A. No, sir.

7 Q. Did you continue hanging out with Ellis that night?
8 Did you see him at any point later?

9 A. No.

10 Q. You never heard him later that night bragging or
11 saying anything about the fight?

12 A. No, sir.

13 Q. All you heard is what you are saying happened in
14 that car?

15 A. Yes.

16 Q. And Jake was right there, heard it too?

17 A. Yes.

18 MR. KING: That's all the questions I have.

19 THE COURT: Redirect.

20 MR. KING: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. SIMPSON:

23 Q. You mentioned about Jake and Peter, and you said
24 they are tight?

25 A. Yes, sir.

1 Q. Is that correct? And said they fight a lot. You
2 mean they get in fights a lot?

3 A. No. They argue. Sorry.

4 Q. Just to clarify that. That's what I thought.
5 Mr. King referred to your statement a couple of times. And I
6 believe you said, that's what I said back then, that jogged
7 your memory. If I told you you said back then that after
8 Ellis comes up rubbing his hands saying "knocked dudes out",
9 he gets in the car and just bails and leaves you there, does
10 that ring a bell? If you told Detective Burckhardt back then
11 that, would that be accurate?

12 A. Yeah, yeah.

13 Q. And then, "I think he got, yeah, he got in the car
14 and he drove off." And you said you got a little -- I'm
15 sorry. You were pretty adamant with Mr. King, is that
16 correct, when you said you heard him say --

17 A. Yes.

18 Q. -- knocked a dude out or dudes out?

19 A. I mean, I wish-- I sometimes wish I didn't hear it,
20 but that's what I heard.

21 MR. SIMPSON: Okay. Thank you, Ms. White. Nothing
22 further.

23 THE COURT: You may step down.

24 The State can call their next witness.

25 MR. CORVEY: Thank you, Judge.

1 The State calls Jake Dudinyak.

2 JACOB DUDINYAK,

3 having been duly sworn, testifies as follows:

4 THE CLERK: Once seated, if you could please state
5 your first and last name and spell your last loudly and
6 clearly into the microphone..

7 THE WITNESS: Jacob Dudinyak, D-u-d-i-n-y-a-k.

8 DIRECT EXAMINATION

9 BY MR. CORVEY:

10 Q. Good afternoon, Jake. Where are you from?

11 A. Mount Pleasant, Charleston, South Carolina.

12 Q. How old are you?

13 A. 23.

14 Q. You've lived in Mount Pleasant your whole life?

15 A. Yep.

16 Q. We've heard about a lot of names. I want to briefly
17 touch on a few of them with you and your relationship with
18 those people. Do you have any siblings?

19 A. Yes, I do.

20 Q. Who are they?

21 A. Peter Dudinyak and Kelly Dudinyak.

22 Q. And, obviously, they lived with you all your life
23 too?

24 A. Yep.

25 Q. Obviously, there are some other people involved in

1 that. What about defendant Ellis Clarke, do you know Ellis?

2 A. Yes, sir, I do.

3 Q. How long have you known Ellis?

4 A. Probably say about close to around 10, 15 years.

5 Q. Good friends?

6 A. Yep.

7 Q. We've asked this to a lot of people. Is it easy to
8 be in here talking about this stuff?

9 A. Not at all.

10 Q. Do you prefer not to be?

11 A. Yeah, but, you know, got to be here.

12 Q. So a few other people may come up as we are talking
13 and I may even stop and ask you to describe your relationship
14 with them. But that in general is it. I kind of want to
15 jump right into it. What were the plans on Friday, February
16 25th?

17 A. To go out and have fun.

18 Q. And just for the jury, and I might jump in and kind
19 of stop you and get some classification on something. Just
20 generally describe what the plans were, who you ended up
21 meeting up with, and where you ended up just socially for
22 now?

23 A. Well, I think I got off work. Met up with Ellis.
24 And talked to a couple of people. They said they were going
25 downtown. And I talked to my brother and my girlfriend at

1 the time, Sarah. So me and Ellis went and picked up Sarah,
2 went and met up with my brother at Señor Tequila's. And from
3 then on, we went downtown.

4 Q. Obviously, this was two years ago, so time frames
5 can be a little tough. But just, generally, about what time
6 did you head downtown after meeting up with Peter?

7 A. Probably say around 9, 9:30.

8 Q. And once getting downtown, what did you guys do from
9 there?

10 A. I think we went to Percy Street.

11 Q. First?

12 A. I think so. And went to -- you know, we drank a
13 little bit there. And then we walked to -- we ended up going
14 out to the bars on King Street.

15 Q. Did you guys end up in Midtown at any point?

16 A. Yes, I think so.

17 Q. Was that your first stop on King Street?

18 A. I'm not too sure.

19 Q. Did you end up at the Silver Dollar at some point?

20 A. Yes, sir, at some point.

21 Q. Was that your last stop on King Street?

22 A. I'm pretty sure.

23 Q. So who all did you meet out that night, some of the
24 people you guys were with, just generally?

25 A. Well, it was me, of course. Everyone I said I rode

1 down there with, Madison Martini, Becca Richards, and a
2 handful, maybe two handfuls of other people.

3 Q. Some of those new names that you mentioned, Becca,
4 Madison, how long have you known them?

5 A. Probably since middle school, so probably 10 years.

6 Q. All grew up in Mount Pleasant together?

7 A. Yep.

8 Q. So as the night is progressing, you know, you guys
9 are drinking. You know, we've talked about this with a lot
10 of people. About how much did you have to drink that night?

11 A. A lot probably, a lot.

12 Q. We talked about a scale. One just being a couple of
13 drinks, or one to 10 being very drunk. If you had to place
14 yourself somewhere where, would you place yourself?

15 A. Probably an 8.

16 Q. So how would you describe the night? Fun, good
17 time?

18 A. Yeah.

19 Q. As things start to wind down, what happens next?

20 A. So, me and Sarah were -- you know, everyone was
21 leaving. I guess the bars were shutting down. I don't
22 really remember what time it was, but we were walking back to
23 the parking lot on Morris Street.

24 Q. What was in the parking lot on Morris Street?

25 A. Ellis's car.

1 Q. Is that the car you guys rode in?

2 A. Yes, sir.

3 Q. So you and Sarah get to the car first?

4 A. Yes.

5 Q. So are you guys in front of everyone else,
6 basically?

7 A. Yes, sir.

8 Q. So what happened once you guys got there?

9 A. We were waiting probably for about five or ten
10 minutes and then --

11 Q. Seem weird no one else had shown up?

12 A. We didn't really think about it, you know.

13 Q. Just hanging out talking?

14 A. Yeah, because, you know, we were walking down King
15 Street. You see people that you haven't seen in a while so
16 everyone kind of splits up.

17 Q. Yeah. And I want to be clear. Obviously, we know
18 an altercation happened, but did you see that at all any?

19 A. No, not at all.

20 Q. So, eventually, does anyone else come up to the car?

21 A. Yes.

22 Q. Who's the next person up to the car?

23 A. Ellis came up to the car.

24 Q. I want you for the jury to describe kind of what
25 happens next in as much detail you can. And I may stop and

1 ask questions, but for them, describe what happened.

2 A. We got up to the car. And Ellis ran up fondling his
3 keys in a huge rush, jogged up, trying to get in his car.
4 Told us to get in the car. And I asked him why. And he said
5 that a fight happened: Just get in the car, the cops are
6 after me.

7 And then I asked him where my brother was. And he
8 said I don't know, as he was getting into his car. So I
9 began to go towards Morris and King Street trying to find my
10 brother.

11 Q. Did Ellis at any point say anything a little bit
12 more specific about the fight while at the car?

13 A. Yes. He said that the cops had my brother and that
14 he punched someone in the face.

15 Q. That Ellis punched somebody in the face?

16 A. Yes.

17 Q. Not Peter; Ellis punched somebody in the face?

18 A. Yes.

19 Q. So he says that. What do you and Sarah do?

20 A. I tell Sarah to wait. And I ask where my brother is
21 at. And he said that the cops have him. So I run to Morris
22 Street.

23 Q. And describe what happens once you get over to
24 Morris Street.

25 A. My brother was in the back of a cop car. And I

1 started to walk up to the cop car. The ambulance was at the
2 scene. And these cops, two cops came up and told me I had to
3 go sit down. And they sat me on the curb across the
4 street.

5 Q. Did you ever get to talk to Peter that night?

6 A. No, I did not.

7 Q. About how long did you hang out there at the scene
8 until, you know, whatever it is?

9 A. I will say next 20 minutes.

10 Q. After hanging out, while there, were you able to
11 talk to anyone else who was there?

12 A. No.

13 Q. So what do you do after realizing you are not going
14 to get to talk to Peter?

15 A. Well, I went and met up with Sarah. You know, I
16 found her. And I was just sitting on the curb right next to
17 the parking lot. So it wasn't too hard. So I found her.
18 And she was with Andrew. And we all met up. And Binh Ton
19 rolled up in his car and we all got in his car and left.

20 Q. You mentioned earlier that you and Sarah had gone to
21 Ellis's car?

22 A. Yes.

23 Q. Where had that gone?

24 A. It left. It was gone.

25 Q. Ellis left?

1 A. Yes.

2 Q. So after you guys meet up and get in Binh's car,
3 what do you guys do?

4 A. We -- then we all go to Percy Street.

5 Q. And what was the purpose of going over to Percy
6 Street?

7 A. Because that's where we all were at before. So we
8 all went and met back up there afterwards.

9 Q. Did you, by chance, go to pick up Becca?

10 A. Yes, she was -- while we were -- before we left, she
11 -- we all met back up.

12 Q. Yeah.

13 A. So then we all got in the car at the same time.

14 Q. To go back to Mount Pleasant?

15 A. No, to Percy Street.

16 Q. So --

17 A. Are you talking --

18 Q. I'm a little confused. Did you guys meet Becca at
19 the parking lot or back at Percy Street?

20 A. I think it was at the parking lot. And then we all
21 went back to Percy Street.

22 Q. Why don't we then pick it back up at Percy Street.
23 What happens once you guys get back up there?

24 A. We get back up there and we walk inside the house
25 and Ellis was sitting there.

1 Q. And did he say anything?

2 A. I mean, he said -- he was kind of bragging about how
3 he fought this guys. That was about it.

4 Q. Bragging, what do you mean by that?

5 A. Saying: Oh, dude, I hit these people. Like: Oh,
6 the cops are after me, haha.

7 Kind of laughing about it.

8 Q. And, I mean, at that point, you had seen ambulance
9 there?

10 A. Yeah.

11 Q. So you guys are back at Percy Street. Ellis is
12 bragging about it. Same crew is there?

13 A. Yeah. And everyone was yelling at this point.
14 Everyone was just freaking out. No one really knew what was
15 going on.

16 Q. Why were they yelling?

17 A. Because, you know, the fight happened. And Peter
18 was in jail and no one knew what was going on.

19 Q. And --

20 A. And Madison ended up coming back to whose house it
21 was and she kicked all of us out, because I guess she saw
22 what happened.

23 Q. Did Ellis ever tell you a little bit more
24 specifically about what Peter was getting arrested for? Did
25 you ask him?

1 A. No, just said that there was a fight and cops were
2 after him.

3 Q. So after Madison comes back and gets upset, what do
4 you guys do then?

5 A. We proceeded to leave.

6 Q. How do you guys leave?

7 A. I ride with Ellis, because me and him are arguing.
8 And Sarah tried to come with me. And I told her to ride with
9 everyone else, to go back to my sister's house, and Becca --
10 yeah, my sister's house.

11 Q. And just to be clear, your sister, that's Kelly?

12 A. Yep.

13 Q. At that point, who did Kelly leave with?

14 A. Yen Ton, which is Binh's sister, and Andrew and
15 Andrew's girlfriend.

16 Q. So who all -- how does the rest of the crew, besides
17 you and Ellis, get back to your sister's and --

18 A. I believe Binh.

19 Q. But you are with Ellis?

20 A. Yeah.

21 Q. And you said you and Ellis were arguing?

22 A. Yes.

23 Q. What were you arguing about?

24 A. Just about my brother getting arrested and all that
25 was going down and him leaving him.

1 Q. Ellis leaving your brother?

2 A. Uh-huh.

3 Q. And you were upset?

4 A. Yeah.

5 Q. What were you upset about?

6 A. I was upset that I didn't really know what was going
7 on and my brother had just gone to jail.

8 Q. For something that Ellis did?

9 A. Yeah.

10 Q. So you guys get back. Does Ellis drop you off at
11 Andrew's?

12 A. Yeah, I believe he came inside.

13 Q. And then everyone just kind of goes to bed that
14 night?

15 A. Yeah, we all went to bed.

16 Q. Now, I just want to be very clear. When you and
17 Sarah are still at the car waiting on everybody, Ellis comes
18 up and unprompted says that he hit somebody?

19 MR. KING: Objection. Leading again.

20 THE COURT: Please don't lead.

21 THE WITNESS: Yes.

22 BY MR. CORVEY:

23 Q. Now, kind of before this comes up and becomes a big
24 deal, at any point after the fact, was there a plan to make
25 all of this up?

1 A. No, sir.

2 Q. Obviously, Pete is your brother?

3 A. Yeah.

4 Q. Are you guys close?

5 A. Yep.

6 Q. Would you come into court here today and lie for
7 him?

8 A. No.

9 Q. Are you here today just to tell the truth about what
10 you observed?

11 A. Yes, yes, sir.

12 MR. CORVEY: Beg the Court's indulgence.

13 BY MR. CORVEY:

14 Q. So we've talked about this a lot, but do you not --
15 you remember meeting with the police?

16 A. Yes, I do.

17 Q. Do you remember specifically what you told them?

18 A. No, not off the top of my head.

19 Q. Would it help you if you looked at the transcript of
20 your interview to kind of remind you what you told them Ellis
21 said?

22 A. Yeah.

23 MR. CORVEY: Your Honor, may I approach?

24 THE COURT: All right.

25 BY MR. CORVEY:

1 Q. Do you remember now what you told police about what
2 Ellis said?

3 A. Yes, I do.

4 Q. What is that?

5 A. That he knocked some dude out.

6 Q. What else?

7 A. And that he got a phone call and was bragging
8 about -- or my sister got a phone call saying that one of my
9 brother's friends was bragging about how Ellis just knocked
10 this guy out.

11 Q. Ellis was bragging about?

12 A. Uh-huh.

13 THE COURT: Is that a yes? You need to say yes or
14 no, not hum-um or uh-huh.

15 THE WITNESS: Yes, yes.

16 MR. CORVEY: No further questions. Please answer
17 any Mr. King may have.

18 CROSS-EXAMINATION

19 BY MR. KING:

20 Q. Mr. Dudinyak, you testified on direct -- he first
21 asked you kind of explain what happened. And you said first
22 that Ellis ran up and said he punched someone in the face,
23 right?

24 A. Yes, sir.

25 Q. That's what you said before he showed you --

1 refreshed your memory, right?

2 A. Yeah.

3 Q. You didn't say anything about Ellis rubbing his hand
4 or anything, right?

5 A. No, I didn't.

6 Q. You didn't see that?

7 A. I saw some of it. He might have been going for his
8 keys, but --

9 Q. You didn't see Ellis rubbing his hand like that,
10 like rubbing his fist?

11 A. I mean, not that I could remember.

12 Q. And you were right there with Sarah, your
13 girlfriend?

14 A. Yes, sir.

15 Q. You've talked about your meeting with the police,
16 right?

17 A. Yes, sir.

18 Q. And you remember going down there and talking to
19 them?

20 A. Yes, sir, I do.

21 Q. And you remember that was Sunday, April 27th, at
22 about 11:18; is that right?

23 A. Yes, sir.

24 Q. Let me ask you this. So you are saying you
25 testified first that Ellis just ran up and said he punched

1 somebody in the face. But now you are saying he might have
2 ran up and said he knocked some guy out, right?

3 A. Yes, sir.

4 Q. Didn't hear him saying he knocked two guys out, did
5 you?

6 A. I'm not too sure.

7 Q. You are not sure exactly what he said; is that fair
8 to say?

9 A. Well, yes, but I know he said knocked someone out.

10 Q. But when you first testified, you said "punched in
11 the face", little different?

12 A. Yes.

13 Q. So, I mean, you are kind of going back and forth,
14 right? It's possible you don't remember exactly what was
15 said, right?

16 A. Yeah.

17 Q. Because when you talked to the police, you told them
18 -- do you remember saying this, that: We were in the parking
19 lot off Morris Street. And I was waiting at my friend's car
20 for everyone. It was like two o'clock. The bars were
21 closing down. I was waiting at his car. One of my buddies
22 ran up. He was out of breath. He ran up and was like, hey,
23 what's up? He's like, come on, we've got to go. We've got
24 to go. I was like, what do you mean? We've got to go.
25 Yeah, we just got in a fight. Your brother is going to jail.

1 The cops have him. And I'm like, what do you mean? And he's
2 like, we got to go. I'm running from the cops.

3 And I'm like: Where's my brother at? And he's
4 like, over there with the cops. So I just took off running
5 toward the cops.

6 Do you remember saying that to the police officer or
7 the detectives that Sunday?

8 A. A lot of things was said, but, no, I don't.

9 Q. You don't remember saying that?

10 A. No.

11 Q. And you don't remember saying later when he asked
12 you: I honestly was at the car waiting for him. And he came
13 up and, you know, he came up running and he was like, dude, I
14 just got into a fight. And, you know, I just started running
15 towards the cops.

16 Do you remember saying that?

17 A. Yeah.

18 Q. So you were also telling the detectives -- you were
19 kind of going back and forth with the detectives back then,
20 right? One time you were saying he ran up and got into a
21 fight. And another time he's saying he knocked somebody out.
22 Is it fair to say you said both back then and today?

23 A. Yes.

24 Q. So after all of this, you leave from downtown. And
25 who do you get in the car with?

1 A. Ellis.

2 Q. This is right after it. So you run down to check on
3 your brother, right?

4 A. Yes.

5 Q. And you said they made you sit on the curb?

6 A. Yes.

7 Q. At some point, you got up and met back up with Binh
8 and them?

9 A. Yes.

10 Q. And you left from that parking lot right there?

11 A. Yes.

12 Q. Whose car did you get into? Who did you leave from
13 there?

14 A. Binh's dad's car, black Lexus.

15 Q. Binh's dad's car?

16 A. Yes.

17 Q. Who was in the car?

18 A. I think it was me, Binh, Andrew, Becca, and I think
19 that might be it.

20 Q. And you are saying that all of y'all went to Percy
21 Street; is that right?

22 A. Yes, yes.

23 Q. And are you sure? Sure y'all didn't get back in the
24 car and go to Mount Pleasant?

25 A. No. I rode with Ellis back to Mount Pleasant. We

1 went to Percy Street. And then Madison kicked us out. And
2 we -- so we all left and I rode with Ellis. It was just me
3 and him in the car.

4 MR. KING: Beg the Court's indulgence one moment,
5 Your Honor.

6 BY MR. KING:

7 Q. Do you remember talking to the police officers --
8 the detective that Sunday, and you told him: Well, yeah,
9 they ran. Ellis ran. I don't know where Binh went to, but I
10 met back up with Becca afterwards. We got in Binh's car and
11 went to Mount Pleasant and came home.

12 Q. Do you remember saying that?

13 A. No, I do not.

14 MR. KING: Your Honor, I move to admit that portion
15 of his video statement.

16 THE COURT: All right. Have you got it?

17 MR. KING: Yes, sir.

18 THE COURT: Let's get it marked for identification.

19 MR. KING: It's digital, Your Honor, at this
20 point.

21 THE COURT: If you want to publish it, it's got to
22 be marked somehow.

23 MR. SIMPSON: The State will be fine with them
24 publishing a clip if he can pull it later, ask Mr. King to do
25 that.

1 THE COURT: Can we go ahead and say what it would be
2 for identification? What would this be, Defendant's Exhibit
3 4? Any objection?

4 MR. CORVEY: He just said he doesn't remember. We
5 have copies of the transcript. I don't see the need to play
6 the full video when we have the transcripts he can look at.

7 THE COURT: Let me see the attorneys. Let me see
8 the attorneys.

9 (Whereupon, a bench conference takes place off the
10 record.)

11 THE COURT: Any objection to the Defendant's Exhibit
12 4.

13 MR. CORVEY: No, Your Honor.

14 THE COURT: All right. Defendant's Exhibit 4
15 admitted -- or the portion that he is going to publish is
16 admitted into evidence without objection. Go ahead.

17 (D-4, Video, is moved into evidence.)

18 BY MR. KING:

19 Q. Do you see that on the screen?

20 A. Yes, sir.

21 Q. And that's you?

22 A. Yes.

23 Q. Sunday, April 27th, that scene, do you remember
24 that?

25 A. Yep.

1 (Video playing.)

2 BY MR. KING:

3 Q. You agree that's what you said?

4 A. Yep.

5 Q. Are you sure you were at Percy Street that night?

6 A. Yes, sir.

7 Q. Did you continue hanging out with the Ellis that
8 night?

9 A. Yes, sir.

10 Q. Now, Ellis said he punched somebody or knocked
11 somebody out, he said kind of both of those, right?

12 A. Yes.

13 Q. But he didn't say who?

14 A. No.

15 Q. And you didn't know who?

16 A. No.

17 Q. It wasn't -- he didn't say it was the guy who fell
18 down and died?

19 A. No.

20 MR. KING: That's all the questions, Judge.

21 THE COURT: All right. Redirect.

22 MR. CORVEY: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. CORVEY:

25 Q. You guys did go back to Mount Pleasant that night at

1 one point, right?

2 A. Yes.

3 Q. But you just went to Percy Street first?

4 A. Yes.

5 Q. Now, at various points in the night, is it fair to
6 say that Ellis told you that he got in a fight?

7 A. Yes.

8 Q. Is it fair to say various points throughout your
9 conversations with him he said that he knocked somebody out?

10 A. Yes.

11 Q. Now, I just want to be very clear, because we've
12 kind of gone back and forth about this with the jury. When
13 you are waiting at the car, what does Ellis say to you when
14 he comes up?

15 A. He said: Hurry up. Get in the car. Hurry. Get in
16 the car. I just knocked this dude out. Get in the car.

17 I said: Where is my brother?

18 And he said: The cops have him.

19 MR. CORVEY: Court's indulgence, please.

20 THE COURT: All right.

21 BY MR. CORVEY:

22 Q. Later after you guys go back to Percy Street, you
23 have this ride that's just you two?

24 A. Yes.

25 Q. And you said you were angry?

1 A. Yes.

2 Q. Why were you angry at Ellis?

3 A. Because I felt like he left my brother just to get
4 caught with the cops because -- and he was freaking out
5 because he thought the cops were after him too.

6 Q. Why did he think the cops were after him?

7 A. I guess from the fight.

8 Q. Did he say anything about what he did in that fight
9 while you guys were driving back to Mount Pleasant?

10 A. Not other than what I have been saying.

11 Q. That he knocked somebody out?

12 A. Yes.

13 Q. And the whole way back in that car, did he ever at
14 one point to you or any point that night say that he didn't
15 do anything?

16 A. No.

17 MR. CORVEY: No further questions, Judge.

18 THE COURT: All right. You may step down.

19 The State can call your next witness.

20 MR. CORVEY: The State calls Rebecca Richards.

21 REBECCA RICHARDS,

22 having been duly sworn, testifies as follows:

23 THE CLERK: If you can please state your first and
24 last name and spell your last loudly and clearly into the
25 microphone.

1 THE WITNESS: Rebecca Richards, R-i-c-h-a-r-d-s.

2 DIRECT EXAMINATION

3 BY MR. CORVEY:

4 Q. Good afternoon, Rebecca. Where are you from?

5 A. I'm from Charleston.

6 Q. Born and raised?

7 A. Yes, sir.

8 Q. What do you do now for a living?

9 A. I'm a nanny.

10 Q. Nanny? Okay. How old are the kids?

11 A. Six and seven.

12 Q. How old are you?

13 A. I'm 22.

14 Q. Where did you go to school?

15 A. USC, Wando.

16 Q. So we've talked about a lot of people today. And I
17 just want to kind of ask you just how you know them and where
18 you fit in all of this. Do you know the gentleman sitting
19 here at the end of this table?

20 A. Yes, sir.

21 Q. Who is that?

22 A. Ellis Clarke.

23 Q. How long you have you known Ellis?

24 A. About six years, five.

25 Q. What about Peter Dudinyak, do you know Peter?

1 A. Yes, sir.

2 Q. How do you know Peter?

3 A. He's my friend's older brother and my ex-boyfriend.

4 Q. At the time that this all was taking place, were you
5 guys dating?

6 A. Yes, sir.

7 Q. Now, what about Madison Martini?

8 A. She was my roommate before she lived at Percy Street
9 and a friend from school.

10 Q. Now, some other people may come up at some point,
11 but I kind of want to dive right into what took place.

12 A. Okay.

13 Q. Do you remember Friday, April 25th, 2014?

14 A. Yes, sir.

15 Q. What were your plans that day?

16 A. We were just all meeting up to go out together in
17 downtown Charleston.

18 Q. And who were you with initially?

19 A. It was me, Madison Martini, Peter Dudinyak, Jake
20 Dudinyak, Ellis, Sarah White and Binh Ton, and a female that
21 I didn't know of.

22 Q. And maybe some other people there at various points?

23 A. Yes, sir, yeah.

24 Q. And what were you guys doing that night?

25 A. Just having a couple of drinks and going out

1 together.

2 Q. And how would you describe the night generally?

3 A. We started off at Midtown, had a couple drinks
4 together there. Moved to Silver Dollar, where the night
5 ended. We were all heading back to Percy Street to kind of
6 regroup.

7 Q. When you left, who did you leave Silver Dollar with?

8 A. Jamie Ledwell.

9 Q. Who is Jamie?

10 A. She's my friend.

11 Q. How long have you known Jamie?

12 A. Same, since high school.

13 Q. And how did you and Jamie get back to Percy Street?

14 A. We took a bike taxi.

15 Q. And so did you guys leave before everyone else or --

16 A. Yeah. We left probably about 15 minutes before
17 everybody else.

18 Q. And, generally, was the plan to go back to kind of
19 regroup at Percy Street once everyone got back?

20 A. Yes. I'm honestly probably drinking after, but we
21 were just meeting there to all hang out.

22 Q. And, I mean, you said drinking. And this isn't
23 meant to embarrass you at all, but were you drinking that
24 night?

25 A. Yes, sir.

1 Q. Today we talked about a scale, one being relatively
2 sober, ten being very drunk. If you had to put yourself on
3 the scale, where would you guess you were?

4 A. I would say about a five.

5 Q. So you and Jamie get back to Percy Street first?

6 A. Yes.

7 Q. What happens from there?

8 A. We were at Percy first. We were waiting for
9 everybody to get back. We were waiting for quite awhile
10 until I started to get worried. Probably waited for about 30
11 minutes until we realized that something had happened. No
12 one was getting back to the house. Because, obviously, it
13 was well past by closing time for the bars.

14 Q. Were you trying to get in touch with anyone?

15 A. Yes, sir. Again, I was calling Peter plenty of
16 times, just wondering where everybody was, but I wasn't
17 getting any answers from anybody.

18 Q. Who's the first person you see with the group you
19 were out earlier besides Jamie?

20 A. Ellis.

21 Q. Ellis?

22 A. Yes.

23 Q. Tell us about that.

24 A. Jamie and I were in the living room. I was trying
25 to get in touch with Peter. Ellis was the first one to show

1 up to the house. He came in exacerbated, saying there had
2 been a fight. And I was, like, what happened?

3 Q. Let me pause. When you say "exacerbated", what do
4 you mean by that?

5 A. Just kind of winded, like shaken up.

6 Q. Okay. Sorry to interrupt. Go ahead.

7 A. That's okay. He said that there had been a fight.
8 And I asked what had happened. And there wasn't much detail,
9 just kind of matter of fact, you know, there had been a fight
10 and Peter was going to jail.

11 Q. Did he at that point talk about his involvement in
12 the fight at all?

13 A. Not yet, no, sir.

14 Q. So from that point, what do you do?

15 A. Well, I was trying to get more information about
16 what exactly had happened. So I then started calling other
17 people of the group, obviously, realizing that Peter probably
18 didn't have his phone. I called Binh. I called Andrew. I
19 tried to call Jake and Sarah. And no one was answering their
20 phones. So, really, I was just trying to get more
21 information about what had happened.

22 Q. And were you able to get any in this time period?

23 A. No, sir.

24 Q. And you said that you and Jamie had been sitting in
25 the living room?

1 A. Yes.

2 Q. I just want to sit in that briefly. Do you remember
3 meeting with police in this case?

4 A. Yes, I do.

5 Q. Do you remember giving them a statement?

6 A. Yes.

7 Q. Do you remember telling them that you didn't think
8 Jamie was there?

9 A. Yeah. Jamie had been picked up at some point by her
10 boyfriend at the time. Honestly, that's not a detail that I
11 remembered specifically, because I wasn't really worried
12 about that at the time. I thought -- I didn't know if she
13 was there or not, to be honest.

14 Q. But now looking back --

15 A. Yeah, she was with me. Yeah, we took a bike taxi,
16 but I just wasn't sure when she left.

17 Q. Okay. So Ellis gets back. You are trying to figure
18 out still what's going on. What's the next thing you hear
19 about what's happening?

20 A. It wasn't -- it was when Madison and Matt came back
21 to the house.

22 Q. Okay. And let's talk about -- you said Madison
23 is --

24 A. Madison Martini is my good friend and old housemate.
25 Matt Keppler was her boyfriend at the time. They came into

1 the house.

2 Q. Just to be clear, this Madison's house?

3 A. This is Percy Street, yes, sir. They come back
4 into the house. Madison was clearly upset, asked us if we
5 had seen what had happened. And I, obviously, hadn't seen
6 it. So she was explaining that they had -- what they had
7 seen, that they had to call 911 for someone who had been hit
8 and knocked out.

9 Q. And after she's describing all of this, what
10 happens?

11 A. That's when I heard Ellis say, that's the kid that I
12 hit. And that's the information that I got. I didn't know
13 what had happened with the fight. I just knew that that was
14 -- he knocked someone out, because of the information that
15 Madison had said and the way he responded.

16 Q. And that's what he said? He said, that's the kid I
17 knocked out, or hit, or something in that response?

18 A. Yes.

19 Q. So from there, after he says that, is it kind of a
20 long conversation from that point?

21 A. No, not at all. Madison then freaked out. She was
22 very upset. Told Ellis to leave, because she had just been
23 on the scene with that. And, obviously, you know, wasn't
24 very happy. Told Ellis to leave the house. She was very
25 upset. It escalated pretty quickly from there. And it

1 wasn't a long conversation. It was pretty quick.

2 Q. And so at this point, you guys are there, and what
3 happens after Madison gets upset?

4 A. After Madison gets upset, we all kind of made plans
5 to move elsewhere. Because she clearly didn't want people
6 over at her house. So we then -- Binh Ton picked me up in
7 the Lexus and we went back to his sister's house in Mount
8 Pleasant.

9 Q. Okay. I want to touch on one thing I forgot to
10 clarify. Initially you said when Ellis first came back to
11 the house with you and Jamie, he was kind of matter of fact?

12 A. Yes, it was very short.

13 Q. Then when Madison gets back, did his comments change
14 at all?

15 A. It did. When we were first asking what happened, it
16 was just that there was a fight. We obviously didn't know
17 who was involved or what had happened. So then when Madison
18 showed up stating more details what had happened, you know,
19 stating that someone had been hit and knocked out, that's
20 when Ellis had said that he knocked him out.

21 Q. And did his tone suggest anything?

22 A. No, sir. It was just very ...

23 So you guys then go back to -- I guess, let me
24 clear -- Andrew's house, Kelly's house and Yen's house.

25 A. Yes, sir.

1 Q. What happened once you guys get back there?

2 A. We are all just talking about what had happened. I
3 was frantic, you know, trying to get every detail that I
4 could from everybody to figure out how I could help Peter.
5 Because at this point, I had realized that he was in jail for
6 something, you know, that he clearly didn't do and probably
7 had no idea for what he was actually going to jail for.

8 Q. How did you know that?

9 A. From the conversation that we had on Percy Street.

10 Q. With Ellis?

11 A. Yes, learning that he had knocked someone out.

12 Q. And to your understanding, that was the individual
13 that Peter was getting arrested for?

14 A. Yes, sir.

15 Q. So, sorry, pick back up when you guys are there
16 figuring out what you can do to help Peter at this point.

17 A. So pretty much, I don't think anybody really
18 understood the severity of the situation until a couple days
19 later. So I don't really think that anybody was that worried
20 about Peter. Obviously, I was, being his girlfriend at the
21 time. But so it was just, you know, discussion of what had
22 happened that night, you know, what had happened to Peter,
23 and then it didn't really turn serious for everybody until a
24 couple of days later.

25 Q. And then so kind of ends, and then what happens the

1 next day, that Saturday?

2 A. That Saturday, I was basically trying to get
3 everybody together to go down to the police station and come
4 forth with the truth. That is when we found out that
5 Mr. Seymour was in a coma. So I realized that this, you
6 know, had gotten a lot more serious than we thought. Peter
7 is not just in jail for a little street brawl. The severity
8 of the situation escalated quite quickly. So I wanted to get
9 into the police station as soon as I could to, you know, let
10 them know the facts and what had happened.

11 Q. Obviously, you wanted to go in there to try to clear
12 Peter's name?

13 A. Yes, sir.

14 Q. And I don't mean to embarrass you or pry into
15 personal details, but are you and Peter still dating?

16 A. No, sir, we are not.

17 Q. Still not dating? At any point throughout this
18 happening and, obviously, he was your boyfriend and you were
19 concerned about what was going on, was there an effort to try
20 to concoct some story on his behalf?

21 A. No, absolutely not.

22 Q. Never met with anybody to try to influence them to
23 say that Ellis had claimed that this was actually him who did
24 this?

25 A. No.

1 Q. Would you come in here today in this courtroom and
2 come you want oath and lie on Pete's behalf?

3 A. No, sir, I would not.

4 Q. So you then go make some efforts to try to go into
5 the police station. At any point throughout this next few
6 days, did you have any communications with Mr. Clarke?

7 A. There was a couple of text messages exchanged, but
8 that was it.

9 Q. Okay. Let's talk about those. So a couple
10 exchanges, describe that for me, not the contents of the
11 exchanges, but just what you mean by a couple of exchanges?

12 A. Oh, well, there was conversation between Ellis and
13 I, and then a separate text message where there was group, it
14 was me and a few other friends, Rosie Duran (ph), Kelly
15 Dudinyak and Binh and then Ellis.

16 Q. Let's talk first just about the conversation with
17 you and Ellis. This was done via text message between you
18 and Mr. Clarke?

19 A. Yes, sir.

20 Q. How did you know it was between you and Mr. Clarke?

21 A. Because it was his number texting me.

22 Q. Had you guys talked on that number beforehand?

23 A. Yes, I had his number.

24 Q. You've known him for a while?

25 A. Yes, sir.

1 Q. Had his number for a while?

2 A. Yeah.

3 Q. To your knowledge, didn't change overnight after
4 this incident or anything?

5 A. No, sir, not that I knew of.

6 Q. In fact, do you still have a copy of those text
7 messages on your phone?

8 A. Yes, sir.

9 Q. Would you recognize a copy of those messages if I
10 showed it to you?

11 A. Yes, sir.

12 MR. CORVEY: Your Honor, may I approach?

13 THE COURT: Yes.

14 BY MR. CORVEY:

15 Q. I'm handing you what's been marked for ID at State's
16 19. Will you take a minute and read through those?

17 A. Yes, sir.

18 Q. Now, what do those messages reflect? Not the
19 contents, just is that the conversation you and Ellis had?

20 A. Yes, sir.

21 Q. Is that a fair and accurate representation of that
22 conversation?

23 A. Yes, sir.

24 Q. Hasn't been changed at all?

25 A. No, sir.

1 Q. How did we actually get those screen shots?

2 A. I presented these to -- I think it was Detective
3 Kosarko.

4 Q. When you were at the police station?

5 A. Yes, sir.

6 Q. Those are the same ones you gave him?

7 A. Yes. I screen shot them right off my messages and
8 e-mailed them over to him.

9 MR. CORVEY: Your Honor, at this time, the State
10 moves 19 into evidence.

11 THE COURT: Any objection?

12 MR. KING: No objection.

13 THE COURT: All right. State's Exhibit 19 is
14 admitted into evidence without objection.

15 (State's Exh. 19, Text message screen shot, was
16 received in evidence.)

17 BY MR. CORVEY:

18 Q. I'm going to put these up one page at a time. If
19 you can describe for the jury who's who in this conversation
20 and what's being talked about.

