

ORIGINAL

Volume I of II

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

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The Honorable John C. Hayes, III, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2016-001363

Hubert Brown,.....Respondent,

v.

State of South Carolina,.....Petitioner.

APPENDIX

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State of South Carolina.,) In the General Sessions
) of York
)
) Case No. 2012-GS-46-03185
) 2012-GS-46-03187
 County of York.)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Hubert Floyd Brown, Junior.,)
)
 Defendant.)
)
)

July 9, 10, 11, 2013
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge, and a jury.

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

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 To the Honorable John C. Hayes, III

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Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION IN THE MATTER OF STATE V. HUBERT
2 BROWN TUESDAY, JULY 9, 2013, AT 09:52 A.M..)

3 THE COURT: Take your seats.

4 SOLICITOR SPRINGS: Mr. Sheriff, would you bring out
5 Hubert Brown.

6 (DEFENDANT HUBERT BROWN, WHITE MALE, ENTERS
7 COURTROOM.)

8 THE COURT: Solicitor.

9 SOLICITOR SPRINGS: May it please the court.

10 THE COURT: Yes, sir.

11 SOLICITOR SPRINGS: Your Honor, the next matter for
12 this honorable Court is the trial of Hubert Floyd Brown,
13 Junior, who is here in the courtroom with retained counsel
14 David Cook. I'm holding two True Billed Indictments; one
15 charges him with burglary in the first degree on 2012-GS-
16 46-3185 and attempted murder on 2012-GS-46-3187.

17 Before I ask Attorney Cook whether Mr. Brown pleads
18 guilty or not guilty, Your Honor, I need to take up his
19 mental and competence - his evaluation by the South
20 Carolina Department of Health. We did have him evaluated
21 for competency to stand trial and criminal responsibility
22 sometimes called insanity at the time of the crime and I'm
23 holding those two reports. And I'll tell the Court the
24 Department of Mental Health found him competent and
25 responsible. May I make these Court's Exhibits and hand

1 them up to the Court?

2 THE COURT: Have you seen these, Mr. Cook?

3 MR. COOK: Yes, sir, Your Honor.

4 THE COURT: Any objection to them being made Court's
5 Exhibits?

6 MR. COOK: No objection. No, sir.

7 (WHEREUPON: COURT'S EXHIBITS ONE AND TWO, IDENTIFIED
8 AND MARKED, RECEIVED INTO EVIDENCE.)

9 SOLICITOR SPRINGS: And I'm handing to the Court the
10 finding of competency on Court's Exhibit One. And
11 Responsibility on Court's Exhibit Two. And we would ask
12 the court to give us a ruling on that.

13 THE COURT: All right. Mr. Cook, do you consent to or
14 object or either to the state - the Court relying on these
15 two reports from May 6, 2013 Report as Exhibit Two. And
16 Competency to Stand Trial Evaluation March 7th and that's
17 the date of the evaluation as Court's One?

18 MR. COOK: No, Your Honor. I don't object to the
19 Court reviewing the materials. We maintain that we are
20 going to continue with the insanity defense and then we
21 give a problem notice to the solicitor ten days before the
22 trial and given him proper notice of an expert witness.

23 THE COURT: All right. But do you consent to the
24 Court relying on these two reports as opposed to having
25 these individuals come and testify?

1 MR. COOK: Yes, sir, I do, Your Honor, I consent to
2 that.

3 THE COURT: All right. Well it's not up to the court
4 to make a certain determination at this time as to criminal
5 responsibility but it is our responsibility at this time to
6 make a determination under Blair as to competency to stand
7 trial.

8 Mr. Brown was evaluated looks like March 7th, 2013,
9 and then a five page report. Shannon Hanson Medical Doctor
10 and Forensic Psychiatric - a Forensic Psychiatric Fellow
11 from the University of South Carolina School of Medicine
12 found that there was no symptoms of mental illness that
13 would prevent Mr. Brown from working with his attorney or
14 interacting with court officials if he so chooses.

15 She further found that he - he, Mr. Brown,
16 demonstrated a rational as well as a factual understanding
17 of the proceedings against him and is currently competent
18 to stand trial. He does have some diagnoses of none on
19 Axis I or Axis II which would be mental. Axis III has some
20 physical issues.

21 For the record the evaluation from March 7th also was
22 for the purpose of determining whether or not this
23 evaluator felt Mr. Brown was capable of criminal
24 responsibility and had the capacity to conform. She found
25 he was responsible and had the capacity to conform but of

1 course that's not an issue for me to determine at this
2 time. I want that to be on the record also. He was
3 examined for both competency and responsibility by Ms.
4 Hanson on March 7th, 2013.

5 I find he is competent to - Well did you have anything
6 further to present on the competency issue?

7 MR. COOK: Nothing, Your Honor.

8 THE COURT: All right. I find he is competent to
9 stand trial based on the determination by Ms. Hanson,
10 Doctor Hanson; that he has the ability to work with his
11 attorney, interact with court officials and have a factual
12 understanding of the proceedings against him and he is
13 competent to stand trial.

14 SOLICITOR SPRINGS: Thank you, Your Honor.

15 Now before I ask Mr. Cook how Mr. Brown pleads, Mr.
16 Cook has been retained by the defendant. Earlier he had
17 appointed counsel, Mr. David Sample, and is as always in
18 the case when a hired attorney steps in Mr. Sample now
19 filed or took the necessary motion to be relieved. Said
20 he's still technically involved in the case; Mr. Cook said
21 he's in charge and he's gonna do this trial and that's fine
22 with us. But I wanted to make sure that we're all agreed
23 that Mr. Cook is in charge of this case.

24 THE COURT: All right. What's the status of Mr.
25 Sample?

1 MR. COOK: Well, Your Honor, I did speak with Mr.
2 Sample last week and he intimated to me that he had some
3 personal family matters that was of a medical nature in New
4 York. And that he - I explained to Mr. Sample that it was
5 perfectly fine with me that he go to New York; that I feel
6 competent enough to take the trial, handle the trial
7 myself. I just spoke with my client about this and he
8 informed me that he's also okay and consents to Mr. Sample
9 not being present. And so in those regards, Your Honor,
10 we're ready to continue on with the trial.

11 THE COURT: All right. Is that correct, Mr. Brown?

12 MR. BROWN: Yes, sir.

13 THE COURT: Okay.

14 SOLICITOR SPRINGS: All right. Mr. Cook, how does Mr.
15 Hubert Floyd Brown, Junior, plead to burglary in the first
16 degree and attempted murder?

17 MR. COOK: He pleads not guilty.

18 SOLICITOR SPRINGS: Thank you.

19 A few other things, Your Honor. Turning to the
20 evaluations the Court has, the two parties have agreed not
21 to - to make those admissible in the case, in the trial
22 without the necessity of bringing people from Columbia.
23 I'm fine with that and the defense wants that.

24 In those reports, the competency report and the
25 responsibility report, Page 4 of each mentions his prior

1 very serious criminal convictions, and I've taken the
2 liberty of preparing a redacted version that takes those
3 out and I think we should use the redacted version. I
4 would ask that Mr. Cook would prefer to use the redacted
5 version. Let me hand him copies of it.

6 (DOCUMENTS RECEIVED BY DEFENSE ATTORNEY COOK.)

7 SOLICITOR SPRINGS: Showing Page 4 on both with the
8 mention of his prior record.

9 THE COURT: I'm looking at Page 4 of the Competency to
10 Stand Trial, second paragraph, states Mr. Brown added that
11 he had past history of legal charges which include criminal
12 sexual conduct which he received at the age of eighteen of
13 which he served twenty years on a thirty year sentence.

14 He says he's been married to Ms. Tabitha Brown while
15 he was incarcerated and he was happily married to her at
16 the time of his most recent arrest. And that same
17 paragraph is on Page 4 of the Criminal Responsibility
18 Capacity to Conform Evaluation also.

19 What's your position on that, Mr. Cook?

20 MR. COOK: Yes, sir, Your Honor. I prefer the
21 redacted version.

22 THE COURT: Okay.

23 MR. COOK: And do consent to it being a part of the
24 record without the examiner present.

25 THE COURT: Okay.

1 SOLICITOR SPRINGS: We're doing that in the nature of
2 a stipulation.

3 THE COURT: That's fine. And I don't - I haven't read
4 the reports completely but I don't know that there is any -
5 that the evaluator relied in either case on that. It's
6 just the recitation of past history.

7 SOLICITOR SPRINGS: That is the way I -

8 THE COURT: Apparently just for information purposes
9 and whether she, Doctor Hanson, factored that in some way
10 in her mental evaluation of his mental conditions, Mr.
11 Brown's mental condition. I don't know but there is
12 nothing to that extent stated to in the report.

13 SOLICITOR SPRINGS: Other pretrial matters from the
14 State. We've ask for - served a demand for reciprocal
15 discovery. Mr. Cook has in a timely manner told us he's
16 going to have a psychologist to testify as an expert as
17 part of an insanity defense. He's fully complied with that
18 but I've told him a couple of times and I'm holding a
19 letter dated June 28th of this year that if his experts
20 gonna have a report she wants to put in as part of the
21 record, I got to have it. Now on this letter I said if I
22 don't have it by five o'clock on Monday, which was last
23 Monday, I'm gonna object. And I was just given her report
24 this morning; I don't have time to prepare for that and I
25 object to that coming in. If they're saying that's gonna

1 be part of their case.

2 MR. COOK: And, Your Honor, I understand entirely and
3 agree with everything that Mr. Solicitor said and
4 apologize. I just for the record I told my expert witness
5 as soon as I got that notice from Solicitor Springs that if
6 you are going to have a report I need to get it fast. For
7 whatever reason she forwarded that to me last night. So I
8 explained to her that I would present it to Solicitor
9 Springs. I anticipated his objections and so I understand,
10 Your Honor, that - I understand the nature of Mr. Springs
11 objections. He did just get the report last night via an
12 email attachment.

13 THE COURT: When is the report dated?

14 SOLICITOR SPRINGS: It's dated July 8th.

15 MR. COOK: Well I'll digress, Your Honor.

16 THE COURT: No. We'll have to just take a look at
17 that as we move through the trial and when we get to that
18 witness.

19 SOLICITOR SPRINGS: Well I would ask if there is
20 anything else that we're entitled to, any exhibit, or
21 thing, that they intend to introduce cause I - They've
22 given me some medical records; that's fine. And if they -
23 I guess I'm asking have they complied with Rule 5 and
24 they've given us everything that we're entitled to as far
25 as reciprocal discovery?

1 MR. COOK: Your Honor, the only other thing that I can
2 think of - and then I thought that I gave this to Solicitor
3 Springs perhaps in February, if I didn't it's my fault.
4 There are some photographs.

5 SOLICITOR SPRINGS: I got those.

6 MR. COOK: And also there are some phone records.

7 SOLICITOR SPRINGS: I got those.

8 MR. COOK: And so other than that I have nothing that
9 I want to interject evidence of and I've given you my
10 witness list, Your Honor.

11 SOLICITOR SPRINGS: Other pretrial motions from the
12 State and this will touch upon one item in the defense's
13 motions in Limine. They want to know about Jackson v.
14 Denno statements from the defendant. The defendant and the
15 case agent, Detective Strickland, spoke on the telephone
16 when the defendant was not in custody and we are going to
17 talk about that telephone conversation. It doesn't fall
18 under Miranda because the man wasn't in custody. Hadn't
19 even been arrested yet. So that's the only statement we're
20 going to use from the defendant. And other than that we're
21 making a motion to preclude any hearsay coming in from our
22 witnesses' or their witnesses' hearsay words, statements
23 from Mr. Brown lips. He has no hearsay exception. If he
24 wants to get in his conversation with others, or his
25 statements, he needs to take the stand like anyone else.

1 I've prepared some law, and handing to the defense, showing
2 that the defendant may not introduce his own defense; his
3 own statements made to others. Handing that up to the
4 Court as well.

5 (DOCUMENTS RECEIVED UP BY THE COURT.)

6 SOLICITOR SPRINGS: So we're precluding any questions
7 of our witnesses' or their witnesses' somebody else about
8 what Mr. Brown said outside of the court.

9 THE COURT: What next?

10 SOLICITOR SPRINGS: The next matter is we do move to
11 preclude any mention from the defense whether in opening or
12 closing or through witnesses' potential punishment for this
13 trial because of Mr. Brown's prior criminal sexual conduct
14 first degree and burglary first degree convictions. This
15 is a life without parole case and we ask that the defense
16 be precluded from mentioning the punishment of these crimes
17 at any time. It's prejudicial to the State and it's not
18 relevant to guilty or not guilty.

19 THE COURT: Mr. Cook.

20 MR. COOK: I understand, Your Honor.

21 THE COURT: All right. Anything else from the State?

22 SOLICITOR SPRINGS: Nothing else from the State.

23 THE COURT: All right. I've got a list from the
24 defense of Motions in Limine. The first is to ensure the
25 State has complied with discovery.

1 SOLICITOR SPRINGS: Yes, sir, we have. And Brady.

2 THE COURT: Then we have the Jackson versus Denno
3 which the State has just indicated that none exist. I
4 hadn't heard that much about the call, telephone
5 conversation. That becomes somewhat of a Jackson versus
6 Denno situation we'll look at it then. It does not appear
7 from what's been related to me at this point to indicate
8 requirements for a Jackson versus Denno hearing.

9 Prior bad acts and convictions for impeachment, well
10 the only one I see would be the criminal sexual conduct.

11 SOLICITOR SPRINGS: He's got a criminal sexual conduct
12 first degree and a burglary first degree. He got out of
13 prison about five or six years ago on those. They are
14 potentially usable but in this case I, I don't want to put
15 any hindrance between Mr. Brown and that witness stand. If
16 he want's to testify I will not try to impeach him with his
17 criminal sexual conduct or burglary first degree. But if
18 he opens the door by saying I never assaulted anyone or I
19 never been in trouble with the law, that's another matter.
20 But I'm not going to impeach his credibility with those
21 crimes.

22 THE COURT: All right. Next we have a Lyle Motion.
23 How about any prior bad acts?

24 SOLICITOR SPRINGS: No prior bad acts unless he opened
25 the door. He's got some history of violence and if he

1 opened the door we'd take it up with the Court first but we
2 reserve the right to go into something if he opens the
3 door.

4 THE COURT: All right. Sequestration would be granted
5 reciprocally.

6 SOLICITOR SPRINGS: Your Honor.

7 THE COURT: Except the case agent and any victims.

8 SOLICITOR SPRINGS: I've got my case agent and I've
9 got three victims. This is a burglary and attempted murder
10 so Mr. and Ms. Michael Mahoney are entitled to be in here
11 all the time, they are victims. Mr. Calvert is a victim
12 and he's entitled to be in here. And the other witnesses'
13 I had would be some police officers that would be
14 sequestered. I would ask that - -

15 Mr. Cook, did I get a witness list from you?

16 THE COURT: Mine's attached to the motions.

17 SOLICITOR SPRINGS: I see that yes. I'm looking at
18 the defendant's witness list and of course they've got
19 their psychologist listed first. They've got the
20 defendant's wife on their witness list so we're
21 sequestering Ms. Tabitha Brown to be out of this room all
22 the time as would Mr. Jerry Parrish.

23 MR. COOK: And, Your Honor, Ms. Brown is in the
24 courtroom at this time. I would be glad to ask her to
25 leave and explain that if you're gonna be one of my

1 witnesses' on my witness list you can't watch the trial as
2 it's happening.