21 A. The white box is Ellis and the blue box is myself.
22 This is a conversation the following day regarding the events
23 of the night before, conversation that was had between
24 everybody when Ellis was there and when he wasn't.

25 Q. And then is this the second page of those

1 messages?

2 A. Yes, sir.

3 Q. And does Ellis say in there that he knocked a guy
4 out?

5 A. Yes, sir.

6 Q. This is just you responding to him?

7 A. Yes, sir.

8 Q. Now, we had some other messages. And you describe
9 those as group text messages?

10 A. Yes, sir, they were sent to multiple recipients.

11 Q. When was that exchanged?

12 A. I think either the same day or the following day.

13 Q. Describe, how did those come about?

14 A. It was just sent to us randomly following those
15 messages. Ellis and I didn't speak after those texts until
16 he sent the group text.

17 Q. And, again, who was that group text sent to?

18 A. Myself, Kelly Dudinyak, Ellis was in it, and I think
19 Binh Ton, and Yen Ton.

20 Q. And did you screen shot those for Detective Kosarko
21 as well?

22 A. Yes, sir.

23 Q. That was just off your phone?

24 A. Uh-huh.

25 Q. Did you edit it in any way?

1 A. No, sir..

2 Q. Was it from the number that you recognized as
3 Ellis?

4 A. Yes, sir.

5 Q. Do you think you would recognize a copy of that if I
6 showed it to you?

7 A. Yes, sir.

8 MR. CORVEY: Your Honor, may I approach?

9 THE COURT: Yes.

10 BY MR. CORVEY:

11 Q. Showing you what was pre-marked as State's 20. Just
12 take a look at that. Is that a fair and accurate
13 representation of the message he sent?

14 A. Yes, sir.

15 Q. Has it changed in any way?

16 A. No, sir.

17 MR. CORVEY: Your Honor, at this time, I move
18 State's 20 into evidence.

19 THE COURT: Any objection?

20 MR. KING: No objection, Your Honor.

21 THE COURT: All right. State's Exhibit 20 admitted
22 into evidence without objection.

23 (State's Exh. 20, Text message screen shot, was
24 received in evidence.)

25 BY MR. CORVEY:

1 Q. So this is a message that Ellis sent to you, Rosie,
2 Kelly and Binh?

3 A. Yes, sir.

4 Q. This is kind of a continuation, same message?

5 A. Yes, sir.

6 Q. So I just want to touch on a few things. Again,
7 when Madison came back that night, she was kind of relaying
8 what happened?

9 A. Yes, sir.

10 Q. Did anyone pry Ellis to come out and say anything,
11 or did he just inject himself in that conversation?

12 A. Did who?

13 Q. Did anyone kind of pry any of that information out
14 of Ellis?

15 A. No.

16 Q. He just came out, I knocked the kid out?

17 A. Yes.

18 Q. Or, that's the kid I knocked out?

19 A. Yes. It was stated that there had been a fight.

20 Q. And then, again, this wasn't some conspiracy to try
21 to pin this on Ellis?

22 A. No, sir. The whole objective was just to tell the
23 truth on the scene.

24 Q. And then in, unprompted by you, communications the
25 next day, he admits to knocking a person out?

1 A. Yes, sir.

2 MR. CORVEY: No further questions at this time.

3 Please answer any Mr. King has.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. KING:

7 Q. Ms. Richards, you didn't see the fight, right?

8 A. No, sir.

9 Q. You don't really know what happened at the night?

10 A. No, sir.

11 Q. You don't know how many people were punched or how
12 many people might have been knocked out?

13 A. No, sir.

14 Q. You didn't see that part?

15 A. No.

16 Q. You said you went back to Percy Street that night
17 after the bars closed?

18 A. Yes, sir.

19 Q. With Jamie Ledwell, right?

20 A. Yes, sir.

21 Q. You testified on direct you told police that Jamie
22 wasn't there for any conversation, right?

23 A. Yes, sir.

24 Q. You were crying because Peter was in jail?

25 A. Yes, sir.

1 Q. You were pretty upset?

2 A. Yes, I was very upset.

3 Q. You were at least a little drunk?

4 A. Yes, sir.

5 Q. And you are saying that Ellis was saying he's the
6 one who knocked that kid out that ended up dying, right?

7 A. Yes, sir.

8 Q. You didn't go to the police that night, did you?

9 A. No, sir.

10 Q. And then Saturday morning, you didn't go to the
11 police?

12 A. Saturday morning is when we went -- I went to the
13 police station or I called and contacted them and spoke with
14 them.

15 Q. And you ended up going and meeting with them the
16 next day, Sunday?

17 A. Yes, sir.

18 Q. When you went to Percy Street, who was there?

19 A. At the beginning of the night or when we got back
20 from the bars?

21 Q. For this conversation, yeah, I'm talking about after
22 the bars closed and you go back and have this conversation.

23 A. Jamie and I arrived at Percy Street first together.
24 And then Ellis was the first one back at the house after we
25 had gotten there.

1 Q. So you and Jamie, and then how much longer before
2 Ellis came back in?

3 A. It had been awhile, because that's when we realized
4 something was wrong, so 45 minutes.

5 Q. And was there any conversation then about it?

6 A. Yes, sir. It was, what's been going on? And he
7 said, Peter is going to jail.

8 Q. And that's when, I guess, you started to get upset
9 at that point, when you realized Peter is going to jail?

10 A. Yes, sir.

11 Q. And then later, who showed up?

12 A. It was Madison Martini and Matt Keppler.

13 Q. Did anybody else show up that night; is that it?

14 A. Yes, sir, that was it. There were roommates in the
15 house that weren't out with us, but that was --

16 Q. People weren't involved in this at all?

17 A. Yes, yes.

18 Q. Jake was not at Percy Street that night, was he?

19 A. No, sir, no.

20 Q. Jake didn't hear this conversation that you are
21 talking about, right?

22 A. No, sir.

23 Q. Are you sure he wasn't just saying that he got in a
24 fight or that he hit someone, punched someone?

25 A. I'm sure.

1 Q. You said Madison kicked Ellis out?

2 A. Yes, sir.

3 Q. What did you do eventually? You said Binh came and
4 picked you up?

5 A. Yes, sir.

6 Q. What happened to Ellis?

7 A. That night?

8 Q. Yes.

9 A. I, honestly, I thought that we were all in the car
10 together. But that's not a detail that I recall from that
11 night specifically.

12 Q. You don't remember Jake getting in the car with
13 Ellis and riding with Ellis back to Mount Pleasant?

14 A. No, sir, no.

15 Q. Was -- are you saying Ellis was in the car?

16 A. I don't recall.

17 Q. You don't recall?

18 A. No, sir.

19 Q. You don't remember when you gave your statement to
20 the detective, when you went down that Sunday?

21 A. Yes, sir, I remember.

22 Q. You remember meeting with -- do you remember meeting
23 with Detective Kosarko?

24 A. Kosarko, yes.

25 Q. Do you remember telling him that: In the car after

1 Percy Street, okay, he picked me up around 3 a.m., I want to
2 say.

3 Sounds like that's probably Binh. Binh picked you
4 up about 3? .

5 A. Yes, uh-huh, correct.

6 Q. And he asked: Is this the whole group?

7 And you said: No, it was just me and Ellis at Percy
8 getting picked up because Madison and Matt stayed.

9 So Madison and Matt stayed at Percy Street?

10 A. Yes, sir.

11 Q. And you are telling him that Ellis is in the car on
12 the way to Mount Pleasant. And y'all are having a
13 conversation about that night. And Ellis is just sitting
14 there not saying anything? Do you remember telling them
15 that?

16 A. Yes, I did think that we were all in the car
17 together.

18 Q. You think -- but you realize now that's not right,
19 that Ellis was actually drove his own car there with Jake
20 riding with him?

21 A. Well, that is where I am confused, because I took
22 him back to his vehicle the next morning when we woke up at
23 Yen's house.

24 Q. He didn't take you back to your vehicle?

25 A. No, I didn't have my vehicle that day.

1 Q. How did you take him back?

2 A. I remember Binh picking us up in the black Lexus,
3 but I don't remember -- I don't recall the detail of all of
4 us were in the car together or not, but I know that we rode
5 together the next morning.

6 Q. Binh picked you up from Percy Street?

7 A. Yes.

8 Q. And took you to Mount Pleasant?

9 A. Yes, sir.

10 Q. Your car wasn't in Mount Pleasant?

11 A. No, sir.

12 Q. Okay. You said next morning you drove Ellis to get
13 his car?

14 A. Okay. So --

15 Q. That's not right, is it?

16 A. No, sir.

17 Q. Ellis drove you to get your car?

18 A. Yes.

19 Q. Because Ellis drove his own car that night, right?

20 A. Okay. Yes, sir.

21 Q. But you are telling Detective Kosarko that y'all are
22 having this conversation by how Ellis did it, and he's just
23 sitting in the car with Binh not saying anything, right?
24 That's not true, was it?

25 A. No, sir.

1 Q. It wasn't true. You told him more than once that,
2 right? Do you remember telling him: And the whole time he
3 wasn't saying anything.

4 Detective says: He was just sitting there quiet?

5 Yeah, he was literally just sitting there.

6 And this is after he's already given everything up?

7 Yeah, yeah.

8 Detective says: He told everybody in the house?

9 You say: Uh-huh. And this is after that, and
10 pretty much rest of the night, he didn't say anything about
11 it.

12 Right? So you told him more than once, Detective
13 Kosarko, that y'all were talking about it in the car and
14 Ellis is riding in there not saying anything about it?

15 A. Okay.

16 Q. And you hung out with Ellis that night, right?
17 Y'all went back and hung out together in Mount Pleasant,
18 right?

19 A. Yes, sir.

20 Q. And Ellis drove you back downtown to get your car
21 the next morning?

22 A. Yes, sir.

23 Q. Do you remember y'all went to breakfast?

24 A. Yeah, yes, sir.

25 Q. You went and ate breakfast together with him?

1 A. We went through a drive-through, yes, sir.

2 Q. So now Peter is in jail at this point, still in
3 jail. That next morning you are eating breakfast, right?

4 A. Yes, sir.

5 Q. And you said kind of next day or two -- I guess,
6 when did you find out things were really serious, that person
7 was in a coma? Was that Saturday morning or some time
8 Saturday?

9 A. Yes, sir, I think Saturday afternoon.

10 Q. Saturday afternoon?

11 A. Uh-huh.

12 Q. So you knew it was getting ready serious at that
13 point, Saturday afternoon, that this wasn't just a regular
14 fight? This has gotten pretty serious. Peter was in serious
15 trouble, right?

16 A. Yes, sir.

17 Q. Were you aware that Peter had already been in some
18 trouble?

19 A. Yes, sir.

20 Q. So when he got arrested for this, there was already
21 something out there that he was in trouble for?

22 A. Yes, sir.

23 Q. And his bond was very high? He couldn't get bonded
24 out; is that right?

25 A. For this incident?

1 Q. Yeah.

2 A. No, sir, he couldn't, no.

3 Q. Did you look into that as far as trying to get him
4 out of jail?

5 A. No, sir.

6 Q. And weren't you on -- or been on a crusade to get
7 Peter out of jail and get Ellis put in jail instead, right?
8 You all weren't on some crusade to do this?

9 A. No, sir. I was trying to tell the truth. I didn't
10 want Peter sitting in jail for something he didn't do.

11 Q. So when you met with Detective Kosarko back in April
12 27th, 2014, that Sunday morning --

13 A. Yes, sir.

14 Q. -- you were trying to convince him that Ellis did
15 it, not Peter, right?

16 A. I was trying to provide him with the truth of what I
17 had heard that night and get Peter out of jail.

18 Q. Get Peter out of jail, that was an important thing,
19 right? You didn't want Peter to be in jail?

20 A. For something he didn't do, absolutely not.

21 Q. You told Detective Kosarko -- you know Matt
22 Keppler?

23 A. Yes, sir.

24 Q. You told Detective Kosarko that Matt saw Ellis hit
25 the guy?

1 A. I thought that they had been closer to the fight,
2 but they walked up later and found him on the ground.

3 Q. Right. So you know that Madison Martini and Matt
4 Keppler did not see the actual puncher who did it?

5 A. Yes, sir.

6 Q. You know that?

7 A. Yes.

8 Q. But you are sitting there that Sunday trying to get
9 Peter out of jail and tell Detective Kosarko: Did Matt see
10 anything?

11 A. Yes.

12 Q. Do you remember saying this: Yes, he saw Ellis hit
13 him. He saw Ellis running and hit the kid. They both saw
14 him. I guess he was unconscious before he even hit the
15 ground.

16 Q. Do you remember that?

17 A. Uh-huh.

18 Q. That wasn't true though, right?

19 A. No, sir.

20 Q. You were giving false information to this detective
21 investigating this crime, right?

22 A. Like I said, I was giving him the information that I
23 had heard that night.

24 Q. Which happened be to be false?

25 A. Yes, sir.

1 Q. That's the second false thing you told him, because
2 you also told him about Ellis riding around in the car and
3 everybody talking and he was sitting around not saying
4 anything?

5 A. Yes.

6 Q. Two pieces of information you told him that weren't
7 true?

8 A. Yes, sir.

9 THE COURT: I hate to interrupt your
10 cross-examination, but the bailiff tells me that one of the
11 jurors needs to take a break. Let's go ahead, take a five-,
12 ten-minute break. And remain seated while the jury is
13 excused.

14 (Whereupon, the jury leaves open court at 05:28
15 p.m.)

16 THE COURT: Ms. Richards, we are still in the middle
17 of your testimony, so you cannot discuss your testimony with
18 anyone, whether that be what you testified thus far or what
19 you anticipate testifying to in the future.

20 Anything from the State before we recess?

21 MR. SIMPSON: Can I release the rest of my witnesses
22 until tomorrow morning? We will go as long as you would
23 like.

24 THE COURT: I want to stop at close to 6 or 6:30 as
25 we can. Y'all tell me. I just want to make sure we get this

1 Anything from the defense?

2 MR. KING: No.

3 THE COURT: Let's take about a five-, ten-minute
4 recess.

5 (Whereupon, recess transpired.)

6 THE COURT: Mr. Simpson, anything from the State
7 before we bring the jury in?

8 MR. SIMPSON: No, Your Honor.

9 THE COURT: Mr. King?

10 MR. KING: No.

11 THE COURT: Let's go ahead and bring the jury in.

12 (Whereupon, the jury returns to open court at 05:41
13 p.m.)

14 THE COURT: Mr. King, you may resume your
15 cross-examination.

16 MR. KING: Yes, sir.

17 BY MR. KING:

18 Q. We were talking about how you had told Detective
19 Kosarko that Matt Keppler saw Ellis hit the guy, right?

20 A. Yes.

21 Q. And that that's not true?

22 A. Yes, sir.

23 Q. But you just got confused about that?

24 A. Yes, sir. I was -- it was just information that I
25 had heard and was relaying that was obviously incorrect.

1 Q. Do you remember later in that interview Detective
2 Kosarko asked you about it again? Do you remember saying:
3 Matt also saw Ellis run up and punch the kid.

4 Kosarko said: Is that according to him or did Matt
5 tell you this?

6 And you said: No, Matt told me this. Matt saw
7 Ellis hit the kid.

8 Do you remember saying that?

9 A. No, sir, I don't.

10 Q. You don't remember saying that?

11 MR. KING: Your Honor, at this point, move to admit
12 another clip. And I can put that on the same disk when I put
13 this on a disk in evidence.

14 THE COURT: It's going to need to be separate
15 because it's going to be a separate exhibit.

16 THE COURT: All right. So this will be Defendant's
17 Exhibit 5.

18 Any objection to Defendant's Exhibit 5?

19 MR. CORVEY: No, Your Honor.

20 THE COURT: All right. Defendant's Exhibit 5
21 admitted into evidence without objection.

22 (D-5, Video, is received in evidence.)

23 MR. KING: First of all, that's you, right?

24 THE WITNESS: Yes, sir.

25 Q. Is that the interview with you and Detective

1 Kosarko?

2 A. Yes, sir.

3 (Video playing.)

4 Q. So you agree that's what you said?

5 A. Yes, sir.

6 Q. Is that a lie?

7 A. It was incorrect, yes, sir.

8 Q. Well, I mean, I understand you can get confused
9 about maybe Matt saw it. Maybe you got confused, thought
10 Matt saw it. But you told him Matt told you he saw it,
11 right?

12 A. Yes, sir.

13 Q. That's not true?

14 A. No, sir.

15 Q. You told Detective Kosarko that Andrew O'Hearn saw
16 it?

17 A. Yes, sir.

18 Q. Do you remember that?

19 A. Uh-huh.

20 Q. You drove Andrew O'Hearn down to the police
21 station?

22 A. Yes, sir.

23 Q. Is that right?

24 A. Yes.

25 Q. He didn't see it either; do you know that?

1 A. That's what I was told.

2 Q. You were told that Andrew O'Hearn didn't see it?

3 A. That he was part of the fight and had seen it, yes,
4 sir.

5 Q. But you told Detective Kosarko that Andrew O'Hearn
6 will tell you Ellis did it?

7 A. Yes, sir.

8 Q. Words exactly, you said: Andrew O'Hearn would be
9 able to tell you he saw Ellis hit the kid.

10 You told them one more thing. You told them that,
11 but a little later, you tell Detective Kosarko that Matt and
12 Madison saw Ellis hit the kid. Do you remember saying
13 that?

14 A. Yes, sir.

15 Q. And that's not true. Matt didn't see it either?

16 A. They saw the fight happening because they were
17 farther distance away, but, apparently, did not see the punch
18 thrown, no, sir.

19 Q. But you remember telling Detective Kosarko --

20 MR. CORVEY: Objection, Your Honor. Asked and
21 answered. These witnesses are going to testify.

22 THE COURT: Sustained.

23 MR. KING: That's all the questions I have.

24 THE COURT: All right. Redirect?

25 MR. CORVEY: Thank you, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. CORVEY:

3 Q. Rebecca, let's just kind of put it all on the table
4 and be very clear. Mr. King is trying to imply -- no, he's
5 actually flat-out accusing you of being a mastermind of some
6 so conspiracy to frame his client, Ellis Clarke. Is that
7 true?

8 A. Yes, sir. No, seriously, no, it's not true.

9 Q. Have you asked anyone to lie for you?

10 A. No, sir.

11 Q. Have you tried to influence anybody to come into
12 this courtroom and lie?

13 A. No, sir, not at all.

14 Q. Have you asked anyone to come in here and lie on
15 Peter's behalf?

16 A. No, sir.

17 Q. Let's talk about another thing. Made a big deal
18 about your interview and some of the things you may have
19 gotten incorrect. And, again, he's calling you a liar, is
20 what he's doing.

21 A. I know.

22 Q. When you were talking with Detective Kosarko, were
23 you trying to be honest with him?

24 A. I made it very clear that everything that I said to
25 Detective Kosarko was word of mouth what I heard from that

1 night and what was had in conversation.

2 Q. Were you trying to be as honest as you could with
3 Detective Kosarko?

4 A. Yes, sir.

5 Q. And why were you doing that?

6 A. Because I didn't want Peter in jail for something
7 that he didn't do.

8 Q. Let's talk about this. I want to come back to the
9 idea that he didn't do it. But first I want to talk about
10 Peter. I'm sorry to have to do this again, because it's your
11 personal life and I hate that you have to talk about this in
12 here.

13 So you mentioned earlier you and Peter broke up?

14 A. Yes, sir.

15 Q. Tell me about that. Was that a good break-up?

16 A. Not exactly. I was overseas in Australia. We broke
17 up. And it was a pretty bad break up. And I didn't even see
18 him until I got home for Christmastime.

19 Q. So this isn't a conspiracy that you made up. And
20 any reason you would have to continue to lie is now gone?

21 A. No, exactly.

22 Q. You and Peter are broken up?

23 A. Yes, sir.

24 Q. But let's go back on what I think is the most
25 important point about this whole thing, the fact that Peter

1 was in jail for something he didn't do.

2 A. Yes, sir.

3 Q. That night, who told you they knocked someone out?

4 A. Ellis.

5 Q. Ellis Clarke did?

6 A. Yes, sir.

7 Q. Next day, who texted you and said that he knocked
8 someone out?

9 A. Ellis.

10 Q. Ellis Clarke did?

11 A. Yes, sir.

12 MR. CORVEY: No further questions.

13 THE COURT: All right. You may step down. Let me
14 see the attorneys.

15 (Whereupon, a bench conference takes place off the
16 record.)

17 THE COURT: State will call their next witness.

18 MR. SIMPSON: Thank you, Your Honor.

19 The State calls Jamie Ledwell.

20 JAMIE LEDWELL,

21 having been duly sworn, testifies as follows:

22 THE CLERK: If you could please state your first and
23 last name and spell your last.

24 THE WITNESS: Jamie Ledwell, L-e-d-w-e-l-l.

25 DIRECT EXAMINATION

1 BY MR. SIMPSON:

2 Q. Good afternoon, Ms. Ledwell. I guess, as you know,
3 it's late in the day, so I will get right to the point.

4 A. No problem.

5 Q. You know what incident we are here about?

6 A. Yes.

7 Q. You know when it occurred? Do you recall when it
8 occurred?

9 A. Yes.

10 Q. April 2014?

11 A. Yes, sir.

12 Q. In April 2014, where were you living?

13 A. I was actually going to school in Columbia, but I
14 was down for the weekend of the incident staying at Percy
15 Street.

16 Q. And whose house is Percy Street?

17 A. Madison, Allison, Jenna --

18 Q. Friends of yours?

19 A. Yes.

20 Q. Okay. Where are you from?

21 A. I'm from here. I was born in Easley, but I moved
22 here when I was two.

23 Q. When you would come visit from USC, was it common
24 for you to go to Percy Street?

25 A. Yes, came down a lot. I was actually planning on

1 living there that summer, but I didn't.

2 Q. Friday, April 25th, how did your evening go? What
3 was the plans? What did you do?

4 A. We started at Percy Street and just started drinking
5 there and then went to a couple bars.

6 Q. Where were those bars?

7 A. Midtown and Silver Dollar.

8 Q. Okay. Those are King Street?

9 A. Yes.

10 Q. And at some point, did you- - what was the last bar
11 you remember attending?

12 A. I remember attending both of them, but I don't
13 remember which order.

14 Q. Okay. At some point, did you leave to return back
15 to Percy Street?

16 A. Yes.

17 Q. And do you recall who you left with?

18 A. Becca Richards.

19 Q. Okay. Do you recall the mode of your transportation
20 back to Percy Street?

21 A. Yes, it was bike taxi.

22 Q. You were drinking that evening?

23 A. Yes.

24 Q. On a scale of one to ten, one being, you know, a
25 drink, 10 being severely intoxicated, where would you kind of

1 put yourself?

2 A. Probably four to five, somewhere in there.

3 Q. At the time you are leaving that night?

4 A. Yes.

5 Q. Time you are heading back to Percy Street in the
6 taxi?

7 A. Uh-huh.

8 Q. When you and Becca get back to Percy Street, is
9 anyone there?

10 A. No, it was just me and Becca when we first got back.

11 Q. And you are the only ones there when you first got
12 back?

13 A. Yes.

14 Q. Who is the next person to arrive back at Percy
15 Street?

16 A. Ellis.

17 Q. Let's be clear. At this point in the evening, do
18 you have any idea that anything has happened?

19 A. No, not at all. It was just a normal night.
20 Everyone kind of dispersed from the bars as they usually do
21 and came back slowly.

22 Q. Best you can remember, how long are you back at
23 Percy Street between when Ellis --

24 A. Not long. It wasn't very long. Maybe -- Becca was
25 looking for her phone, 10, 15 minutes maybe, I would think.

1 Q. You say she was looking for her phone. Was she
2 trying to call people?

3 A. She was trying to call Peter.

4 Q. Fair to say it was long enough that people are
5 starting to say, where is everyone else?

6 A. Yes, where's everyone else. She wanted to talk to
7 Peter in a little bit since we were out.

8 Q. Make this clear. Do you know the individual sitting
9 right here?

10 A. Yes.

11 Q. And who is that?

12 A. That's Ellis Clarke.

13 Q. Ellis Clarke. And did you know him back then?

14 A. Yes.

15 Q. And how long had you known him back then?

16 A. Hard to say. I don't -- maybe a year or two. I'm
17 not sure. We met through friends, but I don't remember when
18 we first met. Couldn't put my finger on it.

19 Q. Okay. When he comes back, is he with anyone?

20 A. No, he's by himself.

21 Q. And he comes in. Tell the jury what occurs when he
22 gets back in there.

23 A. He came in. And Becca was, I guess, like asking
24 where Peter was. And he said, Peter is getting arrested, and
25 something along the lines of -- we ask why Peter was getting

1 arrested. And Ellis said something along the lines of: I
2 got in a fight, but Peter didn't, or, I asked, if you got in
3 a fight, why did Peter get arrested. And he said, I don't
4 know, something like that. I don't remember word for word.

5 Q. Okay. So you can't transcribe word for word what he
6 said when he got back?

7 A. No, something along the lines of, Ellis got in a
8 fight, Peter is getting arrested. Peter didn't get in a
9 fight, essentially.

10 Q. But you clearly take away from this conversation
11 with Ellis Clarke that Peter is getting arrested for
12 something he did?

13 A. Yes.

14 Q. Okay. Now, at that point when you are getting this
15 information from Ellis, do you have any idea of what -- that
16 it is something of this magnitude?

17 A. No, no, I just that was it was a simple little fight
18 on the street, Peter being in jail for a night and get out
19 tomorrow situation.

20 Q. Did you have any inclination, oh, my gosh, I have to
21 call the police immediately?

22 A. No, no, not at all. I didn't think it was a big
23 deal. I thought it was a small thing.

24 Q. Okay. And did you stay at Percy Street that
25 night?

1 A. No, I didn't. I got picked up.

2 Q. And not to pry, but who picked you up?

3 A. His name is Keith Dolan.

4 Q. Were you guys seeing each other at the time?

5 A. Yes, kind of.

6 Q. Were you away from Percy Street for any later
7 conversations with -- do you remember Madison coming back?

8 A. No, I left before Madison came back.

9 Q. You caught this first conversation when Ellis got
10 back and --

11 A. And then I left, yes, right before everyone else
12 came back.

13 Q. If someone were to not be crystal clear on exactly
14 when you were there and left, that could be understandable?

15 A. Yes, because I -- yeah, I also tend to sneak away
16 without saying goodbye.

17 Q. You are sort of a ghost then?

18 A. Yes.

19 Q. After talking the next day or in the two years that
20 have past, have you ever gotten together for any sort of
21 conspiratorial group meetings where you are going to craft a
22 lie to frame Ellis Clarke for this?

23 A. No.

24 Q. Has anyone influenced tried to influence your
25 testimony here today at all?

1 A. No.

2 Q. No, you know, calls from friends or text or Facebook
3 things to get you to lie for anybody for them?

4 A. No.

5 Q. Are you still, like, very close with Peter Dudinyak
6 and --

7 A. I see him, like, I say hi. When I see him, I don't
8 hang out with him all the time. He was -- Peter and Becca
9 were dating at the time. That's more why I hung out with
10 him.

11 Q. Is that the type of relationship you would come into
12 a court of law and come in and commit perjury to help?

13 A. No.

14 Q. Ms. Ledwell, thanks. Please answer any questions
15 Mr. King may have.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. KING:

19 Q. Ms. Ledwell, this was a long time ago yeah, it was
20 two years ago, so?

21 A. Yeah.

22 Q. And it was late at night, right, like two or three
23 morning?

24 A. Yes.

25 Q. You were at least halfway to severely intoxicated;

1 you are like four or five?

2 A. Yes.

3 Q. And when they are talking about this, is it fair to
4 say it was kind of a lot of talk, and maybe you can't
5 remember exactly what was said?

6 A. Yes, that's fair. I don't remember word for word,
7 but I know what I took from the conversation.

8 Q. But you testified today that Ellis -- you heard
9 Ellis say that he got into a fight?

10 A. Uh-huh.

11 Q. Right? That's it?

12 A. It was -- I don't know word for word what he said.
13 It was something along the lines -- I took away from the
14 conversation that Ellis was in a fight and Peter was being
15 arrested for something that Ellis did.

16 Q. Again, that's what you took away from the
17 conversation?

18 A. Yes.

19 Q. But you can't tell us exactly what was the said?

20 A. I spoke to police recently after it happened and
21 that word-for-word thing probably would be more accurate. I
22 don't recall word for word.

23 Q. You don't think there's any way you misheard,
24 misunderstood anything you heard that night at 3 a.m.? You
25 said it wasn't a big deal at the time?

1 A. It wasn't a big deal at the time, but I do remember
2 what I took away from the conversation.

3 Q. And you said you went to the police?

4 A. Probably a week or two later, I spoke with -- I
5 spoke with an investigator, I think. I don't remember. I
6 did a phone interview with them.

7 Q. You said like a week later?

8 A. I don't recall. It was probably a week or two later
9 after it happened. Peter was still in jail.

10 Q. After you say you heard this conversation, you
11 didn't feel any need to contact police and say they had the
12 wrong guy?

13 A. Oh, I did contact them.

14 Q. A week late?

15 A. Probably sooner, somewhere in there. I don't
16 remember when I contacted them, but I did.

17 Q. But it took some time?

18 A. Probably. I don't remember. I mean, it should be
19 -- there should be a record of it somewhere. I couldn't tell
20 you exactly.

21 MR. KING: That's all the questions I have.

22 THE COURT: Redirect?

23 MR. SIMPSON: No, Your Honor.

24 THE COURT: All right. You may step down.

25 Ladies and gentlemen, we are going to go ahead and

1 microphone.

2 THE WITNESS: Madison Martini, Madison

3 M-a-r-t-i-n-i.

4 DIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q. Good morning. How are you?

7 A. Fine. How are you?

8 Q. Where do you currently live?

9 A. Baltimore.

10 Q. Where are you from?

11 A. Charleston.

12 Q. And how long -- did you grow up here in Charleston?

13 A. Yes.

14 Q. Did you go to school?

15 A. Yes.

16 Q. Where did you go to school?

17 A. I went to Wando High School.

18 Q. Any post-high school education?

19 A. I'm in school right now.

20 Q. Where are you in school?

21 A. I'm in tech school.

22 Q. Okay. And that's in Baltimore?

23 A. I do Trident classes online in Baltimore.

24 Q. And where did you live back in April of 2014?

25 A. Percy Street.

1 Q. Who all lived at Percy Street?

2 A. My friend Allison, Jenna, my friend Rachael and
3 Annie.

4 Q. And do you remember where on Percy Street that was?

5 A. Percy Street.

6 Q. Is that a downtown residence?

7 A. Yes, sir.

8 Q. And you know the incident why you are here today,
9 right?

10 A. Uh-huh.

11 Q. I may interrupt you from time to time. And as you
12 mentioned people names, I may ask you some questions about
13 your relationship with them. But if you could, take the jury
14 through your evening on Friday, April 25th, 2014.

15 A. I had to babysit that night.

16 Q. Let me stop you. You were babysitting at that time?

17 A. Yes, sir.

18 Q. Who were you babysitting for?

19 A. I'm not sure, probably the Smiths, a family I used
20 to babysit for.

21 Q. About what time do you think you get off of
22 babysitting?

23 A. With them, definitely late, because they like to
24 party. So, again, I went back to my house to meet my
25 friends.

1 Q. Okay. And your house being Percy Street?

2 A. Percy Street, yes, sir. And then I think I went out
3 with -- it was Jamie, Becca, we went to Midtown with a bunch
4 of our guy friends.

5 Q. You say Jamie, what's Jamie's last name?

6 A. Ledwell.

7 Q. Becca, what's her last name?

8 A. Richards.

9 Q. How long have you known Jamie?

10 A. Since ninth grade.

11 Q. And how long have you known Becca?

12 A. Around the same time.

13 Q. And you said you were meeting out with some guy
14 friends; what guy friends?

15 A. Peter, Ellis, Jake, there were other guys, Andrew
16 was there, a bunch of them.

17 Q. How long -- Peter and Jake are brothers?

18 A. Yes.

19 Q. How long have you known them?

20 A. For a while, probably since, I mean, high school.

21 Q. And do you recognize the person seated here at the
22 end of the table?

23 A. Yes, Ellis.

24 Q. And what's his last name? Do you know his last
25 name?

1. A. Clarke.

2 Q. And how long have you known Ellis?

3 A. A long time.

4 Q. You had a friendship with Ellis Clarke?

5 A. Yes. My sister actually lived with his girlfriend
6 back in, I think, when I first started college. So I was it
7 was like 1980.

8 Q. Let me ask the name Matthew Keppler; do you know
9 that name?

10 A. Yes.

11 Q. Who is Matthew Keppler?

12 A. We were dating at the time of the incident.

13 Q. You mentioned all these people with Ellis that you
14 go way back with. Did you go way back with Matthew Keppler?

15 A. No, no. I met him, like, when I was working at
16 Tsunami downtown Charleston through a friend.

17 Q. You were dating at the time of the incident?

18 A. Uh-huh.

19 THE COURT: Excuse me. You need to say yes or no.
20 The court reporter can't take down uh-huh or hum-um.

21 THE WITNESS: Yes.

22 BY MR. SIMPSON:

23 Q. You were dating Mr. Keppler at the time of the
24 incident?

25 A. Yes.

1 Q. And any plans when you got home with him, going
2 back --

3 A. Yes, he was coming out with us as well.

4 Q. And do you recall where you met up with him?

5 A. I'm sure he came to my house first..

6 Q. So if we could sort of catch back up where we were,
7 all these people you are meeting at Midtown?

8 A. Yes.

9 Q. Where is Midtown?

10 A. It was really close walk to my house, Percy Street.

11 Q. What street is Midtown on?

12 A. King Street.

13 Q. And how did things going at at Midtown?

14 A. It was good. Everyone was having fun. And we were
15 leaving Midtown. That's when I think we went in different
16 groups to the Silver Dollar.

17 Q. Okay. And the Silver Dollar is just another bar?

18 A. Yes, sir.

19 Q. Is that also on King Street?

20 A. Yes.

21 Q. Are you familiar with this area; sounds like pretty
22 well?

23 A. Yes.

24 Q. Are these near the intersection of King and Morris
25 Street?

1 A. Yes, I think Morris, I think, that falls in-between
2 the two.

3 Q. Okay. So at some point, you guys, I'm assuming,
4 decide to leave the Silver Dollar?

5 A. Yes.

6 Q. What was the kind of plan among this group at that
7 time?

8 A. To go back to Percy Street.

9 Q. And if you can guess, I know it's been a long time
10 and exact times are difficult, about what time were you all
11 leaving the Silver Dollar?

12 A. Around 12:30. It was a little bit before closing
13 time, which is usually like 1:30.

14 Q. About before whenever Silver Dollar would have
15 closed?

16 A. Yes.

17 Q. Does everyone just leave in one cohesive group?

18 A. No. Matt and I left together. Jamie and Becca had
19 left, I think, a little earlier than we did.

20 Q. Do you remember how, what mode of transportation
21 they were in?

22 A. They took a bike taxi.

23 Q. Okay. So of this large number of people, you are
24 saying people started leaving in little groups?

25 A. Yes.

1 Q. Who were you with?

2 A. With Matt.

3 Q. And what direction? You walk out of Silver Dollar,
4 what direction would you have been sort of walking?

5 A. Towards Percy Street.

6 Q. Which would be towards crosstown or Marion Square?

7 A. Towards crosstown.

8 Q. And I may interrupt you, but real detailed, please
9 explain to this jury, walking with Matt, what you observed
10 when you were walking up?

11 A. Matt and I were walking back to my house and across
12 the street. I saw a guy fall to the ground.

13 Q. Let me stop you. I may do this from time to time.

14 A. I understand.

15 Q. I'm not being rude. You say across the street.
16 Where are you at when this happens?

17 A. I was just across Morris and King, like --

18 Q. Are you on King? Are you standing on King or
19 standing on Morris?

20 A. I was on King, so Morris, King, and I was probably
21 just right past, like walking right past Morris, the
22 intersection.

23 Q. You are just right across the intersection?

24 A. Yes.

25 Q. And what do you see?

1 A. I saw a guy fall to the ground.

2 Q. And --

3 A. And I didn't see him get hit, but I did see him
4 literally falling to the ground.

5 Q. Not meaning to be overtly graphic, but did that make
6 a noise?

7 A.. I mean, there was a huge ruckus of people freaking
8 out.

9 Q. And you are right across that intersection. Explain
10 this to the jury. This is King Street close to bar closing
11 time. What's it like out on King Street?