3 So I ask that you sit out in the hallway.

4 And Jerry Parrish, Your Honor, is not present in the
5 courtroom I take it.

6 Mr. Parrish.

7 He's the former employer of my client, Your Honor, and
8 I have him on hold and told him I may call him Wednesday.

9 And my expert witness is not present today either.

10 THE COURT: All right. And the motion regarding
11 missing link in chain of custody.

12 SOLICITOR SPRINGS: I don't know what that's all
13 about.

14 MR. COOK: And, Your Honor, I'll digress on that
15 motion. That's just standard boil plate language and
16 that's not applicable to this trial.

17 THE COURT: And then the last one, something that
18 really has nothing to do with the trial itself, it has to
19 do with the fee of the expert witness. I'll have to deal
20 with that independently.

21 All right, voir dire from the defense. I don't see
22 any problem with any of that. Voir dire from the State: I
23 don't see any problem with that unless something is pointed
24 out to me by counsel.

25 MR. COOK: Your Honor, I apologize. I missed that in

1 regards to my motion for the funding for my expert witness.

2 THE COURT: I don't - I'm not gonna rule on that right
3 now. I'm gonna take that under consideration.

4 MR. COOK: Oh, yes, sir.

5 THE COURT: I have no idea what the cost is, I have no
6 idea about contractual arrangements, I have no idea about
7 your clients ability to pay. He's hired you. I know he
8 got appointed counsel and he's got the money to hire an
9 attorney too so I got a lot of issues to deal with before I
10 can make a determination as to whether or not this doctor
11 or psychiatrist fees would be paid by the state.

12 MR. COOK: Yes, sir, Your Honor. And I apologize for
13 continuing but I was just wondering, should I make - I was
14 planning on making that motion then separate from my
15 motions in limine before the trial and telling Your Honor -
16 ---

17 THE COURT: I'm on notice. Let's do this, let's make
18 sure that we have filed - I'll file my copy. I'll ask the
19 Clerk to hand this to the court reporter to be marked as
20 Court's Exhibit Number Three and that is the
21 memorialization of your motion regarding fees and just a
22 part of the record ---

23 MR. COOK: Yes, sir.

24 THE COURT: --- and being articulated it's now a
25 written motion ---

1 MR. COOK: Yes, sir.

2 THE COURT: --- filed. All right.

3 (WHEREUPON: COURT'S EXHIBIT NUMBER THREE IDENTIFIED
4 AND MARKED, RECEIVED INTO THE RECORD.)

5 SOLICITOR SPRINGS: Nothing else from the State.

6 I believe the strikes are ten and five. Could we get
7 at least two alternates?

8 THE COURT: Yeah, let's get two alternates. We should
9 have enough for that.

10 MR. COOK: Nothing else from the defense, Your Honor.

11 THE COURT: Anything else before we get the jury up?

12 SOLICITOR SPRINGS: Nothing from the State.

13 MR. COOK: Nothing from the defense, Your Honor.

14 THE COURT: All right. I'll step out while the jury
15 is being brought up and when we get the jury up somebody
16 let me know and we'll go forward with the trial.

17 (COURT IN RECESS AT 10:13 A.M..)

18 (JURY ENTERS COURTROOM AT 10:21 A.M..)

19 (COURT BACK IN SESSION AT 10:32 A.M..)

20 THE COURT: Thank you. You may take your seats.

21 Members of the jury panel, I'm John Hayes and along
22 with Judge Alford I'm assigned to hold criminal court,
23 General Sessions Court, this week.

24 The first case is the case of the State versus Hubert
25 Floyd Brown, Junior.

1 Mr. Brown, would you please stand and let the jury see
2 who you are.

3 (DEFENDANT HUBERT BROWN STOOD.)

4 THE COURT: And he is represented by Mr. David Cook.

5 (ATTORNEY COOK STOOD.)

6 THE COURT: You may be seated.

7 The State is represented by Mr. E.B. Springs from THE
8 Solicitor's office and I'm gonna ask him to introduce who
9 he has with him.

10 SOLICITOR SPRINGS: This is Assistant Solicitor Chris
11 Jones. Chris Jones.

12 You came from what county?

13 SOLICITOR JONES: Chesterfield County.

14 SOLICITOR SPRINGS: He recently came to York County to
15 work for us.

16 THE COURT: Okay. And THE gentleman sitting behind
17 you too.

18 SOLICITOR SPRINGS: This is Detective Tracy Strickland
19 with THE York County Sheriff's Office.

20 (DETECTIVE STRICKLAND STOOD.)

21 THE COURT: Okay. Thank you.

22 Mr. Hubert Floyd Brown, Junior, to whom you've just
23 been introduced is charged with attempted murder and
24 burglary in THE first degree. It's alleged that on June
25 8th of last year 2012 that Mr. Brown was involved in a

1 burglary at a dwelling owned by Michael and Amy Mahoney and
2 Christopher Calvert, at least occupied by them, this was at
3 [REDACTED], York, South Carolina. It's alleged that
4 he committed, Mr. Brown, burglary by entering into that
5 premises with an intent to commit a crime and without
6 permission, without consent. And that during the course of
7 the event assaulted and caused physical injury to Mr.
8 Calvert. And that Mr. Brown came armed with a deadly
9 weapon that being a large blade knife while he was inside
10 [REDACTED]

11 It's alleged that on that same date and at that same
12 place at 10:30 at night in this event that I've just gone
13 over on the burglary charge that Mr. Brown in the second
14 indictment is charged with attempted murder in that he
15 allegedly tried to kill Mr. Calvert by swinging a hatchet
16 at Mr. Calvert. And then exchanging the hatchet for a
17 heavy bladed weapon similar to a machete and struck - swung
18 it at Mr. Calvert striking him in the hand.

19 Those are the two charges against Mr. Brown; to these
20 he has pled not guilty.

21 First, are any of you related by marriage to any of
22 the five individuals to whom you've just been introduced;
23 if so, please stand?

24 No one stands.

25 Have any of you been associated with our solicitor Mr.

1 Kevin Brackett's office in any way? That is, do you have
2 any family members that work with the solicitor? Have you
3 participated in any programs sponsored by THE solicitor or
4 are you a friend or acquaintance of anyone who is employed
5 with Mr. Brackett's office; if so, please stand?

6 No one stands.

7 Have - Any of you related by blood or marriage - I've
8 already ask that, let me ask it this way.

9 Have any of you been represented by Mr. David Cook at
10 any time, you or a member of your immediate family
11 represented by Mr. Cook; if so, please stand?

12 No one stands.

13 Are any of you members of THE Grand Jury which passed
14 on these two indictments at an earlier time; if so, please
15 stand?

16 No one stands.

17 Have any of you heard about this case from any source
18 whatsoever? Read about it, heard anybody talk about it, or
19 have any of you formed or expressed any opinion about any
20 issue which would be involved in this case; if so, please
21 stand?

22 No one stands.

23 THE next question is somewhat sensitive so I'm not
24 gonna ask you to go into great detail but if any of you or
25 a member of your immediate family been THE victim of a

1 burglary or an aggravated type of assault; if so, please
2 stand?

3 All right. Again I'm not gonna ask you to give me any
4 particulars. Please stand. Okay.

5 Your name and number?

6 A. Anna Burton, Thirty-five.

7 THE COURT: All right. Would THE fact that you had
8 this experience at a prior occasion in your life would that
9 prevent you from being fair and impartial in the trial of
10 Mr. Brown?

11 MS. BURTON: I can be fair.

12 THE COURT: Okay. Thank you. Appreciate it.

13 No one else stands.

14 Are any of you or members of your immediate family
15 involved in law enforcement at any level? Anything from
16 THE sheriff's office to a city policeman to a university
17 policeman or in THE prosecution of criminal cases?
18 Anything from a solicitor, attorney general, JAG officer,
19 anything like that; if so, please stand?

20 I'll start and work my way across and what I'm gonna
21 do is ask each of you to give me your name and number and
22 then why you are standing. Like Uncle Joe's a sheriff's
23 officer for Chesterfield County or so.

24 Just tell me that and then when I get through hearing
25 all that information I'll ask all of you that question

1 about fairness.

2 Yes, sir, your name and number?

3 A. Matthew Talford, 211. I have a brother who is at the
4 Department of Corrections in California.

5 THE COURT: All right.

6 Yes, ma'am, your name and number?

7 A. Bernadine Large, 121. My husband is a retired
8 policeman.

9 THE COURT: Yes, ma'am.

10 A. Bonnie Stanton, 205. My brother in law is a sheriff
11 in Wisconsin.

12 THE COURT: All right.

13 Yes, ma'am.

14 A. Belinda Wike, 233. My brother is a Rock Hill city
15 police officer.

16 THE COURT: All right. This is county case. Correct?

17 SOLICITOR SPRINGS: Yes, sir, it is.

18 THE COURT: Okay. Yes, sir, your name and number?

19 A. James Friday, 77. My uncle is an ex Fort Mill Police
20 Department and my step brother is a

21 THE COURT: All right. Now the five of you are
22 standing, would the fact that you have some relation in law
23 enforcement if that would prevent you from being fair and
24 impartial please raise your right hand?

25 No one does. You may be seated. Thank you. I

1 appreciate your response.

2 Are any of you or members of your immediate family
3 members of; contributors to organizations such as Student's
4 Against Drunk Drivers; Mother's Against Drunk Drivers;
5 Citizens Against Violence; Sheriff's Association; Fraternal
6 Order of Police; Trooper's Association, or anything like
7 that; if so, please stand?

8 No one stands.

9 Do any of you have any religious or moral or
10 philosophical reasons that you could not be fair and
11 impartial to the State and to Mr. Brown in this particular
12 trial; if so, please stand?

13 Yes, sir, your name and number again? I know you just
14 stood.

15 A. Matthew Talford, 211. I was - I'm not sure I can give
16 a fair on issues of theft or burglary.

17 THE COURT: All right. Well I'll excuse you and if
18 you tell me you cannot be fair I will not ask you to go
19 into details. Don't leave but just be seated and you will
20 not be included in the draw. Thank you.

21 No one else stands.

22 The following are possible witnesses. I don't know
23 that all of these people will testify but their names even
24 if they don't testify their names may be mentioned so if
25 you know any of these individuals, go to church with them,

1 related to them, belong to clubs or anything like that with
2 them please stand.

3 Doctor Carol Walser -

4 I believe she's from Charlotte; is that correct?

5 MR. COOK: Yes, sir, Your Honor.

6 THE COURT: --- from Charlotte, North Carolina. Jerry
7 Parrish, Mr. Michael Mahoney, Ms. Amy Lee Mahoney, Mr.
8 Christopher Holden Calvert, Detective Tracy Strickland,
9 Deputy Crystal Beck, Sergeant Shawn Thomasson, Officer
10 Paula Neely, Ms. Tabitha Brown, Mr. Kurtis Seegers, Deputy
11 Mark Whitesides, Officer Cheryl Guzmann, Doctor Shannon
12 Hanson, Ms. Stephanie Selestino, Mr. Robert Jackson, Ms.
13 Amy Gurganus, Mr. Kevin Tolson, Doctor Richard Frierson.

14 No one stands or acknowledging that you know any of
15 those or are related to them.

16 Anything else from the State?

17 SOLICITOR SPRINGS: No, Your Honor.

18 THE COURT: Anything else from the Defense?

19 MR. COOK: Nothing, Your Honor.

20 THE COURT: All right. The strikes will be ten for
21 the Defense and five for the State. We will draw two
22 alternates. After that the State will have the right to
23 strike and when I say strike that means excuse up to one
24 individual and the Defense up to two as to each alternate.
25 We will draw two alternates.

1 The way we draw juries in this particular setting is
2 as follows: Please if your name is called and your number,
3 come forward and bring with you any personal belongings
4 that you may have and stand next to the bailiff and turn
5 around and face the table which would be to your left where
6 Mr. Springs and Mr. Jones are seated. Mr. Springs will -
7 One of them will say either present the juror or excuse the
8 juror. If you hear the words excuse the juror return to
9 your seat. If you hear the words present the juror turn
10 and face the table where Mr. Brown and Mr. Cook are seated.
11 Mr. Cook will either say excuse the juror. Again that
12 means you may return to your seat. Or swear the juror. If
13 he says swear the juror the bailiff will direct you to
14 where to sit in the jury box.

15 Please when you come forward bring with you any
16 personal belongings in case you are seated and you will not
17 have to go back and fetch them.

18 I believe I've already ask this but do any of you know
19 of any reason whatsoever why you could not or should not
20 serve as a fair and impartial juror in this case; if so,
21 please now stand?

22 No one stands.

23 All right, Madame Clerk.

24 MADAME CLERK: Number 200, Louis Shaffner.

25 (WHITE MALE COMING FORWARD.)

1 MADAME CLERK: What say you for the State?

2 SOLICITOR SPRINGS: Please present the juror.

3 MADAME CLERK: The Defense?

4 MR. COOK: Please seat the juror, Your Honor.

5 MADAME CLERK: Please have a seat in the jury box.

6 Number 89, Amanda Hall.

7 (BLACK FEMALE COMING FORWARD.)

8 MADAME CLERK: What say you for the State?

9 SOLICITOR SPRINGS: Please present the juror.

10 MADAME CLERK: Defense?

11 MR. COOK: Please seat the juror..

12 MADAME CLERK: Please have a seat in the jury box.

13 Number 25, Delores Biering-Hodge.

14 (WHITE FEMALE COMING FORWARD.)

15 MADAME CLERK: What say you for the State?

16 SOLICITOR SPRINGS: Please present the juror.

17 MADAME CLERK: Defense?

18 MR. COOK: Madame, this is Juror 25?

19 MADAME CLERK: Twenty-five.

20 MR. COOK: Please seat the juror..

21 MADAME CLERK: Please have a seat in the jury box.

22 Number 134, Michael Love.

23 (WHITE MALE COMING FORWARD.)

24 MADAME CLERK: What say you for the State?

25 SOLICITOR SPRINGS: Please excuse the juror.

1 MADAME CLERK: You've been excused from this case.

2 Number 27, Candace Boyd.

3 (BLACK FEMALE COMING FORWARD.)

4 MADAME CLERK: What say you for the State?

5 SOLICITOR SPRINGS: Please present the juror.

6 MADAME CLERK: Defense?

7 MR. COOK: Please seat the juror.

8 MADAME CLERK: Please have a seat in the jury box.

9 Number 1-0-5, Robert Holmes.

10 (WHITE MALE COMING FORWARD.)

11 MADAME CLERK: What say you for the State?

12 SOLICITOR SPRINGS: Please present the juror.

13 MADAME CLERK: Defense?

14 MR. COOK: Please excuse the juror.

15 MADAME CLERK: You've been excused from this case.

16 Number 2-0-1, Shelly Shope.

17 (WHITE FEMALE COMING FORWARD.)

18 MADAME CLERK: What say you for the State?

19 SOLICITOR SPRINGS: Please present the juror.

20 MADAME CLERK: Defense?

21 MR. COOK: Madame Clerk, I'm sorry, what number is

22 this juror?

23 MADAME CLERK: 2-0-1.

24 MR. COOK: Please seat the juror.

25 MADAME CLERK: Please have a seat in the jury box.

1 Number 2-0-8; Lucinda Sutton.

2 (WHITE FEMALE COMING FORWARD.)