12 A. It's crazy. People are everywhere. There's a lot
13 going on.

14 Q. And you said, to be clear, you did not see who hit
15 this person?

16 A. No, I did not.

17 Q. But from across the street, you see a person go
18 down?

19 A. Uh-huh.

20 Q. Fair to say, I know you can't speak for others, but
21 is Matt right next to you when this happens?

22 A. Yes.

23 Q. He is? Okay. So if someone were to say Matt and
24 Madison saw this person go down, they would be telling the
25 truth?

1 A. Yes.

2 Q. And you should talk to them, because they saw it,
3 they will be telling the truth?

4 A. Yes.

5 Q. How did you and Matt react to this?

6 A. We freaked out. He's like, call 911. So I got to
7 911. He ran over to do CPR and kind of get everyone away
8 from the guy.

9 Q. We are going to hear from Matt, but does he have a
10 sort of background that would make you think --

11 A. Yes, he's in the military, so he is trained in CPR
12 and all of that stuff.

13 Q. Okay. Do you guys cross King and go to the place?

14 A. Yes, we ran over.

15 Q. Sounds like you are just across the street?

16 A. Yes.

17 Q. You described sort of a chaotic situation.

18 A. Yes.

19 Q. Fair to say from that vantage point, right across
20 the street, what would you say, it's 50 feet?

21 A. Yeah, about. It's close.

22 Q. Across a typical intersection?

23 A. Yes.

24 Q. From that vantage point of across an intersection,
25 you described the scene and pretty chaotic.

1 A. Yes.

2 Q. Could you identify any of those people from that
3 distance?

4 A. I didn't know anyone I knew was involved.

5 Q. Okay. So a person from about that distance, it was
6 difficult for you to say --

7 A. Yeah. We weren't honestly focused on that. Our
8 main focus was the guy who was there on the ground.

9 Q. Right, which would be a natural focus for somebody;
10 would you agree?

11 A. Yes.

12 Q. So take us through that. You and Matt go over to
13 that scene, right? And what do you observe there? You said
14 you called 911?

15 A. I called 911.

16 Q. What is Matt doing?

17 A. He was doing CPR, I believe, to the guy on the
18 ground and trying to see if he was okay.

19 Q. Okay. Other people other than you and Matt around
20 there at that point?

21 A. Yeah, there were friends around, not our friends.
22 But then when paramedics and police started to come, that's
23 when Matt and I kind of backed off and realized like, okay,
24 it's our time to go home.

25 Q. So you went right there and stayed there with this

1 person until professionals arrived on and had the scene under
2 control; is that fair to say?

3 A. Yes.

4 Q. Approximating as best you can, about how long was
5 that? Was it a fairly quick response?

6 A. I believe so. I mean, it was so long ago, but I
7 would say at least 15 minutes. I don't know.

8 Q. Okay. I forgot, about this time when you are
9 leaving the bar and witnessing these events, you had some
10 drinks; is that fair to say?

11 A. Yes.

12 Q. But you said you worked late that night?

13 A. I had like two, three drinks, max.

14 Q. On a scale of say one to ten, one being, you know,
15 barely a beer and ten being severely intoxicated, you would
16 say before a three?

17 A. Three.

18 Q. Was Matt showing any sort of signs --

19 A. Matt is always very controlled when he drinks.

20 Q. So what impact did that have on you seeing this guy,
21 seeing this person fall?

22 A. Like, completely in shock. I mean, fights happen on
23 King Street, but we are normally not involved in them.

24 Q. And to be very clear, in all of this time you are
25 with this person on the sidewalk, do you have any idea that

1 you would possibly know anyone involved in this?

2 A. No clue.

3 Q. When you turned to see it from that distance from
4 about across the street, it was very difficult from that
5 distance to tell what was going on?

6 A. Yes.

7 Q. What did you and Matt do when you left that scene?

8 A. We all went back to Percy Street.

9 Q. I'm sorry. I got a little ahead of myself. Do you
10 have any medical training at all?

11 A. From nannying, yes, I do CPR.

12 Q. You are not a doctor, correct?

13 A. I'm not a doctor.

14 Q. Understanding that, though, how would you describe,
15 from a layperson's standpoint, the condition of that person
16 on the sidewalk?

17 A. Not very good.

18 Q. Did you see, was he talking?

19 A. No.

20 Q. Was he -- to what you could tell --

21 THE COURT: Excuse me. Was that a no?

22 THE WITNESS: Yes, it was a no.

23 THE COURT: Okay.

24 BY MR. SIMPSON:

25 Q. Was he breathing, as far as you know?

1 A. No.

2 Q. And I'm not trying to make you upset, but was he --
3 was there any bleeding?

4 A. Yes.

5 Q. Did you recognize that person?

6 A. I did not.

7 Q. Had you ever seen that person before?

8 A. No.

9 Q. We can even tell today two years later that this was
10 an emotional thing to see, right?

11 A. Yes.

12 Q. What did -- you and Matt then left to go back to
13 Percy Street?

14 A. Yes, sir.

15 Q. And what -- did you stop on the way home?

16 A. Yes, we got food from the hotdog guy.

17 Q. And you eventually made it back to Percy Street; is
18 that correct?

19 A. Yes, sir.

20 Q. So this was -- would have taken you, this whole trip
21 from Silver Dollar back to Percy Street, took longer than it
22 would normally take because of all of this, right?

23 A. Uh-huh.

24 Q. How long would you think it took you, best you could
25 guess, from Silver Dollar back to Percy Street?

1 A. 45 minutes maybe.

2 Q. Again, you get back to Percy Street. And this is
3 your house?

4 A. Yes, sir.

5 Q. And when you -- describe to this jury when you walk
6 in, what do you see? Who is there at that Percy Street?

7 A. Becca was there. Jamie was there. Ellis was there.
8 Then Matt had come with me.

9 Q. Okay. You had just sort of seen something that's
10 out of the ordinary?

11 A. Yes.

12 Q. So when you walk in, what do you say to those people
13 that are there?

14 A. I was like, oh, my gosh, y'all, we just saw this
15 crazy fight -- not fight, but we just saw this guy fall to
16 the ground. I called 911 and everything.

17 Q. And so you described what you've just experienced to
18 this group?

19 A. Yes.

20 Q. And is Ellis Clarke there when you are describing
21 it?

22 A. He is.

23 Q. And does he respond to your description?

24 A. He does. He says: That was me. I did it. I
25 punched that kid.

1 Q. Okay. Now, let's be clear on this. Did you
2 interpret it, what he said to you, what came out of his
3 mouth, is it like, I was just involved?

4 A. Yes.

5 Q. Or was it, that was me with that person?

6 A. Yes. He made it seem clear that he had hit the kid
7 who was on the ground.

8 Q. And were you guys pretty descriptive about what you
9 had just seen?

10 A. Yes.

11 Q. Were you descriptive about the kind of condition
12 that person was in?

13 A. Yes. I was very angry when he had said that.

14 Q. Now, this conversation about what you had seen and
15 what he had done, how long does that conversation last?

16 A. Probably ten-or-so minutes.

17 Q. Okay. Was there any point in that whole ten-minute
18 conversation where Mr. Clarke said, oh, I'm just messing with
19 you, that wasn't me?

20 A. No.

21 Q. Was there any part in that conversation where he
22 clarified, oh, I was just --

23 A. He was almost bragging that he had done it, like,
24 you would think like it was cool, which, obviously, was
25 not.

1 Q. There's no part where he said, don't misunderstand
2 me, I was there with one of my friends?

3 A. No.

4 Q. You know Peter Dudinyak, right?

5 A. I do.

6 Q. And Ellis knows Peter?

7 A. Yes.

8 Q. Any point where he said, well, I was involved, but
9 it was Peter that hit the guy you are talking about?

10 A. No.

11 Q. From this conversation and the words from
12 Mr. Clarke, any doubt in your mind who he was talking about
13 hurting?

14 A. No.

15 Q. And who was that?

16 A. I believe that Ellis made it clear that he had hit
17 the guy on the ground.

18 Q. You obviously had an emotional response to what you
19 had seen on King Street. Is that fair to say?

20 A. Yes.

21 Q. What's your response to now learning that the person
22 responsible for that was in your house?

23 A. I was angry, started screaming at Ellis and made him
24 leave my house.

25 Q. Okay. So be frank, what did you say to Ellis at

1 that point?

2 A. I mean, I probably used some cuss words and told him
3 to get the F' out of my house.

4 Q. Is that because of what you had just seen?

5 A. Yeah.

6 MR. SIMPSON: Court's indulgence.

7 BY MR. SIMPSON:

8 Q. Did Ellis leave your house at that time?

9 A. Yes.

10 Q. Who stayed at Percy Street that night with you?

11 A. Matt stayed.

12 Q. What happens the next day and later?

13 A. The next day, I mean, we found out that the kid he
14 had punched was really hurt.

15 Q. Let me also make it clear. Do you find out that
16 night where Pete is?

17 A. Yes, we did find out that Peter was in jail, because
18 of somebody -- because Ellis had punched this kid.

19 Q. And how did you feel about the fact that -- let's be
20 clear. You had a friendship with Ellis, right?

21 A. Yeah. I mean, he was in my friend group, just as
22 Jake, Peter.

23 Q. And you had a friendship with Jake and Peter, right?

24 A. Yes.

25 Q. Were you out to hurt someone in that group that

1 night?

2 A. No.

3 Q. Out to punish anybody for anything?

4 A. No.

5 Q. But how did you feel about the fact that Peter was
6 in jail?

7 A. That wasn't cool.

8 Q. And it wasn't cool because why? Why was that not
9 cool?

10 A. For a friend to send another friend to jail for
11 something they did.

12 Q. So in the coming days, what did you decide to do,
13 you personally?

14 A. I had gone to the police and talked to them about
15 what had happened.

16 Q. Okay. And did you share with the police what you
17 shared with this jury here today?

18 A. Yes.

19 MR. SIMPSON: Court's indulgence.

20 THE COURT: All right.

21 MR. SIMPSON: Ms. Martini, thank you for being here.
22 Please answer any questions for Mr. King.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. KING:

1 Q. Ms. Martini, are you closer friends with Becca than
2 with Ellis, or were you?

3 A. Yes.

4 Q. Were you all roommates or just friends at the time?

5 A. Just friends.

6 Q. And how long had you known her?

7 A. Since about ninth grade.

8 Q. And you testified you didn't see who threw the
9 punch.

10 A. I'm sorry?

11 Q. You testified you didn't see who threw this punch --

12 A. I did not.

13 Q. -- to this guy you just saw fall down. And you are
14 testifying today that Ellis was taking credit for doing that?

15 A. Yes.

16 Q. This was after 2 a.m., right, around that time?

17 A. Yes.

18 Q. Right around two o'clock when the bars are closed
19 and you had walked home, right?

20 A. Around -- it was probably around 1, I believe, some
21 time, yes..

22 Q. You didn't -- y'all didn't stay until after the bars
23 almost closed at 2?

24 A. Almost closed, but I still left around 12:30.

25 Q. And you had been drinking, you said?

1 A. Yes.

2 Q. And you had just witnessed something that was pretty
3 shocking, right?

4 A. Yes.

5 Q. You were crying a minute ago just kind of thinking
6 about it again, right?

7 A. Yes.

8 Q. So when you walked in, you testified first on direct
9 that you've talked about the fight, right? You walked in
10 talking about the fight?

11 A. Yes.

12 Q. And then you kind of changed it that you saw this
13 guy fall to the ground, but when you walked in, you knew
14 there was a big fight out there, somebody had gotten hit,
15 right?

16 A. No, honestly, what I had really seen was a guy fall
17 to the ground. And that is what attracted us to running
18 across the street and call 911. King Street is always loud
19 and crazy. You don't really know what's going on.

20 Q. You had said on direct, you said the fight -- you
21 said you walked in and told them you had saw the fight?

22 A. Well, when someone is falling to the ground, it's
23 usually a fight.

24 Q. And when you spoke with the police, do you remember
25 telling them: I just like -- I was like, y'all, listen to

1 what just happened. I, like, brought up the fight.

2 So it's kind of a small point. But the point is,
3 couldn't Ellis, when you walked in and started talking about
4 this fight, couldn't Ellis have been saying, that was me,
5 that was the fight I was involved in?

6 A. Maybe, but, no, because I was talking about the guy
7 who had fallen to the ground, the reason why I called 911.
8 And he said, I did it, so ...

9 Q. Maybe, but, no, that's your answer?

10 A. No is my answer.

11 Q. And you remember talking with the police when you
12 had interviewed with them, right?

13 A. Yes.

14 Q. I think you've talked with Kosarko. Do you remember
15 talking with him?

16 A. I remember -- yeah, I remember talking to the
17 police. I don't remember the names.

18 Q. And that was Wednesday, April 30th at 9:11 a.m.; is
19 that right?

20 A. What was the year?

21 Q. 2014.

22 A. Okay. So maybe, sure. It's been a while.

23 Q. You remember saying then: -- We are kind of getting
24 down to maybe just particular words. But you told Kosarko
25 then: The way he said it, like, I don't remember word for

1 word the way he said it.

2 Do you remember saying something like that?

3 A. Yes.

4 Q. I said: Yeah, this kid fell to the ground. And he
5 was like: Yeah, that was me.

6 Like, so the way he said it to me -- the way he said
7 it was to me saying, like, yeah, that was me that knocked him
8 out.

9 Right? I'm kind of going down the words, but this
10 is 2 a.m. People had been drinking. You just saw this
11 shocking event. But you told Kosarko that you don't remember
12 what he said word for word, right?

13 A. Yes.

14 Q. And it seemed to you that he was saying he knocked
15 the kid out, right?

16 A. Yes.

17 Q. Who all was at Percy Street when this conversation
18 happened?

19 A. Matt, Ellis, Jamie, Becca.

20 Q. Jake was never there that night for that
21 conversation?

22 A. Jake could have been there. I don't know. That's
23 who I remember.

24 Q. Did you notice any injuries on Ellis, on his face,
25 his hands, his legs, anything like that?

1 A. No.

2 Q. No? So you witness this guy fall to the ground, and
3 it was pretty upsetting to you, right?

4 A. Yes.

5 Q. You knew this was serious?

6 A. Yes.

7 Q. You called 911?

8 A. Yes.

9 Q. You described how he appeared to you on the ground?

10 A. Yes.

11 Q. You knew this was serious thing?

12 A. Yes.

13 Q. And so you are saying that that night, you know,
14 around 2 a.m., Ellis admitted he did that, and you knew that,
15 and you knew that Peter was in jail?

16 A. Yes.

17 Q. You found that out, right? And you are saying that
18 you believed that Ellis knocked this guy out and Peter was
19 innocent of it, right?

20 A. Yes.

21 Q. But you didn't call the police that night?

22 A. No.

23 Q. Next morning, Saturday, you talked to Becca, I
24 guess?

25 A. I'm sure I had.

1 Q. This was probably a hot topic of conversation,
2 right? This is what everybody was talking about the next
3 morning, wouldn't it have been?

4 A. Yes.

5 Q. You found out at some point the man was in a coma
6 and later died, right?

7 A. Yes.

8 Q. You didn't go to the police on Saturday, did you?

9 A. No.

10 Q. And then Sunday -- you didn't go to the police on
11 Sunday, right?

12 A. No.

13 Q. You didn't go until Wednesday, right?

14 A. Yes.

15 Q. But you knew there was an innocent man sitting in
16 jail?

17 A. Yes.

18 Q. And you had information about that that could maybe
19 set him free?

20 A. Yes.

21 Q. And, in fact, you never contacted the police at all?
22 They called you, didn't they?

23 A. I don't remember.

24 Q. Do you remember saying -- when you went to the
25 police station, you were there with your mother, right?

1 A. Yes.

2 Q. Do you remember Detective Kosarko had left and you
3 were chatting with your mother. This is all recorded. So
4 you were chatting with your mother in that interview room.
5 Do you remember that?

6 A. Yes, I'm sure we were chatting.

7 Q. Do you remember her asking you, how are you here
8 today? And you said: I actually don't know. Like, Matt was
9 like, yeah, this detective called me. He's probably going to
10 want to talk to you. I said, yeah, that's fine, but I didn't
11 ask him. I don't know how they got Matt's number. I mean,
12 I'm sure Matt gave them my number.

13 Q. They called you. You didn't contact the police
14 ever, did you?

15 A. No.

16 Q. They found Matt. Matt came in, gave them your
17 number, and they called you? Right? So you are saying that
18 you knew an innocent man was in jail. You believed Ellis had
19 confessed to doing it. I mean, what are you telling Becca?
20 Like, I will go to the police; I'm busy. I will get there at
21 some point. Becca is not telling you go to the police? You
22 have information to help Peter; Becca wasn't telling you
23 that?

24 A. I'm sure she was.

25 Q. And like I said, what are you saying -- so you are

1 at home sleeping in your warm bed while Peter is at the jail
2 sleeping on a cold cot, right? And you are eating nice food.
3 And he's eating whatever they serve him on a plastic tray,
4 Sunday, Monday, Tuesday. And the police have to call you to
5 get you to even come in, right? Is that right? You have to
6 answer the question.

7 A. Yes.

8 Q. And the reason is, because that's not what Ellis
9 said that night. You didn't believe Ellis really did it or
10 you would have went to the police, wouldn't you? Because you
11 are a decent person, right?

12 A. Obviously, Ellis said it that made me angry
13 enough -- I have so many people stay at my house, everyone.
14 The fact that I would let Ellis stay at my house in the first
15 place and then he did something that angered me enough to get
16 him out of my house, I was so disgusted.

17 Q. Right. But --

18 A. Right.

19 Q. You didn't feel like you needed to go to the
20 police?

21 MR. SIMPSON: Objection, Your Honor. Asked and
22 answered.

23 THE COURT: Sustained.

24 MR. KING: That's all the questions I have.

25 THE COURT: Redirect.

1 MR. SIMPSON: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. SIMPSON:

4 Q. Madison, are you -- have you ever thought that you
5 would find yourself -- you are a good person, correct?

6 A. I believe so.

7 Q. Did you ever thought you would find yourself
8 entangled in something like this, involved in someone's death
9 under these circumstances?

10 A. No.

11 Q. Going to the police, for a young person, that's a
12 pretty scary thing, isn't it?

13 A. Yes.

14 Q. So much so that you brought your mom with you,
15 right?

16 A. Yes.

17 Q. But you went to the police, didn't you?

18 A. Yes.

19 Q. And you told them the truth?

20 A. Yes.

21 Q. Right? And I believe Jason really made a good
22 point, that when you are leaving a friend in jail. That's
23 pretty rough thing to do, isn't it?

24 A. Yes.

25 Q. But you did ultimately decide to do the right thing,

1 right?

2 A. Yes.

3 Q. Even though it was scary?

4 A. Yes.

5 Q. And even though it was difficult?

6 A. Yes.

7 Q. And you are telling the truth to this jury here
8 today?

9 A. Yes.

10 Q. At any point in time after this happened, was there
11 some conspiracy meeting where you and your friends got
12 together and decided to tell lies to hurt Ellis Clarke?

13 A. No.

14 Q. And he was your friend when this happened, correct?

15 A. Yes.

16 Q. And when you saw this happen, you called 911?

17 A. Yes.

18 Q. To get people there quick to help someone, right?

19 A. Yes.

20 MR. SIMPSON: Ms. Martini, thank you for your time
21 this week. Appreciate it.

22 THE COURT: You may step down.

23 You can call your next witness.

24 MR. SIMPSON: Thank you, Your Honor. The State
25 calls Matthew Keppler.

1 MATTHEW KEPPLER,

2 having been duly sworn, testifies as follows:

3 THE CLERK: Once seated, if you could please state
4 your first and last name and spell your last loudly and
5 clearly into the microphone.

6 THE WITNESS: Matthew Keppler, K-e-p-p-l-e-r.

7 DIRECT EXAMINATION

8 BY MR. SIMPSON:

9 Q. Mr. Keppler, good morning.

10 A. Good morning.

11 Q. Where do you currently?

12 A. I currently live in Breckenridge Colorado.

13 Q. What are you doing in Colorado?

14 A. I have a maintenance job at a ski resort.

15 Q. And you are here in Charleston for this this week;
16 is that correct?

17 A. Yes, sir.

18 Q. Let me sort of introduce you to this jury, if that's
19 okay. Where are you from, originally?

20 A. Osborne and Marietta, Georgia, just outside
21 Atlanta.

22 Q. If you would go through a little bit of your
23 education and work background with this jury.

24 A. I went to Collins Hill High School, graduated from
25 Collins Hill High School. And then I enlisted in the United

1 States Navy. From there, I went for a year and a half of
2 naval nuclear training.

3 Q. Was it that that led to you Charleston eventually?

4 A. Yes, sir. So there's about a year of schooling
5 here. And then I was assigned to USS *Florida* for about four
6 and a half years. And then I came here as an instructor for
7 three years.

8 Q. You spent three years here. And where was that
9 specifically?

10 A. I lived downtown East Bay Street and eventually
11 moved to James Island. Lived in James Island for a while.

12 Q. I mean, where did you work?

13 A. I apologize. Goose Creek, South Carolina.

14 Q. Is that the Naval Weapons Station?

15 A. Yes.

16 Q. That was as an instructor?

17 A. Yes, sir.

18 Q. Also, total, how many years were you here in
19 Charleston during that stretch?

20 A. Three years.

21 Q. Three years as a teacher?

22 A. Yes, sir.

23 Q. During that three years, did you have opportunity to
24 meet someone named Madison Martini?

25 A. Yes, sir.

1 Q. And sort of how did you meet Madison and who was she
2 to you?

3 A. She worked at a restaurant, Tsunami, down on East
4 Bay Street. And we were introduced via mutual friends. And
5 we were dating for a few months, started dating for about two
6 or three months.

7 Q. About two or three months?

8 A. Yes, sir.

9 Q. Okay. And you obviously know why you are here
10 today.

11 A. Yes, sir.

12 Q. And were you kind of dating Ms. Martini when these
13 events occurred?

14 A. Yes, sir.

15 Q. And where did Madison live back when you were
16 dating?

17 A. She lived on Percy Street.

18 Q. So let's get to it and go back to Friday, April
19 25th, 2014. Okay? What were you doing that evening?

20 A. We were with a bunch of friends. I was with
21 Madison. And we were out at the bars on King Street.

22 Q. Where did you meet Madison that night?

23 A. At her house.

24 Q. And where was that again?

25 A. Percy Street.

1 Q. And where did you go from there?

2 A. From there, we started at Midtown on King Street and
3 then ended up at the Silver Dollar.

4 Q. Okay. Were you drinking that night?

5 A. Yes, sir.

6 Q. Would you say you were intoxicated that night?

7 A. Maybe five or six drinks throughout the course of
8 the night; not too intoxicated. I remember the night pretty
9 vividly.

10 Q. Scale of one to ten, one being a beer, ten being
11 severely intoxicated, where would you put yourself?

12 A. Maybe like three or four.

13 Q. Okay. You have a clear recollection of that
14 night?

15 A. Yes, sir.

16 Q. So at some point in the evening, you and Madison go
17 out and are meeting up with some of her friends?

18 A. Yes, sir.

19 Q. And who was that, if you can recall? Who were the
20 people that you can recall meeting up with?

21 A. We met with Peter Dudinyak, Jake Dudinyak, Sarah
22 White, Becca Richards. And I think there were a couple of
23 other people. I can't recall.

24 Q. Do you recognize the gentleman seated right here?

25 A. Yes, sir.

1 Q. Was he one of the people you met up with?

2 A. Yes, sir.

3 Q. Okay. Now, these guys are friends, right?

4 A. Yes, sir.

5 Q. But are they your friends?

6 A. I had just met maybe Jake Dudinyak the week before.

7 And then I met Peter and Ellis that night.

8 Q. Okay. So you are meeting Peter and Ellis that
9 night?

10 A. Yes, sir.

11 Q. What about some of the girls; do you know Jamie
12 Ledwell?

13 A. Yes, sir.

14 Q. How did you know her?

15 A. She's good friends with Madison. And I had met her
16 pretty soon after I started meeting Madison. So I've known
17 her about the same amount of time I've known Madison.

18 Q. Becca Richards, do you know who that is?

19 A. Yes, sir, I met her maybe about -- maybe week
20 before. It could have been that night, but we met about the
21 same time I met Peter and Jake as well.

22 Q. So you are -- correct me if I am wrong. You just
23 sort of started this relationship with Madison, right?

24 A. Yes.

25 Q. And you are in the process where you are meeting a

1 lot of her friends for the first, second time?

2 A. Yes, sir.

3 Q. And Peter and Ellis you just met for the first time
4 that night; is that correct?

5 A. Yes, sir.

6 Q. So you said you went to Midtown and then moved to
7 Silver Dollar; is that correct?

8 A. Yes, sir.

9 Q. And at some point, you decided to leave the Silver
10 Dollar?

11 A. Yes, sir.

12 Q. And, you know, times are a funny thing, I know,
13 especially at that time. But best guess, about what time are
14 you leaving the Silver Dollar?

15 A. About 1:15, 1:30 in the morning.

16 Q. Somewhere around in there? Close to closing time?

17 A. Yes, sir.

18 Q. And does this whole group all leave as one cohesive
19 unit, or how does everybody--

20 A. No, we kind of left different groups. Madison and I
21 left together. And I think there were either a couple of
22 friends ahead of us or behind us, you know, maybe even both
23 as we were leaving going back to Madison's.

24 Q. Was that the plan, to go back to Percy Street?

25 A. Yes, sir.

1 Q. All right. So I'm going to ask you to go slow. And
2 I may interrupt you. What happened as you are leaving the
3 Silver Dollar? What direction on King are you headed?

4 A. Towards North Charleston, so I guess north, yeah,
5 headed north.

6 Q. If you know, what's sort of that first intersection
7 do you get to? Do you know that cross street?

8 A. No, I don't really have a clue.

9 Q. Just describe for the jury what you -- what
10 happened, what you observed as you were leaving the Silver
11 Dollar?

12 A. So we were walking on the Silver Dollar side of King
13 Street. We heard some commotion going on behind us. And so
14 as there many people on King Street, everybody turned around.
15 We were watching. And so we see this commotion. We are
16 watching. And next thing I know, I see a guy go down and I
17 watch his head bounce off the concrete. So I immediately
18 told Madison, told her to call 911.

19 Q. Let me stop you here. Excuse the interruption. Are
20 you just right across the street when this happened?

21 A. No, we were north a little bit, so maybe about 50
22 yards away.

23 Q. Kind of diagonal across the street?

24 A. Yes, sir.

25 Q. From that perspective, just sort of doing it from

1 diagonally across the street, how would you describe; pretty
2 chaotic scene?

3 A. Yes, sir, it was very chaotic.

4 Q. Were you able from that distance to identify anybody
5 who would have thrown a punch or involved in the fight?

6 A. No, sir, not at that time, no.

7 Q. At that time, right?

8 A. Right.

9 Q. Did you at that point, viewing from that vantage
10 point, even have any idea that anyone involved in this whole
11 thing were people you might have known?

12 A. No, not at all.

13 Q. Is your attention mainly focused toward the guy
14 falling down?

15 A. Yes, sir, absolutely.

16 Q. And how do you react?

17 A. I sprinted across the street, because this guy
18 was -- you know, there's obviously a lot of commotion. I
19 didn't want him to get stepped on or anything. So I ran
20 over. I was kind of leaning over him and keeping people off
21 of him. I just was worried about him getting stepped on or
22 something.

23 Q. What's King Street like around this time on a Friday
24 night?

25 A. Busy.

1 Q. And this is an event that obviously draws
2 attention?

3 A. Yes, sir, absolutely. There's a lot of people
4 screaming, a lot of commotion.

5 Q. And, again, did you know at this point that anyone
6 you could have known or been with that night was involved
7 with this?

8 A. No, sir.

9 Q. What -- did you approach this person that was lying
10 there on the sidewalk?

11 A. Yes, sir. So I was leaning over him pretty close,
12 listening to his breathing, checking his pulse. I just
13 wanted to make sure he was alive.

14 Q. So, again, through the Navy, do you have some degree
15 of medical training?

16 A. Yes, sir, some basic first responder stuff, CPR,
17 stuff like that.

18 Q. How would you sort of appraise this individual's
19 condition right when you get there?

20 A. He was definitely having trouble breathing, but he
21 was breathing. And he did have a pulse.

22 Q. Okay. Was he talking?

23 A. No, he was not talking. He was unconscious.

24 Q. Okay. Was he bleeding? Any signs of blood?

25 A. No, Your Honor, there were no signs of blood at that

1 time.

2 Q. You don't recall? Did you stay with this person?

3 A. I stayed with him until the police arrived, which
4 happened pretty fast. And everything started happening kind
5 of fast when I was over him. But when the police came, they,
6 you know, pushed me out and, obviously, let them do whatever
7 they do.

8 Q. Their priority was treating that person, right?

9 A. Yes, sir.

10 Q. So once police come and the professionals have
11 arrived and they've secured the scene, what do you and
12 Madison do?

13 A. At that point, we left. We just continued on our
14 way home. We stopped to get some food and went to her
15 house.

16 Q. Okay. And if you could, you said you do eventually
17 get back to Percy Street?

18 A. Yes, sir.

19 Q. Do you recall, as best you can, what sort of -- what
20 do you see when you arrive back at Percy Street?

21 A. I saw Ellis Clarke was on the couch. And he was
22 talking to, I believe -- I believe it was Jenna Marlowe, who
23 was pretty upset. And he was talking about what had
24 happened, what went on on King Street.

25 Q. Fair to say that you and Madison had just witnessed

1 something pretty shocking, right?

2 A. Yes, sir.

3 Q. When you come in, do you share or does she share
4 with the group what you guys just witnessed?

5 A. Yes, sir, absolutely. So we were talking about
6 obviously what just had just happened 15, 30 minutes ago.

7 Q. I want to you focus as best you can -- I know it's
8 been a while, but best you can, focus on what you heard said
9 and the context of it said by Ellis Clarke when you get back
10 to Percy Street?

11 A. There was kind of a bragging demeanor going on. He
12 was bragging about hitting and, you know, knocking a kid out
13 in one punch.

14 Q. And continue with that. This is a discussion that's
15 going on there at Percy?

16 A. Yes, sir.

17 Q. Okay. And at any point, are you actively involved
18 in this discussion?

19 A. I was -- I didn't really know Ellis. Right? I
20 didn't want to start any more aggression going on at the
21 house.

22 Q. What's the tone already?

23 A. It was an angry, kind of a bragging tone, angry
24 tone. I mean, it was kind of awkward, I guess. The girl
25 wanted him out of the house. He started bragging. They

1 became upset. And I was really -- you know, I just didn't
2 want to start any more fights at the house or something like
3 that.

4 Q. Was there ever a point, though, where you felt you
5 were sort of getting drug into it?

6 A. Yes, sir, absolutely. So once the girls started
7 getting mad, Ellis started to plead with me, asking, you
8 know, saying you would have done the same thing that I did to
9 protect your boys.

10 Q. And did he describe to you what it was that he did?

11 A. Yes, punching, punching Clint in the face.

12 Q. And to the best of your recollection, can you
13 describe what he said about that, as well as you can
14 remember?

15 A. He said: You know, you would have done the same
16 thing. I was walking and I heard a commotion, my boys. So I
17 sprinted back to protect them and punched the first guy I saw
18 in the face.

19 Q. Having -- how long did this whole heated discussion
20 go on?

21 A. Maybe five or ten minutes.

22 Q. Okay. Having witnessed what you witnessed on King
23 Street and come home and witnessed this whole conversation,
24 any doubt in your mind what was being discussed back at Percy
25 Street?

1 A. No doubt, no, sir.

2 Q. Any doubt he was talking about the gentleman you had
3 treated on King Street was the person Ellis was talking
4 about?

5 A. There is no doubt, sir.

6 Q. So at some point, does Ellis leave Percy Street?

7 A. Yes, sir. Girls had insisted that he leave, and he
8 eventually left.

9 Q. Okay. And, again, when did you meet Ellis?

10 A. That night..

11 Q. And when did you meet Peter?

12 A. The same night.

13 Q. Okay. I don't mean to get personal, but are you and
14 Madison Martini still romantically involved?

15 A. No, sir.

16 Q. How long were you dating after this incident
17 occurred?

18 A. I think maybe a month or so more.

19 Q. So, again, is it fair to say this was sort of a
20 short fling you had?

21 A. Yes, sir.

22 Q. Any hard feelings now?

23 A. No, sir, not at all.

24 Q. Okay. But do you still talk all the time?

25 A. Not all the time, no, sir.

1 Q. You had a short fling with Madison, and through the
2 course of that, you met some of her friends; is that fair?

3 A. Yes, sir.

4 Q. You had met Ellis that night?

5 A. Yes, sir.

6 Q. And Peter that night?

7 A. Yes, sir.

8 Q. Are these the kinds of relationships that would
9 bring you into the courtroom to lie?

10 A. No, sir.

11 Q. Are you out to help -- coming in here today to help
12 Peter?

13 A. Not at all.

14 Q. And when did you meet Peter?

15 A. The same night I met Ellis, on April 25th.

16 Q. At any point in time that night, that evening or
17 after in the days to come, was there some meeting you were
18 involved in, some conspiracy hatched to lie about this case
19 to get Ellis in trouble?

20 A. No, sir, not at all.

21 MR. SIMPSON: Court's indulgence.

22 BY MR. SIMPSON:

23 Q. So did you, nevertheless, learn shortly thereafter
24 that someone was in jail for what --

25 A. Yes, sir.

1 Q. Who was that person that you learned?

2 A. Peter Dudinyak.

3 Q. After witnessing what you did at Percy Street, what
4 did you think about the fact that Peter Dudinyak --

5 A. I didn't want the wrong person in jail.

6 Q. Was it clear in your mind, after witnessing the
7 words out of Ellis's mouth, that the wrong person was, in
8 fact, in jail?

9 A. Yes, sir.

10 Q. And what did you do about that?

11 A. At this point, we contacted the authorities. I
12 don't remember the detective's name, but we contacted the
13 detective and gave him my story.

14 Q. And would you have also given him contact
15 information for others, right?

16 A. Yes, sir.

17 Q. And were those others also willing to go do what you
18 did and tell the truth and tell the detectives what happened?

19 A. Yes.

20 Q. And, again, you live in Colorado now?

21 A. Yes.

22 Q. And you came back here for this?

23 A. Yes.

24 Q. At our request?

25 A. Yes.

1 Q. Any intention or reason you can think of for telling
2 anything but the truth today?

3 A. No, sir.

4 MR. SIMPSON: Thank you so much, Mr. Keppler. We
5 appreciate you coming here. Answer any questions of
6 Mr. King.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. KING:

10 Q. Mr. Keppler, you testified that Ellis said he
11 punched somebody in the face, right?

12 A. Yes, sir.

13 Q. When you got to Percy Street, when you were at Percy
14 Street for this conversation, do you remember who is there?

15 A. Yes, sir. It was myself, Madison, Ellis and Jenna
16 Marlowe, is what I remember.

17 Q. What about Becca?

18 A. Becca wasn't there at the time, as I recall.

19 Q. Now, Becca was kind of drunk that night; is that
20 right? She had been drinking some?

21 A. She had been drinking, yes, sir.

22 Q. Did you see her at some point upset over Peter being
23 in jail?

24 A. He was upset, yes, sir.

25 Q. Didn't you have her keys and lied to her about the

1 keys so that she wouldn't drive?

2 A. Yes, sir.

3 Q. So Becca wasn't there; didn't hear any of this, is
4 what you are saying?

5 A. At that time, right, Becca was not there.

6 Q. And you stayed -- ended up staying? You never left
7 Percy Street? You stayed there?

8 A. Correct.

9 Q. Do you remember you met with the police, like you
10 testified, right?

11 A. Yes, sir.

12 Q. You went down on Monday, April 28th, 2014, at 1:50
13 p.m.; does that sound about right?

14 A. Yes, sir.

15 Q. You met with Kosarko?

16 A. That's correct, yes.

17 Q. When you met with him, you told him the truth?

18 A. Absolutely.

19 Q. Best you could remember?

20 A. Yes, sir.

21 Q. Because you didn't really know any of these people
22 that well, right?

23 A. Yes, sir.

24 Q. Madison Martini you were dating at the time?

25 A. I understand.

1 Q. You had some sympathy for her, but other people you
2 didn't really know that well, right?

3 A. Yes, sir.

4 Q. So I just want to ask you about something that you
5 said at that interview with Kosarko. You were talking to
6 him. And he's asking you these same kind of questions about
7 what you saw and what you heard. Do you remember saying
8 this? And he asked you, you were talking about what Ellis
9 said and Kosarko said: Did he say what happened to that guy?

10 And you said: You know, I feel like I remember it.

11 And some of this, just kind of stopped talking in
12 mid-sentence.

13 But: I feel like I remember him because everybody
14 else's was taking him as bragging about how he knocked this
15 dude out. I can't remember specifically if he said that he
16 had knocked him out, but I know that -- and you are like
17 almost, gosh, I really wish -- and you tell him you want to
18 be completely specific, you don't want to give fake
19 knowledge.

20 Do you remember saying that?

21 A. I do not. I don't remember saying that.

22 MR. KING: Your Honor, may I admit that small
23 portion of that?

24 THE COURT: All right. Any objection?

25 MR. SIMPSON: No, Your Honor.

1 THE COURT: All right. This will be Defendant's
2 Exhibit No. 6.

3 MR. KING:

4 (D-6, Video of Mr. Keppler's interview, is moved
5 into evidence.)

6 Q. Do you see this, Mr. Keppler? That's you?

7 A. Yes.

8 Q. That's this interview we are talking about on Monday
9 April 28th, 2014, right?

10 A. Yes, sir.

11 Q. And is this what you said?

12 (Video playing.)

13 Q. That's what you said, right?

14 A. Yes, sir.

15 Q. And you are an honest guy, right?

16 A. Yes, sir.

17 Q. You had no reason to lie to that detective at the
18 time? It looks like you are kind of struggling. You are
19 trying to be as honest as you can, right?

20 A. Yes, sir.

21 Q. So what you said, you said: Everybody else was
22 taking him as bragging about how he knocked this dude out.

23 Let's talk about that for a second. "Everybody
24 else", so that means all these people are talking about what
25 was said that night, right?

1 A. Of course, yes, sir. Obviously, it's a big event
2 that happened. My friends and I are going to talk about it.

3 Q. Right. They talk about it. When people talk about
4 an event and talk back and forth, details can get -- details
5 can get off, right, just from our personal experience? Some
6 details, somebody remembers one detail, somebody remembers
7 something different; that's the way life is, right?

8 A. Yes, sir.

9 Q. So everybody was talking about what the conversation
10 was that night. But you, being as honest as you can with
11 Kosarko, the Monday afterwards, you are remembering back over
12 two years ago almost, two years ago -- this was shortly after
13 this happened, right?

14 A. Yes, sir.

15 Q. And you could not specifically remember if he said
16 "knocked him out"; is that right? That's was told Kosarko.

17 A. Well, it appears so, yes, sir.

18 Q. I want to talk about one more statement that you
19 made to that same detective on that same night. Do you
20 remember Kosarko asking you: Did Ellis ever say that he
21 specifically hit the person that knocked him down; do you
22 recall?

23 And you said: Yes, so that's what -- I don't
24 remember if he said knocked someone out, but he did say he
25 hit someone.

1 Okay. And you said that he ran and just hit the
2 first guy. Okay?

3 A. Right.

4 Q. Or hit somebody that was involved in the commotion;
5 do you remember saying that?

6 A. Right. So, I knew that he hit someone, and I knew
7 that he knocked him out because I witnessed it and I was
8 laying over the victim's body. And I knew he was
9 unconscious, so I knew he was knocked out.

10 Q. But this is what you said to Kosarko, right?

11 A. Right.

12 Q. I guess that's the first question. Did you say this
13 to him: I don't remember if he said "he knocked someone
14 out", but he did say he hit someone.

15 Did you say that to Kosarko?

16 A. Yes, sir.

17 Q. You said: Then he ran and just hit the first guy.

18 Right? And I think you testified that today. Isn't
19 that what you said, you said he just ran to the first guy?

20 A. Yes, sir.

21 Q. Then said: Or hit somebody that was involved in the
22 commotion.

23 Right? Do you remember saying that?

24 A. I don't recall whether, you know, it was one or the
25 other, as far as what I said.

1 MR. KING: May I play that brief clip as well?

2 THE COURT: Any objection?

3 MR. SIMPSON: No, Your Honor.

4 THE COURT: All right. This will be Defendant's
5 Exhibit 7 admitted without objection.

6 (D-7, Video, was received in evidence.)

7 BY MR. KING:

8 Q. Same interview, right? That is you?

9 A. Yes, sir.

10 (Video playing.)

11 Q. And this is 1:59, so this was a little later than
12 that second clip. Is this what you said?

13 (Video playing.)

14 Q. Is that what you said?

15 A. Yes, sir.

16 Q. So that Monday after all of this happened, really
17 the minimum you were sure of in that conversation is that
18 Ellis said he hit someone, right, that was involved in the
19 commotion?

20 A. Yes, sir.

21 Q. If you break that down, that's really the bare
22 minimum that you remember that day, right?

23 A. Yes, sir.

24 Q. Do you remember them -- do you remember anything
25 about this being like strike three for Peter? Do you

1 remember saying something like that: I know a lot of friends
2 of Peter and Ellis and all their friends are saying this is
3 like --

4 MR. SIMPSON: Objection, Your Honor; hearsay.

5 THE COURT: Sustained.

6 BY MR. KING:

7 Q. Do you remember people talking about --

8 MR. SIMPSON: Objection, Your Honor; hearsay.

9 THE COURT: As long as he doesn't say what they
10 said, I will allow it. He can mention people talking, but he
11 can't say what they said.

12 MR. KING: Offering it not for the truth of the
13 matter asserted, but for the affect that it would have on
14 people who heard this.

15 THE COURT: Let me see the attorneys.

16 (Whereupon, a bench conference takes place off the
17 record.)

18 THE COURT: Objection sustained.

19 MR. KING: I have no other questions.

20 THE COURT: All right. Redirect.

21 MR. SIMPSON: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. SIMPSON:

24 Q. Is this the only police interview you've ever given
25 in your life?

1 A. Yes, sir.

2 Q. They ask you the same question over and over again,
3 right?

4 A. Yes, sir.

5 Q. So you answer a question. We went through this for
6 days now. You answer the question, and you phrase, you
7 answer, you phrase your answers differently over and over and
8 over again, right?

9 A. Yes, sir.

10 Q. So you were asked again -- and as Mr. King has done,
11 I would like to play you a clip from your interview. You
12 were asked -- you described to the jury at this point where
13 Ellis Clarke is kind of pulling you in as an ally; is that
14 fair to say?

15 A. Yes, sir.

16 Q. And do you remember saying that you answer: -- He
17 said to you: If you were walking with your friends and you
18 heard them getting in a fight and they called your name back,
19 what would you have done? I was trying to run back and
20 protect my boys, so I sprinted and I hit the first guy I saw,
21 and that was the end of the commotion.

22 Do you recall saying that?

23 A. Yes, sir.

24 Q. Okay. And then they ask you again and again. And
25 we can always sit here and pick apart little words, but you

1 remember that?

2 A. Yes, sir.

3 MR. SIMPSON: Okay. Nothing further, Your Honor.

4 THE COURT: All right. You may step down.

5 You can call your next witness.

6 MR. SIMPSON: Court's indulgence.

7 THE COURT: All right. The State calls Ashley
8 Newell.

9 ASHLEY NEWELL,

10 having been duly sworn, testifies as follows:

11 THE CLERK: Ma'am, once seated, if you can please
12 state your first and last name and spell your last loudly and
13 clearly into the microphone.

14 THE WITNESS: My name is Ashley Newell, N-e-w-e-l-l.

15 DIRECT EXAMINATION

16 BY MR. CORVEY:

17 Q. Good morning. How are you?

18 A. I'm great. How are you?

19 Q. Good. Where do you work?

20 A. I work for the Charleston Police Department.

21 Q. How long have you been with CPD?

22 A. I've been with CPD about 5 1/2 years now.

23 Q. Just for the jury, can you describe what your roles
24 with CPD are and your day-to-day duties.

25 A. Sure. I am a crime scene technician for the

1 Charleston Police Department's forensic services division.
2 So my major responsibilities are responding to both major and
3 minor crime scenes, documenting, collecting, preserving
4 physical evidence and packaging it accordingly.

5 Q. What sort of training and other experiences do you
6 have in that sort of work?

7 A. I have a bachelor's of science in criminal justice,
8 a master's of science in criminal justice. I have 400 hours
9 of in-service training as a crime scene investigator. And
10 I'm also certified with the international association as a
11 crime scene investigator, as well as a member of the
12 International Association for Bloodstain Pattern Analysis.
13 And I'm a subject matter expert for the National Center of
14 Biomedical Research and Training.

15 Q. I think that covers it. So I guess we will get to
16 the matter. Did you become involved in this case?

17 A. I did.

18 Q. And how did you become involved in this case?

19 A. I was requested to respond to the scene location of
20 King and Morris in reference to an insult that had occurred
21 earlier.

22 Q. And is that your standard protocol, you get called
23 out by investigators or detective on scene?

24 A. Yes. Whoever is on scene, in this case it was the
25 on scene sergeant, who called me and notified me of the

1 incident location and requested that I respond.

2 Q. And this would have been the night of Friday, April
3 25th, going into the morning hours of April 26th?

4 A. Yes.

5 Q. So if you would just kind of walk through the jury
6 and generally describe what you did once you arrived on
7 scene.

8 A. Sure. Once I arrived on scene, I spoke with
9 Sergeant Robinson, who was the officer who had been holding
10 the scene for me. He had protected the scene using barrier
11 tape, making sure no one had walked through the scene or
12 touched anything or moved anything that wasn't absolutely
13 necessary as far as EMS and first responders go. He then
14 informed me that there was a victim that had been transported
15 from that location to M.U.S.C., as well as a second victim
16 that had been transported to Roper Hospital. I was informed
17 that one of the victims had very serious injuries. And that
18 it was requested for me to document the scene as thoroughly
19 as possible and as well as collect any items of evidentiary
20 value.

21 Q. So when you say evidentiary value, what do you mean
22 by that? Seems obvious, but if you can explain.

23 A. Evidentiary value would be any sort of physical
24 evidence. So that would be swabs, fingerprints, something
25 that could lead towards investigation purposes.

1 Q. And did you -- in this case, did you have the
2 occasion to collect any physical evidence?

3 A. I did. The only thing that I personally collected
4 was a swab of blood.

5 Q. And if you can kind of describe the process that you
6 take in collecting that.

7 A. Sure. Our process begins with documenting the scene
8 thoroughly. So I photographed the scene in its entirety, as
9 well as did initial observations as to what they had been
10 pertinent to the investigation. I would then rephotograph
11 with evidence markers to indicate in those photos what is of
12 importance. And then depending on what was on the scene
13 would determine my further collection methods. So in this
14 case, in the collection of the swab, I first tested the swab
15 to see if it was blood. And we did a presumptive test with
16 o-tolidine, which resulted in a presumptive positive result.
17 And in that case, I then collected the swab.

18 MR. CORVEY: Your Honor, may I approach?

19 THE COURT: Yes.

20 BY MR. CORVEY:

21 Q. Ms. Newell, I'm handing you what's been entered into
22 evidence as State's Exhibit 9, 10, 11 and 12. I think they
23 are photographs you took that night. If you will take a look
24 at those and tell me if you recognize those.

25 A. Yes, I recognize these.

1 MR. CORVEY: Your Honor, may I publish to the jury?

2 THE COURT: Have they been introduced?

3 MR. CORVEY: They have been, 9 through 12, yes,
4 sir.

5 THE COURT: All right. Go ahead.

6 BY MR. CORVEY:

7 Q. Ms. Newell, I'm showing you what's been entered as
8 State's Exhibit 9. Can you describe to the jury what this
9 depicts? And you can write on that screen if it helps you at
10 all.

11 A. Okay. This would be the incident location at the
12 intersection of Morris and King Street. The crime scene
13 barrier tape is the area in which I was informed the incident
14 had occurred. And the swab that was collected from this
15 scene is in this area right here. (Witness indicates.)

16 Q. Okay. And then now I'm showing you State's 10.
17 That looks like a close-up of the same area. If you could
18 kind of describe what this depicts.

19 A. Yes. This is a closer-up photograph of the same
20 location and the area more of the swab was taken was right
21 here. (Indicating.)

22 Q. And then now I'm showing you State's 11 again. Is
23 that a close-up of the same area?

24 A. Same area, even closer.

25 Q. And just to clarify, I'm going to show you State's 9

1 again. And that area is sort of behind that electrical box
2 close to edge of the building?

3 A. Yes, that's correct.

4 Q. So closer to the intersection of King Street and
5 Morris?

6 A. Yeah.

7 Q. And now showing you State's 12. And what does this
8 depict?

9 A. This is depicting the o-tolidine presumptive test.
10 When the presumptive test indicates a positive result, this
11 swab will turn a bluish-green color. So this is me
12 documenting the positive blue-green results from the swab
13 from the scene.

14 Q. So suffice it to say, the spots we saw on the ground
15 on State's 11 were blood?

16 A. Presumptively, yes.

17 Q. Presumptively?

18 A. Yes.

19 Q. So after documenting the scene and going over that
20 night, what else did you do with regard to being called out
21 to this incident?

22 A. I next responded to Roper Hospital where I
23 photographed the second victim. And I documented his
24 external injuries.

25 And then followed by that, I then responded to

1 M.U.S.C., where I photographed the victim who had the more
2 serious injuries and photographed him.

3 Q. And then did that conclude your involvement in this
4 case?

5 A. Yes, at that point, yes.

6 MR. CORVEY: Court's indulgence. No further
7 questions. Please answer any questions Mr. King may have.

8 THE COURT: Cross-examination.

9 MR. KING: I don't have any questions for this
10 witness.

11 THE COURT: You may step down.

12 (Whereupon, a bench conference takes place off the
13 record.)

14 THE COURT: The State can call their next witness.

15 MR. SIMPSON: The State calls Detective Richard
16 Burckhardt.

17 RICHARD BURCKHARDT,
18 having been duly sworn, testifies as follows:

19 THE CLERK: Once seated, if you would please state
20 your first and last name, and spell your last loudly and
21 clearly into the microphone for the record.

22 THE WITNESS: My name is Richard Burckhardt,
23 B-u-r-c-k-h-a-r-d-t.

24 DIRECT EXAMINATION

25 BY MR. SIMPSON:

1 Q. Detective, good morning.

2 A. Good morning.

3 Q. I would like to start by introducing you to the
4 jury. If you could, explain your sort of work history.

5 Where are you currently employed, by the way?

6 A. I'm currently employed in the federal court. I am a
7 court security officer of the United States Marshal Service.

8 Q. And is that a retirement gig sort of?

9 A. I retired in -- after 27 years with the CPD,
10 Charleston Police Department. I retired in November of last
11 year for a couple of weeks.

12 Q. If you could, you mentioned a 27-year career.

13 A. Yes.

14 Q. Could you sort of just recount that career for the
15 jury; what are the highlights of that, if you would?

16 A. Okay. So formal education, I possess a bachelor's
17 degree in education. I attended the Criminal Justice Academy
18 of South Carolina back in 1988. As in a situation of most
19 officers, I worked uniform patrol division for a number of
20 years throughout various parts of the city. I was a mounted
21 horse unit for a few years. We had horses; since been
22 disbanded. But, primarily, I spent the last 17 years of my
23 career in investigations, during which time I was appointed
24 to the Drug Enforcement Administration, DEA. I was also
25 appointed to the Federal Bureau of Investigations, the FBI,

1 and also the United States Marshal Service, in task force
2 capacity. I worked criminal investigations for a long time.
3 I've probably worked somewhere in the neighborhood of 300
4 maybe some-odd homicide cases.

5 Q. You worked your way up to, what a layperson may
6 call, you were a major case investigator for a long time?

7 A. That would be accurate.

8 Q. Okay. And, again, how many -- approximately how
9 many homicides do you think you played some role in?

10 A. Nearly 400, I think, 380 something was the count
11 when I left.

12 Q. Now, typically, might there be more than one
13 investigator or detective working a case?

14 A. Yes. Generally, the standard operating procedures
15 is we like to work our cases with a team concept, one
16 detective actually taking lead and other detectives acting as
17 a support.

18 Q. And even under those detectives, do you have any
19 number of people doing things on an investigation for you; is
20 that fair to say?

21 A. Yes.

22 Q. But what best way could you just describe for the
23 jury the role, sort of, of a lead detective? Sort of
24 assigned lead detective, what's that person's job?

25 A. As an event, unfortunate events all the time takes

1 place, an incident, in this case, it's a homicide, one person
2 has to be able to take the lead charge in that. And that
3 basically alleviates a lot of probably that could involving
4 in a investigation. One person has to basically take charge,
5 not that they would make all the decisions, we consult with
6 other investigators, we assign tasks, interviews. People do
7 various different things.

8 Q. But you, for lack of a better word, you need one
9 chef, one decision-maker; is that true?

10 A. Yes.

11 Q. Would that necessarily mean you were involved in
12 every single interviewer or you know every single detail that
13 other people did?

14 A. Right.

15 Q. But you were the big picture guy; is that fair to
16 say?

17 A. The overview, I would look at everything that I
18 could, any information, reports, interviews, et cetera, that
19 became available.

20 Q. Okay. Now, were you that person in the present
21 case?

22 A. After a few days had transpired.

23 Q. And about what time did you become involved with
24 this case?

25 A. So this incident occurred, as my recollection, it

1 was a Friday night into a Saturday morning. It was around
2 closing time in the bar district and downtown, between 1 and
3 2 a.m. I wasn't -- I was not on duty at the time. The
4 assault took place. The victim was transported to the
5 Medical University Hospital and was in grave danger and in a
6 very bad situation. I was made aware of that.

7 However, Monday morning, I believe it to be that
8 following Monday, I had asked to see the case itself, what
9 had been done, what interviews had been taken.

10 Q. You remember being brought in that Monday morning?

11 A. Yes.

12 Q. And you are being brought in, as what we talked
13 about, sort of the decision maker, the lead guy; is that fair
14 to say?

15 A. Fair to say.

16 Q. In that role, do you understand on Monday that
17 there's a person that is in jail for this assault?

18 A. That's right.

19 Q. And who's that person that was in jail and charged
20 with this on that Monday?

21 A. That is Mr. Peter Dudinyak.

22 Q. Okay. So do you see, you personally, 27 years of
23 experience, do you personally see your job in that lead
24 detective as merely building a case against the person in
25 jail?

1 A. No.

2 Q. Okay. So explain that. What's your job? You are
3 coming in on Monday. They are saying, hey, take a look at
4 this. What do you see your job as to do in that role?

5 A. In my career and in my experience, to answer that,
6 an investigation to me was always an elimination, and it's a
7 process. And to do what was suggested is just to work and
8 build a case against the person that was arrested, to give
9 you a kind of tunnel vision, which isn't healthy to the
10 investigation, that's not a good idea. You look at the
11 evidence.

12 Q. You've been in law enforcement -- you are retired
13 now, so you can say all kind of stuff. You've been in law
14 enforcement for 27 years, right?

15 A. Yes.

16 Q. In your experience, do bad things happen when
17 someone just tunnels in on a charged person?

18 A. It's happened on a number of occasions.

19 Q. Okay. And so do you personally try not to do that
20 in your work?

21 A. Oh, absolutely not, no.

22 Q. And to that aim, I would like you to describe your
23 process to this jury in this case. What occurred as you come
24 in and it's your job to look at the big picture?

25 A. I was asked by the command at the time for me to

1 look at that particular Monday, which I did. I took the
2 available -- I started with the statements, the statements of
3 people, individuals that were on the sidewalk at the time
4 that this incident occurred. And I reviewed the statements
5 of these people. And there are different views and angles of
6 what they interpreted took place.

7 My flag, if you will, and there were several flags
8 when I started reviewing this case, was that --

9 Q. I just want to caution you quickly. Talking about
10 the specifically what people said is going to be a problem,
11 but would you say these eyewitness things raised some flags
12 for you?

13 A. They did. Specifically, there was the account of
14 injuries provided by the witnesses versus the actual injuries
15 to the victim himself.

16 Q. And so how did your investigation proceed?

17 A. Well, several of the accounts were that --

18 MR. KING: Objection. Hearsay.

19 THE COURT: Sustained.

20 BY MR. SIMPSON:

21 Q. Moving on from the eyewitnesses, you perceived some
22 red flags and moving on from there, where do you go?

23 A. Next thing I wanted to do, obviously, was research
24 any video that we may have had that could have been obtained
25 from the street, and we did.

1 Q. And did review of that video raise some red flags
2 for you?

3 A. It did.

4 Q. Could you describe those?

5 A. After reviewing the video and identifying, which was
6 paramount for us to identify the actual positioning of all of
7 the individuals that are in this group, I just -- we could
8 not see how that victim was, Mr. Seymour, that was struck in
9 the front. He was not positioned where this assault could
10 have happened.

11 Q. So in total, in reviewing the positions of the
12 individuals in this video, you had a real hard time with how
13 Peter, the person in jail, could have been the one that did
14 that?

15 A. Yes. And in furtherance of that, there was also
16 physical evidence located at the scene that would have
17 supported my thoughts.

18 Q. At the same time, approximately as is going in, are
19 more statements being obtained?

20 A. Yes.

21 Q. And we've been here all week, but are you also
22 listening to the statements of what any number of people have
23 to say about that evening?

24 A. Yes.

25 Q. And is that occurring at the same time these red

1 flags are being raised in your mind about the guilt of Peter
2 Dudinyak?

3 A. It's all kind of unfolding about the same time, same
4 time frame.

5 Q. Again, without going into what they said, you may
6 have not been the person that took the statement, but you
7 were ultimately made aware of the statement of Sarah White?

8 A. Yes.

9 Q. Jacob Dudinyak?

10 A. Yes.

11 Q. Rebecca Richards?

12 A. Yes...

13 Q. Madison Martini?

14 A. Yes.

15 Q. Jamie Ledwell?

16 A. Correct.

17 Q. Matthew Keppler?

18 A. Yes.

19 Q. Binh Ton?

20 A. Yes.

21 Q. And these are all, to varying degrees, were those
22 also important to you?

23 A. Very.

24 Q. And, ultimately, do you allow -- are you willing to
25 receive and allow another statement from Peter Dudinyak

1 himself?

2 A. Yes.

3 Q. And it was your understanding he wanted to tell you
4 something different than had previously been provided?

5 A. He did.

6 Q. So you have concerns about the possibility -- the
7 impossibility of Peter being able to strike from the video?

8 A. Right.

9 Q. The statements of these several other people, red
10 flags with the statements of the eyewitnesses, what
11 ultimately -- oh, let me ask you this. As it applies to what
12 other people are saying about Ellis, did you ever have a
13 chance to look at some text messages?

14 A. I did.

15 Q. And to you, what do those text messages reflect?

16 A. It was -- the way I looked at these text messages,
17 it was somewhat of a near confession. They were not innocent
18 denials, explaining what happened.

19 Q. Taking all of these things in conjunction, what is
20 the ultimate decision that's made regarding the charges
21 against Peter Dudinyak?

22 A. I discussed with the CP command that there was a
23 problem with the investigation, that although Mr. Dudinyak
24 was part of the convergence of people that the video clearly
25 showed, I did not believe him to throw the fatal punch and I

1 believed it was the defendant, Ellis Clarke, that threw the
2 punch. And at that time I contacted the Ninth Circuit
3 Solicitor's Office and told them that there was an individual
4 arrested for this crime and it was problematic, and that I
5 believed that I had the right person that needed to be
6 charged.

7 Q. You can be frank. In law enforcement agencies, the
8 bureaucracy, like any other, is that an easy call to make
9 when you are saying, we've made a mistake?

10 A. Oh, absolutely not.

11 Q. It wasn't you, but your department had made a
12 mistake?

13 A. No. I mean, it would have been easier to stay with
14 the person they arrested and move forward with it and that
15 been the end of it. That wasn't the case.

16 Q. Would that have been the right thing, in your mind?

17 A. Absolutely not.

18 Q. So you are saying it would have been easier on you
19 just to stick with what had happened; is that fair enough?

20 A. Yeah. There was a lot of work put into this.

21 Q. But that would have been -- would that have been
22 right or wrong, in your mind?

23 A. It would absolutely be the wrong thing to do knowing
24 that you had a person that didn't throw that punch.

25 MR. SIMPSON: Court's indulgence.

1 Detective Burckhardt, please answer any questions
2 Mr. King has for you.

3 THE WITNESS: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. KING:

6 Q. Good morning.

7 A. Good morning.

8 Q. You can't see on this video. You can't see the
9 punch in this video, right, the surveillance video you are
10 talking about?

11 A. About only thing that is missing is the actual
12 punch.

13 Q. What we would like to see is just kind of off camera
14 there, kind of down in the bottom corner, right, when you are
15 watching the screen? Do you remember seeing the surveillance
16 screen?

17 A. Yes, I do.

18 Q. And it's kind of the bottom right corner, you could
19 see some commotion going on there, right?

20 A. Right.

21 Q. But not the punch?

22 A. No.

23 Q. Now, you said you had been a police officer for 27
24 years?

25 A. That's correct.

1 Q. You had a lot of training when you were a police
2 officer?

3 A. I have.

4 Q. You have interrogated a lot of suspects?

5 A. Hundreds.

6 Q. You've had training in interrogation?

7 A. I have.

8 Q. Now, in general, if you go into an interrogation
9 room and you have a suspect, you want to know as much as
10 information as you can have before you go in there, right?

11 A. It would be helpful, yeah.

12 Q. Fully informed. Now, when you go to interview a
13 suspect and you've done the investigation and you have
14 eyewitnesses, do you go into the suspect and say, well,
15 here's what I've got, here's what this eyewitness says, you
16 lay everything out in your case, and then ask the suspect,
17 well, tell me what you did? Is that the way you conduct an
18 interrogation?

19 A. Not all the time, no.

20 Q. So, generally, you want to withhold the information
21 that you have when you are interrogating a suspect, to see
22 what they say, because you don't want the information you
23 have to influence them or for them to get their story right
24 when you lay the information out, right? Does that make
25 sense?

1 A. Mr. King, I can correct you there. Typically, in an
2 interview, I would, based on my training, I would tailor an
3 interview based on the behavioral make-up of that person. I
4 could approach an interview with one person completely than I
5 would with another person. So to answer yes to that, I can't
6 agree with that.

7 Q. But you don't think in general when you interviewing
8 a suspect, it's a bad idea to lay out your whole case before
9 you talk to them?

10 A. No, you typically don't want to lay it all out,
11 right.

12 Q. And the reason is because if you lay it all out
13 before you talk to them, then they can see what you've got
14 and tailor their response to the evidence you have, right?
15 And you want to get them talking what they can say before
16 they know what you have?

17 A. That's a possibility.

18 Q. Because if they say something, you have a witness
19 that says one thing, and they start telling another thing,
20 you know there's a discrepancy and you've got an issue there,
21 right?

22 A. That's a possibility.

23 Q. But if you told them what witness said before you've
24 talked to them, then they can just agree with whatever that
25 witness said, right?

1 A. I suppose that could be correct, yeah.

2 Q. So you brought Peter in on May 12th for that
3 interview, right? You met with Pete and you interviewed
4 him --

5 A. Yes.

6 Q. -- about what happened that night?

7 A. Yes.

8 Q. And you had seen the surveillance video, right?

9 A. I watched it number of times, a lot.

10 Q. And Peter had not seen the surveillance video at
11 that point when you start the interrogation?

12 A. Not when I started.

13 Q. Towards the end, you take him, show him the video,
14 and have him identify where and what was and who?

15 A. Correct.

16 Q. And you know that the video shows Andrew O'Hearn and
17 Peter Dudinyak across Morris Street?

18 A. Yes.

19 Q. And it shows them running down sort of diagonally
20 across the street into the ruckus; is that right?

21 A. Yes, uh-huh.

22 Q. And Ellis runs across kind of farther up, running
23 straight across, and then you don't see him anymore, is that
24 right, kind of farther back?

25 A. Yeah, he makes a break, what I would describe him to

1 be in somewhat of a sprinter's position. And he crosses the
2 street further up than Dudinyak and O'Hearn. And he cuts
3 across, I wouldn't say directly across, kind of an angle, but
4 he disappears out of view.

5 Q. So when you are watching that video, it doesn't show
6 Ellis as they're running towards the confrontation, right,
7 before they get to the confrontation? It doesn't show Ellis
8 running past, right past Peter, does it?

9 A. No.

10 Q. Now, so when you interviewed Pete Dudinyak, you got
11 his explanation from what happened before you showed him the
12 video, right?

13 A. Yes.

14 Q. You know the first time he talked to the police, the
15 night he was arrested, you reviewed that, right?

16 A. He spoke to Detective Bailey.

17 Q. You know that he lied during that interview?

18 A. He did.

19 Q. He said something that doesn't match up with
20 anything?

21 A. No, he was untruthful.

22 Q. So he's already lied to Detective Bailey. So you
23 are meeting with him and you ask him, well, come clean, tell
24 me what happened, right? And before he sees the video, he
25 tells you -- and this is your report: Dudinyak stated that

1 he, along with O'Hearn and Clarke, crossed the street to go.
2 to Binh Ton.

3 Do you remember writing a report in this case?

4 A. I do..

5 Q. Does that sound about what you put in your report?

6 A. Pretty much.

7 Q. Dudinyak stated that Clarke sprinted past him and
8 headed directly toward the victim Seymour where he delivered
9 a single-hand punch to the head area of the victim Seymour,
10 knocking him to the ground, right?

11 A. Right.

12 Q. Dudinyak stated as he arrived to the confrontation,
13 he observed Binh Ton standing over a person fighting with
14 them.

15 All right. So when he first talked, tells you what
16 happened, he says that him and Ellis are running towards the
17 confrontation. Ellis runs past him and hits the guy before
18 he even arrives to this ruckus, right?

19 A. I don't know before -- Dudinyak says before. I
20 think it's kind of -- I think timing on this, it's almost
21 simultaneous. It's pretty quick.

22 Q. So you don't think that Peter told you first that as
23 they are running toward the confrontation before they get
24 there, Ellis runs past him, knocks the guy out before Peter
25 gets there?

1 A. That's what Mr. Dudinyak stated.

2 Q. That is what he said?

3 A. Yes.

4 Q. That's not what the video shows, right?

5 A. Video shows the positioning of everybody but the
6 victim and Mr. Clarke. That's what the video shows. That's
7 what I saw on the video.

8 Q. Let's back up again, kind of break it down step by
9 step. You agree that Peter told you that Ellis ran past him
10 and knocked the guy out before Peter got to the
11 confrontation, like as they were running there? Do you agree
12 that's what Peter told you in the beginning?

13 A. Yes.

14 Q. That video doesn't show Ellis running past Peter as
15 Peter is running toward the commotion, does it?

16 A. There is a part of that video on that wall, and I
17 believe it to be an awning that starts, that he could have
18 gone past there. It doesn't show -- if you look at video on
19 that sidewalk area on Morris Street, the side of the street
20 where the incident occurred, there's some foliage there,
21 there's some darkness on that video. I think the people that
22 you can actually see on that video, on that side of the
23 street, is Binh Ton, I believe the name what Regina Harding,
24 she appears in that video. The video that I watched had
25 Mr. Dudinyak coming across the street with Mr. O'Hearn,

1 convergence, if you will, and Mr. Clarke on the top of the
2 screen coming and disappears on that sidewalk.

3 So it's my interpretation of the explanation of
4 Mr. Dudinyak is that he was coming across the street,
5 Mr. Clarke was coming across the side of that wall to where
6 the actual assault took place. Physical evidence also
7 supported that, because Mr. Seymour was behind the
8 individuals. He was behind Mr. Hennessey. He was behind
9 Mr. Baker. He does not appear in the video.

10 Q. One second. And you remember interviewing Peter,
11 right?

12 A. Yes.

13 Q. And you don't remember him saying this: We were
14 coming --

15 MR. SIMPSON: Objection, Your Honor; hearsay.

16 THE COURT: I'm going to allow that. Overruled.

17 BY MR. KING:

18 Q. "We were coming up on a fight that had broken out.
19 And at that point, you know, I saw that it was one of my
20 friends, Binh Ton, that had been in the altercation. And at
21 that point, Ellis ran by me, hit the guy. I ran up, tried to
22 break up the fight. At which point, turned into chaos. I
23 got thrown on the ground and got back up. When I ran up,
24 Mr. Seymour was already on the ground."

25 Okay?.

1 A. Okay.

2 Q. And then he says it again, kind of goes over what
3 happened again. And he says: So Ellis runs in front of me,
4 hits dude, hits the ground, Mr. Seymour. I followed. When I
5 got to the confrontation, Mr. Seymour was on the ground.

6 All right. You agree that's what Peter said at that
7 interview?

8 A. I agree to that.

9 Q. Let's take a look at the video that's in evidence.

10 (Video playing.)

11 Q. Okay. This is the video we are talking about,
12 right?

13 A. Yes.

14 Q. And that is the -- you can see the ladies looking
15 back to the left towards some sort of commotion, right?

16 A. Yes.

17 Q. And now -- we just missed it, but that's Andrew
18 O'Hearn and Peter running across the street there toward the
19 commotion, right?

20 A. Correct.

21 Q. Can you approximate where you think Ellis went right
22 now? You can't see him.

23 A. He starts out by the top right corner, sidewalk, and
24 sprints across.

25 Q. Maybe we can back that up and watch it.

1 (Video playing.)

2 BY MR. KING:

3 Q. Can you mark -- okay. Do you see Ellis on that
4 video at this point? We will go a little bit farther.

5 A. Yes.

6 Q. Okay. Show me where Ellis is.

7 A. He sprints across the street top right corner
8 towards the vehicle.

9 Q. Where is Peter?

10 A. Peter is wearing a darker shirt, the two that are
11 crossing the street there.

12 Q. Can you use a touch pad maybe and draw a circle
13 around it.

14 A. Mr. Dudinyak?

15 Q. Yes, please.

16 A. (Witness indicates.)

17 Q. That will work. Okay. Now, we see Peter is running
18 up to the commotion. All right. Ellis doesn't run past him
19 as he's running up to the commotion; does he?

20 A. I can't say that for sure because you are blocked --
21 this corner view here is not complete. You can see where
22 some of these individuals are actually cut off by the camera
23 angle.

24 Q. All right. Now, would you agree at that second,
25 Peter is at the commotion? He's there, right?

1 A. Yes.

2 Q. There's Binh Ton. He's there?

3 A. Yes.

4 Q. Did Ellis run past him?

5 A. It's not on the video. It's not in the video. And
6 I'm saying because on that left, if you look at the left
7 screen there, it's being blocked by some object.

8 Q. Well, he's already there. That's the point I'm
9 saying. He's already at the commotion. What Peter says is:
10 Ellis runs in front of me. Hits dude. Hits the ground. And
11 then when I got to the confrontation, Mr. Seymour was on the
12 ground.

13 A. Correct. If he would have -- if he would have
14 blamed wall, running in that direction, running past
15 Mr. Dudinyak, I could understand that. Because, again,
16 there's area on the screen on this video that's being
17 blocked.

18 Q. We don't see that. Peter said, when I got to the
19 confrontation. There he is. He got to the confrontation.
20 So in his statement, Ellis has already ran in front of him
21 and ran past him. And at this point, according to Peter,
22 Mr. Seymour is already on the ground. So it doesn't matter
23 what happened after that, at least for this discussion that
24 we are having. Peter is there. Ellis didn't run past him
25 that you can see in the video right there? Put it this way,

1 can you see on this video Ellis running past him?

2 A. No, you can't.

3 Q. So after he gives you this statement, then you take
4 him and show him the video, right?

5 A. Yes.

6 Q. You let him see it?

7 A. Yes.

8 Q. And now his testimony, lo and behold, appears to
9 match up more with the video, right? Isn't that the problem
10 when you reveal evidence to a suspect?

11 A. No. I actually thought that he was very close to
12 what the video provided, counselor. I really thought it was
13 actually the other end. And not just Mr. Dudinyak, I showed
14 that video to just any witness I could so that I could get
15 confirmation, identities of all of the people that were
16 there. That was a practice in this investigation. We used
17 several videos.

18 Q. So you showed Peter the video. Then you just came
19 back, had Peter basically sign an identification of Ellis,
20 like, is this Ellis, and identify him?

21 A. It's not a single identification, which is another
22 process we use. If one person is an acquaintance of
23 somebody, we don't show a lineup because they already know
24 who that person is. So an individual photo is produced as
25 opposed to a six-pack or something like that. And that was,

1 again, done for identification purposes.