3 MADAME CLERK: What say you for the State?

4 SOLICITOR SPRINGS: Please present the juror.

5 MADAME CLERK: Defense?

6 MR. COOK: Please seat the juror.

7 MADAME CLERK: Please have a seat in the jury box.

8 Number 243, Carolyn Wood.

9 (WHITE FEMALE COMING FORWARD.)

10 SOLICITOR SPRINGS: May we approach, Your Honor.

11 THE COURT: Yes.

12 (BENCH CONFERENCE OFF THE RECORD AT 10:50 A. M..)

13 MADAME CLERK: What say you for the State?

14 SOLICITOR SPRINGS: Please present the juror.

15 MADAME CLERK: Defense?

16 MR. COOK: Please strike the juror.

17 MADAME CLERK: You've been excused from this case.

18 Number 42, Eileen Casey.

19 (WHITE FEMALE COMING FORWARD.)

20 MADAME CLERK: What say you for the State?

21 SOLICITOR SPRINGS: Please present the juror.

22 MADAME CLERK: Defense?

23 MR. COOK: Please excuse the juror.

24 MADAME CLERK: You've been excused from this case.

25 Number 2, Kerri Adams.

1 (WHITE FEMALE COMING FORWARD.)

2 MADAME CLERK: What say you for the State?

3 SOLICITOR SPRINGS: Please present the juror.

4 MADAME CLERK: Defense?

5 MR. COOK: Please seat the juror.

6 MADAME CLERK: Please have a seat in the jury box.

7 Number 43, Christopher Centeno.

8 (WHITE MALE COMING FORWARD.)

9 MADAME CLERK: What say you for the State?

10 SOLICITOR SPRINGS: Please present the juror.

11 MADAME CLERK: Defense?

12 MR. COOK: Please excuse the juror.

13 MADAME CLERK: You've been excused from this case.

14 Number 68, Susie Edwards.

15 (WHITE FEMALE COMING FORWARD.)

16 MADAME CLERK: What say you for the State?

17 SOLICITOR SPRINGS: Please present the juror.

18 MADAME CLERK: Defense?

19 MR. COOK: Please seat the juror.

20 MADAME CLERK: Please have a seat in the jury box.

21 Number 233, Belenda Wike.

22 (WHITE FEMALE COMING FORWARD.)

23 MADAME CLERK: What say you for the State?

24 SOLICITOR SPRINGS: Please excuse the juror.

25 MADAME CLERK: You've been excused from this case.

1 Number 147, Erika Mejia.

2 (HISPANIC FEMALE COMING FORWARD.)

3 MADAME CLERK: What say you for the State?

4 SOLICITOR SPRINGS: Can I have the juror number again?

5 MADAME CLERK: 147.

6 SOLICITOR SPRINGS: Please present the juror.

7 MADAME CLERK: Defense?

8 MR. COOK: Please seat the juror, Your Honor.

9 MADAME CLERK: Please have a seat in the jury box.

10 Number 188, Tiffany Robbins.

11 (BLACK FEMALE COMING FORWARD.)

12 MADAME CLERK: What say you for the State?

13 SOLICITOR SPRINGS: Please excuse the juror.

14 MADAME CLERK: You've been excused from this case.

15 Number 36, Brandi Caminiti.

16 (WHITE FEMALE COMING FORWARD.)

17 MADAME CLERK: What say you for the State?

18 SOLICITOR SPRINGS: Please present the juror.

19 MADAME CLERK: Defense?

20 MR. COOK: I'm sorry, Madame Clerk, what number is
21 this?

22 MADAME CLERK: 36.

23 MR. COOK: 36. Please seat the juror.

24 MADAME CLERK: Please have a seat in the jury box.

25 Number 116, Jordanie Kimbrell.

1 (WHITE FEMALE COMING FORWARD.)

2 MADAME CLERK: What say you for the State?

3 SOLICITOR SPRINGS: Please seat the juror.

4 MADAME CLERK: Defense?

5 MR. COOK: Please seat the juror.

6 MADAME CLERK: Please have a seat in the jury box.

7 Number 35, Anna Burton.

8 (WHITE FEMALE COMING FORWARD.)

9 MADAME CLERK: What say you for the State?

10 SOLICITOR SPRINGS: Please present the juror.

11 MADAME CLERK: Defense?

12 MR. COOK: Please excuse the juror.

13 MADAME CLERK: You've been excused from this case.

14 Number 77, James Friday.

15 (WHITE MALE COMING FORWARD.)

16 MADAME CLERK: What say you for the State?

17 SOLICITOR SPRINGS: Please present the juror.

18 MADAME CLERK: Defense?

19 MR. COOK: Please excuse the juror.

20 MADAME CLERK: You've been excused from this case.

21 Number 157, Kelly Motley.

22 (WHITE FEMALE COMING FORWARD.)

23 MADAME CLERK: What say you for the State?

24 SOLICITOR SPRINGS: Please present the juror.

25 MADAME CLERK: Defense?

1 MR. COOK: Please seat the juror.

2 MADAME CLERK: Please have a seat in the jury box.

3 THE COURT: All right, we'll draw two alternates.

4 MADAME CLERK: Number 73, Edward Feeley.

5 (WHITE MALE COMING FORWARD.)

6 MADAME CLERK: What say you for the State?

7 SOLICITOR SPRINGS: Please present the juror.

8 MADAME CLERK: Defense?

9 MR. COOK: Please excuse the juror.

10 MADAME CLERK: You've been excused from this case.

11 Number 20, Daniel Beasley.

12 (WHITE MALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 SOLICITOR SPRINGS: Please present the juror.

15 MADAME CLERK: Defense?

16 MR. COOK: Please seat the alternate.

17 MADAME CLERK: Please have a seat in the jury box.

18 Number 67, Sharon Earle.

19 (WHITE FEMALE COMING FORWARD.)

20 MADAME CLERK: What say you for the State?

21 SOLICITOR SPRINGS: Please present the juror.

22 MADAME CLERK: Defense?

23 MR. COOK: Please seat the alternate.

24 MADAME CLERK: Please have a seat in the jury box.

25 THE COURT: Anything from the State involving the

1 striking of the panel?

2 SOLICITOR SPRINGS: No, Judge Hayes.

3 THE COURT: Anything from the Defense?

4 MR. COOK: Nothing, Your Honor.

5 THE COURT: For those of you who are not chosen I'm
6 gonna allow you to leave. Please call back at one o'clock
7 to receive whatever your instructions are regarding what to
8 do next. It may be to call back at a certain time or it
9 may even be to report back at a certain time. Please make
10 sure you follow those instructions. I'm going to ask you
11 to leave quietly so I can start talking to the jurors who
12 are seated. Thank you so much.

13 (JURY DISMISSED AT 11:08.)

14 THE COURT: Those of you who are chosen I'm going to
15 ask you to stand at this time and the Clerk's gonna
16 administer the oath. And when you get ready to sit down
17 I'm gonna ask everybody on the front, the first five ladies
18 to move to their left and I'm gonna ask Ms. Hall to move to
19 the forelady's seat after you are sworn in.

20 MADAME CLERK: Please raise your right hand.

21 (WHEREUPON: PETIT JURY SWORN
22 IN AT 11:09 A. M..)

23 THE COURT: Now make that change in seating.

24 (JURORS COMPLIED.)

25 THE COURT: And the only assigned seating is for the

1 Forelady and the two alternates. There is no other
2 assigned seating so when you come in just wherever you
3 happen to be in the line coming in just take the first
4 available seat.

5 I'm gonna chat with you just for a few minutes before
6 I turn the case over to the attorneys. In a few minutes
7 the attorneys have the right to stand before you and make
8 what are called opening statements. At that time they are
9 not arguing their position; they are not testifying because
10 they are not witnesses. What they are doing is outlining
11 or blue printing the trial for you. Telling you a little
12 bit more about what this case involves than I have.

13 At a later point in the trial they have the right to
14 come before you and after hearing the evidence and argue
15 why your verdict should be a certain verdict based on the
16 evidence and the charge of the law which I will give you.

17 To each of these charges Mr. Brown has entered pleas
18 of not guilty. This places on the State the burden of
19 proving his guilt beyond a reasonable doubt. Mr. Brown
20 like anyone charged with any offense in our system is
21 presumed innocent of this set of charges and need not prove
22 his innocence. Like I say the State however must prove his
23 guilt beyond a reasonable doubt.

24 I have three primary jobs. One is I am the logistics
25 person. I make sure we take breaks, I make sure people are

1 seated in the right place and only one person talks at the
2 time; the progress of the trial. My second job is that I
3 rule on questions of evidentiary matters. That is, if one
4 side believes certain evidence should be allowed in the
5 record for your consideration in this trial, and the other
6 based on some legal reason or rule of evidence believes it
7 should not be allowed into evidence, it's up to me to make
8 a determination as to whether that evidence is presentable
9 to the jury or not.

10 My third job is that I am the sole judge of the law.
11 I am giving you some legal principles now. During the
12 trial perhaps I will give you some legal principles and at
13 the end of the trial I will give you a concise
14 comprehensive charge on the law that you are to apply to
15 the facts as you determine them to be.

16 You are not to infer from anything I say or do as
17 being an opinion of mine of the facts. That is solely up
18 to the jury. I am the judge of the law and you must take
19 and accept the law as I charge it even if you think I
20 charge the law in error or even if you think the law should
21 be different. Your oath requires you to apply the law as I
22 charge it.

23 As I said you are not to infer from anything I say or
24 do during the trial as indicating an opinion of mine on the
25 facts as our law does not allow a trial judge to invade

1 your providence and express or even formulate any opinion
2 about the facts. It is solely up to you as the trial jury
3 in this case to examine the evidence and to give to the
4 evidence the effect, the value, the weight and the truth
5 you believe it should have. In doing this you may believe
6 one witness as opposed to several; several witnesses' as
7 opposed to one, you may believe all, part, or none of a
8 witnesses' testimony. Use your common sense, your sense of
9 logic, your sense of reason and use your experiences in
10 life as you analyze the evidence.

11 As judges of the facts you necessarily must judge the
12 credibility, that is, the believability of the witnesses's
13 who testify. In accessing credibility, believability, use
14 the things I just talked about. Use the things that you
15 find in your day to day life as being indicators of
16 truthfulness. And you can use certain evaluators. How a
17 witness acts on the stand. Are they hesitant and
18 straightforward? Is their testimony consistent or
19 inconsistent? Do they have any bias or prejudice; any
20 reason to help or hurt one side or the other? And you can
21 consider the opportunity a witness had to know those things
22 about which the witness testified.

23 All these things you consider, determine the true
24 facts, apply the law, and your verdict will speak the
25 truth.

1 You are not to make up your own mind or even discuss
2 the case among yourselves until I instruct you to jointly
3 deliberate and return a unanimous verdict. Prior to that
4 time you don't have all the tools you need make a fair and
5 reasonable decision so don't try to make up your mind or
6 discuss the case until we reached the point where I
7 instruct you to do so.

8 Do not let anyone discuss this case with you outside
9 the courtroom. If anyone tries to discuss the case with
10 you tell them you cannot as you are a seated juror. And
11 report back to me if anyone tries to discuss this case with
12 you hopefully identifying that person so I can take action
13 against anyone who tries to talk to a seated juror.

14 Do not let yourselves be exposed to any news coverage
15 if there is anything, any news coverage. Don't watch
16 anything, listen to anything or read anything that could
17 remotely deal with this trial. Your verdict must be based
18 on the law and the evidence as it's developed in this
19 trial.

20 Along those same lines we now have access to the world
21 through Google and Cloud and all the other electronic
22 means. Do not use any electronic means to access or use
23 any other means. Not only electronic means to access any
24 information relating to this trial. Don't go on line to
25 find out anything about the charges, about Mr. Brown, about

1 his counsel or about the Solicitor or about me, about rules
2 of court, about evidence. Don't do anything as far as
3 independent research regarding this case. That would be
4 improper and it would cause us to have some problems with
5 the trial so do not do that.

6 Do not - and this may sound simplistic but it's not
7 when you think about it - Do not go on Facebook or any of
8 these other social media and say I'm serving on a jury.
9 The reason I admonish you not to do that is you may get
10 something back from one of your friends or someone saying
11 something that could be adverse to your serving as a juror.
12 So just while you're on this trial just don't be
13 communicating with people about your activities and of
14 course don't do anything regarding learning anything about
15 this trial.

16 There is no reason I can think of that any of you
17 would have to go where this event allegedly occurred on
18 Osteen Road so avoid that area. The reason I say that is I
19 don't know how much the evidence will relate to that
20 premises but it happened a year ago and things change. So
21 the way the place looks today although it may be similar;
22 it may not, so you don't need to go to check out the scene.

23 Madame Forelady, you will be the liaison between the
24 jury and myself. You will preside over the jury's
25 deliberations and ultimately sign the jury's unanimous

1 verdict. You don't need to take notes. Please listen
2 attentively. We take breaks about every hour and a half.
3 I find that that is a good time to take breaks. However,
4 if you need a break at any time, just raise your right hand
5 and with no questions ask we'll take a break. It's hard to
6 pay attention if you're not comfortable and so if you need
7 a break just raise your hand and with no questions ask
8 we'll take a break.

9 And I extend that to counsel and Mr. Brown also.

10 We would like to move the case along at a good pace
11 but we're not in a hurry. That is, if you need a break let
12 me know and we'll take a break.

13 Now at this time I'll call on Mr. Springs.

14 SOLICITOR SPRINGS: Can we take one of those breaks?

15 THE COURT: Yeah we'll take one of those breaks right
16 now. I'm gonna let you go to the jury room and get
17 familiar with the jury room and the bailiff will show you
18 where to go as you are serving on the jury.

19 (JURY EXITS COURTROOM AT 11:17 A.M..)

20 THE COURT: We'll take a break until 11:30.

21 (COURT IN RECESS AT 11:17 A.M..)

22 (COURT BACK IN SESSION AT 11:38 A. M..)

23 THE COURT: Thank you. You may take your seats.

24 Is the State ready?

25 SOLICITOR SPRINGS: Yes, sir.

OPENING STATEMENT: BY SOLICITOR SPRINGS

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1 THE COURT: Is the Defense ready? Mr. Cook, you
2 ready?

3 MR. COOK: Yes, sir, Your Honor.

4 THE COURT: Bring in the jury.

5 (JURY REENTERS COURTROOM AT 11:39 A.M..)

6 THE COURT: All right. Mr. Springs.

7 SOLICITOR SPRINGS: Thank you. May it please the
8 Court.

9 Ladies and gentlemen of the jury, Madame Forelady, my
10 name is E.B. Springs, I am the prosecutor in this burglary
11 and attempted murder case. The charges are attempted
12 murder, and I think you all understand that term, and
13 burglary. Let me define burglary first though because so
14 many people think a burglary is when some guy wearing a
15 mask breaks into a house or a building at night to steal
16 stuff. That's a burglary. That is a burglary but there
17 are other kinds of burglaries.

18 If somebody goes into a house or a building without
19 permission to commit a crime inside the house or the
20 building, that's a burglary. For instance if somebody
21 broke into a lady's house in the middle of the night and
22 went in her bedroom and raped her, it's not just a rape
23 case, it's a burglary case. You see how it works? You've
24 broken into a house, you come into the house. Even if she
25 forgot to lock her door. You don't have to break in a

OPENING STATEMENT: BY SOLICITOR SPRINGS

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1 window or kick the door in. You come into somebody's house
2 without their permission even if the door is unlocked and
3 you just throw it open and run in without breaking it the
4 way Mr. Brown did in this case, you come in without
5 permission, if you come in intending to commit a crime as
6 he did in this case intending to kill somebody, assault
7 somebody, that's a burglary.