2 Q. Right. After that video, he does identification?

3 A. Right.

4 Q. I think he gets a sandwich and gets to eat. And
5 then you -- then he goes home that night, right?

6 A. Goes back to jail that day.

7 Q. Charges are dismissed that very day?

8 A. Whenever the solicitor was able to. It was pretty
9 soon after.

10 Q. So you made the decision to dismiss the charge
11 against Peter; is that right?

12 A. I would say it was a collective decision between law
13 enforcement and the Ninth Circuit.

14 Q. But you were definitely involved in that decision?

15 A. I provided the information that turned the page, I
16 think.

17 Q. Based on what you are saying, you were brought in to
18 look at the situation?

19 A. I was.

20 Q. So you were probably the most important law
21 enforcement who was involved in this decision?

22 A. That would probably be pretty accurate.

23 Q. Now, you've talked to Jacqueline Gladden?

24 A. I'm not sure if I spoke to Gladden or not.

25 Q. I don't know --

1 A. I don't think I did.

2 Q. Interview Jacqueline Gladden, an eyewitness?

3 A. She was interviewed that evening maybe, one of the
4 females. There were a couple of females out there.

5 Q. Before you made the decision, this big decision to
6 dismiss the charge against Pete and charge another man, you
7 didn't talk to an eyewitness, Jacqueline Gladden, to ask her,
8 explain to me what you saw again? You didn't talk to her?

9 A. No.

10 Q. You didn't talk to Gabrielle either, the other
11 eyewitnesses?

12 A. No, no, detective did that.

13 Q. You didn't talk to her?

14 A. No.

15 Q. And you didn't talk to you Rosalie Frederick, a
16 third person?

17 A. No, I relied on the detective reports for that.

18 MR. KING: That's all the questions I have.

19 THE COURT: Redirect.

20 MR. SIMPSON: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. SIMPSON:

23 Q. We will pick up right where Mr. King left off. To
24 be clear, members of your agency spoke with all three of
25 those people, correct?

1 A. That's correct.

2 Q. We have the video. It's in evidence. I'm going to
3 be talking about it a lot, I'm sure, during closing
4 arguments. But does this video show all of the sidewalk at
5 issue here?

6 A. No, does not.

7 Q. There's a pretty large part of that sidewalk you
8 can't see in the video?

9 A. I think it's probably cut in half.

10 Q. If a person was, as the witness is saying, running
11 along the wall of the building on Morris Street, would you be
12 able to see that in that video?

13 A. No, you wouldn't.

14 Q. If a person was to try to get to that wall -- if a
15 person was on this side of the Morris Street and needed to
16 get to that wall, would you see them in the video across from
17 that street?

18 A. On the far side?

19 Q. Yes.

20 A. Yes, you would.

21 Q. Do you see Ellis, in fact, crossing the street right
22 where he would be?

23 A. We do.

24 Q. I believe you described it as a sprint position.
25 Could you describe that for the jury?

1 A. He was in a lower type of block position as if he
2 was taking a full sprint in that direction.

3 Q. In the direction of the portion of the sidewalk that
4 is not on the video?

5 A. Yes.

6 Q. In the direction that he would be running if he was
7 to run past Peter and punch the first guy he saw?

8 A. That would work.

9 Q. And so in the video, we see Peter Dudinyak in the
10 view in this video, right?

11 A. Yes, we do.

12 Q. We see Binh Ton at points in time in the video; is
13 that correct?

14 A. Yes.

15 Q. We see Regina Harding at points in time in the
16 video?

17 A. We do.

18 Q. I believe we see the head of Bradley Baker in that
19 video?

20 A. We do.

21 Q. We don't see Danielle Hennessey, but is there any
22 belief that Daniel Hennessey hit Clint Seymour?

23 A. No.

24 Q. Gosh, there's one person. Two people we don't see.
25 Do we see Clint Seymour?

1 A. No, we don't.

2 Q. Do we see Ellis Clarke?

3 A. Not at this point.

4 Q. In fact, last time we see Ellis Clarke is sprinting
5 in the direction we know Clint Seymour to be?

6 A. Yes.

7 Q. Off camera?

8 A. Yes.

9 Q. Sprinting in a manner to, as he put, punch the first
10 guy he came to?

11 A. Yes.

12 MR. SIMPSON: Detective Burckhardt, thank you for
13 being here today. Appreciate it.

14 THE COURT: You may step down.

15 Ladies and gentlemen, we are going to take our
16 morning break at this point in time. Please leave your
17 notepads in the jury box. Do not discuss the case at this
18 point in time. It's too early for deliberations. Do not do
19 independent investigations. Make sure your names are written
20 on the first page of your notepad. Leave them in the jury
21 box. And we will take about a 15-minute break.

22 Everyone else, please, remain seated while the jury
23 is excused.

24 (Whereupon, the jury leaves open court at 11:22
25 a.m.)

1 DIRECT EXAMINATION

2 BY MR. SIMPSON:

3 Q. Ms. Tormos, good afternoon.

4 A. Hi.

5 Q. What is your current occupation?

6 A. I am a forensic pathologist with the Medical
7 University of South Carolina.8 Q. And could you explain to the jury what a forensic
9 pathologist is?10 A. A forensic pathologist is a medical doctor that has
11 a specialized degree in how injury causes death.12 Q. And what kind of education and background is
13 required by a person -- I know it's a long road, but if you
14 can recount to the jury that path to become a forensic
15 pathologist.16 A. In order to become a forensic pathologist, you have
17 to have a four-year degree from college, usually in the
18 general sciences, biology, chemistry, things like that. Then
19 you have to go to medical school for an additional four
20 years. After you become a doctor, a medical doctor, you have
21 to do specialty training in anatomic pathology or anatomic
22 and clinical pathology. I'm an anatomic and clinical
23 pathologist.24 Once you become a pathologist, then you have to do
25 an additional year of subspecialty training in forensic

1 pathology. So it's about 13 years after high school.

2 Q. If you could, just recount your own path you just
3 laid out generally. Can you lay that out for your particular
4 to you?

5 A. Absolutely. I went to college at the University of
6 Puerto Rico where I got my bachelor's degree in general
7 sciences, then proceeded on to medical school, the state
8 school at the University of Puerto Rico on a different
9 campus, completed my MD degree. After I completed my MD
10 degree, I went on to become an anatomic and clinical
11 pathologist. I'm a board certified anatomic and clinical
12 pathologist. I worked for two years in Puerto Rico as a
13 forensic pathologist and one year in private practice doing
14 surgical pathologist.

15 Then moved here to South Carolina. Then my
16 subspecialty training right here at the Medical University of
17 South Carolina. I'm a board-certified forensic pathologist
18 as well.

19 And after I completed my fellowship or my
20 subspecialty training, they asked me to stay. So I've been
21 here for about five years.

22 Q. Sort of the -- what is an autopsy?

23 A. An autopsy is a medical procedure similar to a
24 surgical procedure in which the body is examined externally
25 and internally for the presence or absence of injury and

1 disease.

2 Q. And are autopsies sort of the -- is that the role of
3 the forensic pathologist, generally speaking?

4 A. Yes, it is a role of the forensic pathologist to
5 conduct an autopsy.

6 Q. And if you could -- have you done an autopsy before?

7 A. Yes, I have.

8 Q. And can you approximate, to the best of your
9 ability, how many before?

10 A. Over 1,000.

11 Q. And in that capacity, have you ever been deemed an
12 expert in forensic pathology?

13 A. Yes, I have.

14 Q. Approximately how many times in court have you been
15 deemed an expert?

16 A. Over 20.

17 MR. SIMPSON: Your Honor, at this point, the State
18 would like to qualify Dr. Lee Marie Tormos as an expert in
19 forensic pathology.

20 THE COURT: All right. Mr. King, any questions or
21 challenges?

22 MR. KING: No, Your Honor.

23 THE COURT: All right. I find Dr. Tormos to be an
24 expert in the field of forensic pathology.

25 Ladies and gentlemen, I will give you some further

1 instructions when I charge you on the law regarding expert
2 testimony, but all you need to know for the time being is
3 that ordinarily a person can only testify to what they
4 personally know, what they saw, what they tasted, what they
5 smelled. However, there is an exception for witnesses who
6 are qualified as experts, which means that in addition to
7 testifying as to what she personally observed, she can also
8 render an opinion in the field in which she's qualified as an
9 expert.

10 All right.

11 MR. SIMPSON: Thank you, Your Honor.

12 BY MR. SIMPSON:

13 Q. Dr. Tormos, where currently do you work? Are you
14 employed?

15 A. I work at the Medical University of South Carolina
16 right here in Charleston.

17 Q. Okay. And in that occupation, did you have occasion
18 to perform an autopsy on April 30th of 2014?

19 A. Yes, sir.

20 Q. And who was the individual you were performing that
21 autopsy on?

22 A. We were performing an autopsy on Mr. Clinton
23 Seymour.

24 Q. And are you given any sort of background information
25 going into an autopsy?

1 A. When a case is first referred to us for autopsy, it
2 is the coroner that lets us know of the case. And they will
3 provide the circumstances to the extent and knowledge that
4 they have at the time that they are referring the case for
5 autopsy.

6 Q. Can you explain generally to this jury just how an
7 autopsy proceeds? What are the steps that you take on any
8 autopsy?

9 A. The first step that we take with any autopsy is
10 getting the body to the autopsy room where we proceed to
11 examine the body externally, noting every detail that we
12 possibly can, including the medical intervention that may
13 have happened, any signs of trauma, any signs of disease, any
14 signs of injury, and also postmortem changes.

15 Once we do the external examination, then we --

16 Q. Ma'am, I'm sorry. May I interrupt you there? Is
17 this a complete examination of the external body regardless
18 of what you are told of the circumstances of the event?

19 A. Yes.

20 Q. Looking for any injuries whatsoever, whether or not
21 they have anything to do with what you know?

22 A. We note the presence or absence of the injuries and
23 also in relation with any circumstances that may have been
24 provided.

25 Q. And you said you note the absence of injuries as

1 well during this external examination?

2 A. Yes.

3 Q. Please proceed. Thank you.

4 A. After we complete the external examination and
5 document all of our findings on paper diagrams and with
6 pictures, we may or may not choose to do X-rays.

7 And then we proceed with the external examination --
8 I'm sorry, the internal examination in which we open the body
9 with a Y-shape incision and look at the organs inside the
10 body for the presence or absence of injury or disease.

11 Q. Now, I would like to move generally from the general
12 into the specific autopsy. Okay? But I would like to take
13 care of a couple of quick preliminary things. You viewed
14 sort of a 3D scan video in regard to this case; is that
15 correct?

16 A. Yes.

17 Q. And was that a fair and accurate depiction of the --
18 virtual depiction of the actual injuries you observed in this
19 autopsy?

20 A. It is a demonstrative tool. It does show the
21 injuries and they are consistent with my autopsy findings.

22 Q. And you communicated about your autopsy with my
23 office; is that fair to say?

24 A. Yes.

25 Q. And you identified specifically three sections of

1 that video that might be helpful to you today?

2 A. Yes.

3 MR. SIMPSON: May I approach the witness, Your
4 Honor?

5 THE COURT: Yes.

6 BY MR. SIMPSON:

7 Q. I'm also showing you, again, just a demonstrative
8 exhibit. What does that appear to you to be?

9 A. This is a plastic rendition of a human skull. Okay?
10 This is the front of the face. You can see the teeth
11 orientation, the nose. The eyes would go here and the ears
12 would be on either side. And this is the back of the head.

13 Q. Now, I find personally when questioning a person of
14 your intellect and experience the less I say, the better I
15 look. So what I'm going to ask you to do is to recount the
16 injuries that you observed during this autopsy of Clinton
17 Seymour. I may interrupt you from time to time, but as you
18 need to use the demonstrative exhibits we've discussed, we
19 have the model in front of you or the clips, you let me know
20 and we will facilitate that with you.

21 So if you could, please just recount in detail for
22 the jury the injuries you observed during this autopsy.

23 A. Overview, Mr. Seymour sustained an injury in the
24 early morning hours of April 26th. And this is provided by
25 the coroner. He was pronounced brain dead two days later at

1 1:40 in the afternoon. After he was pronounced brain dead,
2 he became an organ donor. And we did the autopsy four days
3 after the initial injury and two days after he was pronounced
4 brain dead.

5 So there is no medical artifact from the neck down
6 in the fact that some of the organs are missing because they
7 are now in other people.

8 Q. And had that extraction, for lack of a better term,
9 been deemed done because those were deemed irrelevant to
10 your --

11 A. Yes. The organs are intact by evidence of the fact
12 that they are working in other people. We always strive to
13 promote organ donation. And in this particular case, it did
14 not affect the autopsy results in any way.

15 The external examination, other than the artifact of
16 organ donation, revealed three contusions to the back of the
17 head, three bruises to the back of the head. Two bruises are
18 relatively high up on the back of the head. In this plastic
19 skull, they would be located here and here. (Witness
20 indicates.) And then there is a third bruise that is further
21 on down which is considered the upper neck.

22 Now, here in this area is where the neck muscles
23 attach to the skull. And it's right here that you have a
24 third contusion on the scalp.

25 MR. SIMPSON: May I approach the witness, Your

1 Honor.

2 THE COURT: Yes.

3 BY MR. SIMPSON:

4 Q. Handing the witness State 24 for ID only. Do you
5 recognize that exhibit?

6 A. Yes. This is preliminary picture that we took
7 during the course of the external examination.

8 Q. Would that image assist you in anyway in discussing
9 what you've just discussed further with the jury?

10 A. This images depicts three of the two contusions I'm
11 talking about.

12 MR. SIMPSON: State would seek to admit State's
13 24.

14 THE COURT: Any objection?

15 MR. KING: No objection.

16 THE COURT: State's Exhibit No. 24 is admitted into
17 evidence without objection.

18 (State's Exhibit 24, Autopsy photo, is moved into
19 evidence.)

20 Q. Tell us what we were just discussing. What are we
21 viewing here?

22 A. We are viewing two of the confusions I just
23 mentioned. These are the upper most contusions. And they
24 are -- can I point? Okay. So this is the upper most
25 contusion. And then this is another abraded contusion.

1 Q. And then -- you mentioned a third as well?

2 A. A third is -- there's no picture of it because we
3 found it later on. So there is no picture of the third, but
4 the third contusion is here. (Indicating.)

5 Q. No external?

6 A. No external picture. There's no photograph of the
7 third one, but that is the location where the third contusion
8 is. It's very low, near the hairline. And it's where the
9 muscles of the neck insert into the back of the head.

10 Q. And before we move -- I assume you are going to move
11 to the internal examination then.

12 A. Uh-huh.

13 Q. Before we do that, may I show you two more exhibits?

14 MR. SIMPSON: May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MR. SIMPSON:

17 Q. I'm showing you what's been marked State's 21 and
18 22. Are these images part of your external examination?

19 A. They are.

20 Q. And I believe you've already mentioned that you note
21 both injuries that you observe and the absence of injuries;
22 is that correct?

23 A. Yes.

24 Q. What do those exhibits depict?

25 A. Exhibit Number 21 depicts the identification shot of

1 or picture of the decedent. So it is a picture of his face.

2 Q. During the course of your external examination, your
3 autopsy, did you note any injuries whatsoever to the face of
4 the decedent?

5 A. I did not.

6 Q. Side of the head?

7 A. No, I did not.

8 Q. Either side? These three circled injuries here on
9 State's 24, that's the complete injuries you observed
10 externally to the area of the head, face?

11 A. Above the head, yes, those are all the injuries that
12 are noted, those three bruises to the back of the scalp.

13 Q. And, again, State's 22 for, ID only.

14 A. State's Exhibit 22 is a picture of the left hand of
15 the decedent. I like to take pictures of the hands to show
16 if there are fingernails in the event that I am going to be
17 doing fingernail clippings for DNA, and also to show the
18 presence or absence of any defense wounds or offense wounds.
19 And there are no injuries on the hand that I am looking,
20 which is the left hand.

21 Q. I presented you a photograph of the left hand. Did
22 your autopsy note any difference with the right hand?

23 A. No, it did not.

24 Q. No defensive or offensive injuries to either hand?

25 A. Correct.

1 All right. Sir, you may continue.

2 BY MR. SIMPSON:

3 Q. To recap, you know, injury and absence of injury, is
4 it correct you've identified the three injuries you observed.
5 And those are the entirety of injuries to Clinton Seymour
6 above the neck and head?

7 A. Correct.

8 Q. Did you observe any injuries to the face, side of
9 the face, top of the head?

10 A. I did not identify any injuries to the face, sides
11 of the face or top of the head.

12 Q. Okay. And I believe we are at the point of your
13 walking through this autopsy where you were moving on from
14 the external to the internal.

15 A. That is correct.

16 Q. And if you could continue. Thank you.

17 A. So after we examine the scalp, we reflex the scalp
18 to look at the scalp from the inside and also to look at the
19 skull bones just like you see them right here. So we reflex
20 the scalp front and back to look at the skull bones. It was
21 at that time that we noticed the third contusion. We went
22 back, documented the third contusion, which is down here.

23 Once we open the skull, similar in autopsy to this,
24 we would have observed the inside of the skull. And this is
25 the face and this is -- the cerebellum sits right here and

1 the brain is sitting on top of that. And we saw a skull
2 fracture that is in the posterior fossa where the cerebellum
3 sits. It's a white-shaped fracture. And it has extensions
4 upward. Now, this is the inner ear right here. And it
5 extends upward into the -- across the inner ear, the petrous
6 bone. So it will cause bleeding of the ear. It extends
7 sideways into the left side of the skull. And it also
8 extends anteriorly. And it does involve the pterygoid plate
9 plate, which is where our olfactory nerves connect between
10 our nose and our brain. So he would have some bleeding into
11 the sinuses as well. All that was seen clinically.

12 So the injury or the fracture is of such a type that
13 we can say that is a point of impact because of the
14 ramifications of the fracture at the point of impact. That
15 white shape means where those three legs intercept, that is
16 the point of impact. And that is what we were able to see.

17 Q. If I can pause you for a second. Forgive my
18 ignorance, but it was clear to you, in your experience, a
19 point where the contact, the force was applied?

20 A. Yes.

21 Q. And where was that point?

22 A. That point is the third in the lower most contusion,
23 which is really upper neck, the upper neck muscles. And that
24 is a point of contact that causes the underlying fracture.

25 Q. You noted in your external examination three

1 injuries that -- we looked at two, and this is the third one
2 that was behind the hair that we are talking about now?

3 A. Yes, it is the third one, is at the level or
4 slightly below the level of the ears. So if you draw a line
5 from ear to ear, it's going to be right at that level, which
6 is also where the neck muscles insert into the back of the
7 skull, right there, behind the right ear.

8 Q. Of the three external injuries that we discussed,
9 would this third one that was hidden behind the hair there be
10 the most serious, as a layperson would describe it, of the
11 three?

12 A. It is the most serious. As the other two
13 contusions, at least locally, they are just confined to the
14 scalp.

15 Q. So this is the point of impact that caused
16 Mr. Seymour's death?

17 A. Yes and no.

18 Q. Okay. I understand we have a second injury to
19 discuss as well.

20 A. Okay. Well, we cannot interpret our findings in a
21 vacuum of information. We have three contusions. But we
22 have to understand the mechanism that's going on. And it
23 turns out that by being hit behind the ear to the back of the
24 head, the head will go forward and will probably have a
25 rotational component. So the head will go forward and likely

1 to the left. That would cause a hyperextension of the neck.
2 And we have some arteries that, of course, from our
3 vertebrae, which are sitting right here, we have arteries
4 that cross right here. And they have a natural give that
5 allows us to say yes and no with our head. But they have a
6 certain amount of give. And when someone gets punched in
7 this particular area, not only does the trauma to the area
8 cause rupture to that artery, but also the hyperextension of
9 the neck causes rupture to that artery.

10 And it is postulated and likely a very significant
11 part of the death, is the fact that when he was hit from
12 behind, behind the ear, he had rupture to that artery. That
13 artery feeds the back part of the brain, including the
14 cerebellum. The back part of the brain has to do with
15 vision. That's where visual cortex is. So he would either
16 be seeing stars or have the vision blackout.

17 Whereas, the cerebellum is the part of the brain
18 that has to do with coordination. And by having a sudden
19 lack of blood flow to that area, he would perceive vertigo,
20 blacking out at the site. Plus or minus, he could have a
21 concussion of the brain stem. And all of those have been
22 noted in the literature to cause pretty much immediate
23 collapse of the person when someone is hit to the head,
24 particularly from behind.

25 Q. We have a couple of things I would like to unpack on

1 your conversations you just made. We will sort of go in
2 reverse order, because you just mentioned it. Any medical
3 reason why an injury like this -- it's from the back, right?
4 Any reason why a person couldn't fall backwards, any medical
5 reason? You said vertigo, the effects of this --

6 A. The person could fall any which way. And if the
7 eyewitnesses say the person fell backwards, the person fell
8 backwards. They could have fallen forward, sideways.

9 Q. There's nothing medically to say they were wrong if
10 people said they observed the result of this to be a
11 backwards movement?

12 A. I would go with the observation over any theory I
13 could propose.

14 Q. Okay. And again, forgive my sort of layperson's
15 jargon, but you described injuries that radiate from this
16 point almost all the way to the front of the face,
17 internally?

18 A. Yes.

19 Q. So what level, if you could characterize it as
20 comfortable as you are as a scientist, is this a hit of some
21 force?

22 A. It is what we call a hit of moderate force. It is
23 the type of hit that we would see in a sports injury, such as
24 boxing. It is a type of hit being hit in the head during a
25 fight, being hit in the head with a bottle or a bat. So it's

1 a moderate-type injury.

2 Q. You used the medical term moderate, but to a
3 layperson, saying that this was quite some force, would that
4 be accurate?

5 A. Yes.

6 Q. You use moderate because moderate distinguishes it
7 from things like a high velocity gunshot?

8 A. Or motor vehicle accident, which might be in the
9 moderate category or might be in the severe category.

10 Q. But in your profession, you can have situations
11 where something is hit by an object traveling 100 miles an
12 hour like a car, you have to have that level higher, correct?

13 A. Yes, yes.

14 Q. But just talking like we would maybe at happy hour
15 or something, he was hit very hard?

16 A. He was hit hard, yes.

17 Q. And you said a few things, and let me have you
18 expand on this too. Assuming -- and I know it's not your job
19 to recreate saying things like that, but if we were to assume
20 that Mr. Seymour fell on a relatively flat surface, would
21 this injury, the third injury, the one you've been
22 describing, have been caused more likely by a hit or more
23 likely by the contact with the floor; and why?

24 A. Whenever we lay down flat on the floor on a flat
25 surface, you will feel the floor behind your shoulders and in

1 the back of your head, but there's this arch in your neck
2 that's not touching the floor. Right? So when someone lays
3 down flat, like that, the shoulders are touching, but the
4 neck is right here and it's creating an arch. And the
5 fracture is here. So it is not in a permanent area where it
6 would be hit by flat surface. Now, that being said, if the
7 surface was uneven, such as a curb or there was a planter,
8 then I would definitely say, yeah, it could be from a fall.
9 But given the information that I have been given, that this
10 is a flat surface, then that hit, that contusion, with the
11 underlying fracture, cannot be from just a collapse alone
12 because of the location of the skull.

13 Q. And did your observations of the sort of torque
14 injury, the arterial injuries, play into that at all?

15 A. Well, when you have vertebral artery injury, the
16 vertebral artery starts bleeding out into the neck and starts
17 bleeding out into the base of the brain. And it is a
18 well-recognized entity, traumatic subarachnoid hemorrhage
19 that causes death either instantaneously or within a few
20 minutes. It is a poorly understood mechanism because there
21 may be many things at play. There may be a concussion of the
22 brain stem that also helps stop the heart from beating and
23 the lungs from breathing.

24 But there have been cases in the literature, such as
25 with Mr. Seymour, where medical care was instituted quickly

1 and, therefore, the organs were able to be kept alive by
2 machines.

3 Q. But the neck artery injuries, did that play any way
4 into where you would say, just to get to the point, that this
5 was caused by the punch or the fall?

6 A. The vertebral artery laceration cannot be caused by
7 the fall. I have researched extensively, even up to last
8 night, just looking at cases in the literature, and it turns
9 out that the only five cases that had reported vertebral
10 lacerations that I could find due to a fall were all falls
11 from height, 8 feet and higher, 8 feet, 14 feet, 20 feet. So
12 a fall from standing would probably not give you the
13 hyperextension of the neck and the rotation of the head
14 needed to tear that artery.

15 Q. But would a punch of some force to a person not
16 expecting it --

17 A. Yes. And there are several. In fact, in a study of
18 15 cases, at least 8 were due to a punch to the back of the
19 head right near the location where Mr. Seymour was punched.

20 Q. We mentioned some demonstrative video clips.

21 A. Uh-huh.

22 Q. Would you just like us to -- could you just narrate
23 these for us as we play State's 29, I believe. Use the clips
24 that you have.

25 A. This was provided to me. This is a demonstrative

1 tool only. What has been used is the CT scan that was done
2 clinically. And you are seeing some specialized software
3 that images of the CT scan of the actual patient have been
4 sewn together to create -- by computer -- to create a 3D
5 image that can be manipulated.

6 This first instance, we will be looking at the top
7 of the head. The CT scans will virtually slice the image.
8 So we are seeing the person from the top of the head. You
9 can see the two ears on either side. And those strange
10 wings, those are the neck immobilizers that the person has
11 on. You will see as these play, that they will show in this
12 first -- in this first clip, you will be seeing the bruise,
13 the confusion that is overlying the fracture. Okay?

14 MR. CORVEY: Just tell me when to play.

15 A. Please play. So, again, this is a manipulated
16 rendition. You are looking at the person from behind. You
17 are seeing the scalp. And the driver is manipulating -- you
18 can see that hairline fracture right there. And then that
19 dark area that is being pointed by the arrow, that is the
20 blood accumulating just on the outside of the bone. As the
21 image goes up and down, you are able to follow the fracture
22 at the base of the skull exactly where I saw it at autopsy
23 being pointed by the arrow.

24 Q. And, Dr. Tormos, feel free to drive, if you will.
25 Just let Ted know if you want to pause it at any point or go

1 forward or do anything again that will help you.

2 A. Again, that same image, you are seeing the fracture
3 here extending to the back of the head.

4 In the second image, again, they are using the
5 rendition of the CT scan image to delineate the fracture.
6 Now, the fracture as we saw it clinically at autopsy and
7 diagnostically at autopsy has a greater extension than what's
8 being shown here. But you are able to see the Y shape of it
9 as it is being demonstrated by the clinical CT scans.

10 Please play. So here's the back of the head. And
11 immediately at the outset, you can see the arrow pointing to
12 the point of impact and to the fracture on the posterior
13 scalp. And you can see that it extends to the left side.

14 And here they have done a color rendition. Note the
15 Y shape of the fracture and the point of impact, which is
16 really on the underside of the skull. So we are seeing the
17 skull pretty much right here. And you can see that the point
18 of impact is down here at the center of the Y shape and its
19 forward extension into the bone that covers the inner ear.

20 And then the third one -- okay. Now, before we
21 start, the computer assigned a color to what would be the
22 density of blood. And it colored it red. It could have
23 colored it blue or green. So don't visualize that this is
24 blood. This is simply the density consistent with a liquid.
25 Okay?

1 Here you are seeing the right side of the face. And
2 you will be seeing on the right side of the neck that there
3 is a white swab, a triangular swab of red colored area, which
4 will be that same density as blood, noting what we saw at
5 autopsy, which is a lot of hemorrhage in the neck muscles.

6 Please play. So the image is being manipulated, so
7 you see both the inside of the skull and the outside. And if
8 you could pause it right there. Okay. In this particular
9 image, if I point -- I can write on it? Okay. So the
10 vertebral arteries that I told you about that come into the
11 skull through this hole, the vertebral arteries are supposed
12 to be paired and then they meet in the middle. So you can
13 see the left one right there, but the right one is missing.
14 The right one is missing because it's torn. So it's bleeding
15 out into places it should not be. It's not connected. They
16 meet in the middle over the -- and become the basilar artery,
17 which is the artery that supplies the brain stem and the base
18 of the brain.

19 Also, here on the right side, this is the venous
20 sinus, and this area right here has a higher density when
21 compared to the other side because there is decreased blood
22 flow, decreased drainage of the blood due to the fact that
23 this young man has cerebral contusion. He has brain edema.
24 So he is in the process of herniation. And as such, the
25 venous blood is having a hard time exiting the skull. And

1 this left venous sinus has a lot of granularity, which also
2 corroborates with what we saw at autopsy, that the brain was
3 being entrapped inside the skull.

4 If you could please continue.

5 MR. CORVEY: Do you want me to clear?

6 THE WITNESS: Yes, please clear.

7 A. Okay. So you can see that the left side of the
8 skull and the right side are not equal. You can also see
9 right here that that is a point of impact. And then again,
10 showing that there is blood flow on the left side of the left
11 artery, but no blood flow on the right artery. And you can
12 see here on the venous sinus at the back of the skull that
13 the right side has a lot of clotting inside the brain.

14 If you look at the right side of the neck, you see
15 that there is a lot more blood. The left side, you can see
16 two distinct vessels going up into the brain; whereas, the
17 right side is a darker red. It's wider and it has
18 granularity in it because it's clotted, and also because
19 clinically we are seeing a lot of hemorrhage in that area.

20 If you could pause it right there. So these are the
21 cervical vertebrae as we see them. And the vertebral artery
22 is really not depicted here. It's too small caliber to be
23 depicted clearly in this image, but it would run on either
24 side right here. And then it would enter the skull through
25 the foramen magnum. And it is right where that pencil is

1 that we saw, we postulated -- was very bloody, was very hard
2 to see, but we postulated that is the source of the bleeding
3 at the base of the brain due to the hyperextension of the
4 neck.

5 If you could please clear. And then the arrow right
6 now is again pointing to the fracture at the base of the
7 skull and the point of impact. And, again, you can see the
8 fracture in the posterior fossa and extending forward and to
9 the foramen magnum and then the granularity of the right side
10 where the hemorrhage is.

11 Q. Dr. Tormos, thank you. At the conclusion of an
12 autopsy, do you assign a cause of death and a manner of
13 death?

14 A. Yes.

15 Q. And what do those terms mean?

16 A. The cause of death is what I believe killed the
17 person.

18 Q. And what cause of death was assigned?

19 A. I called it blunt trauma to head and neck.

20 Q. And what is the manner of death?

21 A. The manner of death is the medical definition
22 homicide, and in the medical definition means cause due to
23 the action or inaction of another individual. In this case,
24 I believe that the blunt trauma to the head was given by
25 another individual, and as such, the manner of death would be

1 homicide.

2 MR. SIMPSON: Court's indulgence.

3 THE COURT: All right.

4 MR. SIMPSON: Dr. Tormos, thank you so much for your
5 professionalism and your time. Please answer any questions
6 Mr. King has.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. KING:

10 Q. Dr. Tormos, so you've testified that the injury --
11 what you consider the point, I guess, of contact in that
12 injury is on the right side of the base of the skull; is that
13 right?

14 A. Yes, sir.

15 Q. And a fist could do this? Punch could do this?

16 A. Yes, sir.

17 Q. A man -- would you say a man, young man, 6' 4", 165
18 pounds, could that man cause this injury?

19 A. Yes, sir.

20 Q. I just want to demonstrate one thing for you and ask
21 you if this is consistent with the injuries you found. So if
22 Mr. Seymour was standing this way, the injury was in this
23 general area here; is that right?

24 A. Yes, sir, behind the ear.

25 Q. Now, would that be consistent with a man on this

1 side of Mr. Seymour striking him with his left hand?

2 A. I believe so, yes.

3 MR. KING: That's all the questions I have.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MR. SIMPSON:

7 Q. Mr. King asked you if this injury was to the right
8 side --

9 A. Yes, sir.

10 Q. -- of the back of the head?

11 A. Yes, sir.

12 Q. And you answered in the affirmative, right?

13 A. Uh-huh.

14 Q. But to be clear, it is right of center, right?

15 A. It is right of center.

16 Q. But, generally speaking, it's still sort of
17 centrally located in the back of the head? And we have the
18 exhibits. You demonstrated that, correct?

19 A. Yes.

20 Q. Close to the center line, but right, just right of
21 the center line?

22 A. Just to the right of midline. It's a small area.

23 Q. So if a person is standing here looking forward, did
24 this sort of left to right hand, and person struck him with
25 the right hand to the rear of the head --

1 A. That would also be a reasonable scenario.

2 Q. Is there any scenario in your expertise -- is there
3 anything that you looked at these injuries and said, that
4 must have been a right-handed blow?

5 A. I cannot tell by looking at a bruise whether it was
6 a right-hand or left-hand.

7 Q. So any attempt to scientifically say anything like
8 that, excluding a right or left hand, would be a scientific
9 fallacy?

10 A. Yes.

11 MR. SIMPSON: Okay. Thank you.

12 THE COURT: All right. You may step down.

13 Ladies and gentlemen, we are going to go ahead and
14 break for lunch. We've got lunch for you today so that we
15 can take a bit shorter lunch. I'm going to give you plenty
16 of opportunity to eat lunch. Don't worry about rushing
17 through lunch. We will take at least 45 minutes. If we need
18 longer, we will take longer, but we will take at least 45
19 minutes to eat lunch. And we've got it here for you waiting
20 on you now.

21 Leave your notepads in the jury box. Do not discuss
22 the case even amongst yourselves at this point in time. And
23 we will go ahead and take at least that 45 minutes.

24 (Whereupon, the jury leaves open court at 12:34
25 p.m.)

1 proceed. Rather than bring him in, let him rest and bring
2 them back out, any motions?

3 MR. KING: Yes, Your Honor, directed verdict motion,
4 two parts, I guess. The first is legal. Your Honor, they've
5 charged Mr. Clarke with assault and battery of a high and
6 aggravated nature, which is an unlawful injury that causes
7 great bodily injury. I don't think that's the appropriate
8 charge. I think great bodily injury contemplates that the
9 person does not die. And once someone is deceased, then
10 there's really the three charges of murder, manslaughter,
11 involuntary manslaughter, which is what he was originally
12 arrested for, involuntary manslaughter.

13 For example, if this were a murder charge and I
14 asked for a lesser-included assault and battery of a high and
15 aggravated nature, I probably wouldn't get it because there's
16 no evidence that he's only guilty of assault and battery of a
17 high and aggravated nature. It would have to be murder,
18 voluntary manslaughter or involuntary manslaughter. So I
19 think in the same way, the State can't prove great bodily
20 injury because the person is deceased. And that's different
21 than great bodily injury, which means you are still alive,
22 but it could have caused death.

23 THE COURT: Okay. All right.

24 MR. SIMPSON: Sorry. I will be brief, Your Honor.
25 Obviously, the burden that the State faces proceeding on any

1 charge is merely to present evidence of each element. The
2 element of assault and battery of a high and aggravated
3 nature, the defendant caused an injury and that caused a
4 great bodily injury. The definition of great bodily injury
5 is there found in the statute, it's an injury that causes,
6 you know, substantial risk of death or substantial impairment
7 to a bodily system. Certainly, the injuries in this case
8 have proven that.

9 To be more direct and personal, I think this is a
10 case where the State has shown some restraint in how we have
11 been proceeding against this defendant. There is currently a
12 case I just learned of this week, I was unaware of until this
13 case had already proceeded, where a one-punch case was
14 pursued as a murder case. Certainly we contemplated doing
15 that as well. And that is going to be a huge appeal on the
16 issue that under these facts, the State can make a case for
17 murder. And so what we are looking here is a very similar
18 facts at the defense bar. The defense bar essentially
19 asserting that we can't go forward on the ABHAN on a defense
20 case like this and a very similar case, the defense bar is
21 asserting we can't go forward on a murder in a case like
22 this.

23 This was a difficult charge in this case, but I
24 think when you do the very clinical and academic job that
25 Your Honor has to do in a directed verdict motion, is just

1 checking the boxes. And I believe when you look at the
2 injuries caused in this person, did it create substantial
3 risk of death? Of course it did. And there's no better
4 evidence of that, in that he ultimately did pass and did
5 cause this -- forgive me. This is kind of a surprise. I
6 believe another part of that definition is causing severe
7 damage to a major bodily system. Of course, these injuries
8 did, as you heard from Dr. Tormos.

9 I think there is no sort of reverse Blockburger
10 where just because we have the element of a death, we have to
11 go forward under that. This was a difficult charging
12 decision. I think one that came from, again, with some
13 restraint on the part of the State. And I don't think we
14 should be punished for that, Your Honor, and on that basis.

15 THE COURT: Anything in reply?

16 MR. KING: Just that I think our legislature
17 contemplated when there's a death involved, involuntary
18 manslaughter, voluntary murder. And they base those
19 penalties on that on the degree of intent and the conduct of
20 the defendant. You know, it seems like an involuntary
21 manslaughter to me. And I think that that's what the
22 legislature intended. It didn't intend for someone deceased
23 for assault and battery of a high and aggravated.

24 THE COURT: I'm going to deny your motion. I think
25 there is sufficient evidence where the jury can base decision

1 on this charge. Anything else?