8 It's a first - Burglary comes in degrees, first,
9 second and third, and this is first degree burglary because
10 he was armed with a machete. He hurt somebody severely
11 inside of the house and it was at night time so it's a
12 first degree burglary. Here's what happened.

13 Hubert Floyd Brown, the defendant dressed in a white
14 shirt, back last year actually going back right at the end
15 of 2011 getting into the first part of 2012 he used to work
16 at a place called Rock Hill Pipe and Fabrication. They
17 work with pipe. He knew and worked with a guy named Mike
18 Mahoney. He's sitting right out here.

19 (SOLICITOR INDICATED TO VICTIM IN COURT GALLEY.)

20 SOLICITOR SPRINGS: He's got sort of a checkered shirt
21 on. Mike and his wife Amy sitting there next to him, and
22 Chris Calvert, who is sitting here, they lived at a house
23 there on Osteen Road. I think the number was [REDACTED]
24 [REDACTED]. Mike and Amy owe the house and they had two borders.
25 Chris Calvert and another man had a room in the house his

OPENING STATEMENT: BY SOLICITOR SPRINGS

-45-

1 name was Billy Odom. Billy Odom was older than they are
2 and since this happened he died. He died of natural
3 causes, cancer. So the four of them lived at 99 [REDACTED]
4 [REDACTED] which is in York County.

5 Mike Mahoney worked at Rock Hill Pipe and knew the
6 defendant when he worked there. The defendant got laid
7 off. He got laid off about six months before this incident
8 happened. And this case, this incident, this attempted
9 murder and this burglary happened the night of June 8th of
10 2012, last year. This case is a little over a year old. So
11 Mike Mahoney worked at Rock Hill Pipe and had been working
12 there for some years. The Defendant was working there and
13 the defendant got laid off. He got laid off around 1st of
14 2012, maybe the end of 2011. And he took it hard. He took
15 it real hard getting laid off.

16 Mike Mahoney tried to help the defendant. He was
17 unemployed looking for a job and Mike Mahoney gave him some
18 odd jobs. One of them was to help him build a fence, one
19 of those picket fences you see down at Lowe's and Home
20 Depot, helped him put a fence around his yard and Mike
21 wanted to get a chicken coop built. He lives - Their house
22 I understand is out in the country. So he was paying the
23 defendant, Mr. Brown, who's nickname is Bubba, he was
24 called Bubba occasionally. His name is Hubert Floyd Brown,
25 Junior. We will call him Hubert Brown and occasionally

OPENING STATEMENT: BY SOLICITOR SPRINGS

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1 somebody will refer to him by his nickname Bubba. Mike was
2 giving him odd jobs to do.

3 Months before this happened June 8th Chris Calvert
4 came to work at Rock Hill Pipe and he started boarding a
5 room or whatever at the Mahoney's house and he started
6 hanging around with Mike as a friend. And Mike wasn't as
7 friendly, he was still hiring Mr. Brown to do some odd jobs
8 but he wasn't socializing with him as much. They wanted to
9 go grab a beer or something to eat he would get Chris.

10 The evening - Let's go back to the beginning of
11 January 8th last year. That's a Friday. Mike Mahoney and
12 Chris Calvert were working at Rock Hill Pipe. They get
13 off, their shift ends before lunch time that day. They
14 get off work they come home and that evening they decide to
15 go to Hooter's. And they do go to Hooter's. They go up to
16 Hooter's to get wings or oysters or whatever, drink some
17 beer. They did whatever they do at Hooter's. They go up
18 to Hooter's and the Defendant starts calling Michael
19 Mahoney on his cell phone. Says he wants to meet up with
20 him.

21 Mike Mahoney says I'm up at Hooter's with Chris, come
22 on up I'll buy you a beer. The Defendant said no, no. And
23 Mike says we're going home soon when we get home you come
24 by the house. The Defendant says okay. Evidently the
25 Defendant was mad. Had a real mad call and was really

OPENING STATEMENT: BY SOLICITOR SPRINGS

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1 stewing over the fact he had lost his job and Mike Mahoney
2 still had his job. Was stewing over the fact that Mike
3 Mahoney was giving him work helping him out to give him
4 charity, giving him odd jobs and hurting his pride and Mike
5 had a new friend named Chris and wasn't socializing with
6 Bubba as much as he used to. And the Defendant had a mad
7 call and he wanted to go see Mike Mahoney.

8 So Mike and Chris are up at Hooter's and they come on
9 home and ask they get home they arrive back home a little
10 bit after ten, say about 10:15 and it's dark out. They get
11 out of Mike's truck and Chris can't find his cell phone.
12 The dome light in Mike's truck is burned out and they get a
13 couple of flash lights and they start trying to find
14 Chris's cell phone.

15 About that time the Defendant drives up and he's got
16 his wife and a couple of his kids in the car. And he gets
17 out of the car and he goes up to Mike Mahoney and he says
18 "I want to talk to you." Mike says "yes." And he says
19 "let's step around here". He takes Mike around the corner
20 of the house and he gets up in Mike's face, literally in
21 his face, and just goes off on him. "You got a job, I
22 don't have a job." Mike will tell you what he said.

23 Just mad as he can be. He's nose to nose with Mike
24 Mahoney and Mike Mahoney pushes him back out of his face.
25 Get off me. And Brown pops ---

OPENING STATEMENT: BY SOLICITOR SPRINGS

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1 (SOLICITOR SPRINGS HIT FIST TOGETHER.)

2 SOLICITOR SPRINGS: --- him in the face, punches
3 Mahoney in the face. Mahoney grabs Brown and they go to
4 the ground. In the meantime Chris Calvert is back around
5 at the truck and he's heard Mahoney go "Oh" and knows there
6 is something going on. Chris Calvert picks up a gear shift
7 rod. Somebody was working on a truck or a car and there
8 was a gear shift rod that goes down and screws into the
9 transmission, a rod about this long.

10 (SOLICITOR DEMONSTRATED.)

11 SOLICITOR SPRINGS: He grabs it and runs over to where
12 Mike Mahoney and Brown are fighting. And Chris runs up and
13 he pops Brown in the head and cuts his head wide open, big
14 gash in the side of his head and he stops the fight.

15 And Brown gets up and he's dazed and he gets his head
16 clear. Mike tells him to leave. "You're hurt, you're
17 bleeding, I can see your head is split wide open. Go get
18 in the car and leave. Go to the hospital."

19 Well he gets back to his car all right and he gets a
20 hatchet out of the back of his car and he starts chasing
21 Chris Calvert telling him he's gonna kill him. And he tells
22 Mike Mahoney "when I get through with him I'm gonna get you
23 too." Well Chris Calvert is a little wiry guy. He's much
24 faster than the Defendant and the Defendant can't catch him
25 and he gets madder and more frustrated and throws the

OPENING STATEMENT: BY SOLICITOR SPRINGS

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1 hatchet down. Tells him once again "I'm gonna getcha and
2 I'm gonna kill yaw." He gets his hatchet and he goes back
3 to the car and he comes out with a machete. You know what
4 those are. The big knife that looks like a big sword. And
5 he starts chasing Calvert again. And they go around the
6 yard and Calvert must a looked like some cartoon. Runs in
7 the front door of the Mahoney's house where Calvert also
8 lived. Runs in the front door with Brown chasing him and
9 he runs around the house one time out the back door where
10 Brown swings and puts a chop mark in the hand railing of
11 the steps going back to the back of the house and still
12 can't catch Calvert.

13 The man goes back to his car and gets in his car and
14 drives up the driveway. Again the Mahoney's live out in
15 the country, a long driveway, and they see the car leave.
16 So Mike and Chris they go in the house. And they go back
17 to the bathroom and Mike's ruffed up and he's got blood on
18 him and he's washing the blood. His wife Amy had seen some
19 of this and she's all upset to what she had seen including
20 people running through the house, Brown trying to catch and
21 kill Calvert, she's all upset and she calls 911. She's
22 almost hysterical.

23 She's on the phone talking to 911. Brown, his car has
24 stopped at the end of the driveway. Everybody now at the
25 Mahoney's is in the house. They don't know he's stopped at

OPENING STATEMENT: BY SOLICITOR SPRINGS

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1 the end of the driveway. He's got his machete back out and
2 he runs back to the house. He runs back to the house. Ms.
3 Mahoney is on 911 all upset because of the fight that had
4 taken place. Mike and Chris are back in the bathroom and
5 the door comes open and Brown comes charging in with his
6 machete. Amy's on 911 "oh, he's got a machete." He runs
7 through the house, Calvert is at the door of the bathroom
8 looks out and here comes a machete at his head. He throws
9 up his hand to block it, he saves his life, but the machete
10 doesn't cleave his head into and it lops off his thumb.

11 The blood starts going everywhere. Brown then runs
12 out of the house, runs back to his car. And when he gets
13 out to the end of the driveway, its night time, and out at
14 the end of the driveway where the car is parked they're
15 holes all over the place from where post or rocks had been
16 pulled out and he steps in one and breaks his ankle.

17 He gets in his car and he goes home. The police come.
18 And this isn't a who done it. In fact they know who their
19 suspect is. A detective is called, Strickland here, and
20 they start taking pictures and somebody goes out to Brown's
21 house. The deputies go out to Brown's house and they see
22 him, he's just showered, he's got a big ole gash in his
23 head and the Deputy says "you need an ambulance." They
24 call an ambulance for him. And they take some pictures
25 including the pictures of his car and the back of his car

OPENING STATEMENT: BY SOLICITOR SPRINGS
BY MR. COOK

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1 where the weapons had been took out, which are gone now.
2 The machete was never recovered. The hatchet was never
3 recovered. He goes to the hospital does, Brown does, gets
4 out the next afternoon about three and by that time the
5 Detective wants him.

6 So he gets arrested and he gets charged with going in
7 that house without permission to commit a crime. That's
8 the burglary. You will have absolutely no problem with
9 that. You will have no problem at all with the attempted
10 murder after you hear how he swung that machete down toward
11 the center of this guy's head.

12 If you will just be good umpires and hear the facts
13 and like a good umpire call it like you see it and you're
14 not gonna have any problem with this case. It will last a
15 couple of days. And we thank you.

16 THE COURT: Mr. Cook.

17 MR. COOK: May it please the Court, Your Honor.

18 Ladies and gentlemen of the jury, I'm Dave Cook and I
19 am the attorney for Mr. Brown.

20 I'm not gonna have a long opening argument and I'm
21 gonna reserve a lot of what I have to say for my closing
22 arguments. I would just simply say that I think you're
23 gonna have a lot harder time with the case than the
24 Solicitor would lead you to believe. My client has pled
25 not guilty, that's why we're here today.

OPENING STATEMENT: BY MR. COOK

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1 And so I just want to talk about a few ground rules
2 briefly. The first I want to say is my client and myself
3 and the Solicitor as well definitely appreciate your time
4 here as jurors. And I'm not gonna get too long winded but
5 I would like to quote Winston Churchill who just simply
6 said "Other than actively serving your country during a
7 time of war." Serving as a juror is the most important
8 duty that you could pay to your country and it's what
9 separates us from communist Stalinist Russia where you are
10 tried and convicted right when you are arrested. And the
11 American court system has constitutional rights provided to
12 everyone and one of those is a trial by your peers.

13 And so you all are here we definitely want you to pay
14 close attention to all of the evidence. And more
15 importantly you're gonna get in my opinion some conflicting
16 testimony. And so look to see which witness you believe is
17 telling the truth. And it's the same type process that you
18 use in everyday life. If some of you are parents you know
19 when you're children are lying to you and so I would ask
20 for you all to be simply attentive and pay close attention.
21 This man is claiming to be not guilty and he's here for a
22 reason today.

23 Some of the quick concepts I want to touch base with
24 you on are the idea of innocent until proven guilty. And
25 unfortunately in America with our school systems out of the

OPENING STATEMENT: BY MR. COOK

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1 sand box you're actually proven guilty, you're guilty until
2 you can prove yourself innocent. Somebody says a rumor
3 against you in the hallways of the school everybody believe
4 it unfortunately. Until you can go and have to actively
5 clear your name.

6 Well fortunately our court system is not like that.
7 This man sitting right here today before you is an innocent
8 man. And he's innocent and throughout the entire trial
9 until you hear all of the evidence. Not just the State's
10 eloquent opposing argument, closing arguments, testimony,
11 perhaps some expert witnesses; there is a lot of stuff that
12 you take in in this case so let's not try it right here at
13 the very beginning. So he's innocent until proven guilty
14 and he won't be proven guilty unless you after you
15 deliberate in the jury room render a verdict to that
16 effect.

17 Next which is tied into innocent until proven guilty
18 doctrine is the idea from the Constitution that you have to
19 find beyond a reasonable doubt as the standard that you use
20 in this case and I want to talk about that real briefly.

21 This is a criminal trial and not a civil trial and
22 sometimes attorneys use the difference to instruct the
23 jury. If it were a civil trial the standard of proof then
24 the claimant would have to use to meet would be a
25 preponderance of the evidence and that's defined as fifty-

OPENING STATEMENT: BY MR. COOK

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1 one percent of the evidence if you think is in one way or
2 another, you know, that some attorneys would use the scales
3 of justice analogy and you have the scales here and if they
4 tip ever so slightly in one direction then you're supposed
5 to find for that side.

6 In a criminal trial its entirely different.
7 Somebody's liberties is at stake and so the standard is
8 much much higher. By the *Constitution* its beyond a
9 reasonable doubt. And what that means and I'll go into
10 more detail in my closing arguments again but I'd like to
11 just touch on it here. It is very important and it's a
12 very ambiguous term for lawyers and for law students so
13 that the Supreme Court has weighed in on a definition to
14 help instruct jurors about what beyond a reasonable doubt
15 means.

16 And they simply say, that is the South Carolina
17 Supreme Court, they simply say that after hearing all of
18 the evidence, that a reasonable juror, and I can assure you
19 that both the Solicitor and myself find you reasonable;
20 that's why we chose you today, but a reasonable juror if
21 after hearing all of the evidence if they hesitate to
22 convict then the State hasn't met their burden beyond a
23 reasonable doubt. So it's hinged on hesitation. Perhaps
24 the Judge will read those in his charges to you. Of course
25 whatever the Judge says is the law.

(WHEREUPON: MARK WHITESIDES,
BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DEPUTY MARK WHITESIDES: BY SOLICITOR JONES

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1 MADAME CLERK: Thank you. You can have a seat.

2 DIRECT EXAMINATION

3 DEPUTY MARK WHITESIDES BY SOLICITOR JONES:

4 Q. Officer, could you please tell us your name?

5 A. Mark Whitesides.

6 Q. Mark Whitesides. And where do you currently work?

7 A. York County Sheriff's Office.

8 Q. And how long have you worked at the sheriff's office?

9 A. Thirteen years this month.

10 Q. And do you have any prior law enforcement experience?

11 A. Just sixteen months at a different sheriff's office
12 prior to coming here.

13 Q. And what's your current rank?

14 A. Deputy II.

15 Q. Deputy II. And were you on duty and patrol the night
16 of June 8th of 2012?

17 A. Yes, I was.

18 Q. And were you dispatched to [REDACTED] [REDACTED] [REDACTED]?

19 A. Yes, I was.

20 Q. And is that road located in York County?

21 A. It is.

22 Q. When you got called out to Osteen Road, was it a low
23 or a high priority call?

24 A. It was a high priority.

25 Q. Can you explain to the jury what a high priority call

DEPUTY MARK WHITESIDES: BY SOLICITOR JONES

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1 is?

2 A. It is an assault with a subject armed with a deadly
3 weapon.

4 Q. Can you explain to the jury where about Osteen Road
5 is? Are there any major highways or roads near it?

6 A. York Highway, Highway 5 intersects.

7 Q. And do you remember about what time you were sent to

8 [REDACTED]

9 A. Approximately 10:30 that evening.

10 Q. So was it dark at night?

11 A. Yes.

12 Q. And when you arrived, did you find anyone injured?

13 A. I did after going inside the residence.

14 Q. And can you describe that injury?

15 A. It was - Mr. Calvert was standing there with his hand
16 in the freezer in the kitchen and his thumb was dangling by
17 just muscle and skin.

18 Q. Was it bleeding?

19 A. Yes. Profusely.

20 Q. And did an ambulance come and take Mr. Calvert away?

21 A. Yes. I called for EMS to come in.

22 Q. Were you able to learn where Mr. Calvert lived?

23 A. Yes.

24 Q. And where was that?

25 A. [REDACTED]

DEPUTY MARK WHITESIDES: BY SOLICITOR JONES

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1 Q. In your experience as a law enforcement officer, have
2 you ever seen a gun shot wound?

3 A. Yes, sir, I have.

4 Q. And have you ever seen someone wounded by a knife or a
5 blade?

6 A. Yes, I have.

7 Q. And from that experience, what type of injury did Mr.
8 Calvert have?

9 A. It appeared to be caused by a large, heavy bladed
10 object.

11 Q. And did you call forensics to come and take pictures
12 of the scene?

13 A. Yes, I did. I called the on-call detective and
14 forensics.

15 Q. I'm sorry. You said you called the detective division
16 as well?

17 A. Yes. On-call detective and forensics.

18 Q. And were you able to talk to people at the scene?

19 A. Yes, I was.

20 Q. And after that preliminary investigation - Where did
21 you do that preliminary investigation - I'm sorry?

22 A. There at the residence at [REDACTED].

23 Q. And was that inside the house and around the yard?

24 A. Yes.

25 Q. And after talking to witnesses and the initial

DEPUTY MARK WHITESIDES: BY SOLICITOR JONES
BY MR. COOK

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1 investigation, were you able to develop a suspect?

2 A. Yes, I was.

3 Q. And can you tell us who that was?

4 A. Mr. Brown, the defendant.

5 Q. And after that investigation, did you write a report
6 for the detective?

7 A. I did.

8 SOLICITOR JONES: No further questions, Your Honor.

9 THE COURT: Mr. Cook?

10 MR. COOK: May it please the court.

11 CROSS EXAMINATION

12 DEPUTY MARK WHITESIDES BY MR. COOK:

13 Q. Good morning, Detective Whitesides.

14 A. Good morning.

15 Q. In your investigation, sir, you say you spoke with
16 Mike Mahoney; is that correct?

17 A. That's correct.

18 Q. And you said you also spoke with Chris Calvert?

19 A. Yes.

20 Q. Did you happen to speak with Amy Mahoney?

21 A. Yes, I did.

22 Q. All right. And again, could you just relate to me
23 briefly a whole narrative of the events?

24 A. I would have to see the narrative I wrote because it's
25 been over a year ago.

DEPUTY MARK WHITESIDES: BY MR. COOK

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1 Q. I'm sorry?

2 A. This has been over a year so if I could refresh my
3 memory.

4 Q. Sure, if you need to look at your incident report.

5 A. Okay.

6 MR. COOK: If I may approach, Your Honor.

7 Q. This one you wrote; is that correct, sir?

8 A. That's correct.

9 Q. And then if you could flip that page, there is another
10 incident report there. Did you generate that incident
11 report?

12 A. No, sir.

13 Q. Okay. I'll just give you a minute to read over that
14 real quickly.

15 (PAUSE.)

16 Q. I guess my main question is, did any of the people I
17 just mentioned, Mike Mahoney, Amy Mahoney or Chris Calvert,
18 mention to you about this initial run through the house?

19 SOLICITOR SPRINGS: I'm going to object to the
20 hearsay.

21 THE COURT: I sustain the objection.

22 Q. I notice in your report that you put that Brown only
23 entered the house one time; is that correct?

24 A. That was what I was advised. Yes.

25 Q. All right.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 MR. COOK: No further questions, Your Honor.

2 SOLICITOR JONES: Nothing from the State, Your Honor.

3 THE COURT: You can step down and be excused. We
4 appreciate your time. Thank you.

5 (WITNESS LEAVING WITNESS STAND.)

6 THE COURT: Call your next witness.

7 SOLICITOR SPRINGS: We call Michael Mahoney.

8 Come on up, Mr. Mahoney. Come up here to the clerk
9 put your left hand on the Holy Bible and raise your right.

10 (WHEREUPON: MICHAEL MAHONEY,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 MADAME CLERK: Thank you. You may have a seat right
13 there.

14 DIRECT EXAMINATION

15 MICHAEL SHAWN MAHONEY BY SOLICITOR SPRINGS:

16 Q. I'm going to ask you to sort of speak towards that
17 microphone and keep your voice up nice and loud. Some of
18 us are getting some age on us and can't hear very well.

19 Tell us your name.

20 A. Michael Shawn Mahoney.

21 Q. And what is your address? Where do you live?

22 A. [REDACTED].

23 Q. And what's your wife's name?

24 A. Amy Mahoney.

25 Q. Okay. I'm going to start asking you in a minute about

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 things that happened the night of June 8th of last year.
2 Before I do, let me know who all resided, lived at, your
3 house at 997 Osteen last year on June 8th. Who were the
4 people living there?

5 A. It would be me, my wife, Amy Mahoney; Chris Calvert
6 and Billy Odom.

7 Q. Okay. And Mr. Odom, has he passed away since?

8 A. Yes, sir.

9 Q. Okay. Whereabouts, Mr. Mahoney, were you working -
10 Let me ask you. Where do you work now?

11 A. Rock Hill Industrial Pipe and Fabrication.

12 Q. How long have you worked there?

13 A. Almost four years now.

14 Q. Okay. And back on June 8th of last year, Chris
15 Calvert who lived at your house, where was he employed?

16 A. Rock Hill Industrial Pipe and Fabrication.

17 Q. Do you know a man named Hubert Floyd Brown, Junior,
18 who has the nickname Bubba?

19 A. Yes, sir.

20 Q. Do you see him in this room?

21 A. Yes, sir.

22 Q. Would you point him out to the jury.

23 (WITNESS INDICATED.)

24 SOLICITOR SPRINGS: Let the record show he is pointing
25 to our defendant, Hubert Floyd Brown, Junior.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Is that his nickname, Bubba?

2 A. Yes, sir.

3 Q. Now, did the defendant ever work at Rock Hill Pipe?

4 A. Yes, sir.

5 Q. And how did his employment end there? When did it end
6 and how did it end?

7 A. About six months prior.

8 Q. Was he laid off?

9 A. As far as I know he was.

10 Q. And did you keep in contact with him after he was laid
11 off from Rock Hill Pipe?

12 A. Yes, sir. He was considered a good friend.

13 Q. Okay. All right. And once he became unemployed, did
14 you try to help him out financially in any way?

15 A. Yes, sir. I tried to keep him busy around my house if
16 I could.

17 Q. Okay. What kind of jobs or work - Were you paying him
18 for work around your house?

19 A. Yes, sir.

20 Q. And what kind of work did you ask him to do that you
21 paid him some money for?

22 A. Some of the specific ones were the chicken coop and
23 working on the private fence.

24 Q. Okay. A privacy fence?

25 A. Yes, sir.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. And when you paid him, did you pay him at the end of
2 the day, the end of the week? How did you pay him?

3 A. I tried to pay him each day.

4 Q. Okay. And as of June 8th of last year, had he already
5 done some work for you?

6 A. Yes, sir.

7 Q. Were you paid up with him? Had you paid him for what
8 he had done?

9 A. Yes, sir.

10 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE PREMARKED FOR
11 IDENTIFICATION.)

12 Q. And, Mr. Mahoney, I'm showing you this big picture
13 that's been marked as State's Exhibit One for
14 identification. Have you looked at that before?

15 A. Yes, sir.

16 Q. And do you recognize that?

17 A. Yes. That's my home.

18 Q. That's an Arial photo of your house?

19 A. Yes, sir.

20 Q. Okay. All right. Is it fairly accurate picture, I
21 know it's a little fuzzy, but is it a fairly accurate
22 picture of your house looking down on it?

23 A. Fairly accurate.

24 SOLICITOR SPRINGS: Your Honor, we do offer State's
25 Exhibit One into evidence.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 THE COURT: Any objection?

2 MR. COOK: No objection, Your Honor.

3 THE COURT: In without objection.

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

6 BY SOLICITOR SPRINGS:

7 Q. We'll come back to that in a minute.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO THROUGH FIVE
9 PREMARKED FOR IDENTIFICATION.)

10 Q. Now, Mr. Mahoney, let's look at some pictures. First
11 of all, this one is marked State's Exhibit Two. Do you
12 recognize what that shows?

13 A. My new privacy fence.

14 Q. Okay. Is that an accurate picture of the fence in
15 your yard as it looked back on June 8th last year?

16 A. Yeah. Exactly as this.

17 SOLICITOR SPRINGS: All right. Your Honor, we do
18 offer State's Exhibit Two into evidence.

19 MR. COOK: Without objection.

20 THE COURT: In without objection.

21 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO, IDENTIFIED
22 AND MARKED, RECEIVED INTO EVIDENCE.)

23 BY SOLICITOR SPRINGS:

24 Q. And State's Exhibit Three and Five, do you recognize
25 what is shown in those pictures?

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 A. My vehicle, the house, the fence in the background.

2 Q. Okay. Are State's Exhibit Three and Five fair and
3 accurate pictures of what that part of your yard looked
4 like last June 8th at night?

5 A. Yes, sir.

6 Q. Okay.

7 SOLICITOR SPRINGS: Your Honor, we do offer State's
8 Exhibit Three and Five into evidence.

9 MR. COOK: Without objection, Your Honor.

10 THE COURT: In without objection.

11 (WHEREUPON: STATE'S EXHIBIT THREE AND FIVE IDENTIFIED
12 AND MARKED, RECEIVED INTO EVIDENCE.)

13 BY SOLICITOR SPRINGS:

14 Q. And last is State's Exhibit Four. Do you recognize
15 whose house that is?

16 A. Yes, sir. My house.

17 Q. Is that State's Exhibit Four a fair and accurate
18 picture of your house as it looked on June 8th last year?

19 A. Yes, sir.

20 Q. Okay.

21 SOLICITOR SPRINGS: Your Honor, we do offer State's
22 Exhibit Four into evidence.

23 MR. COOK: Without objection, Your Honor.

24 THE COURT: In without objection.

25 (WHEREUPON: STATE'S EXHIBIT NUMBER FOUR, IDENTIFIED

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 AND MARKED, RECEIVED INTO EVIDENCE.)

2 SOLICITOR SPRINGS: And I believe I offered Three and
3 Five but I better do it again because I'm unsure.

4 MADAME COURT REPORTER: It's in.

5 SOLICITOR SPRINGS: I did. Thank you.

6 Q. Mr. Mahoney, this is State's Exhibit Two and does that
7 show the fence?

8 A. That's correct.

9 Q. Is that the fence that you said that you had Mr. Brown
10 building for you so that you could give him some income,
11 some work?

12 A. Yes, sir. It was almost finished and work was busy so
13 I had him come over and help finish it for me.

14 Q. Okay. And this is State's Exhibit Five.

15 Is that a piece of the fence also along with your
16 house?

17 A. Yes, sir.

18 Q. And State's Exhibit Three. I see the fence and the
19 house. Is that the same one we just looked at a minute
20 ago?

21 A. Yes, sir.

22 Q. And how about that pickup truck, who's is that?

23 A. That's my pickup truck.

24 Q. Okay. And this other car, who owns that?

25 A. That's my wife's car, Amy Mahoney.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Amy? Okay.

2 SOLICITOR SPRINGS: If you could bring the lights up.

3 Q. Now, was there bad trouble at your house
4 the night of June 8th last year?

5 A. Very bad.

6 Q. Let's talk about June 8th of last year. Did you work
7 at Rock Hill Pipe some on Friday, June 8th, last year?

8 A. Yes, sir. We had about a half day at work.

9 Q. Okay. You say we. Who else worked about a half day?

10 A. Me and Christopher Calvert.

11 Q. Okay. Who lived at your house?

12 A. Yes, sir.

13 Q. Okay. So you say a half day. Did you get off what,
14 lunch time or something?

15 A. Yes, sir. Right in there.

16 Q. Okay. When you guys got off did you come on home to
17 Osteen Road?

18 A. Yes, sir.

19 Q. And when it got to be supper time, you know evening
20 meal time, did you guys stay home for the evening meal or
21 did you go out to eat?

22 A. No. I went out to go get a snack. I asked him if he
23 wanted to come along and he said sure.

24 Q. That's Chris Calvert?

25 A. Yes, sir.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Okay. So where did you and Chris Calvert go to eat?

2 A. We talked about it and I said, "have you ever been to
3 Hooter's over here yet" and he said "no" and I said, "well
4 I'll show you a treat and we'll go out to Hooter's."

5 Q. So you went to Hooter's?

6 A. Yes, sir.

7 Q. And the waitresses had those little skimpy outfits?

8 A. Yes, sir.

9 Q. Okay. Did you have a cell phone with you that
10 evening, June 8th?

11 A. Yes, sir.

12 Q. And while you were at Hooter's did you have any
13 conversation on your cell phone with the defendant?

14 A. Yeah. About nine o'clock.

15 Q. And you can say what he said to you. What did he say
16 when you talked to him on the phone and you were at
17 Hooter's on your cell phone?

18 A. I asked him if - I told him I was up there at Hooter's
19 and I asked him, I said, "you want to come up here and have
20 a drink, you know, it's on me." And he said, "well who you
21 got with you?" I said, "just Chris, Chris Calvert." And
22 he goes, "no I'm good." I said, "all right." Well, then
23 you know, he's a good friend of mine and I wanted to see
24 him anyway so I said "well I'm going to leave here shortly.
25 Why don't you meet me over at my house. We could have a

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 beer over there?" And he said "okay" and that was the end
2 of the conversation.

3 Q. And did you and Chris Calvert in fact leave Hooter's a
4 little while later?

5 A. Yes, sir.

6 Q. And did you go on home?

7 A. Yes.

8 Q. And when you got home, had the defendant gotten at
9 your house yet or did you get there before he did?

10 A. No. He pulled in shortly after we did.

11 Q. Give me a ballpark idea of how many minutes shortly.

12 A. Four to five minutes, maybe.

13 Q. Okay. And when you first drove up and parked your
14 truck - were you in that green truck we saw?

15 A. Yes, sir.

16 Q. When you and Chris first drove up and parked, and the
17 defendant was still a few minutes before he got there, what
18 did you and Chris Calvert do after you arrived?