2 MR. KING: Part two, Judge, on the facts. Sounds
3 like the State has put up -- none of the witnesses really
4 testified or identified anybody as throwing the punch except
5 for two. Binh Ton testified that he saw Ellis throw a punch.
6 The guy went down. He doesn't see if the guy gets up or not.
7 He doesn't know who that person was, and can't really connect
8 that to Mr. Seymour. He just says that he saw Ellis punch
9 somebody. So I don't think that is any evidence that
10 Mr. Clarke did this.

11 Peter Dudinyak is the one witness they have who
12 testified Ellis did this. It's a credibility issue. He has
13 such bad credibility with the inconsistent statements he gave
14 to the police and with his bias for being charged himself and
15 being accused of this.

16 And I think based on that, there's no reason a jury
17 can find him guilty beyond a reasonable doubt.

18 THE COURT: All right. Mr. Simpson.

19 MR. SIMPSON: Thank you, Judge. Of course, you are
20 aware of the standard here. It's any evidence standard.
21 Just to pick one of several pieces of evidence we have, on
22 the statement of Binh Ton alone, since Mr. King mentioned it,
23 would be enough to overcome the any evidence standard. Of
24 course, we will embark on closing argument where it's the
25 State position we have far more evidence than that. But by

1 this witnesses confessions, by the eyewitnesses, Peter
2 Dudinyak, seeing Mr. Clarke throw the punch, ultimately, what
3 you've heard all week, we have more than met our standard of
4 any evidence, Your Honor.

5 THE COURT: All right. Mr. King, anything in reply?

6 MR. KING: No, Your Honor.

7 THE COURT: Okay. I'm going to deny your motion. I
8 think there's sufficient evidence for it to go to the jury.

9 Anything further?

10 MR. KING: Not from the Defense.

11 MR. SIMPSON: No.

12 THE COURT: All right. Defendant stand again.

13 (Whereupon, the defendant is sworn.)

14 THE COURT: Your name is Dalton Ellis Clarke?

15 MR. CLARKE: Yes.

16 THE COURT: I'm going to go over with you these
17 rights again. At this time I'm going to explain to you
18 certain rights which you have. If you do not understand
19 anything I've said, please let me know. If you want to
20 explain anything in more detail, let me know. Do you
21 understand that?

22 MR. CLARKE: Yes, sir, Your Honor.

23 THE COURT: We've reached the stage of the trial
24 where you may present your defense. You have the right to
25 claim the protection given to you by the Fifth Amendment to

1 THE COURT: All right. Let's go ahead and bring the
2 jury in.

3 (Whereupon, the jury returns to open court at 01:54
4 p.m.)

5 THE COURT: Ladies and gentlemen, welcome back. I
6 hope everyone had a good lunch. Please make sure you have
7 your own notepads and don't have anyone else's notepads. We
8 are ready to proceed with the trial of this case.

9 Mr. Simpson, the State can call their next witness.

10 MR. SIMPSON: At this time, the State rests.

11 THE COURT: All right. Ladies and gentlemen, the
12 State has rested their case. Now is the time for the defense
13 to present a defense, if they choose to do so.

14 Mr. King, does the Defense wish to present anything?

15 MR. KING: Yes, Your Honor.

16 THE COURT: All right. You can call your first
17 witness.

18 MR. KING: The Defense calls Jacqueline Gladden.

19 THE COURT: All right.

20 JACQUELINE GLADDEN,
21 having been duly sworn, testifies as follows:

22 THE CLERK: If you could please state your first and
23 last name and spell your last loudly and clearly into the
24 microphone.

25 THE WITNESS: Yes, sir. My name is Jacqueline

1 Gladden, G-l-a-d-d-e-n.

2 DIRECT EXAMINATION

3 BY MR. KING:

4 Q. Ms. Gladden, how are you doing?

5 A. Fine. Thank you.

6 Q. I just want to ask you a few questions. Can you
7 tell me, are you from Charleston? Where are you from?

8 A. Yes, sir, I'm from Charleston.

9 Q. Born and raised here?

10 A. Yes, sir.

11 Q. Do you work anywhere? What do you do here in
12 Charleston?

13 A. I'm a bagger at Bi-Lo on Meeting Street.

14 Q. Do you remember being present at King and Morris
15 Street back April 26th of 2014?

16 A. Yes, sir.

17 Q. Do you remember seeing anything that happened that
18 day?

19 A. Yes, sir.

20 Q. Okay. Now, first of all, what are you doing out on
21 King and Morris Street that particular day?

22 A. I was walking home from the club.

23 Q. Where were you?

24 A. Joe Pasta.

25 Q. Now, had you been drinking that night?

1 A. No, sir.

2 Q. So you weren't impaired or anything like that?

3 A. No, sir.

4 Q. Was there anything that would have impaired your
5 judgment, your ability to see anything?

6 A. No, sir.

7 Q. So what were you doing when you left Joe Pasta that
8 night?

9 A. I was walking down King Street going home to Stewart
10 Street.

11 Q. And did you happen to see anything as you were
12 walking home?

13 A. Yes, sir.

14 Q. What did you see?

15 A. When I was on King Street, I was with another young
16 lady, and I saw Mr. Peter attack Mr. Clinton out of nowhere.
17 And he sucker punched him really hard. And his head hit the
18 pavement and you could hear his skull crack.

19 Q. Let me stop you there for a minute. You are using
20 some first names. Do you know these people?

21 A. No, sir.

22 Q. Okay. Why are you calling them by their first
23 names?

24 A. Because I saw the information on the TV, on the news
25 and on the Internet, Google.

1 Q. Have you followed this case?

2 A. Yes, sir.

3 Q. Now, leaving out the names, tell me again what you
4 saw. Not calling them by name, what did you see exactly?
5 Describe what you saw.

6 A. I saw a tall Caucasian gentleman with brown hair
7 attack another tall Caucasian gentleman, sucker punch him
8 really hard. He fell backwards and hit head head on the
9 pavement causing a skull fracture.

10 Q. Where were you standing when you saw this?

11 A. Across the from the incident.

12 Q. Across Morris Street or across King Street?

13 A. Morris Street.

14 Q. How far away would you say you were from him?

15 A. Couple of feet, sir.

16 Q. Did you see which hand this person punched the man
17 with?

18 A. Yes, sir.

19 Q. Do you remember what that was?

20 A. If I'm not mistaken, sir, it was the left hand, if
21 I'm not mistaken.

22 Q. What did you do -- well, okay. After you saw that,
23 the person fell, did you see anything happen after that?

24 A. Yes, sir.

25 Q. What did you see?

1 A. I saw two parties start fighting each other. And I
2 ran to Mr. Clinton's side to aid him. He was not moving at
3 all. Mr. Peter grabbed one of the young ladies. I snatched
4 his hand off her and pursued to chase him because he ran away
5 from the scene and hid behind a dumpster. And I chased him.
6 and I told the officer that he was behind the dumpster.

7 Q. Let me back up. Who is this -- the lady, you said a
8 lady, talking about Peter hit a lady?

9 A. He grabbed her arm.

10 Q. Grabbed. I'm sorry. Do you know who that lady was?

11 A. No, sir, not at the time. A lot of people ran to
12 Mr. Clinton's aid when he was hurt real badly.

13 Q. How was -- you know his name is Pete? That's who we
14 are talking about?

15 A. Yes, sir.

16 Q. How was he acting that night?

17 A. He was very intoxicated.

18 Q. When the lady ran up to him, what was he doing?

19 A. We all ran to the Clinton's aid to keep Peter away
20 from Mr. Clinton.

21 Q. And then what did that guy do after that, after you
22 ran up there to his aid and he grabbed the lady?

23 A. When he grabbed her arm, I grabbed his arm and I
24 snatched his arm off the young lady's arm. And I told him --
25 I did use some curse words. Would you like me to use exact

1 words I used?

2 Q. If you need to describe that.

3 A. Okay. I told him: Get your hands off her. What
4 the fuck is wrong with you? You don't grab no fucking woman.

5 And he grabbed her arm twice. And I grabbed him off
6 the young lady arm again. And he started running. And I
7 chased him down the road. He hid behind the dumpster. And I
8 said, officer, that's the mother fucker right there that
9 attacked the young man for no reason. Lock him up for
10 assault.

11 And I learned days later on the news that
12 Mr. Clinton had passed away from a skull fracture.

13 Q. Did you see the police arrest anyone or put someone
14 in custody?

15 A. Yes, sir, they arrested Mr. Peter.

16 Q. They arrested the person that you saw throw the
17 punch?

18 A. Yes, sir.

19 Q. How certain are you of what you saw and the man you
20 identified?

21 A. I'm 100 percent sure.

22 Q. You were interviewed that night by the police?

23 A. Yes, sir.

24 Q. They never came -- did they ever come back and
25 interview you after that?

1 A. No, sir.

2 Q. Just that one time?

3 A. Yes, sir.

4 Q. Did you ever talk to a Detective Burckhardt at the
5 police department?

6 A. Yes, sir.

7 Q. How long did you talk with him?

8 A. You are talking about the gentleman that was here
9 today, sir, with the glasses?

10 Q. I'm talking about -- well, do you know who you've
11 talked to the night of --

12 A. Of the incident?

13 Q. Yes. Do you know that person's name?

14 A. No, but he's a heavy-set Caucasian man... He does
15 wear glasses. And he had a thick volume of hair, but I did
16 not know his name at the time.

17 Q. Okay. But after that night, you never talked to any
18 other law enforcement officer after that?

19 A. No, sir.

20 MR. KING: That's all the questions I have.

21 THE WITNESS: Thank you.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. SIMPSON:

25 Q. Thank you. Ms. Gladden, good afternoon. How are

1 you?

2 A. Fine, sir.

3 Q. Just a quick note. You said a few things that were
4 a little surprising to us. You know everybody's name that's
5 involved; is that right?

6 A. Yes, sir. I've been following the story.

7 Q. You diagnosed the injury as a skull fracture,
8 right?

9 A. Yes, sir.

10 Q. And so you say you followed this very closely on the
11 news?

12 A. Yes, sir.

13 Q. And the Internet?

14 A. Yes, sir.

15 Q. So some of the information you've gotten, you've
16 gotten from those sources; is that correct?

17 A. Yes, sir.

18 Q. Okay. And Jason -- I'm sorry, Mr. King just asked
19 you something that's important. You are certain you saw it
20 happen, right?

21 A. Yes, sir.

22 Q. You told -- did the right thing. You told the law
23 enforcement people that night what happened?

24 A. Yes, sir.

25 Q. And that, you are here today, to tell the same thing

1 you told them; is that correct?

2 A. Yes, sir.

3 Q. Okay. So first let's get to -- you gave a statement
4 to them that night?

5 A. Yes, sir.

6 Q. Is that audio recorded?

7 A. Yes, sir.

8 Q. And you said you saw this Mr. -- referred to him as
9 Mr. Peter, is that who we are talking about?

10 A. Yes.

11 Q. You saw him punch a guy in the face, didn't you?

12 A. Yes, sir.

13 Q. And you were right across Morris Street?

14 A. Yes, sir.

15 Q. So this happened and that's not that far away?

16 A. No, just a few feet away.

17 Q. Right. Correct me if I'm wrong. You also mentioned
18 that the person he punched in the face, I think several
19 times, was being defensive? He was doing stuff, but he was
20 just being defensive, self-defense, correct?

21 A. No, sir. Mr. Clinton didn't even see Mr. Peter
22 coming. He was walking with friends. As soon as he turned
23 the corner, Mr. Peter come out of nowhere and sucker punch
24 him. And he didn't even have the chance to defend himself.

25 Q. Right in the face, right in the face?

1 A. Yes, sir.

2 Q. And right in the forehead area, right?

3 A. Yes, sir.

4 Q. And you are certain of that?

5 A. Yes, sir.

6 Q. As certain as you are who punched him, you are
7 certain of that, punched him right in the face?

8 A. Yes, sir.

9 Q. I want to bring up -- be patient with me. I'm
10 sorry. I'm looking at stuff here.

11 A. No problem.

12 Q. And you don't remember telling the officer:
13 Basically, he was trying to be defensive; he was just trying
14 to be self-defense?

15 A. I honestly do not recall saying that. If I did say
16 it, if it's in the recording, then I will admit that, but I
17 honestly don't remember.

18 Q. Okay. And it was recorded, though; the statement
19 was recorded?

20 A. Yes, sir.

21 Q. And if you listened to that recording, do you think
22 you would be able to say, oh, that's me?

23 A. Yes, sir.

24 Q. And you don't recall saying: You don't hit a man
25 who is trying to be defensive just because you instigated

1 your fight and you put your hand on a woman?

2 A. I do not honestly remember exactly everything that
3 was said. It was over two years ago.

4 Q. It's hard. I'm not trying to say --

5 A. Yes, sir.

6 Q. If that is what was recorded, that's what you were
7 saying?

8 A. Yes, sir. If it's on the recording, I said it.

9 Q. But when you were asked, what was the guy that got
10 hit, what was he all up to you? You don't remember saying:
11 He was being defensive; he was trying to defend himself?

12 A. If it's on the recording, I said it, sir.

13 Q. Okay. But today you don't remember him -- like,
14 what do you mean -- I guess you don't remember. But when you
15 say somebody is being defensive, what do you mean?

16 A. Defensive is when you are trying to protect yourself
17 when somebody is attacking you.

18 Q. Which is what a person would do in that situation?

19 A. Yes, sir.

20 Q. When you hear these statements, does it refresh your
21 recollection? Was he sort of trying to defend himself a
22 little bit or --

23 A. I honestly don't remember. All I remember was
24 Mr. Peter attacking Mr. Clinton. He fell backwards onto the
25 back of his head and had a skull fracture.

1 Q. Right there in the forehead, right in the face?

2 A. Yes, sir.

3 Q. Can you demonstrate what you saw?

4 A. Yes, sir.

5 MR. SIMPSON: May I ask the witness to step down?

6 THE COURT: Yes.

7 BY MR. SIMPSON:

8 Q. So, again, we don't know -- you say back then you
9 were trying to tell the truth, of course?

10 A. Yes, sir.

11 Q. Back then you might have said -- we can listen --
12 but you might have said he was trying to defend himself like
13 someone would do?

14 A. Yes, sir.

15 Q. You be Mr. Peter, what did he do?

16 A. He comes this way out of nowhere. (Witness
17 indicates.)

18 Q. And boom?

19 A. Right.

20 Q. Just like --

21 A. Yes, sir. And Mr. Clinton fell backwards. His head
22 hit the concrete.

23 Q. That was a hard punch, right, that you saw. Right?
24 Boom, because -- and I'm not trying -- I mean, it was bam?

25 A. And he went back like that. (Witness indicates.)

1 Q. He went back just like that?

2 A. And that's when everybody ran to his aid,

3 Mr. Clinton's aid.

4 Q. Okay. You were right across Morris Street?

5 A. Yes, sir.

6 MR. SIMPSON: My apologies, Your Honor. May I grab
7 an exhibit off the table?

8 THE COURT: All right.

9 BY MR. SIMPSON:

10 Q. So you admit you were trying to be honest with the
11 police that night?

12 A. Yes, sir.

13 Q. And, again, we've already acted this out, but he
14 said: Like a boxing punch right to the face? And you said:
15 Quick jab?

16 A. Yes, sir.

17 Q. And you are certain of that fact as you are certain
18 that that was Mr. Peter that threw that punch?

19 A. Yes, sir.

20 Q. Now, again, I like this about you already. You are
21 a person that speaks your mind. Fair enough?

22 A. Yes.

23 Q. What you saw that night, you were very vocal and
24 very honest and vocal about just now --

25 A. I have been cussing, but I do.

1 Q. That's fine. You don't have to be polite in here.
2 But you were right there being vocal about who you thought
3 that was?

4 A. Yes, sir.

5 Q. Anybody that would have heard this and turned around
6 probably would have seen you saying: There's that mother
7 fucker right there?

8 A. Yes, sir.

9 Q. So you focused a lot in your statement on the sound.
10 This was a loud sound?

11 A. Yes, sir.

12 Q. So if I was walking down King Street that night and
13 I heard that sound and I turned around, there would be lanky
14 Mr. Peter and you right there?

15 A. Yes, sir. Yes, sir.

16 Q. Saying: That's the mother fucker?

17 A. Mother fucker, yes, sir.

18 Q. Right there. If I turned around, I would know
19 exactly who it was, if I was an eyewitnesses, because you
20 would be able to tell it?

21 A. Yes, sir.

22 Q. Because you just saw him get punched right in the
23 face?

24 A. Yes, sir.

25 Q. And I just ask, if there was any surveillance out

1 there, whatever, we would see you right across Morris
2 Street?

3 A. Yes, sir.

4 Q. And this was a loud sound really; this made a
5 sound?

6 A. Yes, sir.

7 Q. And when people hear a sound, they turn, right?

8 A. Yes, sir.

9 Q. And they would have turned and seen tall, lanky
10 Peter and you saying: That's that mother fucker right
11 there?

12 A. Yes, sir.

13 Q. One more thing, Ms. Gladden. You said you were
14 walking from Joe Pasta?

15 A. Yes, sir.

16 Q. Home?

17 A. Yes, sir.

18 Q. Those places, are we going towards the crosstown up
19 King or down towards the Battery?

20 A. No, towards where Bi-Lo is, sir.

21 Q. Oh, okay.

22 A. Yes, sir.

23 Q. What I would call up King; you were walking up King?

24 A. Yes, sir.

25 Q. And you saw some of these groups of people where you

1 were walking, right?

2 A. Yes, sir. Whenever the club closes, you have --
3 it's mostly college students.

4 Q. Pretty crazy out there, right?

5 A. Yes, sir.

6 Q. And do you remember telling police that night that
7 you sort of saw some of these guys and you had walked past
8 them and then heard something and turned around?

9 A. Yes, sir.

10 Q. So it's fair to say you were already sort of past
11 where this happened --

12 A. Right.

13 Q. -- when something triggered you to turn around,
14 right?

15 A. Right.

16 Q. There was a loud -- this did make a loud noise when
17 it happened, right?

18 A. Yes, sir.

19 Q. And pretty chaotic scene, you would agree?

20 A. Yes, sir.

21 Q. Let me just show you something. .

22 A. Yes, sir.

23 Q. We've got sort of a drawing here, referring to
24 State's Exhibit 8, King Street.

25 A. Yes, sir.

1 Q. Morris Street.

2 A. Yes, sir.

3 Q. Do you know where we are talking about there?

4 A. Yes, sir.

5 Q. So where are you? Where did this happen that you
6 saw? I'm not trying to confuse you. Are you good with what
7 we are seeing here?

8 A. Yes, sir. It's the opposite direction, but King
9 Street will be on this way and Morrison (sic) Street would be
10 the opposite direction.

11 Q. Do you want to turn like this? Is this better for
12 you?

13 A. Yes, just like this, yes, sir.

14 Q. Is that better for you?

15 A. Yes, sir. Now, I was coming -- I was leaving Morris
16 Street. That's where the incident took place, right here.
17 (Witness indicates.)

18 Q. Okay.

19 A. After the incident settled down, this is where the
20 restaurant and the little flowerbed is. There was gentleman
21 in the flowerbed and I did help him up.

22 Q. Okay. I want to focus on where you were when you
23 first --

24 A. I was right across the street at the corner, because
25 I was talking to a young -- two young ladies. We hear

1 somebody running behind us. So we turned. Peter is running
2 to Mr. Clinton.

3 Q. He's running from this way up King Street, huh?

4 A. No, sir. I'm trying to get the -- I'm trying to get
5 the picture straight because it's kind of confusing when it's
6 backwards.

7 Q. I will turn it however you want. I'm not trying to
8 confuse you. We have satellite.

9 A. That would be much better.

10 Q. Would that be better?

11 A. Yes, sir. I could recognize the buildings better.

12 Q. We've got State's 6 and State's 7. Same thing, a
13 little closer with 7.

14 A. This one, please.

15 Q. 7?

16 A. This is King Street, correct, sir?

17 Q. Yes.

18 A. Okay. This is the flowerbed and the restaurant
19 right here. This is where Mr. Clinton went down when Peter
20 came this way and attacked him.

21 Q. Peter came this way along this wall here and
22 attacked him, huh?

23 A. Yes, sir. He wouldn't be that far off though.

24 Q. Peter came right down that wall?

25 A. Yes, sir, because Mr. Clinton fell right there at

1 the corner. . And bunch of people up there gathered to aid
2 Mr. Clinton. The young lady in the aisle was right over
3 here.

4 Q. So --

5 A. That's when I made it across. We were that close,
6 because we were both right here, and we saw what happened.
7 And we also ran to aid Mr. Clinton right here at this corner,
8 sir.

9 Q. And if anybody would have heard some noise and
10 turned around, they would have seen you there?

11 A. Yes, sir.

12 Q. With Peter saying --

13 A. This is the mother fucker that attacked him for no
14 reason.

15 Q. And attacked him by hitting him right in the face?

16 A. Yes, sir.

17 Q. Clear as can be?

18 A. Yes, sir.

19 Q. And then afterwards, you chased Pete off to a
20 dumpster?

21 A. Yes, sir. I was chasing him and he went to hide
22 behind a dumpster.

23 Q. And he said down the road to a dumpster?

24 A. Yes, sir.

25 Q. Little bit down the road or a ways?

1 A. Yes, sir. I could show you in the picture if you
2 would like.

3 Q. Oh, sure. Should I get the farther one for that?

4 A. No, the closer one, please. Now, Mr. Peter took --

5 Q. Am I holding it right?

6 A. I don't believe so. Thank you very much. After
7 Mr. Peter started running, he went this direction. There's a
8 dumpster behind here, behind this facility right here. If
9 I'm not mistaken, it's some type of restaurant or something.
10 There's a dumpster back here. He ran back here. I chased
11 him. And then when I got over here, the officers had already
12 arrested him.

13 Q. They got him?

14 A. Yes, sir. And I'm the one who pointed out: That's
15 him, Mr. Officer, that's the mother fucker that attacked the
16 young man for no reason. Lock him up for assault.

17 Officer flashed his light at me and said: Don't
18 worry, ma'am. We got him. Thank you. Lock this sorry ass
19 up.

20 MR. SIMPSON: I have nothing further. Thank you for
21 your time, Ms. Gladden.

22 THE COURT: Redirect.

23 MR. KING: No, Your Honor.

24 THE COURT: All right. You may step down. Thank
25 you.

1 Defense can call your next witness.

2 MR. KING: The defense calls Gabrielle Lemieux.

3 GABRIELLE LEMIEUX,

4 having been duly sworn, testifies as follows:

5 THE CLERK: If you could please state your first and
6 last name and spell your last loudly and clearly into the
7 microphone.

8 THE WITNESS: Gabrielle Lemieux, L-e-m-i-e-u-x.

9 DIRECT EXAMINATION

10 BY MR. KING:

11 Q. Ms. Lemieux, where do you reside?

12 A. Charleston.

13 Q. Are you from Charleston?

14 A. I'm from northern Virginia, but I have residency
15 now.

16 Q. What brought you to Charleston?

17 A. School.

18 Q. Where did you go to school?

19 A. College of Charleston.

20 Q. Are you still in school?

21 A. Yes.

22 Q. What are you majoring in?

23 A. Communication and psychology.

24 Q. Do you remember being on King Street and Morris
25 Street back in 2014, April 26th?

1 A. Yes.

2 Q. And do you remember seeing something that day?

3 A. Yes.

4 Q. Where were you coming from? What were you doing out
5 there?

6 A. We were coming from Midtown and we were walking.

7 Q. Had you been drinking?

8 A. We had three beers.

9 Q. Would you consider yourself intoxicated?

10 A. No.

11 Q. So as you are walking, did something draw your
12 attention?

13 A. Yes. We were crossing Morris and we see a cluster
14 of guys. I see a gentleman in a black shirt punch another
15 guy, Clinton. Clinton hit the ground. And we all heard it
16 and we ran towards him.

17 Q. You saw the punch?

18 A. Yes.

19 Q. Describe this person again that you saw.

20 A. He was over 6 feet tall. He was dark-skinned. I'm
21 not sure if he was African American or mixed, dark features,
22 and he was wearing a black shirt.

23 Q. Black shirt?

24 A. Yes. I remember the black shirt, because he tried
25 to run. And I grabbed his shirt and I said, you stay here

1 with the cops. And then he grabbed my arm. And then Jackie
2 said, don't touch this girl. And he ran off and Jackie ran
3 after him.

4 Q. Who is Jackie you are referring to?

5 A. The woman that was just in here.

6 Q. Are you friends with her?

7 A. No.

8 Q. Did you know her that night?

9 A. She was walking with us that night. I think she was
10 talking to Danielle, who is another witness as well.
11 Danielle is my best friend.

12 Q. When did you first meet Jackie?

13 A. That night, pretty sure.

14 Q. How long did you talk with her?

15 A. We were just walking down the street.

16 Q. Y'all just happened to be walking down the street?

17 A. Yeah. There was a big cluster of people. It was 2
18 in the morning. Everybody was leaving the bars, so bunch of
19 us walking down the street and she was talking to us.

20 Q. Shortly before this happened?

21 A. Yes.

22 Q. Did you know anybody involved in this commotion or
23 fight or anything?

24 A. No one involved in the fight, no. We didn't know
25 anyone. We were just there.

1 Q. At some point, did the police bring a suspect to
2 have you take a look at that suspect?

3 A. Yes.

4 Q. Describe that.

5 A. I was sitting in the cop car and they said that --
6 the other cop car was about 20 feet away, and they took the
7 guy in custody out and said, do you recognize him? And I
8 said, that's him.

9 Q. How certain were you that he was the person that
10 punched the guy?

11 A. 100 percent.

12 Q. You were interviewed by police that night?

13 A. Yes.

14 Q. Did anyone else from law enforcement the next day or
15 in the days after come and talk to you about the incident?

16 A. No.

17 Q. That's the only law enforcement --

18 A. I don't recall, no.

19 Q. So you were only talking to that one officer that
20 night?

21 A. I'm pretty sure I talked to, like, two officers that
22 night, one in the car and did my testimony, and then one made
23 sure we were home safe, pretty sure.

24 Q. That's it? No more contact?

25 A. Yes, yeah, uh-huh.

1 MR. KING: I have no more questions, Your Honor.

2 THE COURT: All right.

3 Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. SIMPSON:

6 Q. Ms. Lemieux, good afternoon. How are you?

7 A. Doing well. How are you?

8 Q. Good. You spoke with police that night back then.

9 Do you remember recording that at all?

10 A. They do have a recording, yes.

11 Q. If we need to, we can play and you can hear your
12 voice?

13 A. Yes.

14 Q. So you are, of course, being honest with the police
15 that night. So you said that you saw the tall, skinny
16 gentleman, right, hit somebody?

17 A. Yes.

18 Q. And did you later learn anybody's names involved in
19 this from the news or anything like that?

20 A. Only Clinton. They told us Clinton's name, the guy
21 who died.

22 Q. But you picked a guy out that night as the tall,
23 skinny, white guy, right?

24 A. I was 10 feet away and ran towards him after he
25 punched him and said, you are not going anywhere, you are

1 going to wait for the cops. And that's when he hit me and
2 ran.

3 Q. You picked him out?

4 A. Oh, yeah.

5 Q. I'm just trying to make this easier. If we call
6 that guy Peter, you are okay with that, even though you don't
7 know his name?

8 A. Yeah.

9 Q. We will call the guy Peter that got arrested?

10 A. Okay.

11 Q. You referred to the previous witness as Jackie,
12 right? Have you guys kind of got to know each other since
13 this happened?

14 A. Oh, just outside right now.

15 Q. You guys were there together, right?

16 A. Uh-huh.

17 Q. I believe at one place you said: All I saw was
18 injustice, so I jumped in. Right? So you and Jackie were in
19 there, saw the thing together?

20 A. Yeah, uh-huh.

21 Q. And Jackie was pretty vocal, right, that night, she
22 was?

23 A. I'm pretty sure, as far as I remember, yeah.

24 Q. Okay. You say you had a pretty good vantage point
25 where this all went down; is that true?

1 A. Yes.

2 Q. You testified earlier you were 100 percent certain,
3 right? And that's that you saw Peter, who we are calling
4 Peter, you saw him punch Clint in the face. Right?

5 A. Yep.

6 Q. Could you, if you -- may I ask the witness to step
7 down? Can you step down? You were be 100 percent certain
8 you saw a Pete hit Collin in the face?

9 A. I don't remember where -- like I know, it's this
10 region. Obviously, he was facing this way. Clinton was
11 facing.

12 Q. They were facing one another for sure?

13 A. In a group like this. So I don't know if he was
14 here, if he was here. I was probably right up here, like
15 right by this wall. And then the fight was right here. So I
16 saw from there.

17 Q. You tell me what to do. I will be Clinton in our
18 little games. I'm Clinton Seymour. Am I, like, stop or
19 what?

20 A. He just came up and punched him.

21 Q. He came up face-to-face like this. I'm Clint. I'm
22 standing. Show me.

23 A. A bunch of guys, obviously, something was said, we
24 couldn't hear exactly what was said, obviously. So then he
25 just went up and --

1 Q. Show me. I know it's awkward. I'm not asking you
2 to punch me, but show me.

3 A. Like this. (Witness indicates.) I don't know if
4 it's up where he just fell backwards and hit his head.

5 Q. He comes up and he hits --

6 A. Somewhere up here. I don't know exactly, just when
7 you see an arm go back, punch.

8 Q. Face-to-face, and hits him in the face. Got you. I
9 appreciate that. It's kind of awkward. You are 100 percent
10 certain that Peter punched the guy in the face and you saw
11 it?

12 A. Yes, if Peter is the gentleman in the black shirt.

13 Q. Yeah. We are just assuming that. Now, you do
14 remember giving an interview?

15 A. Yes.

16 Q. And do you remember the detective asked you: How
17 many punches did the guy throw? Do you remember?

18 And do you remember answering: I mean, all I heard
19 was one punch and he was on the ground. That's all I saw.

20 A. Semantics, yes, yes.

21 Q. Semantics, sure. I'm a lawyer. You are a psych
22 major. You understand semantics, but what's that as a psych
23 major, all I heard --

24 A. Sound was traumatizing, so I feel like I was saying
25 that. Obviously, I did see it. I saw his arm go back. I

1 saw him punch it. I wouldn't have gone after some random guy
2 if I didn't know.

3 Q. You saw Peter punch somebody in the face. Okay.
4 Now, you do mention even back then that you were a psychology
5 major, right, to the detective? At one point -- and, again,
6 you gave an audio statement, but if we need to listen to it,
7 you let me know if you think I'm saying something wrong.
8 Before I show you -- you say: I don't want to describe him
9 because I don't want my imagination to describe different
10 things, but I definitely have a picture in my mind.

11 And you earlier said, I'm a psychology major, I'm
12 not going to give you a description.

13 A. Yeah.

14 Q. Explain that. That's interesting.

15 A. Rounded nose, he doesn't have -- I don't want to say
16 those because we can formulate things in our head, but I do
17 know the generalized characteristics that this gentlemen had
18 that made him stand out, black shirt, over 6 feet, dark
19 features.

20 Q. Very distinctive person, right?

21 A. Yes.

22 Q. If you turn around and look at a crowd, especially
23 chaotic situation, that's going to be a guy that you draw
24 your attention? Fair to say?

25 A. I mean, that can go both ways. But, yes, that's the

1 guy that I saw his movement towards Clinton, so that's why I
2 chose to --

3 Q. You didn't know any of this before?

4 A. No.

5 Q. You didn't know Clinton?

6 A. No.

7 Q. And you didn't know Peter. But you did -- your
8 attention was drawn and you saw Peter. And I think you said
9 100 percent certain -- you are 100 percent certain you saw
10 Peter punch someone in the face?

11 A. Yes.

12 Q. And when you saw Peter punch someone in the face,
13 you and Jackie were on it, right?

14 A. Yeah.

15 Q. And I'm not putting words in your mouth. She was
16 just in here: That's the mother fucker that punched him in
17 the face. Right? Do you remember that?

18 A. Yeah.

19 Q. That was it right there for everybody to see, right?

20 A. Uh-huh.

21 Q. And let me, if I could, which do you prefer? You
22 are just going to have to trust me on this. I've got sort of
23 a map of the area or this little drawing with the corner.
24 Which works easier for you? People perceive things
25 differently.

1 A. That one.

2 Q. So if you take as long as you need, and I can do
3 this however, and the streets are labeled, are you sort of
4 getting a sense of --

5 A. I know exactly where it is.

6 Q. So where were you when your attention is first drawn
7 to this commotion?

8 A. It was like in the middle of the crosswalk. It
9 happened right here. Clinton hit the ground right besides
10 the electrical box in the parking lot right here. Yeah.

11 Q. And you are saying you are --

12 A. I was like right here (witness indicating) in the
13 middle of the --

14 Q. You don't stop and just keep running up there when
15 it happened?

16 A. It wasn't all the way up here. It was right in the
17 corner. So, yeah, like that.

18 Q. And now, when this occurred, you were walking --

19 A. Wait. South, yeah, I was going south, like towards
20 the Battery, towards where Calhoun is.

21 Q. You were coming this way?

22 A. Yes, I was coming south.

23 Q. You said you had been walking with Jackie though
24 that night, right?

25 A. No. I was walking with Danielle. Jackie was next

1 to us on the crosswalk.

2 Q. Walking the same way?

3 A. Yes. I wasn't really associated with Jackie.

4 Q. But you were walking the same direction as Jackie?

5 A. I'm assuming. She was right next to me, but, yeah.

6 Q. If she was walking the other way, could you be wrong
7 or you just think she was wrong?

8 A. I mean, I know that I was going towards Calhoun
9 because that's where I lived, so I was going towards that.

10 Q. Okay. Now, you said you were walking with someone
11 named Danielle?

12 A. Danielle, yeah.

13 Q. And she was friend of yours?

14 A. Yeah.

15 Q. Still a friend of yours?

16 A. No, not really.

17 Q. Were you guys friends back then though?

18 A. I've known her since second grade. It's one of
19 those --

20 Q. Oh, one of those things. So she's, I'm assuming,
21 pretty good person, right?

22 A. Yeah.

23 Q. Honest person?

24 A. Yes.

25 Q. And she's right next to you when this happens?

1 A. Yes.

2 Q. And does she -- in your presence, does she point out
3 Peter as the guy that did it?

4 A. She wasn't paying attention. I think she was
5 talking to someone else. And I'm the one that saw things.
6 And she heard -- she said she heard Clinton's head hit the
7 ground and that's what got her attention. So she ran after
8 me after I started running.

9 Q. She's walking right with you. And her attention is
10 drawn when she hears that noise?

11 A. Uh-huh.

12 MR. SIMPSON: Okay. Court's indulgence.

13 BY MR. SIMPSON:

14 Q. And person we are calling Peter, tall guy, and
15 again, you know, not to get into sensitive racial stuff, but
16 dark skin, could be an African American, maybe, maybe mixed,
17 or full African American?

18 A. Uh-huh.

19 MR. SIMPSON: Thank you. That's it.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. KING:

23 Q. You testified, did you want to get involved in
24 anything that night?

25 A. Sorry?

1 Q. Did you want to get involve in this commotion that
2 night?

3 A. No. Like, just like he said, it was injustice, so I
4 just ran up to -- I saw some guy getting beat up, so ...

5 Q. You heard the guy, you said, hit the ground?

6 A. I saw him.

7 Q. You saw him?

8 A. Yes.

9 Q. You knew it was serious?

10 A. Oh, yeah. The sound that his skull made against the
11 concrete, like, that was just traumatizing itself. I knew it
12 was serious. That's why I grabbed Peter. We are going to
13 call him, Peter's black shirt, you are not going anywhere. I
14 knew this was serious. Clint was on the ground.

15 Q. Would you have done that -- you identified somebody
16 when the police showed you, right?

17 A. Yes.

18 Q. You understood what you were doing there, right?
19 What did you expect was going to happen to that guy that you
20 identified?

21 A. I mean, hopefully, he would go to court. I don't
22 know what -- I just want justice for Clinton.

23 Q. But you knew he would have -- that person would have
24 to face consequences, right?

25 A. Yes.

1 Q. Would you have ran after somebody if you weren't
2 certain?

3 A. Oh, no. I mean, no. I wouldn't have ran after
4 somebody if I wasn't certain.

5 MR. KING: That's all the questions I have.

6 THE COURT: All right. You may step down.

7 Defense can call their next witness.

8 MR. KING: The defense calls Rosalie Frederick.

9 ROSALIE FREDERICK,

10 having been duly sworn, testifies as follows:

11 THE CLERK: Once seated, if you can state your first
12 and last name, and spell your last loudly and clearly into
13 the microphone.