19 A. Well, my dome light doesn't work inside of my truck
20 and he said he dropped his phone. And I said "all right"
21 so I walked inside to go get a flashlight and he was still
22 scrimmaging around. It's a work truck, it's kind of messy.
23 So after I went in there and got the flashlight, I came
24 back outside. We were both looking inside. When I walked
25 back out, I seen Bubba pull up in his vehicle and I seen

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1 his family in the car too and I you know kind of waved over
2 at him. I said, "hold on one second." We were still
3 looking for his phone. I believe we found his phone. I
4 can't recall but --

5 Q. Okay. Let me stop you. Did the defendant get out of
6 his vehicle?

7 A. Yes.

8 Q. And did he come up to you?

9 A. Yes.

10 Q. And what did he say to you when he got up to you?

11 A. He goes, "can we go around back to talk real quick
12 just by ourselves?" And I said, "yes".

13 Q. Okay. And did you walk around back to talk?

14 A. Yes, sir.

15 Q. Okay. Well let's - we're back at State's Exhibit One,
16 the big aerial photo.

17 A. Yes, sir.

18 Q. And first of all, will you show the jury the driveway
19 that goes down to your house.

20 A. I'm sorry, it's upside down.

21 Q. Oh.

22 A. Yes it is. There you go.

23 Q. First of all, point to your house.

24 A. There's my house right here.

25 Q. All right. Where is your driveway from the street?

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 A. The driveway is right - this is Osteen Road right
2 there.

3 Q. Okay.

4 A. And the driveway comes all the way up right here and
5 this is your parking area.

6 Q. Okay.

7 A. My vehicle was parked right here. My wife's was right
8 there and Floyd, Bubba's, was parked right over here
9 towards the grass area.

10 Q. Okay.

11 A. When he got out of the vehicle he walked over
12 here. I walked over there and we ended up walking around
13 back to have the conversation in privacy where no one else
14 could see.

15 Q. Okay. How about Chris Calvert, did he walk around
16 with you or did he not walk around with you?

17 A. He stayed around over by the truck.

18 Q. So point one more time where you ended up talking to
19 the defendant.

20 A. About fifty feet away. The vehicle was over here. We
21 were back here in a corner.

22 Q. Okay. Thank you.

23 Now, was there some light back there so you could each
24 other's faces? Was there light back there?

25 A. Yes, sir. There's an actual - one of them street post

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 lights back there in the back corner of the property.

2 Q. Okay. And when you got back around that side area of
3 the house, what did the defendant say to you?

4 A. Nothing much. I asked him, I said, "why didn't you
5 want to come up to Hooter's" and I can't recall what he
6 said, but the outcome of the whole conversation became
7 about work. And he sat there and pointed to me and he sat
8 there and said "you wouldn't have your job if I wasn't
9 there to watch your back". And he sat there and got in my
10 face, pointed with his right finger. And I seen his left
11 hand clench up so I pushed him off of me.

12 Q. Let me stop you. You said he got in your face. Are
13 you saying literally his face was close to you?

14 (WITNESS HELD HAND TO FACE.)

15 Q. You're holding your hand about six inches in front of
16 your - less than that. He was that close?

17 A. Yeah.

18 Q. Did that make you feel a little bit uncomfortable?

19 A. Very.

20 Q. And how would you describe his demeanor? Was he calm
21 or was he agitated?

22 A. Very agitated.

23 Q. And when he got in your space like that, what did you
24 do?

25 A. I sat there and separated us.

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1 Q. Okay. Show us how you did that.

2 A. I had to force him off me.

3 Q. Okay. Is that about - is that a pretty accurate
4 demonstration of how you pushed him away?

5 A. Yes. Before anything bad happened right then.

6 Q. Okay. When you pushed him away - let me back up. You
7 said he was agitated and saying things about you wouldn't
8 have a job. Did you respond before you had to push him off
9 of you?

10 A. Yeah. I kind of told him that's BS.

11 Q. Okay. After you pushed him - let's take this slowly.
12 What's the next thing he did after you pushed him out
13 of your face?

14 A. He was already swinging at me.

15 Q. Okay. And did he contact you - did he hit you?

16 A. Yes, sir. His left fist caught with my right temple.

17 Q. Okay. He had his hand balled up in a fist?

18 A. Yeah. And hit me right in the head.

19 Q. Did it hurt to get punched in the head with a fist?

20 A. No. I kind of when I was pushing him away he was
21 swinging at the same time but still I was shocked he
22 actually had the nerve to swing at me, so.

23 Q. When he punched you in the head, did it knock you to
24 the ground?

25 A. No, sir. It actually intensified my anger.

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1 Q. What did you do - again, just take it in slow motion.

2 The punch hits you in the head and what do you do,
3 what happens next?

4 A. I sit there and get actually really mad because it
5 happened within a split second. I sat there and I wasn't
6 going to take a hit in the face so I went ahead and picked
7 him up. Me and his started tussling on the ground and -

8 Q. Okay - I'm sorry. You ended up on the ground?

9 A. Yes, sir.

10 Q. All right. Both you and the defendant.

11 A. Yes, sir.

12 Q. All right. At that point was it a fist fight or a
13 wrestling match?

14 A. More like a wrestling.

15 Q. How about Chris Calvert, did he jump in and help you?

16 A. To be honest, sir, I didn't know what happened because
17 me and him were tussling. I didn't have time to look
18 around to see who was coming.

19 Q. All right. Well let me stop you and ask you this
20 question. At some point in time that night, did you figure
21 out or learn that the defendant had been popped in the
22 head?

23 A. Yes, sir. About 15 seconds later.

24 Q. Okay. All right. Let's go at that point. When you
25 realize he has been hit in the head, is anybody fighting

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 anybody at that point or was it quiet at that moment?

2 A. Well, it actually got really quiet because I noticed
3 when he got up he was completely dazed.

4 Q. Okay.

5 A. And I didn't know what happened to him.

6 Q. Okay. Then what did he do?

7 A. He sat there enough. Reached up and grabbed his head
8 and a whole bunch of blood started gushing down his face
9 and was mumbling trying to get the words out of his mouth
10 that he has been hit, he's been hit, and he pointed over to
11 Chris and he goes, Mikey hit me.

12 Q. Okay. And did his - you said he was dazed. Did his -
13 you're looking at him. Did his mind seem to clear?

14 A. Eventually it did. His wife was hollering over that -

15 Q. Don't say what she said. She'll have to talk for
16 herself.

17 A. I'm sorry.

18 Q. You can say she was hollering. Was she yelling?

19 A. No. I'm sorry. Say it again.

20 Q. Was the wife yelling?

21 A. Yes. Yes.

22 Q. Okay. And Chris Calvert, was he attacking the
23 defendant or he backed up?

24 A. He was actually probably about 20 feet from us by this
25 time back behind the fence.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Chris Calvert?

2 A. Yes.

3 Q. Okay. Now, the defendant's wife, what's her name?

4 A. Tabitha.

5 Q. Tabitha Brown. Tabitha Brown was yelling?

6 A. Yes.

7 Q. Okay. And Chris Calvert was about, did you say 20
8 feet away?

9 A. Yes, sir.

10 Q. Okay. And then what's the next thing and again, it's
11 like a slow motion playback. What's the next thing the
12 defendant did or said?

13 A. Bubba said, I'm going to get yaw. I'm going to get
14 yaw.

15 And that's actually once he went to his vehicle.

16 Q. And what's the next thing you saw him do or say?

17 A. Well, we sat there - well before this happened, I told
18 him, I said you need medical care. I said, your head is
19 gushing. Go to your vehicle and leave and go to the
20 hospital because I seen how bad he was bleeding so when he
21 actually went to his vehicle, instead of doing that, he
22 went inside his trunk and pulled out a hatchet and sat
23 there and looked over at Chris Calvert and goes, you're a
24 dead man. I'm going to kill yaw.

25 Q. All right. What's the next thing he did and said?

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1 A. There wasn't much said. There was a lot chasing
2 around in my front yard and Chris Calvert is a very limber
3 guy.

4 Q. Let me stop you. Who is chasing who?

5 A. Mr. Floyd Brown is actually chasing Chris Calvert.

6 Q. Did Floyd Brown have anything in his hands?

7 A. A hatchet.

8 Q. Okay. Chris Calvert, did he have anything in his
9 hands?

10 A. Nothing.

11 Q. Okay. And is it fair to say Chris Calvert could run
12 faster than the defendant?

13 A. Oh, without a doubt.

14 Q. Okay. And tell us the next thing you saw happen.

15 Where did they run and then what happened?

16 A. Well, they chased him around the yard and this didn't
17 go on very long. Bubba sat there and grabbed the hatchet.
18 Threw it to the ground with frustration because he couldn't
19 catch him and he goes, I swear on everything I love and my
20 kids, I'm going to kill you, and he went back to his
21 vehicle.

22 Q. And what did he do when he got back to his vehicle?

23 A. He pulled out a machete and put up the hatchet.

24 Q. And then what's the next thing he did when he had the
25 machete in his hand?

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 A. It wasn't much longer they actually went through my
2 house --

3 Q. You have to say names. Who is chasing who at this
4 point?

5 A. All right. Bubba is chasing Chris.

6 Q. Okay. And Bubba chasing Chris; where did they go?

7 A. Chris started heading towards the house apparently he
8 was getting tired of running around too and Bubba went
9 right after him.

10 Q. Okay. Now, if the defendant, Bubba, is chasing Chris
11 Calvert, is he limping at all or is ---

12 A. No, sir.

13 Q. --- he running pretty good?

14 A. Running pretty good.

15 Q. Okay. Did you see them run into the house?

16 A. Yes, sir.

17 Q. Okay. And did they exit the house?

18 A. Yeah. They exit - came in through the front door and
19 exited through the kitchen area which is the back door and
20 Bubba was so mad that he hadn't caught him by yet, he sat
21 there and grabbed the machete and slammed it right down on
22 the handrail going down my steps, my back steps.

23 Q. Okay. Let me stop you there.

24 (WHEREUPON: STATE'S EXHIBIT NUMBER SIX, PREMARKED FOR
25 IDENTIFICATION.)

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Mr. Mahoney, I'm
2 showing you what's been marked State's Exhibit Six for
3 identification. Do you recognize what that shows?

4 A. Yes, sir.

5 Q. What is that in that picture?

6 A. That is the handrail going down the back steps out of
7 my house.

8 Q. Okay. And what's that right there, that mark?

9 A. That is the machete mark.

10 Q. Okay. Is that where the defendant's machete hit your
11 handrail?

12 A. Out of frustration, yes.

13 Q. Is that a fair and accurate picture, State's Exhibit
14 Six, of the cut mark in the handrail?

15 A. Yes, sir. It's still there today.

16 SOLICITOR SPRINGS: Your Honor, we do offer State's
17 Exhibit Six into evidence.

18 MR. COOK: No objection.

19 THE COURT In without objection.

20 (WHEREUPON: STATE'S EXHIBIT NUMBER SIX, IDENTIFIED
21 AND MARKED, RECEIVED INTO EVIDENCE.)

22 Q. And is this roughly a six inch mark, that cut, is that
23 where the machete hit your handrail?

24 A. Yes, sir.

25 Q. After they ran out of your house and the defendant out

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 of frustration puts the machete in your handrail, then
2 what's the next thing the defendant does or says?

3 A. Well, we all ended up going back around the front of
4 the house.

5 Q. Who is we? You've got to say names.

6 A. I'm sorry. Chris Calvert, Bubba and me. I ended up
7 going back around the house because I wouldn't let them go
8 back through inside the house and I didn't want none of
9 this conflict to go inside my house.

10 Q. Okay.

11 A. So I sat there and we all started walking back around
12 the front side - well, Bubba was probably still going after
13 Chris, and he goes --

14 Q. You're getting ready to say what somebody said. Who
15 was that?

16 A. Bubba sat there and said - I forgot how the phrase
17 went. "After I'm done with him, everyone else is going to
18 get their's too" if I'm not mistaken.

19 Q. And then what's the next thing that he does, the
20 defendant does or says?

21 A. He sat there and said "you better get off my property
22 right now. I'm going inside and I'm having Amy call the
23 sheriff.

24 Q. You said that?

25 A. Yeah.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Did you tell that to the defendant?

2 A. I sat there and told Amy to - yes, I told Bubba that.

3 Q. Okay. All right. Did he get in his car and leave?

4 A. He actually did.

5 Q. Did he take the machete with him?

6 A. As far as I know, yeah.

7 Q. Did you watch the car go up the driveway?

8 A. Yes, I did.

9 Q. Okay. And as you see the car, the defendant's car
10 leaving going up of your driveway, what did you and Chris
11 Calvert and Amy do? Where did you go?

12 A. I instructed everyone to get back inside the house.

13 Q. And did you go in the house?

14 A. Yes, sir.

15 Q. Did you shut the door to the house?

16 A. Yes, sir.

17 Q. And once you get in the house, where do you and Chris
18 Calvert go?

19 A. We go through the living room to the master bedroom
20 and I looked over and Amy was sitting in there and I said
21 "call the sheriff's department right now" and I went to the
22 bathroom to wash off the blood. It was from Bubba's head.

23 Q. Okay. Let me stop you.

24 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVEN THROUGH
25 TWELVE PREMARKED FOR IDENTIFICATION.)

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Mr. Mahoney, let me show you State's Exhibits Seven
2 through Twelve. Just quietly look at those and then I'll
3 ask you what they are of and where they were taken.

4 (WITNESS REVIEWING EXHIBITS.)

5 Q. Okay. Do you recognize whose house that is?

6 A. Yes, sir. It's my house.

7 Q. It's your house. And does this show your house from
8 outside in the yard or inside the house?

9 A. All the pictures are inside.

10 Q. Okay. And State's Exhibit Seven, Eight, Nine, Ten and
11 Twelve are the true and accurate pictures of what the
12 inside of your house looked like that night June 8th last
13 year?

14 A. Yes, sir.

15 SOLICITOR SPRINGS: Your Honor, we do offer into
16 evidence State's Exhibit Seven, Eight, Nine, Ten, Eleven
17 and Twelve.

18 MR. COOK: Without objection.

19 THE COURT: In without objection.

20 (WHEREUPON: STATE'S EXHIBIT NUMBERS EIGHT THROUGH
21 TWELVE, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

22 BY SOLICITOR SPRINGS:

23 Q. And you say you and Chris Calvert went to wash?

24 A. Yes, sir. In the master bathroom.

25 Q. Okay.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 A. Which you did not have a picture of.

2 Q. Okay.

3 A. That right there is the master bedroom right there.

4 Q. Okay.

5 THE COURT: You need to keep your voice up so the jury
6 can hear you.

7 A. Sorry about that.

8 BY SOLICITOR SPRINGS:

9 Q. State's Exhibit Eleven, does it show the door to the
10 master bedroom?

11 A. Yes, sir.

12 Q. Okay. Let's put this on --

13 SOLICITOR SPRINGS: Mr. Bailiff, would you look right
14 there and see if there is a long pointer behind that door?

15 (BAILIFF RETRIEVES POINTER FROM VIDEO/PROJECTOR
16 VIEWING CABINET ON COURTROOM WALL.)

17 SOLICITOR SPRINGS: Thank you.

18 Q. On the witness stand you were pointing to here and is
19 that the door to the master bedroom?

20 A. Yes, sir.

21 Q. So you and Chris Calvert went back there for you to
22 wash up?

23 A. Yes, sir. If you go through that room, the bath -
24 There's a closet right there on the right and the next room
25 is gonna be the bathroom.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Okay. What's over here? What room is that?

2 A. That's the kitchen.

3 Q. Okay.

4 SOLICITOR SPRINGS: And that was State's Exhibit
5 Eleven we were looking at.

6 Q. Did your wife Any call 911?

7 A. Yes, sir.

8 Q. And while you and Mr. Calvert are back in the master
9 bedroom and you're washing up, what's the next thing that
10 you hear? What's the next thing that happened?

11 A. It wasn't good.

12 Q. Let's take it slow and easy. What's the next thing
13 you hear or see that happens?

14 A. After I told my wife to call the sheriff's department,
15 I looked down at my hands and see that they were covered in
16 blood and went to my sink to sit there and start washing
17 off. I'm sitting there washing my hands off and I hear a
18 horrible scream come out of my wife's mouth and I couldn't
19 understand what she was saying. She was screaming so loud.

20 As soon as I heard her scream, Chris jumps back,
21 knocks me back off the sink and - this happened so fast.
22 It was maybe one or two seconds. After I get off the
23 floor, I get up and look down and I see his left hand thumb
24 is severed off.

25 Q. Whose thumb is severed?

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 A. Christopher Calvert's thumb is severed off and the
2 only part that was holding it on was a little piece of
3 flesh right here.

4 (WITNESS INDICATED TO HIS HAND.)

5 Q. Okay. And was the defendant anywhere around?

6 A. No. He was gone by then.

7 Q. Did you see him leave?

8 A. No, sir.

9 Q. Okay. And Mr. Calvert's severed thumb, did it bleed?

10 A. Oh, yes, sir.

11 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTEEN,
12 PREMARKED FOR IDENTIFICATION.)

13 Q. Mr. Mahoney, I'm showing you what's been marked
14 State's Exhibit Thirteen. And have you ever heard what's
15 on this recorded disk?

16 A. Yes, sir.

17 Q. And is your voice on there some?

18 A. Yes, sir.

19 Q. What's that a recording of?

20 A. It's a recording of the 911 call.

21 Q. Okay. The part where - Is your wife's voice on there
22 as well?

23 A. Yes, sir.

24 Q. And the part - Have you heard it all?

25 A. Yes, sir.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Okay. Is the part where you speak true and accurate?

2 A. Yes, sir.

3 Q. And is the part where your wife Amy speaks is it true
4 and accurate and also what you heard with your own ears?

5 A. Yeah.

6 Q. Does that make sense? Okay. Did you do something to
7 help Mr. Calvert stop the clots of blood?

8 A. I sat there and I handed him a rag and I went outside
9 to look for Bubba but he was gone by then. I was also
10 talking with the police or sheriff's department on the
11 phone at the same time telling them to hurry up and get
12 here he's got a severed off thumb.

13 Q. Okay.

14 A. And I seen them down the street like two minutes later
15 looking over at the neighbor's house and I was telling the
16 operator, tell them to come down further. Tell them to
17 come down further so we can get him some medical - get him
18 some help.

19 Q. Okay. Let me stop you there.

20 (WHEREUPON: STATE'S EXHIBIT NUMBERS FOURTEEN THROUGH
21 EIGHTEEN PREMARKED FOR IDENTIFICATION.)

22 Q. Let me show you a series of pictures. First of all, I
23 want to show you what's been marked for identification
24 State's Exhibit Fourteen. Do you recognize where that is?

25 A. Yes, sir. It's the front porch.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Of your house?

2 A. Yes, sir.

3 Q. And does it show - Is that the hand railing of the
4 front porch?

5 A. Yes, sir. Going down the right side.

6 Q. What's that red stuff on it look like?

7 A. Blood.

8 Q. Okay. Is that an accurate picture of what the
9 handrail of your front porch looked like the night of June
10 8th last year?

11 A. Yes, sir.

12 Q. And how about State's Exhibit Fifteen, do you
13 recognize what that shows?

14 A. Yeah, that's the front door entry way.

15 Q. Okay.

16 A. With blood drops all over it.

17 Q. Okay. All right. Is it a fair and accurate picture
18 of what the front entrance of your house looked like June
19 8th of last year?

20 A. Yes, sir.

21 Q. And I'm showing you State's Exhibit Sixteen for
22 identification. Do you recognize what that shows?

23 A. It's the front screen door.

24 Q. Okay. And what's that red stuff look like.

25 A. It looks like blood.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Okay. Is that the front screen door of whose house?

2 A. My house, sir.

3 Q. All right. Is it a true and accurate picture of what
4 the front screen door of your house looked like June 8th of
5 last year?

6 A. Yes, sir.

7 Q. Now, I'm showing you what's been marked for
8 identification as State's Exhibit Seventeen. Do you
9 recognize that scene?

10 A. That's the master bathroom.

11 Q. Okay. And what's all that red stuff?

12 A. A lot of blood.

13 Q. All right. And do you know who it came from?

14 A. Christopher Calvert.

15 Q. Okay. And is that where you were located, Mr. Calvert
16 was located, when you said the defendant — when you said
17 Mr. Calvert's thumb got cut off?

18 A. Yes, sir.

19 Q. Okay. Is it a true and accurate picture of what that
20 bathroom looked like?

21 A. Yes, sir.

22 Q. All right. I'm showing you what's been marked for
23 exhibit as State's Exhibit Eighteen. Do you recognize
24 that?

25 A. Yes, sir. That's the master bathroom wall.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Okay. What's that red stuff on the wall?

2 A. Blood splattered going back towards the shower.

3 Q. Okay. Is that a true and accurate picture of what
4 that wall in your bathroom looked like June 8th of last
5 year?

6 A. Yes, sir.

7 Q. All right.

8 SOLICITOR SPRINGS: Your Honor, at this time we do
9 offer into evidence State's Exhibit Eighteen, Seventeen,
10 Sixteen, Fifteen and Fourteen.

11 MR. COOK: Without objection, Your Honor.

12 THE COURT: In without objection.

13 WHEREUPON: STATE'S EXHIBIT NUMBERS FOURTEEN THROUGH
14 EIGHTEEN IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

15 SOLICITOR SPRINGS: Would you dim the lights?

16 (COURTROOM LIGHTS DIMMED.)

17 Q. Mr. Mahoney, I'm showing you State's Exhibit Fourteen.

18 (STATE'S EXHIBIT FOURTEEN PUBLISHED TO THE JURY AT
19 12:48 P.M..)

20 Q. And I know it's hard to see but what did you say this
21 stuff looked like on the front porch walkway?

22 A. Looks like blood splatter.

23 Q. I'm showing you what's been marked for identification
24 State's Exhibit Seventeen

25 (STATE'S EXHIBIT SEVENTEEN PUBLISHED TO JURY.)

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Is that your bathroom?

2 A. Yes, sir.

3 Q. Where did all this blood come from? Who did it come
4 from?

5 A. It came out of Christopher Calvert out of his thumb.

6 SOLICITOR SPRINGS: Thank you.

7 (COURTROOM LIGHTS TURNED UP.)

8 Q. Did the police come?

9 A. Yes, sir.

10 Q. And did you talk to the police?

11 A. Yes, sir.

12 Q. And did an ambulance come?

13 A. Yes, sir.

14 Q. And did the ambulance take Chris Calvert to the
15 hospital?

16 A. Yes they did.

17 Q. Do you know - You said earlier in your testimony that
18 the defendant started driving down your driveway towards
19 the public road, Osteen Road, and you and Mr. Calvert, and
20 I think you said your wife, you went in the house. Is that
21 what you said?

22 A. That's correct.

23 Q. Okay. Later, again later, did the defendant come back
24 to your house a little later?

25 A. Yes, sir.

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 Q. Okay. And do you know where his car was parked when
2 he was back in your house?

3 A. No, sir.

4 (WHEREUPON: STATE'S EXHIBIT NUMBERS NINETEEN THROUGH
5 TWENTY-TWO PREMARKED FOR IDENTIFICATION.)

6 Q. Mr. Mahoney, let me show you some pictures. If you
7 would, just look at these. They're marked State's Exhibit
8 Nineteen through Twenty-two. Look at them quietly to
9 yourself and then I'm going to ask you a couple of
10 questions.

11 (WITNESS REVIEWING EXHIBITS/PHOTOS.)

12 Q. Do you recognize what that shows?

13 A. Yes, sir.

14 Q. Whereabouts - Where is this place? In all these
15 pictures, State's Exhibit Nineteen through Twenty-two,
16 where is that?

17 A. Well that is at the very beginning of the driveway.

18 Q. Okay. Let's start with State's Exhibit Twenty. What
19 does that show?

20 A. That's showing the very front entrance to my driveway.

21 MR. COOK: Your Honor, I'm going to object on the
22 grounds of relevance.

23 THE COURT: Objection overruled.

24 Q. And State's Exhibit Nineteen and Twenty-two and --

25 THE COURT: Did you offer them? Did you offer that

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 one into evidence that he objected to?

2 SOLICITOR SPRINGS: I have not yet.

3 Q. State's Exhibit Twenty though, you say it shows the
4 end of your driveway?

5 A. That's correct.

6 Q. State's Exhibit Nineteen, Twenty-one and Twenty-two,
7 do you recognize what's shown in those three pictures? You
8 can hold them if you want to.

9 (WITNESS REVIEWING EXHIBITS.)

10 Q. Do you know where that place is?

11 A. It looks like holes in the ground.

12 Q. Okay. Do you know where those holes are located?

13 A. I used to have an old fence around the front side of
14 the - like an old picket fence. Like the real old one but
15 it was ragged.

16 Q. Okay.

17 A. And we ended up excavating them back out of the ground
18 because it was falling apart and those are the holes that
19 were created by it.

20 Q. Okay. Okay. Let's go back to State's Exhibit Twenty.

21 You said - Is that a true and accurate picture of the
22 end of your driveway?

23 A. Yes, sir.

24 Q. Does it show where any of those holes where the old
25 fence are located are?

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 A. Well actually this right here is that piece of pipe
2 that runs underneath and it's got a groove over there at
3 the front of the property so the water doesn't flush up
4 onto your land and it's got that pipe running underneath
5 your driveway so the water will flow underneath it instead
6 of flowing upright. So what you have is the pipe on this
7 side, leads under the driveway to the other side, which has
8 holes on each side of it.

9 Q. Okay.

10 A. Where the pipes at.

11 Q. All right. Is that a true and accurate picture of the
12 end of your driveway, State's Exhibit Twenty?

13 A. Yes, sir.

14 Q. Okay. Now, after Mr. Calvert got his thumb cut off
15 and the police come and Mr. Calvert is taken away in the
16 ambulance, did you hear in some fashion from the defendant
17 later on?

18 A. I did.

19 Q. And how did he communicate with you?

20 A. By telephone.

21 Q. And what did he say to you in that communication?

22 A. Well actually it was a text message. Me and him
23 didn't speak personally. He sent me two text messages.

24 Q. And what's the gist of what's - What was in those
25 messages? What's the gist of them?

MICHAEL MAHONEY: BY SOLICITOR SPRINGS

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1 A. That Christopher Calvert's gonna get his and a couple
2 negative remarks in regardance to me.

3 Q. And what about you?

4 A. A couple of negative things towards me also.

5 Q. Okay. All right.

6 (PAUSE.)

7 SOLICITOR SPRINGS: Mr. Mahoney, thank you. The
8 defense attorney may want to ask you some questions.

9 THE COURT: We'll break for lunch before we do that
10 because it's almost one o'clock.

11 We'll break until 2:30. Have a pleasant lunch and
12 we'll see you back at 2:30. The bailiff will tell you how
13 to get in and out while you're serving as a juror.

14 You sit right there.

15 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:55 P.M..)

16 THE COURT: Mr. Mahoney, since you're subject to cross
17 examination, do not discuss your testimony with anybody
18 over the lunch break. Obviously you will have lunch but
19 don't discuss with the solicitor or your wife or anyone
20 else anything regarding your testimony.

21 MR. MAHONEY: Yes, Your Honor.

22 THE COURT: All right. We'll be at ease until 2:30.

23 (COURT IN LUNCH RECESS AT 12:56 P.M..)

24 (COURT BACK IN SESSION AT 02:41 P.M.)

25 THE COURT: Thank you. You may take your seats.

MICHAEL MAHONEY: BY MR. COOK

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1 State ready?

2 SOLICITOR SPRINGS: Yes, sir.

3 THE COURT: The witness?

4 SOLICITOR SPRINGS: Mr. Mahoney, would you come on
5 back up?

6 THE COURT: Come on back up and be on the stand.

7 THE COURT: Mr. Cook, you ready?

8 MR. COOK: Yes, Your Honor.

9 (WITNESS RETURNS TO WITNESS STAND.)

10 THE COURT: Bring in the jury.

11 (JURY REENTERS COURTROOM AT 2:42 P.M.)

12 THE COURT: Mr. Cook, you may proceed.

13 MR. COOK: Thank you, Your Honor. May it please the
14 court.

15 CROSS EXAMINATION

16 MICHAEL MAHONEY BY MR. COOK:

17 Q. Good afternoon, Mr. Mahoney.

18 A. How you doing, sir.

19 Q. Mr. Mahoney, were you doing cocaine that night?

20 A. No, sir.

21 Q. Okay. Do you know whether Chris Calvert was doing
22 cocaine that night?

23 A. No, sir.

24 Q. Let me get you to clarify. When you say no, does that
25 mean no he wasn't doing it or you don't know?

MICHAEL MAHONEY: BY MR. COOK

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1 A. No I don't know that.

2 Q. Did my client have keys to your residence?

3 A. Not that I know of.

4 Q. I mean, was he regularly asked over and have access to
5 the house as a friend of yours? You mentioned he was a
6 good friend of yours.

7 A. Yes, he was a good friend.

8 Q. Okay. Had he ever stayed over at your house?

9 A. I don't believe so.

10 Q. Had he ever been over at your house with your
11 permission while you were not there?

12 A. Yes, sir. To do yard work.

13 Q. Let me bring you back to your recollection of the
14 events when you are in your yard and my client first pulls
15 up. Actually, let me fast forward through that. And
16 explain again. I just want to hear you. After Chris
17 Calvert hit my client, describe my client's injuries.

18 A. Blood was gushing from his head. He was mumbling out
19 words and then he finally became coherent.

20 Q. At any point - how did you get - You said you went
21 into the house to wash the blood off of your shirt. How
22 did you get blood on yourself?

23 A. Because I was trying to actually attend to Bubba.

24 Q. Now what do you mean by "attend to Bubba?"

25 A. Trying to get him to go to the hospital. He had an

MICHAEL MAHONEY: BY MR. COOK

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1 extreme amount of blood coming out of his head. He was
2 persistent about going after Chris so I kind of was
3 interfering with that and trying to stop him, trying to
4 calm him down, and he was persistent and didn't want to
5 hear it.

6 Q. Did you ever hug my client?

7 A. Maybe in the wrestling match in the backyard.

8 Q. And you were trying to get him to go to the hospital?

9 A. I was trying to get him to leave to go to the hospital
10 to get him off my property before anything went too far.

11 Q. And what happened next?

12 A. He -- When I first told him to leave, I thought he
13 actually was going to but he went to his vehicle and pulled
14 out a hatchet instead.

15 Q. Okay. And then what happened?

16 A. He persisted after Chris and Chris was way too fast
17 for him and Bubba got tired of chasing him down. I could
18 see that he would never catch Chris and I kept trying to
19 him, stop, stop. You know, you need to go. Just go to the
20 hospital.