14 THE WITNESS: My name is Rosalie Frederick,
15 F-r-e-d-e-r-i-c-k.

16 DIRECT EXAMINATION

17 BY MR. KING:

18 Q. Ms. Frederick, where are you from?

19 A. I'm originally from Baltimore, Maryland.

20 Q. What brought you to Charleston?

21 A. College, just never left.

22 Q. Where did you go?

23 A. College of Charleston.

24 Q. What are you doing now?

25 A. I currently work in law enforcement.

1 Q. Who do you work for?

2 A. Mount Pleasant Police Department.

3 Q. Do you remember being out on King and Morris Street
4 or in that area back on April 26th, 2014?

5 A. Yes, sir.

6 Q. Around 1:45 a.m.?

7 A. Uh-huh, yes, sir.

8 Q. What were you doing out there that night?

9 A. I was working security that evening. I just worked
10 private security for couple bars on King Street, stand at the
11 front door, taking IDs, that kind of thing. And I was
12 leaving the place that we were working to go to another one
13 of the bars, just to pick up a paycheck from our bosses. And
14 that's when I came upon the scene that was occurring.

15 Q. Were you drinking that night?

16 A. No, sir.

17 Q. You said because you just got off work?

18 A. Correct. Like I said, we would stand at the door.
19 We were being security. There was no actual consumption of
20 alcohol for any of us that ever worked in the company.

21 Q. At some point, where were you walking from up King
22 Street?

23 A. We were working at a place called HOM, H-O-M, on
24 upper King Street. I guess it's what you would call upper
25 and headed towards Republic, which is, you know, the opposite

1 direction down King Street. Myself and another co-worker of
2 mine were on the other side of King Street from where the
3 incident happened, and we all witnessed -- you want me to
4 tell you exactly what I witnessed at that time?

5 Q. Yes.

6 A. Like I said, I don't know why we had crossed the
7 street, probably because there are a lot of other bars on
8 that side of the street, so crossed to get away from the
9 crowds, because we were simply walking to get our paychecks
10 to go home. And we are at the opposite corner from where
11 this happened. And heard some people arguing, voices raised.
12 And, of course, at that moment, I look over, look to see what
13 was going on, and saw some gentleman hit somebody else. I
14 heard his head hit the concrete from across the street. And
15 so myself and the gentleman that I was working with, we just,
16 you know, ran diagonal across the street. I went and tended
17 to the man that got hurt. And he kind of helped defuse the
18 situation that was going on right there.

19 Q. Did you see the man who threw the punch?

20 A. Not, you know, straight on. I saw everything that
21 was going on. And like I said, as soon as I saw the
22 gentleman go down, that was my focus, was drawn to him. I
23 know that there was a bunch of people around us, some females
24 as well. And I made sure they were okay. I remember
25 something about the gentleman that was wearing a black

1 T-shirt, and that's pretty much it. This was two years ago,
2 so it's kind of hard for me for sure.. I know I made a
3 statement that evening that may help me refresh my memory.
4 But at this point I couldn't positively identify for you,
5 because it's been, like I said, so long.

6 Q. Right. That night, do you remember making an
7 identification?

8 A. I do remember getting asked a few times if I could
9 make one. And I was like, no, I'm not 100 percent sure. I
10 was across the street. And then it was so long ago. I do
11 remember sitting in probably a detective car and they had
12 somebody in custody at that point. And I thought that I said
13 that possibly could be him, not 100 percent sure. I made it
14 a point to say I was not 100 percent sure. And that's what I
15 recall from here.

16 Q. Do you remember being interviewed by Detective
17 Casey?

18 A. I do. I don't remember a lot of specifics because
19 it was so long ago, but I do.

20 Q. And do you remember at some point he brought a
21 suspect out?

22 A. Yes.

23 Q. And you are saying today you are not sure exactly if
24 the guy -- if that guy is the one who did it?

25 A. Correct. This is two years ago. Whoever I

1 identified at that point, I thought that was him. I know
2 that they eventually ended up finding some other gentleman,
3 but I stand by whatever I said that evening.

4 Q. You stand -- whatever you said that evening you
5 stand by?

6 A. Yes.

7 Q. Is right?

8 A. I would stand by that, yeah.

9 Q. Regardless of what your memory says right now?

10 A. Correct, because that happened then and I made that
11 statement then. This is two -- or that was two years ago.
12 Hard for me to recall everything today what happened two
13 years ago, but what I recall that night would be my best, I
14 would say, my best, you know, version of what happened.

15 Q. You don't remember that Detective Casey brought that
16 guy over to you, a certain individual over to you, and asked
17 you if this is the guy that threw the punch, and you said
18 yes?

19 A. I vaguely remember that, yes, sir.

20 Q. Would it refresh your memory to hear that?

21 A. Sure. I haven't heard it since then, so it could
22 help.

23 MR. KING: If I may approach the witness.

24 THE WITNESS: I haven't heard this since the day it
25 happened, so --

1 (Witness listening to video through headphones.)

2 Q. Now, that was you, right?

3 A. Yes, sir.

4 Q. And that was you making an identification that
5 night?

6 A. Yes.

7 MR. KING: Your Honor, I would move to admit that
8 brief identification.

9 MR. SIMPSON: Judge, we would consent as long as we
10 got to play her entire statement on that night. It's a short
11 statement that concludes with that right here. If we can
12 play the whole thing, no problem.

13 THE COURT: Let's get that marked Defendant's
14 Exhibit 8 admitted into evidence without objection.

15 MR. SIMPSON: TO clarify the State's position, give
16 her an interview, stop it, bring somebody over, start it
17 again, she makes the ID, as long as we can play that whole --

18 THE COURT: It's in evidence, so he can use it as he
19 sees fit, and on cross-examination you can use it as you
20 wish.

21 MR. SIMPSON: Thank you.

22 (Defendant's Exhibit 8, Audio clip, is moved into
23 evidence.)

24 BY MR. KING:

25 Q. I'm going to play this right now. What you've just

1 heard, just confirm this is what you said.

2 (Whereupon, audio is played.)

3 Q. Ms. Frederick, you did identify the person that
4 night?

5 A. Correct.

6 Q. And when you listen to that, do you sound --
7 thinking back, were you sure of who you identified?

8 A. As sure as I could have been on that evening, yes,
9 sir.

10 Q. You worked as a bouncer. Now you are law
11 enforcement?

12 A. Correct.

13 Q. When you were a bouncer, did you have to deal with,
14 I guess, have to call the police or have to deal with
15 problems like that?

16 A. Occasionally. Nothing ever, you know, with somebody
17 getting seriously injured.

18 Q. And now -- you were familiar with how criminal
19 system worked as a bouncer before you were in law
20 enforcement?

21 A. Yes, sir.

22 Q. Did you have an interest in law enforcement back
23 then?

24 A. Yes.

25 Q. So did you know the consequences of identifying

1 someone like that?

2 A. Absolutely.

3 Q. And what were the consequences?

4 A. That, I mean, I didn't know that I would be called
5 into court. Obviously, I found that out later. You know,
6 the consequences I would never want to put the wrong person
7 in jail. I would never want to misidentify somebody. Like I
8 said, I go by what I said that evening, because that was the
9 best recollection I could make then. It's two years from
10 now. I would stand by what I thought and what I saw or
11 thought I saw, excuse me. And like I've said over and over,
12 my focus that evening was on the gentleman that got injured.
13 I was highly concerned about making sure that he lived, which
14 I know that he did not. And so I wasn't -- you know, as soon
15 as things happened, I saw something, I took care of him, and
16 then law enforcement handled the rest of the situation after
17 that. And, you know, I stand by what I said, so ...

18 Q. After that night, did anybody from law enforcement,
19 after that night, like the next day, any law enforcement come
20 back to interview you again?

21 A. I don't believe so. Like I said, I do remember
22 everything that -- you know, those events happened that
23 evening, that detective talked to me that same evening.
24 There may have been a phone call or two after, but nothing
25 until, you know, a week or two ago that I found out I was

1 being called in for this.

2 MR. KING: I have no further questions, Your Honor.

3 THE COURT: Redirect.

4 MR. SIMPSON: Thank you, Judge.

5 REDIRECT EXAMINATION

6 BY MR. SIMPSON:

7 Q. Good afternoon.

8 A. Hi. How are you?

9 Q. You work for Mount Pleasant Police Department?

10 A. Correct.

11 Q. Just to be clear for the jury. You never met me
12 before, right?

13 A. Correct.

14 Q. And I haven't sought any way to influence -- your
15 testimony hasn't been influenced by anyone. So you said your
16 focus and your attention was a person was in need and hurt?

17 A. Correct.

18 Q. Something grabs your attention, you turn, and your
19 number one thing, like any good -- I think there's a certain
20 characteristic --

21 A. We run towards stuff instead of running away from
22 things.

23 Q. -- in law enforcement, right? And your first
24 thought, if I understand you, is not even catching the bad
25 guy, your first thought is, what could we would do to help

1 this person?

2 A. Correct.

3 Q. Later law enforcement comes, and you are an
4 inspiring to get into law enforcement, right?

5 A. Uh-huh.

6 Q. And you try to be as helpful as possible, is that
7 true?

8 A. Always.

9 Q. And as honest as possible ?

10 A. That's why I got into this job, to be helpful.

11 Q. You said to this jury more than once on the stand,
12 what I said back then was true and I was trying to help and I
13 go back by what I said back then?

14 A. Yes, sir.

15 Q. The defense played a little clip, didn't they, of
16 you saying that's the guy?

17 A. Yes, sir.

18 Q. Right? There was a discussion that took place
19 before that. Do you recall that?

20 A. I'm sure it was just to say, hey -- I don't remember
21 that, I mean, specifically.

22 Q. We've admitted a recording. And you can stop this
23 if this isn't you, right, and say, hey, this not me?

24 A. I recognize my voice. As much as I don't like it
25 recorded, I know what it sounds like.

1 (Whereupon, audio is played.)

2 Q. Ms. Fredericks, do you remember giving that
3 interview?

4 A. I do.

5 Q. And you've told this jury several times, told us
6 here in court, you know, we should go with what you said that
7 night?

8 A. Yes.

9 Q. And the big picture is quite a bit different than it
10 was painted before, isn't it, with this ID of this person?
11 Is that fair to say?

12 A. I would agree with that, yes.

13 Q. Okay. You were asked -- well, you offered, and
14 again, you are being as honest as you can, right?

15 A. Absolutely.

16 Q. You offered right off the bat: I couldn't give you
17 a description of the gentleman who hit him. Did you hear
18 yourself say that?

19 A. Yeah.

20 Q. Later asked quite directly: Did you see that guy
21 who punched him at all?

22 I did not.

23 Did you hear that?

24 A. Hearing that now, yes.

25 Q. We might have a person detained, can you, ID him?

1 A. Probably not; words to that effect. Is that
2 accurate?

3 A. Yes.

4 Q. You sort of sound -- again, I think this is the
5 first responder in you, almost sound sad: I really wish I
6 could give you more, but I can't give you anything.

7 And you explain that because my attention is focused
8 on this person that's hurt. Is that fair to say?

9 A. Absolutely.

10 Q. Let me ask you a pretty direct question. You are a
11 police officer now?

12 A. I am.

13 Q. And I know that, you know, band of brothers and blue
14 line and all that. We don't like to point fingers. You were
15 being as helpful as you can that night?

16 A. Correct.

17 Q. I want to you put on a different hat, put on your
18 law enforcement hat. If you are talking to somebody and you
19 can asked them four or five times, can you give me a
20 description of a person, do you go back and then ask them to
21 point out somebody as a cop?

22 A. Me personally?

23 Q. Yes.

24 A. I probably wouldn't do that.

25 Q. After they've told you, can you ID them, that's a

1 little suggestive, is it not? Because that's a word we use
2 in law enforcement?

3 A. A little bit.

4 Q. When someone says, I did not see them, I can't give
5 you a description, I can't point anybody out, do you still
6 come up with a dude in handcuffs and say, is this your guy?
7 That's suggestive from your cop training?

8 A. I thought I said it could have been him. I don't
9 remember anything definite, because being in this job, I
10 would much rather not put --

11 Q. Directly as you can -- and I'm not accusing you of
12 anything, certainly, not being dishonest. I think you were
13 trying to help. And that's clear in that interview. So
14 don't take this the wrong way. But should we put, after all
15 those things you said, explaining to that officer, I cannot
16 do that, should we put any stock in this ID that you are
17 talking about?

18 A. In mine, I would probably say no. I would much
19 rather people who were closer and tussling with whichever
20 gentlemen that was, that did throw this punch, I would
21 probably go by their testimony over mine, simply because, I
22 said over and over again, my recollection is all about the
23 gentleman that got hurt.

24 Q. That's an interesting thing to say. I didn't
25 suggest ever for you to say something like that, did I?

1 A. No.

2 Q. But we should go with the people who were actually
3 there involved and who knew what was going on?

4 A. Yes. I mean, there were a number of us involved,
5 but there's people who were closer to the incident --

6 Q. And we should?

7 A. -- than I was.

8 Q. And we should go with them?

9 A. That's what I would say, my personal opinion, yes.

10 MR. SIMPSON: Thank you very much. Appreciate it.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION

13 BY MR. KING:

14 Q. Now, that was the first part of the interview you
15 listened to there, right?

16 A. Yes.

17 Q. And I played for you the second part of the
18 interview?

19 A. I believe that's -- yeah, that was two something in
20 the morning. So I believe that's the sequence of events,
21 yes.

22 Q. What he played, you hadn't been shown anyone yet,
23 right?

24 A. Correct.

25 Q. And you listened to that second part, right? And

1 Detective Casey was asking you, is this the guy who punched
2 him. Right? He didn't say, is this the guy that was just
3 out here? Do you remember?

4 A. Right.

5 Q. And is it possible that when you saw the person that
6 that brought it back? How can you explain that? You
7 wouldn't have ended up identifying an innocent person?

8 A. No, I would definitely not.

9 Q. Because you were in law enforcement --

10 A. I am now. And I hope all of this is based on my
11 personal opinion and not my professional opinion because
12 those are -- I mean, now are two different things, but
13 different opinion back then. This is before I was in law
14 enforcement. You know, just making sure.

15 Q. You knew back then not to take this lightly?

16 A. Correct, absolutely.

17 Q. Is it possible that when they showed you the man
18 that you identified, that that brought back a memory or
19 anything like that? Is that possible?

20 A. It's entirely possible, yeah.

21 Q. And do you stand by that second part where you said
22 that that was the guy who punched him?

23 A. I stand by what I thought I saw that evening.

24 That's the best answer I can give you. If I 110 percent knew
25 it was him and could tell you that today, I would. But I

1 stand by what I thought I saw that evening from across the
2 street what I thought I saw. And if I said, you know, tall
3 white male in a black shirt, that's what I thought I saw.
4 I'm assuming that that is what they presented in front of me.
5 So, I don't know if that answers your question. I hope so.

6 Q. Just answer it as honestly as you can.

7 A. That's what I'm doing. So I'm hoping I'm answering
8 your question.

9 MR. KING: I have no other questions.

10 THE COURT: All right. You may step down. Thank
11 you.

12 Defense can call their next witness.

13 MR. KING: The defense calls Officer Bianchi.

14 DAVID BIANCHI,

15 having been duly sworn, testifies as follows:

16 THE CLERK: Once seated, if you could please state
17 your first and last name, and spell your last loudly and
18 clearly into the microphone.

19 THE WITNESS: David Bianchi, are B-i-a-n-c-h-i.

20 DIRECT EXAMINATION

21 BY MR. KING:

22 Q. Is it Officer Bianchi?

23 A. Yes.

24 Q. Where do you work?

25 A. City of Charleston Police Department.

1 Q. How long have you been there?

2 A. Going on three years.

3 Q. Do you remember an incident being out at King and
4 Morris Street on April 26th, 2014, at about 1:46 in the
5 morning?

6 A. Yes, sir.

7 Q. What do you remember about that night? What
8 happened?

9 A. I was patrolling my area west of King Street.. It
10 was two years ago, so I'm trying to recall everything. I
11 called out for an assault in progress. I drove down Morris.
12 The description of the party was put out on the radio. I
13 located that party walking down Morris Street towards me, and
14 I detained him.

15 Q. Do you remember, was there anyone chasing after that
16 that guy? Do you remember anyone else in the area?

17 A. The party that I detained?

18 Q. Right.

19 A. I don't recall. I didn't see anybody chasing after
20 him. He was walking away from the incident location and just
21 happened to be walking towards me.

22 Q. How did you know who to arrest?

23 A. It was put over the radio that the suspect was -- I
24 have my notes here -- tall, white male, wearing a black
25 shirt. He was the only one in the area that matched that

1 description.

2 Q. So you had him in custody, right? I guess you had
3 this person?

4 A. Yes, sir.

5 Q. As you had that person there, did anyone say
6 anything, any bystander in the area say anything about that
7 person? Do you remember?

8 A. Not to me. I don't recall them saying it to any
9 other officers, but not to me.

10 Q. Do you remember writing a report on the case?

11 A. Just supplemental report, yes, sir.

12 Q. Do you remember putting in that report that you
13 stopped the person. And you said: Officer Thomas and I then
14 walked Mr. Dudinyak over to my unit. It was at that point
15 that a black female, Jacqueline Gladden, who was standing on
16 the sidewalk, shouted, that's the guy?

17 Do you remember putting that in the report and
18 seeing that?

19 A. I remember a black female being there. Like I said,
20 it's been two years, so I don't recall.

21 Q. Would it refresh your memory if you saw your report?

22 A. It could, yes, sir.

23 MR. KING: May I approach, Your Honor.

24 THE COURT: Yes, sir.

25 (Defendant's Exh. 9, Supplemental Report, was

1 marked for identification.)

2 Q. I'm showing you Defendant's Exhibit 9 for
3 identification. See if that refreshes your memory.

4 A. The black female was on the south side of the
5 sidewalk where my vehicle was.

6 Q. Does that refresh your memory about what happened?

7 A. Yes, it does.

8 Q. You remember now? What was the name of the man that
9 you detained?

10 A. Let's see if I can pronounce the name, Dudinyak.

11 Q. Do you have a first name?

12 A. I believe it's Peter, Peter Dudinyak, yes.

13 Q. Okay. So you said -- so there was a female there?

14 A. Yes, sir.

15 Q. And what was her name?

16 A. Jacqueline Gladden.

17 Q. And do you remember what she did when you had Peter
18 Dudinyak detained?

19 A. I remember that she was fairly animated and that she
20 did say, that's the guy, referring to Mr. Dudinyak.

21 MR. KING: That's all the questions I have.

22 THE COURT: All right. Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. SIMPSON:

25 Q. Good afternoon. I'm going to be real quick. So we

1 just met Jacqueline, right, Jackie? You said she was being
2 fairly animated out there, right?

3 A. Yes, sir.

4 Q. That's some careful language. But what do you mean?
5 Do you recall her being sort of amped up, loud?

6 A. Amped up, loud, jumping around, a lot of movements,
7 yes, sir.

8 Q. So she was saying, that is the guy?

9 A. Yes.

10 Q. Was her language that polite, or is that how you
11 remember it?

12 A. I can't recall.

13 Q. Okay. But if I was a person walking down King
14 Street and I heard something and it drew out my attention, I
15 would turn around and I would probably see Jacqueline there,
16 like, drawing attention, saying, that's him, that's him,
17 right?

18 A. Possibly, yes, sir.

19 Q. And that's the sort of things that can color a
20 person's perception of something; wouldn't you agree?

21 A. I can't comment on that, but it could.

22 Q. And in your report, you detained Pete Dudinyak, I
23 believe you described that as without incident?

24 A. Yes, sir.

25 Q. When you saw him and told him to stop, did he

1 stop?

2 A. I pulled up in my unit, in my marked unit. And he
3 began to run north through a parking lot off Morris Street.
4 I told him to that stop, at which point he stopped and I
5 detained him.

6 Q. Okay. No resisting arrest or anything of that
7 nature?

8 A. No.

9 Q. You said, hey, stop, and he stopped?

10 A. He stopped.

11 Q. Came back with you?

12 A. Yes, sir.

13 Q. And, again, you described that in your report as, I
14 detained him without incident?

15 A. Yes, sir.

16 MR. SIMPSON: Thank you. I have nothing further.

17 THE COURT: Redirect.

18 MR. KING: I have no more questions, Your Honor.

19 THE COURT: All right. You may step down.

20 THE COURT: Defense can call your next witness.

21 MR. KING: The defense calls Detective Casey.

22 JEFFREY CASEY,

23 having been duly sworn, testifies as follows:

24 THE CLERK: If you could please state your first and
25 last name. And spell your last loudly and clearly into the

1 microphone.

2 THE WITNESS: Jeff Casey, Charleston Police
3 Department, C-a-s-e-y.

4 DIRECT EXAMINATION

5 BY MR. KING:

6 Q. Detective Casey, where are you employed?

7 A. Yes.

8 Q. Where are you employed?

9 A. Charleston Police Department.

10 Q. Were you working with the Charleston Police
11 Department back in April of 2014?

12 A. Yes.

13 Q. Do you remember responding to a scene at King and
14 Morris Street on April 26th, 2014, at about 1:46 a.m.?

15 A. Yes.

16 Q. Explain what happened. What did you respond to?

17 A. I was the on-call detective at that time, myself and
18 another detective, Bailey. We got called to an altercation
19 at the corner of King and Morris Street. So when I responded
20 there, it was approximately maybe, I guess, 20, 25 minutes
21 after things happened, the altercation, when the original
22 call came on. There were several hundred people in the area.
23 I talked with on-duty sergeant at the time, who let me know
24 that there was a fight. One party had some serious injuries.
25 He got punched. Another party was injured. They both had

1 been transported already by the time we got there. And there
2 were a few witnesses that were on scene that needed to be
3 interviewed.

4 Q. Okay. And you did interview those witnesses?

5 A. I interviewed three witnesses.

6 Q. Do you remember the names of those witnesses?

7 A. I believe one was Jacqueline Gladden, I think it
8 was. Gabrielle Lemieux and Rosalind -- I forget what her
9 last name was. I think it was Rosalind. I would have to
10 look at the report.

11 Q. Would it refresh your memory if you had a copy of
12 your report?

13 A. Yes.

14 MR. KING: May I approach, Your Honor?

15 THE COURT: Yes.

16 (Defendant's Exh. 10, Police Report, was marked
17 for identification.)

18 Q. I show you Defendant's Exhibit 10. If you want to
19 look at that for a minute and refresh your memory.

20 A. Yes, this is what I wrote.

21 Q. So the three people again that you --

22 A. Jacqueline Gladden, Rosalind (sic) Frederick and
23 Gabrielle Lemieux.

24 Q. Does that say Rosalie?

25 A. Rosalie Frederick, I mean.

1 Q. What was the name of the man who was detained?

2 A. I believe it was Dudinyak. I'm not sure if it's
3 written in here or not. I believe it was Dudinyak, was the
4 last name.

5 Q. Did you arrest more than one person that night?

6 A. No, we didn't.

7 Q. It was just one man?

8 A. Yes.

9 Q. Do you remember interviewing Jacqueline Gladden?

10 A. Yes.

11 Q. Do you know if she identified Dudinyak as the person
12 who punched this man?

13 A. Yes, that night, she did. She's the one who stated
14 that --

15 MR. SIMPSON: Objection, Your Honor, hearsay.

16 THE COURT: Sustained.

17 BY MR. KING:

18 Q. What about Gabrielle Lemieux? Let me ask you. Did
19 you conduct any show-ups that night?

20 A. Yes, I did.

21 Q. How many did you do?

22 A. I believe two. I don't believe I did one for
23 Jacqueline because she already identified the party when the
24 officers stopped him. Mr. Dudinyak was running from the
25 scene. I believe couple of our officers and a Charleston

1 officer stopped him. And then she pointed him out to those
2 officers as the party who was involved in the altercation.

3 Q. So you did the show-up of what --

4 A. I did a show-up of Rosalie Frederick and Gabrielle
5 Lemieux.

6 Q. What's a show-up? Can you explain what a show-up
7 is.

8 A. Show-up is, basically, we have the witness on scene.
9 If we have a party detained. We usually have that party
10 detained stand outside the cruiser where he was at. And then
11 we have the witness sitting in our passenger seat of our
12 unmarked cruiser, or marked if an officer has a marked
13 cruiser. And they have the parties stand up. And we ask the
14 witness, is this the party who was involved in the fight that
15 occurred or whatever incident happened.

16 Q. And the subject of the show-up would have been who?
17 Who were you showing?

18 A. Mr. Dudinyak that day. He was the party that was
19 detained.

20 Q. And you showed that party to Gabrielle Lemieux?

21 A. Yes.

22 Q. Did she make an identification?

23 A. Yes, she did.

24 Q. Who did she identify?

25 A. She identified Mr. Dudinyak.

1 Q. Did she appear certain or uncertain of her
2 identification?

3 A. In the report, I have that she was quoted as saying
4 she was 100 percent positive at the time.

5 Q. What about Rosalie Frederick, did she identify
6 anyone?

7 A. Yes.

8 Q. Who did she identify?

9 A. She also identified Mr. Dudinyak at that time as a
10 party who threw a punch during the altercation.

11 Q. Did she appear to be certain or uncertain of her
12 identification?

13 MR. SIMPSON: Objection, Your Honor. Hearsay.

14 THE COURT: Sustained.

15 BY MR. KING:

16 Q. And what ended up happening with Mr. Dudinyak?

17 A. After he was identified, he was taken to the station
18 where he was interviewed, I believe, by Detective Bailey. At
19 that time, I'm not sure, I believe he asked for a lawyer at
20 that time.

21 MR. KING: I have no further questions.

22 THE COURT: Cross-examination.

23 MR. SIMPSON: Thank you.

24 CROSS-EXAMINATION

25 BY MR. SIMPSON:

1 Q. Detective, you said you believe, you don't know
2 about that, about asking for a lawyer?

3 A. No, I haven't reviewed that.

4 Q. That's okay. You just testified to it, but you are
5 not sure that happened?

6 A. No.

7 Q. That could be erroneous?

8 A. Yes.

9 Q. You made a comment that there was, you said, several
10 hundred people out on King Street.

11 A. Yes. When I got there, I mean, pretty much every
12 Friday, Saturday night, it's several hundred to 1,000 people
13 at least mingling around the downtown area, the bars.

14 Q. Pretty wild?

15 A. Yes.

16 Q. Pretty chaotic?

17 A. Yes.

18 Q. I've got to ask you, Detective, one of the persons
19 you did a show-up to was Rosalie Frederick. Do you remember
20 that?

21 A. Yes.

22 Q. You conducted an interview with her before you did
23 that show-up?

24 A. Yes.

25 Q. Did she tell you several times during that interview

1 that she would be unable to identify anyone involved?

2 A. She was -- she made that statement, yes, she did.

3 Q. Can you educate me why you would perform a
4 single-person show-up ID to a person who has told you
5 multiple times that they can't -- they did not have the view
6 to accurately ID someone?

7 A. Since we had that one person detained and other
8 party stating that was the party that ran away, we just asked
9 every party, every witness that I spoke with, if that was a
10 party who was involved.

11 Q. So it's chaotic down there, right?

12 A. Yes.

13 Q. You are doing things on the fly in a chaotic
14 situation; is that fair?

15 A. Yes.

16 Q. Was this case -- you mentioned there was another
17 detective down there, Detective Bailey; is that correct?

18 A. Yes.

19 Q. Was this case later kind of passed on to you and
20 Detective Bailey to other law enforcement to sort of take it
21 away?

22 A. Yes. It gets turned over to the specialized unit
23 that handles this.

24 Q. Again, I'm not trying to be overly judgmental, but
25 did you know the physical location of the injuries to this

1 person, or was treatment the main concern with the person
2 that got hurt out on King Street?

3 A. Person -- by the time I got there, he was already
4 transport.

5 Q. He was gone?

6 A. He was gone.

7 Q. So there's just no way you could know anything about
8 it?

9 A. No, I heard he was unconscious.

10 Q. If witnesses are giving you information there in
11 these statements that is just wholly objectively inaccurate
12 compared to those things, you wouldn't even know that at the
13 time, right?

14 A. No.

15 MR. SIMPSON: I don't have anything further. Thank
16 you.

17 THE COURT: All right. Redirect.

18 MR. KING: I have no more questions, Your Honor.

19 THE COURT: Thank you. You may step down.

20 Ladies and gentlemen, I think we are going to take
21 our afternoon break at this point in time. We will take
22 about a 10, 15-minute break, give you an opportunity to
23 stretch your legs, use the restroom, whatever the case may
24 be.

25 Leave your notepads in the jury box. Do not take

1 we've got left is closing arguments -- well, motions, closing
2 arguments, charge and deliberations. Right?

3 MR. SIMPSON: That's our understanding.

4 THE COURT: Is that your understanding? Let's bring
5 the jury in, let you go ahead and close on the record. I
6 will see if you have any rebuttal testimony or evidence you
7 want to present. You say no.

8 I'm going to go ahead and cut them loose for the
9 day. And then we will come back tomorrow morning for closing
10 arguments, charges and deliberations. Does that sound right?

11 MR. SIMPSON: Yes, sir.

12 THE COURT: Let's go ahead and bring the jury in.

13 (Whereupon, a bench conference takes place.)

14 (Whereupon, the jury returns to open court at 03:51
15 p.m.)

16 THE COURT: Ladies and gentlemen, welcome back. We
17 are ready to resume the trial of the case. Make sure you
18 have your own note pads and not have anyone else notepad.

19 Mr. King, Defense can call your next witness.

20 MR. KING: Your Honor, at this time, the Defense
21 rests.

22 THE COURT: All right. Mr. Simpson, does the State
23 wish to present anything in reply?

24 MR. SIMPSON: No, Your Honor.

25 THE COURT: All right. Ladies and gentlemen, the

1 State has presented their case. The Defense has presented
2 their case. And there is no rebuttal testimony or evidence
3 to be presented in this case. All of the evidence to be
4 presented has now been presented to you. And only thing left
5 is the attorneys' closing arguments and the charge on the
6 law.

7 Given the time of day, I think we are going to go
8 ahead and break for today. And we will resume tomorrow
9 morning. I'm going to ask that you please be back -- I will
10 give you until 9:30. Be back at 9:30 tomorrow morning.
11 Leave your notepads in the jury box. We will hand that back
12 with you tomorrow. Don't take those with you.

13 Again, I caution you, don't discuss the case. It's
14 still too early for deliberation. Don't conduct any
15 independent investigation. Don't discuss the case among
16 yourself. We will come back tomorrow morning and proceed
17 with the trial at that time.

18 I hope everybody has a good evening. And we will
19 see you back at 9:30. Thank you very much.

20 (Whereupon, the jury leaves open court at 03:53
21 p.m.)

22 THE COURT: All right. Any motions at this time?

23 MR. SIMPSON: None from the State, Your Honor.

24 MR. KING: The Defense would renew our motions for
25 directed verdict.

1 THE COURT: All right. Your motion is noted. I'm
2 going to deny that. Anything further?

3 MR. SIMPSON: Nothing from the State, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. KING: No, Your Honor.

6 THE COURT: All right. We will come back tomorrow
7 morning. The Defense will close first. Then the State will
8 close. Then I will charge you on the law and we will go into
9 deliberations. Okay?

10 Mr. King, as I instructed, given the posture of the
11 case, now that all of the testimony and evidence has been
12 presented, the fact that technically your client is not on
13 bond any longer, generally, at this stage I do require that
14 the defendant be held overnight. Okay?

15 MR. KING: Yes, Your Honor.

16 THE COURT: So we will need to take him in tonight
17 until we come back tomorrow. Okay? Anything further?

18 MR. SIMPSON: No, Your Honor.

19 THE COURT: All right. We will be in recess until
20 9:30 tomorrow morning.

21 MR. KING: Are we having a charge conference maybe
22 at 9:30?

23 THE COURT: What I will do is I will provide you --
24 and thank you for bringing that up. I will give you a
25 written copy of my instructions, my closing charges. I will

1 give you an opportunity to raise any objections to the
2 charges before I charge the jury after you've read it. And
3 then I will give you another opportunity to raise any
4 objections after I charge the jury, because sometimes it does
5 sound differently than it looks like when you read it on the
6 paper. Okay?

7 Now, is there any lesser-included charges or --

8 MR. KING: I think I would request assault and
9 battery third degree.

10 THE COURT: Third degree? All right. I will take a
11 look at that.

12 MR. KING: And that would just be if the jury
13 thought that he showed up and hit someone, but didn't
14 necessarily kill this man.

15 THE COURT: I understand. I will take a look. I
16 will look at the charge and if it's -- I think it's pretty
17 clear if there's any evidence to support a lesser charge, I
18 have to charge it.

19 MR. KING: And I also request defense of others and
20 the right to act on appearances. I think there's been some
21 evidence from Binh Ton--

22 THE COURT: Well, that's my question. That's
23 what -- I was anticipating that. And I'm going to have to
24 look to see. What evidence -- I mean, I understand the
25 overall situation. But as I understand the defense in this

1 case is Mr. Clarke is basically saying he's not the guy.

2 MR. KING: Right. That's the defense --

3 THE COURT: And Dudinyak was the one that -- and
4 that was my question. When the defendant says, I didn't do
5 it, someone else did it, are they entitled to a defense of
6 others charge as kind of an alternative defense. I don't
7 know the answer to that. I don't know if y'all knew off the
8 top of your head. I've been trying to do some research. And
9 if it's out there, I haven't found it yet. And I've got to
10 look and see whether or not the defendant is entitled to a
11 jury charge on an alternative defense, in other words, where
12 he's -- as I understand your argument, you are basically
13 saying, my client didn't do it, but if he did it, he's
14 entitled --

15 MR. KING: Right.

16 THE COURT: -- to defense of others charge.

17 MR. KING: I may even argue that second part, but I
18 think there's some evidence that they might think he -- even
19 if he hit this man, that he was responding to a situation
20 where, based on the evidence of Binh Ton, that he was being
21 surrounded, guys were in his face, that Mr. Clarke would have
22 the right to act on appearances, defending other persons. So
23 even if they thought he did it, then there's some evidence
24 that it was in self-defense. But, honestly, I will be -- I'm
25 going to only argue that it's not him. I just think there is

1 that evidence there.

2 THE COURT: What's the State's position? And I will
3 let y'all reargue this tomorrow morning because I've got to
4 do some research.

5 MR. SIMPSON: Your Honor, my response on the fly is
6 that we don't even meet the any evidence standard here where
7 all evidence points to the fact that the victim, the actual
8 one assaulted that we are talking about, is standing with his
9 hands by his side at some distance to the rear of whatever
10 situation Binh Ton was. I think even with the low bar of any
11 evidence, there still has to be something asserted, some
12 piece of evidence that would do that. And Binh Ton saying, I
13 was verbally jousting with another person, doesn't in any
14 contemplation of the law of self-defense arise to where, oh,
15 well, okay, you can come up and punch someone in the back.
16 And I will point to the physical evidence of where the punch
17 actually occurred. That doesn't even reach that any evidence
18 standard.

19 Even if you accept everything Mr. King is saying,
20 Binh Ton felt threatened, he would still be saying, well,
21 then that must justify punching from behind a person who was
22 in the vicinity of the person threatening Mr. Ton. I mean, I
23 just -- in full understanding of the low standard here, I
24 just don't even think we got there with that. I don't think
25 there's been a single assertion that he was acting -- he was

1 putting himself in the shoes of Mr. Ton and acting
2 inappropriately. That's what defense of others is, I was in
3 great fear of the safety of another person and I was acting
4 in defense of that person. They are asking to speculate and
5 charge that; whereas, there's no evidence of it. Nothing has
6 been put forward of it, that that was going on. And what we
7 are talking about here is inside Mr. Clarke's mind what is
8 going on.

9 THE COURT: And I think defense of others you can
10 act on appearances.

11 MR. SIMPSON: But there's been no evidence presented
12 that he was, in fact, acting on that appearance. There
13 hasn't been any evidence. It's very low, but he's got to put
14 some evidence forward that in his mind, he was acting in
15 defense of Binh Ton. And that's just simply not on the
16 record.

17 Now, Judge, I will say, I've seen enough cases get
18 reversed for failure to charge something. And my general
19 position is, if you are going to charge it, that's fine. We
20 will argue it to the jury. I'm comfortable doing that here.
21 I like being safe and having a clean record, but I really
22 don't think we met this any evidence standard. So the
23 State's position would be that would not be an appropriate
24 charge.

25 THE COURT: I can tell you, do some quick research

1 on it. I'm going to do some too. Is the defendant entitled
2 to a defense of others charge where the defendant is saying,
3 I wasn't even acting in defense of others because I didn't do
4 it? And that's the question I've got. I don't think that he
5 is. I mean, to me, it just doesn't make sense that when he's
6 saying, I didn't do it, I wasn't even acting in defense of
7 others, is he entitled to a defense of others where the
8 evidence shows that, had he done it, there might had been
9 that defense. But his -- the whole defense is -- and my
10 question is, the State -- this is my dilemma. Is that he
11 does not have to prove defense of others. The State has to
12 disprove it. And so that's the only reason I've got a
13 question in my mind is, is he entitled to that defense where
14 the burden is on the State to prove that he did not act in
15 defense of others? And I don't know the answer to that right
16 now.

17 So let's do some research overnight and come back
18 and make that decision. Okay?

19 All right. We will be in recess until 9:30 tomorrow
20 morning.

21 (Whereupon, the proceedings are adjourned.)
22
23
24
25

1 loss of consciousness. Third degree requires injury. As I
2 understand, all of those elements are present in this case,
3 and the law requires that we charge that. So I'm going to
4 charge ABHAN second degree and third degree.

5 MR. SIMPSON: And just to be clear, Your Honor, for
6 the purpose of closing arguments, that is because it's a jury
7 issue level of injury Clinton Seymour suffered, not somebody
8 else?

9 THE COURT: That's right, as to whether or not
10 Clinton Seymour -- whether or not Clinton Seymour at the
11 hands of this defendant suffered greatly bodily injury,
12 moderate bodily injury or injury. Okay? All right.

13 MR. KING: Next thing, I renew my request for the
14 self-defense charge.

15 THE COURT: And I don't see -- the more I consider
16 it, number one, I don't see where the victim -- where there's
17 any evidence that assault on the victim in this case was in
18 defense of others. Had it been one of the other two,
19 possibly, but all of the evidence in this case basically
20 states that the victim in this case was standing back behind
21 everyone else and wasn't participating in any way. So you
22 can't have any type of an assault on this person to be in
23 defense of others, number one.

24 And number two, I'm not sure that the defendant is
25 entitled to a charge that says, I didn't do it, but if I did

1 do it, it was in defense of others. So I'm not going to
2 charge defense of others in this case.

3 MR. KING: Thank you, Your Honor.

4 THE COURT: All right. Anything further from the
5 State with regard to these charges at this time?

6 MR. SIMPSON: Not in regard to the charge. I would
7 like to raise something before we bring the jury up.

8 THE COURT: Anything further from the defendant in
9 regard to these charges?

10 MR. KING: No, Your Honor.

11 THE COURT: All right. Sentencing, you said you had
12 something else to raise?

13 MR. SIMPSON: Yes, Judge. I just wanted to let you
14 know sort of what's going on as it involves an exhibit that's
15 already been entered into evidence. State's Exhibit 1 is the
16 surveillance video from King and Morris. And it's State's 1
17 for a reason. That's pretty important evidence.

18 If you are going to see a bunch of people coming in
19 and out, like Jeff here with the computer, we had that file
20 that's been entered crash. And we've got our crack tech team
21 working on restoring that. It may involve having another
22 copy substituted at some point. I will have all of the
23 distractions out of this area momentarily, if you would just
24 give us a moment.

25 THE COURT: Something other than the actual exhibit?

1 opening statements, these closing arguments are not evidence
2 in this case. It is simply the attorneys's contention as to
3 what they feel the evidence has shown and what they feel the
4 law to be applied in this case is.

5 If at any time an attorney makes reference to a
6 factual issue that is different from the facts as you find
7 them to be, a reference says the law that is different from
8 the law as I will charge you at the end of their arguments,
9 then you are to disregard that portion of their argument,
10 because this is not evidence. It's just their contention as
11 to what they think the evidence has shown, what the facts are
12 in this case and the law to be applied.

13 All right. Mr. King.

14 MR. KING: First thing I said to you is, they had
15 the guy and they let him go. Think about how that happened.
16 How does that happen? And I found the answer remembering
17 Detective Burckhardt's testimony. And he told us about
18 tunnel vision. And that's concerning. And he said bad
19 things can happen when you have tunnel vision. He's
20 explaining how he doesn't just build a case against a
21 particular suspect. He's subjective and looks at everything.
22 But the very thing he's talking about, tunnel vision, he's
23 falling into that trap himself.

24 There's different terms for it, having blinders on.
25 There's detective term, confirmation bias, because when we

1 tend to look for things that support what we believe, then we
2 ignore the things that contradict what we believe. It's just
3 human nature. Happens to the best of us. And it's hard to
4 be objective. That's why you have to take an oath, and you
5 get reminded by the judge that you can't allow sympathy or
6 passion or anything else to influence your decision. You
7 have to be reminded. You have to be objective, because it's
8 so hard.

9 So Detective Burkhardt comes on this case. And he's
10 fed lies mainly by Becca, then by Peter. And he decides
11 Ellis did this. He decides early on that Ellis is the one
12 who did this. But just like all of us, he's only human. And
13 he made a mistake. 27 years' experience, but he's still
14 human. And, yet, the force of those 27 years' experience by
15 hiding his mistake and his opinion and his opinion carries
16 weight. So he says he looks through all of the evidence. He
17 says he sees a lot of red flags in the video. And I think
18 you saw an example of his tunnel vision when he was on the
19 stand, because I just tried to get him to agree, and he
20 agreed that Peter told him in the last interview on May 12th.
21 when he said Ellis did it, before he had seen the video, he
22 said, Ellis ran past me and hit the guy. And by the time he
23 got there, Clinton was on the ground. So he clearly said
24 that as he's running to the scene, Ellis runs past him before
25 he gets there. Detective Burckhardt could not see it that

1 way. I will play back.

2 (Video playing.)

3 MR. KING: And it's on the video. I mean, you can't
4 really argue with that. And if you remember, when I'm
5 talking about that with Detective Burkhardt, he keeps talking
6 about what's going on on that left side, off camera. He
7 keeps talk about Ellis running, which you can't even see. So
8 he doesn't care about what's going on, what you can see.
9 He's pointing about this bottom left corner and just off to
10 the side, we can't see, is what he seems to be concerned
11 about, but doesn't care about what the video itself shows.

12 He wouldn't admit that. Ellis doesn't run past him
13 before he gets in that mix. And if you watch it, you can see
14 Andrew -- I mean, Peter run right up in the mix. Nobody runs
15 past him. He sees it a different way. I mean, you look and
16 see how many red flags you see in that video. But that's the
17 bias. That's what's affected his objectivity. And he
18 doesn't see the things that don't support what he says.

19 It's contagious too. And once you start assuming
20 that someone did it and you've set your mind to it, innocent
21 things begin to look sinister. And you ignore whatever
22 doesn't fit into your theory.

23 For example, Mr. Simpson stood up in the opening
24 statement and he said that Ellis ran like a coward and noble
25 Peter stops for the police, ignoring what the video shows on

1 here.

2 (Video playing.)

3 MR. KING: The video, which shows exactly what
4 happened, has Peter running away. But in their mind, they
5 don't see that. Ellis is the one who's running, like a
6 coward. Ellis is in a full sprint. But in the other video,
7 Peter and Andrew O'Hearn, they are just running to assess the
8 situation.

9 I'm having technical difficulties now, but you can
10 watch in the jury room. They are running too. Why is Ellis
11 in the full sprint but they are just going to see what's
12 happening in assessing the situation?

13 (Video playing.)

14 MR. KING: They are sprinting too, but they don't
15 see that, because that doesn't fit with their theory of the
16 case when they've made up their mind.

17 They put up testimony that Ellis calls Andrew
18 O'Hearn that Saturday morning. And remember, Andrew O'Hearn
19 said everybody is talking about this. They are calling each
20 other, texting, Facebook. Everybody is talking about this
21 because it's on the news. It's a big deal. But when Ellis
22 calls his friend to recap the night, he's getting his story
23 straight.

24 And then you can take an ambiguous text message, and
25 if you have already made up your mind, then you can see

1 whatever you want to see in that. But there are things he
2 says in here: If it's the guy I hit, why didn't the girl
3 pick me out?

4 He talks about how everybody, how his friends are
5 trying to flip this on him. But there's an explanation for
6 this. Ellis runs back down toward his friend. Peter runs
7 across the street, punches Clinton Seymour right side of his
8 neck with his left hand, same way he's running across. He's
9 got those long arms. He's got the reach. He's got the
10 height. Those are an advantage in a fight. Clinton falls.
11 Daniel Hennessey goes after Binh.

12 And Binh told us what happened. Binh says there was
13 a guy in his face and Ellis ran and hit that guy in his face.
14 No one says Clinton was being aggressive or in his face. So
15 Binh is telling you who he hit. Binh presents no testimony
16 that Ellis hit Clinton. He doesn't know what happened to
17 that guy that went down. Doesn't know if he got up. Doesn't
18 know who it was.

19 Daniel Hennessey and Bradley Baker were both punched
20 and both went down. There's a photograph of his eye where
21 he's punched, Daniel Hennessey, two of them.

22 Then Gabriel sees it happen. Runs to the guy. Runs
23 to Peter and grabs him. Peter realizes this is serious.
24 People could hear the sound when he hit the ground. And
25 that's why he runs and hides behind the dumpster.

1 But Jacqueline Gladden is not going to let him get
2 away. She chases him down. And she points him out to the
3 police. Ellis goes back to the car and he says, I got in a
4 fight, or, I punched a guy, or, I knocked a guy out, or, I
5 knocked two guys out. Whatever he said, it still fits in
6 with what he did. They go back to Percy Street. And he
7 says, I got in a fight, or, I punched a guy, or, I knocked
8 the guy out. And they are mad because they feel like he left
9 Peter behind.

10 And the best evidence of what happened at Percy
11 Street is, I think Matt Keppler, because he really had the
12 least interest of any of these people. He seems like a
13 straight-up guy. He really didn't know him that well. And
14 let's see what he says about the Percy Street conversation.
15 There were two clips of him in evidence.

16 (Video playing.)

17 MR. KING: So Detective Kosarko is asking him, he's
18 talking about Ellis said he knocked somebody out or punched a
19 guy. Seemed to use this interchangeably, got in a fight,
20 punched a guy. And he's asking what happened to the guy he
21 punched. And we are trying to figure out, was Ellis talking
22 about punching Clinton Seymour that went down on didn't get
23 back up. And here's what Mike Keppler says.

24 (Video playing.)

25 MR. KING: Everybody else was taking it as if Ellis

1 was saying -- bragging about knocking the guy out.

2 (Video playing.)

3 MR. KING: He's struggling because once that rumor
4 starts that Ellis did this, it can be a powerful rumor. And
5 he's struggling, but he tells the truth. He doesn't want to
6 give fake knowledge. So he can't remember if Ellis
7 specifically said "knocked the guy out". And he gives one
8 more statement. This is in evidence.

9 (Video playing.)

10 MR. KING: Again, Kosarko, they ask these questions
11 over and over again, going back to it, trying to make that
12 connection between who Ellis said he hit and which person
13 that is. And here's the most Keppler can say.

14 (Video playing.)

15 MR. KING: He said he hit someone at Percy Street.

16 (Video playing.)

17 MR. KING: Or hit the first guy or somebody involved
18 in the commotion. That's the most Keppler can really say.
19 He said he hit somebody in the commotion.

20 So Becca, I think, and I'm not saying that these
21 people got together around a big table and had a discussion
22 of a conspiracy how to frame Ellis. That's not the way life
23 works. But Becca starts talking about Ellis in the car that
24 night. Read the text message. Ellis is saying, I know you
25 were talking about being in the car last night, Becca, or she

1 told the police where Ellis was in the back and wasn't
2 stating anything, that he wasn't even in the car. But she's
3 talking about it that night. He's crying. She's upset
4 because Peter is in jail. And by the next morning, you know,
5 everybody is calling. This is spreading. And the rumor that
6 Ellis did it is taking hold on Saturday morning. And rumors
7 can take on a life of their own.

8 So Becca and Jake, they are, I think, the first two
9 that go down on that Sunday. And they talk to the police.
10 And what does Becca tell them? Well, Andrew O'Hearn saw
11 Ellis do it. Matt Keppler saw Ellis do it. Madison Martini
12 saw Ellis do it. Oh, and Matt, Matt Keppler, he told me he
13 did it.. Let's watch that, because this is a lie.

14 (Video playing.)

15 MR. KING: Okay. I give her maybe she thought Ellis
16 saw it. She thought Matt saw it because he came up on the
17 scene, but she said "Matt told me". And that's not true.
18 That is a lie. If she's willing to lie to a detective in a
19 homicide investigation, imagine what she's telling all of her
20 friends, this circle of friends that are gossiping and
21 calling each other and spreading this word.

22 Jake talks to the detective that day. And he said,
23 I was at Percy Street too and I heard him say it. But he
24 slips up and tells the truth, that he got in the car with
25 Binh and rode back to Mount Pleasant. He didn't go to Percy.

1 Street. And the police ask these questions over and over
2 again for a reason, because when people are lying, it's hard
3 to keep everything straight. And they are waiting to see if
4 they get a different version the second time. So here's what
5 Jake says about what he did after the fight.

6 (Video playing.)

7 MR. KING: That's what he did, with Sarah, his
8 girlfriend. But he's telling the detective that he heard it
9 too at Percy Street, he heard it. So in Detective
10 Burckhardt's defense, he's getting some bad information. And
11 Becca is a nice, pretty, young girl. Doesn't seem like she
12 would lie, but she did. She did.

13 And Detective Burkhardt said he looked at all of the
14 evidence and he saw these red flags. He sure did miss a lot
15 of red flags. There's a red flag when Peter is running and
16 Ellis is not. It's a red flag when their star witness,
17 Peter, lied to the police over and over again. And he
18 admitted it. He told them some story that there's no way was
19 true, looked the detective in the face and said, I'm telling
20 the truth, swear to God, and lies. He has no problem with
21 that.

22 Maybe it's a red flag when their star witness
23 describes the punch to the left side of Clinton's head when
24 the injuries are actually on the right side of the back.

25 Maybe it's a red flag when the girlfriend of the

1 accused person, is telling lies during the investigation.

2 If you watch all those surveillance videos, you
3 could see it on there in the video. But he's not looking for
4 red flags. He's looking for whatever supports his opinion
5 and his theory of the case, like we all do. But he's got to
6 be objective in the job that he's in. It's not easy.

7 So Burckhardt has his tunnel vision. And he ignores
8 an eyewitness with no motive to lie at all, Jacqueline
9 Gladden, who says it was Peter, who says he punched him with
10 his left hand. And Peter happens to be left-handed. How
11 powerful is that? There's a lot more people right-handed
12 than left-handed. She saw a left-handed punch.

13 Now, she demonstrated it. And I'm sure Mr. Simpson
14 is going to make a big deal about the punch in the face, but
15 when she demonstrated, if you watch, she used her left hand.
16 She brought it around like this, and at least came in this
17 area here. So you are going to fault her for being off a
18 couple of inches, for being a few inches from where the punch
19 lands when she's across the street? Why in the world would
20 she make that up? Why would she say it was a left-handed
21 punch if that's not what she saw. She may get some details
22 wrong. He's remembering back two years, but what she did
23 that night was chase that guy down and she said, that's the
24 guy.

25 Burckhardt doesn't even talk to her because she

1 doesn't fit into his theory. So ignores her completely. How
2 can you ignore Jacqueline Gladden? It's such an important
3 fact that she saw Peter throw a left-handed punch and it
4 matches up exactly where the injury would be.

5 And think about it. Dr. Tormos told us that when he
6 was hit in the back here, because Mr. Simpson asked about it,
7 why would he fall backwards when he's hit back here, that's a
8 good question because seems like you see a guy fall back, he
9 got punched in the front and fell back. So they are all
10 seeing this guy fall back and hit his head. You can see why
11 someone would assume the punch was more to the front.
12 Dr. Tormos had to explain why it seems odd, but when he's hit
13 right here, it causes him to get vertigo and he just fell
14 down.

15 So it's not hard to see why Jacqueline Gladden would
16 think the punch was more in the front of the face. She's
17 awfully close.

18 Detective Burckhardt, with his tunnel vision, now he
19 ignores Gabrielle, who again has no reason to lie, who chased
20 after him, ran him and grabbed him. And says she was 100
21 percent sure that's the guy that did it that night. And it's
22 been two years. So she can't remember exactly what he looks
23 like now. They are going to make a big deal out of that.
24 But she knew what she saw that night. Is it that important
25 what she thinks now, two years ago when she chased him down?

1 They showed him to her and she said, that's him, 100 percent
2 sure.

3 They ignore Daniel Hennessey's first statement to
4 the police right after this happened at the hospital. They
5 ask him, who did it, who threw the punch? And he said, it
6 was either the tall guy Peter that got arrested or the Asian
7 guy.

8 In the next interview they eliminated the Asian guy.
9 Couldn't have been him. Even Daniel Hennessey identified
10 Peter as the one day who did it. Ignore that. That doesn't
11 fit in with the theory of the case. They are stretching this
12 so hard to make it fit the evidence. Whoever Binh Ton saw
13 Ellis punch is not Clinton.

14 And let's talk about the running punch theory. The
15 running punch theory is that -- and we've been using this
16 sort of -- this is a layout of Morris Street. So I think of
17 it like this is King Street and this is the corner where they
18 came around to Morris. And this is where Peter and Andrew
19 run across and Ellis runs across back here. In the running
20 punch theory, Ellis is running along the wall this way with
21 his right hand. But the testimony is that Clinton was
22 standing this way. And if you watch the video, of course
23 that's the way you would stand. You would see Binh Ton
24 facing this way, their crowd. You can see Bradley Baker
25 facing this way. And that's what Daniel Hennessey said,

1 Clinton is facing generally this way.

2 So he's going to run around with a running punch.

3 Well, the punch is going to be the opposite way of the

4 momentum that he has. That's the point of a running punch.

5 He's building up this momentum to deliver a big blow. But if

6 he's running and punches backwards, that makes no sense.

7 That is a stretch. Not to mention -- not to mention that to

8 get over here, this is the back of the head, but it's the

9 right, far right side over here, how is he going to get over

10 there with his right hand? Is he going to reach all the way

11 around and punch him over to this side? Because the injury

12 is going to be facing this way, the farthest away it could be

13 from where he's running and where his right fist would be.

14 He's going to hook it all the way around? That's ridiculous.

15 Peter still can't get his story straight. Because

16 he said Clinton was here on this side. And that would make

17 sense under his story, because Ellis is running down to the

18 right of him. Ellis ran to the right and threw that right

19 punch. He knows Ellis is right-handed. But that's where the

20 injury is. It's not what Dr. Tormos said.

21 So see how hard they are trying to stretch this,

22 when it's so simple. And it's so simple in front of us.

23 Peter ran across the street and hit Clinton with his left

24 hand, exactly the way it matches.

25 Jacqueline Gladden saw that. She saw it happen.

1 And Peter runs away because he's guilty. And Peter lies to
2 the police because he's guilty. How are they going to make
3 Jacqueline Gladden go away? How are they going to make her
4 disappear? They tried. He didn't call her. He didn't call
5 any of them. If I hadn't been there, you wouldn't even know
6 they existed.

7 So they just want these witnesses to go away. But
8 that's what the jury is for, because these mistakes happen.
9 It's not the first time it's happened and it won't be the
10 last. But we've got a system, a safety net, a way that
11 before we convict somebody of a crime, we get 12 objective
12 people, not Detective Burckhardt to make this decision, not
13 them, 12 people objective to look at what the evidence really
14 shows.

15 Don't ignore Jackie. You can't ignore what she
16 says. Please don't ignore Gabrielle.

17 Rosalie, it's interesting, she still picked him out,
18 if you listen to it. And there's a conflict there. But she
19 still said that is the guy who threw the punch once she saw
20 him. Don't ignore that.

21 Don't ignore the presumption of innocence. He
22 didn't do this. Thank you.

23 THE COURT: Mr. Simpson.

24 MR. SIMPSON: Thank you, Your Honor.

25 Ladies and gentlemen, good morning. I will start my

1 closing as I started my opening, by offering you the State's
2 profound thanks. Thank you for your time. We asked you to
3 be away from your families and your jobs, and we appreciate
4 it.

5 And after hearing that closing argument, I am
6 incredibly thankful that you've actually been here in this
7 room and actually heard the evidence as it was presented,
8 because as we are going to talk through what you've heard
9 this week -- and I don't say this lightly -- I don't believe
10 that was a very accurate view of what we heard, on several
11 points. And I will raise them as we go along.

12 But let's start -- let's begin with video. Let's
13 begin, before we even start talking about all of the people
14 you've heard from for three days that had information to give
15 you, and let's start with something that doesn't come from
16 someone's perception or can't be misunderstood, let's start
17 with something that you get to see and you get to watch. And
18 let's talk about that.

19 Forgive me for some bad artwork. If you can see my
20 line here, this black line, and I'm doing that in front of
21 you, so perhaps not exact, but this black line here
22 highlights your view from this video. Right? Remember, the
23 video is live. You get to watch it. You get to watch it in
24 the jury room. And what you are going to see on that video
25 as you watch it, is you are going to start to be able to put

1 people exactly where they were. You don't have to rely on
2 them telling you where they were. You get to see it and
3 place people.

4 Let's stop here, what you see. Where is Bradley?
5 Where do we know beyond a doubt where Bradley is? Put a B
6 right here. Here's Bradley.

7 (Video playing.)

8 MR. SIMPSON: So you heard about this point where
9 Binh calls for help. So where is everybody else? We've seen
10 this. We've been watching this the whole time. Let's focus
11 on the two in the middle, Peter and Andrew. Peter comes up,
12 hits the guy with the left hand. That's not at all what he
13 does, is it? Because you get to see what he does. He comes
14 right here, Peter. Andrew hangs back. You get to watch him.
15 He comes right back to the back. Andrew hangs right here.
16 Here we go. He goes around the car. And Andrew is back in
17 the picture.

18 And we get to see two more people. Here's two more
19 people that we know where they are. Don't we? From this
20 corner here comes Binh Ton. Forgive the two Bs, but we got
21 Bradley here. Binh Ton right here. And we see sort of on
22 the top right side, you kind of see an arm touching Binh Ton
23 on the face. That's Regina who we heard about. So we know
24 where Regina is. She's right here.

25 Every single witness in this case talked about how

1 fast this happened, talked about how quick and chaotic this
2 was. That you have Binh call me for help. Everybody comes
3 over. It's verbal. It's heated. And like as quick as you
4 can hardly fathom. Things turn chaotic. And what makes them
5 turn chaotic? Clint going down. That's the first violence,
6 right? You heard that from everybody. Clint getting
7 punched.

8 So we know that right around the time all these
9 people are arriving at this electrical boxes, very soon, if
10 not instantaneous with that, Clint goes down. Okay?

11 So right around this time we are looking right now,
12 where do know -- before we even heard a witness from this
13 stand, what do we know? Bradley Baker is here. Peter is
14 here. Andrew is in the back. Binh Ton is here. Regina is
15 here. So who are we missing? Who are we missing?

16 Let's talk about something else that doesn't lie.
17 We know exactly where Clint is. We don't have to rely on
18 anything a person says. We know exactly where he is. And
19 why we know that is awful. Why we know that is terrible.
20 But we know where Clint is because we know where his blood
21 spots are on the sidewalk. And Clint is exactly where
22 Bradley and Binh -- I'm sorry, Bradley and Dan tell you.
23 He's behind them.

24 And you haven't even seen them all. You will have
25 several pictures of this area. And you can work this out,

1 but we know from where the bloodstains -- not relying on
2 people saying they know where he fell -- that Clint is back
3 here. So there's Clint.

4 Now, does anyone here think Daniel Hennessey hit
5 Clint? Of course not. They were out together. They were
6 friends. So we will rely on this because there's no debate
7 about it.

8 Where is Daniel Hennessey? He's just off camera
9 right next to Bradley Baker, here. And so you see there's
10 some shuffling around. And this video goes on before it
11 rotates and leaves the scene. But we know right there as
12 they arrive, there's Andrew and Peter arrive here. We know
13 right around here is where this punch happens. Right? We
14 know that. Everybody says this happens fast. This happens
15 right when they come up on each other. And we know where
16 Peter is, where Andrew is, where Binh Ton, where Regina is.
17 We know where Bradley is. We know where Daniel is. The only
18 people we don't know -- we know where Clinton is -- one
19 person. Wow. Amazing. Before one witness testified on the
20 stand, there was one person involved in this unaccounted for,
21 and that's Ellis Clarke.

22 And you've heard about our crazy theory of the case.
23 Are you kidding me? Look at this, whole sidewalk is not on
24 camera. And before you've heard from anybody else on the
25 stand, you've got this whole sidewalk here that's not going

1 to be seen. And this whole area here that leads right to
2 whom? Clinton Seymour. But, wait, if Ellis Clarke was to do
3 that and run up, I think we would see him some on the camera.
4 And where would we see him? We would see him sprinting right
5 across the here, wouldn't we? That's where we would see
6 Ellis Clarke, Ellis Clarke sprinting across the street and
7 off camera.

8 (Video playing.)

9 MR. SIMPSON: And so here we go. Our trial hasn't
10 begun yet. I haven't talked about a single witness. But
11 before we even embark on talking about all of the things
12 you've heard this week, we have the red flags from the video
13 that Detective Burckhardt was mentioning, the guilt by
14 omission, the fact that we can strike everyone off of this
15 list that could have punched Clinton Seymour except for one
16 person, Clinton Seymour -- I'm sorry, excuse me, Ellis
17 Clarke, who is sprinting across right to the area that would
18 lead him right to Clint. That's where we begin. That's our
19 starting point.

20 Understanding that this is where we start before we
21 even start talking about the case, let's begin. And let's
22 begin where Jason King's witness told us to begin. Rosalie
23 Frederick, one of his witnesses, as he referred to them, on
24 the stand says, look, you want to know what happened out
25 there, it was so chaotic, yes, I saw it, but if you really

1 want to know, talk to the people that were involved. That's
2 what his witness told you to do. And that's what we did.

3 And so we start with Bradley Baker and Daniel
4 Hennessey. And if they were coming in here to concoct
5 stories, if they were coming in here to lie to all 12 of you,
6 what would they have told you? If it was their motive, that
7 was who they were, they would say, I saw Ellis Clarke punch
8 Clinton Seymour. They are not here to lie and not here to
9 concoct stories to tell one side or the other, but, boy, they
10 told you some important things.

11 And, again, we are talking about omitting people,
12 taking people away. Both told you very clearly they were
13 standing side to side, Bradley Baker on camera, Hennessey not
14 on camera, when both of them, surveying the situation, things
15 are getting heated, for an instance turn, and both see Clint
16 go down. Right? Both talk about the freezing up and the
17 face going white and said it happened fast, but we turned and
18 we saw this moment it happened. And then they come back
19 around, what did both of them tell you? Who is in front of
20 them? And they both tell you, Peter Dudinyak is in front of
21 them. Binh Ton is in front of him. They don't see Andrew
22 because as you can see, Andrew hangs around in the back. But
23 Binh and Peter are right there, at that moment their friend
24 goes down, where, behind them? And who is the only person,
25 as we've discussed, who could have made it back there? Ellis

1 Clarke.

2 Take his witness's advice and listen to the people
3 who were involved. Let's go a layer deeper, the other people
4 involved. Binh Ton and Peter Dudinyak, who had the best view
5 that night of what occurred? Who was facing what occurred?
6 Binh Ton and Peter Dudinyak, the best view. They had in
7 front of them Brad and Dan. But back there was Clint. They
8 are facing in that direction. And what do both of them tell
9 you? Exactly what we've seen, or seen from the absence of in
10 the video. Clint (sic) ran past them along the wall of the
11 Morris Street building, precisely what we see, where we see
12 him go, he ran past him and hit Clint. The two people with
13 the best view tell you that.

14 Listen to his witnesses. They said, listen to those
15 people. So let's listen to them. They tell you that
16 happened. The people with the best view.

17 Binh Ton, let's start with him. You know, you were
18 the ones that get to judge whether or not people are telling
19 the truth, but let's talk about Binh. Did Binh want to be
20 here? Was Binh eager to help us in this case when he took
21 the stand? Absolutely not. He's a mess. And I think that
22 conveyed. He never wanted to be in a position where he's
23 pointing to his friend and saying that he did this.

24 And I'm a father of two little girls. And when they
25 are saying something and having a hard time saying it because

1 they really don't want to say it, that's when I know they are
2 telling the truth: Okay, I broke it, Daddy. And it goes
3 forward to adulthood.

4 Binh comes in and he's struggling. He doesn't want
5 to point out friends. It's the last thing he wanted to do.
6 But when he learned the severity of this situation, he came
7 in, reluctantly, hesitantly, and took that stand and said,
8 look, I was right there, the one guy -- Bradley and Dan are
9 in my face. He flies by me, right down along the Morris
10 Street building that you can't see, punches the guy.

11 And I believe Mr. King was creating all of this
12 ambiguity where, frankly, it doesn't exist, said he hit the
13 guy and the guy went right down. And right when the guy went
14 down, the big guy, Danielle Hennessey we now know came. And
15 Daniel explained to you what -- see how it all fits together?
16 Daniel explained, I saw it go down and I lunged at the Asian
17 guy, sort of a preemptive way, man, this is getting serious.
18 This all fits together. That's the moment that occurs. And
19 so Binh came in reluctantly. Probably the most miserable
20 moment of his life, took that stand and told you that his
21 friend hit him.

22 Then Peter came in. Peter, who we've excluded as a
23 possibility from this video, standing right there around the
24 electrical box at the time we believe this occurred, at the
25 time you heard it occur. Peter came in and told you the same

1 thing. Now, let's be honest, I'm not going to insult your
2 intelligence. Did Peter have a reason to lie in this case?
3 You want me to stand here and explain that away? I'm not.
4 Of course he has a reason to lie. So how do we know if he's
5 telling the truth or not? Again, corroboration.

6 You know, there's lots of ways to know if somebody
7 is telling the truth or not. But to me, the best way, do all
8 those other pieces that can't lie, video, do what other
9 people say, does it fit? Does it come together like a
10 puzzle? And at this point it does. Corroboration of what
11 Peter has to tell you fits the others. We just heard Binh
12 Ton say the exact same thing. We've heard Brad and Daniel,
13 they didn't see the actual person throw the punch, but fits
14 with them. All the pieces come together. Fits the video.
15 We are excluding everybody. And where he says Clint (sic) is
16 running -- I mean, Ellis is running is exactly where we see
17 in the video.

18 There is no ambiguity that Mr. King likes to create.
19 What he said in the statement is, yeah, he ran past me and he
20 hit that guy, he went down. We are talking fractions of
21 seconds. And as many times, he ordered the things
22 differently, but that has been the whole defense for the
23 whole trial. It's a defense of semantics, where little tiny
24 words are presented to you as lies. And I don't think you
25 think they are.

1 Corroborated by the injury to Clinton Seymour, and
2 this is where I get a little upset, because I do believe this
3 was sort of continually seeking to mislead you. How many
4 times did Mr. King stand here and say right side, right side.
5 Y'all saw him hit on the right side. You heard from
6 Dr. Tormos. She's a scientist, a medical professional. So
7 when something is right of the center line of the skull, she
8 tells you that. And she did and that's accurate. We are
9 talking about an injury square onto the back that lands
10 slightly right of center here. But he stands in front of you
11 and just makes it seem, oh, it could have been anywhere. We
12 know exactly where it is. He got punched from the back.
13 This is a true sucker punch from the rear.

14 And that injury fits perfectly, contrary to what
15 Mr. King tells you, with what you see here. Clint standing
16 behind everybody, his attention drawn to the action here.
17 The wall of the building here. Turned. For a person to come
18 down right-handed, swing the right hand, and hit him right
19 here.

20 And then it was great, I believe was the last
21 question, while we talk about right hand, left hand, that
22 Dr. Tormos answered. These are theories we are presenting.
23 I'm going to be direct with you. She told you, you can't
24 tell this stuff, right hand, left hand, means nothing. Okay?
25 You can't tell it scientifically, so don't be swayed when

1. Jason explains that -- Mr. King explains to you this must
2 have been a left-hand punch. The expert told you you can't
3 say that.

4 Finally, the hands, here's something that Dr. Tormos
5 was very clear on. Ladies and gentlemen, Mr. Seymour, I
6 shouldn't have to explain to you at this point, got hit very
7 hard. Dr. Tormos explained to you a hit of moderate force.
8 But then she really explained it well, that in her
9 profession, they deal with impacts literally that come from a
10 locomotive or a car. So you need a term of art, a term of
11 science that explains a car hitting somebody at 100 miles an
12 hour. That's severe. But she explained that. She said, I
13 say moderate because that's the scientific term.

14 But he got hit really, really hard. And he got hit
15 with such force -- I don't mean to be graphic, but the
16 fractures radiated from that point in the back of his head
17 internally all the way around to nearly the front of his
18 skull, causing bleeding from the ear all the way to nose and
19 sinuses they talked about. This was a blow.

20 How do we know Peter is telling the truth? That's
21 Peter hands that night. Because even when he was in there
22 trying to defend his friends -- and how ironic is that, that
23 now he gets called a liar, because the only person he was
24 trying to help was this guy sitting right here. But this
25 doesn't lie. These are Peter's hands that night. A blow of

1 that magnitude could the skull, this is hard. He's hitting
2 bone. And not a single injury to his hands?

3 So listen to their witnesses. The best people to
4 know what happened there are Brad, Dan, Peter and Binh. And
5 they all point right to this man, Ellis Clarke.

6 So let's stop there. Let's pause again, pause that
7 for the video. Let's pause after everybody that's there.
8 Everything corroborated. Everything fitting the video.
9 Everything going together, the exclusion of all of the others
10 other than Ellis Clarke. I would pause it that at this point
11 alone, you should sit in that box firmly convinced of Ellis
12 Clarke's guilt at this point, with nothing more. You should
13 be comfortable at this point in that conclusion.

14 But do we stop here? Absolutely not. We move on.
15 Sarah and Jake, Sarah and Jake are waiting in Ellis's car.
16 They see none of this. What do Sarah and Jake tell you? And
17 think about this conspiracy theory. I don't want to go off
18 on a tangent a lot, because I think it's laughable, but Sarah
19 was dating Jake Dudinyak. Is that the kind of relationship
20 to bring someone in to commit a felony and lie about things?
21 I really don't think so. I think you understand that that's
22 not the sort of thing a person would do. There's no motive
23 there to do that.

24 Sarah and Jake took the stand and told you,
25 especially Sarah, that Ellis runs and he's rubbing his hand.

1 Contrast that with the picture of the hand we just saw.
2 Ellis is rubbing his hand. He said either, I just knocked
3 two dudes out or one dude out. Mr. King challenged her on
4 that. I'm glad she came back forcibly. She said, look, I
5 don't know if it was one or two, but I know that he was
6 rubbing his hands, I just knocked a dude out. How many
7 people got knocked out that night, ladies and gentlemen;
8 knocked out? One, Clinton Seymour.

9 On these little word plays that Mr. King likes to do
10 where he trips people up, let me give you a great example of
11 how that works, because it's an example that comes from me.
12 He pointed out correctly that I said in my opening statement
13 that Ellis ran away like a coward. And that's how these
14 semantics works. I did not mean physically run. I mean he
15 fled away like a coward while Peter stopped. And that's
16 what's in the video. I did not intend to mislead. I
17 apologize, but I will posit to you that's been the whole
18 defense, catching people in little words and say they must be
19 lying. I think y'all know better.

20 But Sarah says Ellis does run up to the car, rubbing
21 his hands, I just knocked a dude out.

22 Jake, the language is a little different, says the
23 same thing though. He runs up, we've got to go. And he gets
24 out of there with leaving Sarah White alone in a parking lot
25 two o'clock in the morning. That's how much he needed to get

1 out of there, and he did.

2 He goes back to Percy Street. At Percy Street,
3 there's Becca and Jamie. Again, Jamie is not really
4 intimately involved in the events of that night, but she
5 tells you, it's clear as a bell, she didn't know the severity
6 of the situation. Madison Martini hadn't come home yet. But
7 Ellis comes home and tells her, Peter just got arrested and
8 he got arrested for something I did. That was her take-away
9 from the whole conversation. And she sort of thinks of it
10 as, oh, Ellis did something stupid and Peter got arrested,
11 someone will pay a fine and it will be done. But she left to
12 go with the guy she was seeing at that time, but it was
13 crystal clear to her what Ellis Clarke said, that Peter is
14 getting arrested for something he did.

15 Becca gives you the same stuff. Gives you the same
16 statements.

17 Madison Martini and Matt Keppler, you heard from
18 them. They saw what happened. And they are good too. We
19 will get to the eyewitnesses that the defense put up. But
20 Madison and Matt Keppler were in similar positions as to all
21 these eyewitnesses you heard from Mr. King. And they told
22 you they heard it. They turned around and they didn't even
23 know that that was their friends that were involved in it.
24 That's how chaotic it was. They knew half these people, but
25 they didn't realize at that time, because it's impossible.