21 Q. Where was he chasing him again?

22 A. In the front yard.

23 Q. Never into the house?

24 A. No, sir. Once he couldn't catch Chris with the
25 hatchet, he sat there and threw the hatchet to the ground

MICHAEL MAHONEY: BY MR. COOK

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1 and he sat there and said, "I swear on my kids and
2 everything that I love, I'm going to kill you." Took the
3 hatchet back to the his car and got the machete out and
4 that's when no more - maybe a minute later then went
5 through the house.

6 Q. The first time?

7 A. Correct.

8 Q. Because don't you maintain that my client entered your
9 house twice?

10 A. Correct.

11 Q. Okay. So he's chasing through the yard with the
12 hatchet and can't catch him?

13 A. Yes, sir.

14 Q. Did he grab anything else?

15 A. Not that I know of.

16 Q. All right. He's chasing him through the yard and he
17 can't catch him so you say that he gets frustrated and
18 throws the hatchet down?

19 A. Yeah. Slams it down to the earth.

20 Q. All right. And did he ever - Did you ever see him
21 pick it back up?

22 A. Yes. As far as I know, he went and took it back to
23 his car.

24 Q. So he threw it down and then he picked it back up?

25 A. No. He sat there and grabbed it and slammed it down

MICHAEL MAHONEY: BY MR. COOK

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1 into the ground bowing down and he comes back up in a
2 higher amount of rage saying, "I swear on everything I love
3 and my kids, you're a dead man."

4 Q. Where's the hatchet at this point?

5 A. I have no idea.

6 Q. But I thought you said you saw him pick it back up and
7 put it back in his car?

8 A. Yes, sir.

9 Q. When would that happen?

10 A. Right after he sat there and slammed it to the ground.
11 He sworn up and down on everything he loves and his kids
12 that he was going to kill him.

13 Q. Did he -- When he slammed it down and made that
14 statement, did he release the hatchet?

15 A. Not as far as I know.

16 Q. Oh, so he still had it in his hand?

17 A. Yeah.

18 Q. And then he went and put it in the car?

19 A. Yeah.

20 Q. All right. And he got the machete out?

21 A. Yes, sir.

22 Q. And continue on. What happens after that?

23 A. I believe they chased around just for a little bit
24 more and Chris went towards the house. I didn't know what
25 was going to become of this but they both entered my house

MICHAEL MAHONEY: BY MR. COOK

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1 and Bubba he was still chasing after Chris. Chris was very
2 fast. Went through the house. They ran in and out of the
3 house in maybe three seconds.

4 Q. Where was your wife Amy during all of this?

5 A. I was not focused on that. I was focused on them two,
6 trying to break it up.

7 Q. Okay. They ran through the house. Where were you
8 standing in the yard when they ran through the house?

9 A. I was no more than a couple paces right behind them.

10 Q. Did you go into the house?

11 A. Yes, sir, right behind them. I was making sure my
12 house don't get destroyed.

13 Q. This is the first time?

14 A. Yes, sir.

15 Q. And did they run through the house and come out the
16 back?

17 A. Yeah.

18 Q. And you were chasing behind them the whole time?

19 A. Yes, sir.

20 Q. Okay. And then what happened?

21 A. He sat there and grabbed the machete. He was
22 frustrated even more and he put that slice into the
23 handrail going down the back steps.

24 Q. Okay. And then what?

25 A. Then the confrontation went around back up to the

MICHAEL MAHONEY: BY MR. COOK

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1 front again and I told them, I - Once he went through the
2 house that first time, I sat there and didn't want no more
3 confrontation on my property. It was over. I told him to
4 get off my property and I sat there and said I was calling
5 the sheriff's department right now and I was going to call
6 911. He sat there and turned around, walked to the vehicle
7 and started pulling down the - they started pulling down
8 the driveway. His family started pulling down to the
9 driveway. I told everyone else get back inside and
10 everyone went back inside and I told Amy to call 911 right
11 now I want this over with.

12 Q. How much time passed between the first time that my
13 client allegedly entered the house and the second time?

14 A. You're talking three or four minutes.

15 Q. Okay.

16 A. Very fast.

17 Q. Why did you not mention the episode of running through
18 the house the first time on your statement to the police?

19 A. After watching someone get their thumb chopped off, I
20 think I had a - my head wasn't a little bit right. I've
21 never seen that in my lifetime.

22 Q. How much time passed before you witnessed that alleged
23 event and you wrote the statement?

24 A. What, having that flashback of that actually
25 happening?

MICHAEL MAHONEY: BY MR. COOK

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1 Q. No, sir. How much time passed before the alleged
2 commission of the crime and you writing the statement to
3 the police?

4 A. Oh. That was after walking through the house and they
5 were doing investigations and everything else I'd say
6 thirty minutes to an hour. You would have to ask the
7 officer that took the statement from me. He would know
8 best. From the phone call all the way up to then, they
9 would know best.

10 Q. Well, you have to understand the officer wasn't there
11 when the crime allegedly happened so I think you would know
12 best. That's why I'm asking you. But you say thirty
13 minutes?

14 A. What time was the phone call?

15 Q. I'm sorry?

16 A. What time was the phone call to the police department?

17 Q. Well let me ask you that question. What time was the
18 phone call to the police department?

19 A. I'm going to say probably around 10:30 maybe.

20 Q. Okay.

21 A. All right. So and then I'm sure they got the
22 statement written down on it with the time at the top of
23 it.

24 Q. How much time do you think passed?

25 A. I would say within an hour maybe.

MICHAEL MAHONEY: BY MR. COOK

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1 Q. Okay. And now my question is, why didn't you write in
2 your statement the fact that my client went into the house
3 the first time?

4 A. Because I was still worried about Chris. He was
5 getting hauled off by the CMS - I mean, he was getting
6 hauled off to the hospital. I was calling his family and
7 calling everyone else to tell them exactly what happened.

8 Q. Where did you write the statement, at your house or at
9 the police department?

10 A. At the back - At the house.

11 Q. Okay. Now, let me take you to what you claim happened
12 inside the house after you thought my client had left with
13 his family. Pick it up there. You advised or instructed
14 everybody to go into the house and then what?

15 A. Yeah. I wanted everyone to get back inside the house
16 just for safety reasons. I didn't want no more conflict
17 outside so I instructed everyone back inside the house. I
18 had Amy call the cops right then. I looked down on my
19 hands and seen all the blood on it; went straight to the
20 bathroom. This was all in the master bath of the bedroom
21 and bathroom that it all happened.

22 She was over in the corner of the bedroom making the
23 phone call. I looked over, made sure she was making the
24 phone call. Started washing my hands off. Chris walked
25 over behind me and was saying something to me. I don't

MICHAEL MAHONEY: BY MR. COOK

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1 remember or recall. All I recall is Amy is screaming off
2 the top of her head and Chris shoving me out of the way.

3 Q. Knocking you off the sink?

4 A. Yes, sir.

5 Q. Were you sitting on the sink?

6 A. No, sir. I was standing right there but he knocked me
7 back. It's not that big of a bathroom.

8 Q. So in your testimony earlier today when you said he
9 knocked me off the sink --

10 A. Well he knocked -- well he was trying -- I'm assuming he
11 was trying to get past me what it was, but he ended up
12 bumping into me knocking me away from the sink and I turned
13 around and seen him on the ground with his thumb sliced
14 off.

15 Q. Does Chris Calvert still live with you?

16 A. No, sir.

17 Q. When did he move out of your house?

18 A. I cannot recall.

19 Q. You can't recall at all? Can you give me an
20 approximation. Was it a month or a year afterwards?

21 A. After his hand healed up and we went to go visit his
22 mom; I sit there and had him go live back with his mom.

23 Q. You said, go live back with his mom?

24 A. Yes, sir.

25 Q. Here's my question. If three minutes passed between

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 the first time he ran into the house, why did you wait so
2 long to call the police?

3 A. Because I was still trying to get him off my property.

4 There was other people to worry about not the
5 property.

6 MR. COOK: No further questions, Your Honor.

7 THE COURT: Redirect.

8 SOLICITOR SPRINGS: Thank you, Mr. Mahoney.

9 THE COURT: You may step down. Appreciate your time.
10 Thank you.

11 (WITNESS LEAVING WITNESS STAND.)

12 THE COURT: Call your next witness.

13 SOLICITOR SPRINGS: Mr. Calvert, please come up. Come
14 on around here, Mr. Calvert. Come over here. There is the
15 Holy Bible, raise your right hand and take the oath.

16 (WHEREUPON: CHRISTOPHER
17 CALVERT BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
18 FOLLOWS:)

19 MADAME CLERK: Thank you. You may have a seat right
20 up there.

21 DIRECT EXAMINATION

22 CHRISTOPHER CALVERT BY SOLICITOR SPRINGS:

23 Q. I'm going to ask you please, sir, to sort of lean
24 towards that microphone and keep your voice up nice and
25 loud so everyone can hear you and tell us your name.

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 A. Christopher Holden Calvert.

2 Q. I want to ask you about what happened the night of
3 June 8th of last year. Let me start out by asking you
4 where you were living. What was your residence the night
5 of June 8th of last year?

6 A. [REDACTED].

7 Q. Okay. Is that the Mahoney's house?

8 A. Right down here in York. Yes, sir.

9 Q. And back in June, June 8th of last year, where were
10 you
11 employed?

12 A. I was employed at Rock Hill Industrial Piping and
13 Fabricating.

14 Q. Okay. And how long had you been working at Rock Hill
15 Pipe when this incident we're talking about, June 8th,
16 happened?

17 A. Maybe three and a half, four months.

18 Q. Okay. Had the defendant left employment there when
19 you started? Was he gone already?

20 A. No. I had never see him there. He had already gone.

21 Q. Okay. Friday, June 8th of last year, did you work
22 some part of that day at Rock Hill Pipe?

23 A. Yes, sir.

24 Q. And when did you get off work?

25 A. We got off work about 11:30, 11:45. Round about noon.

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 Q. Okay. When you say we, who are you talking about?

2 You and who?

3 A. Me and Mr. Mahoney.

4 Q. Okay. And did you come on home to Osteen Road that
5 afternoon?

6 A. We actually stopped by Academy Sporting Goods and got
7 a weight bench and weight bar and then we went home.

8 Q. Okay. All right. And when it got to be supper time,
9 evening meal time, where did you go to eat?

10 A. We went to Hooter's.

11 Q. Okay. And who all went to Hooter's?

12 A. Mike and I.

13 Q. And did you have some drinks at Hooter's?

14 A. A few.

15 Q. Okay. All right. When you went into the men's room,
16 did somebody give you some power cocaine to sniff up your
17 nose?

18 A. Well, yeah, they did.

19 Q. Okay.

20 A. Which was as soon, just soon after we had got there.

21 Q. Okay. Did some bad things happen to you the night of
22 June 8th of last year?

23 A. Yes, sir.

24 Q. When you and Mike Mahoney left Hooter's, did you go
25 home that evening?

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 A. Straight home. Yes, sir.

2 Q. Do you remember about what time it was when you went
3 home from Hooter's?

4 A. I don't know the time we left Hooter's but we got home
5 at about 10:15, 10:20, I'd say.

6 Q. Okay. And was it dark out when you got home?

7 A. Yes, sir.

8 Q. Did you have a cell phone that was your own that day?

9 A. I did.

10 Q. Okay. When you got home and arrived back home about
11 -- Did you say 10:15?

12 A. Ten, twenty.

13 Q. Where was your cell phone?

14 A. I lost it. It dropped in between the seats and it was
15 in the back floor board with tools and whatnot scattered
16 around. You know, I just misplaced it.

17 Q. Okay. So did you look for it?

18 A. Oh, yeah.

19 Q. Was anybody helping you look for it?

20 A. Mr. Mahoney was.

21 Q. Okay. What were you guys doing as far as looking for
22 it?

23 A. Well he had --

24 Q. What were you using for light?

25 A. He had a flashlight. I had a lighter actually.

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 Q. Okay. All right. And did somebody arrive at the
2 house while you were looking for your cell phone?

3 A. They did.

4 Q. And do you now know who that was that pulled up?

5 A. Yes, sir.

6 Q. Okay. Who was it?

7 A. That would be Mr. Floyd and his wife, Tabitha, and
8 their children.

9 Q. Okay. And did the defendant, Mr. Brown, get out of
10 his car?

11 A. He is the only one that got out of the car.

12 Q. Okay. When he got out of the car where did he go and
13 who did he talk to?

14 A. He went straight to Mike which was towards the back
15 driver's side of the truck, you know, because Mike was on
16 the driver's side and I was on the passenger's side because
17 Mike drives. You know, I don't. And they were talking and
18 the guy asked him to step around back and talk to him in
19 private.

20 Q. Okay. Now who asked who to step --

21 A. Bubba - excuse me. Mr. Floyd asked Mr. Mahoney to
22 step around back and he just wanted to discuss something
23 with him.

24 Q. Okay. All right. And did they step around the side
25 of the house?

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 A. They did.

2 Q. Okay. And what's the next thing that got your
3 attention? The next thing you heard or saw that got you
4 alerted.

5 A. Well, I was continuing to look for my phone and the
6 next thing I heard was "why did you do that" and then I
7 heard, like a guttural sound and I could hear a commotion
8 going on.

9 Q. Okay.

10 A. When I heard that, I mean, you know I could hear that
11 my friend - my friend was the one that asked - excuse me.
12 Mike was the one that asked, "what did you do that for" and
13 then I hear the rustling and the guttural noise and the
14 guttural noise came from Mike also and I went around there to
15 take care of my friend.

16 Q. Okay. All right. When you are hearing these things
17 from where you are at the truck, could you see them or are
18 you just able to hear them?

19 A. No, sir. I was able to hear them. I couldn't see
20 them because of the privacy fence. It came out too far.

21 Q. Did you go running to Mike Mahoney's aid?

22 A. Yes, sir.

23 Q. When you got to where you could see them, what were
24 they doing?

25 A. When I got to where I could see them, they were kind

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 of wrestling on the ground, roll, but Bubba had done rolled
2 on top of Mike and that's when I hit him.

3 Q. Okay. What did you hit him with?

4 A. I hit him with a gear shift.

5 Q. All right.

6 A. At the time I give the police report, I said I didn't
7 remember hitting him with anything but I done been in the
8 hospital for a week. I had been under my meds and by the
9 time I got down here to make a report, I had been - my mind
10 had cleared.

11 Q. Okay.

12 A. So I was clear by the time I got here kind of because
13 I was still under my medications.

14 Q. When did you give your statement to - I take it you
15 didn't give your statement that night?

16 A. No, sir. I wasn't able to. I lost too much blood.

17 Q. Okay. Now, when you - Where on the defendant's body
18 did you hit him with the gear shift?

19 A. In the head.

20 Q. Okay. How many times did you hit him?

21 A. Once.

22 Q. Okay. Did you hit him anymore than that one time in
23 the head?

24 A. No, sir.

25 Q. Okay. Did that stop him attacking Mike Mahoney?

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 A. It stopped him from attacking him.

2 Q. Okay. All right. Then, let's take it step by step.

3 Then what's the next thing that happens?

4 A. The next thing that happens is Mike's telling the
5 guy, you know, because he's coming - or, excuse me. Bubba
6 is coming to as far as knowing what's going on.

7 Q. Okay. How long was he dazed from not knowing what's
8 going on?

9 A. It could have been a minute or maybe give or take a
10 few seconds. Only a minute, a couple of minutes. You
11 know, because the guy, I hit him hard.

12 Q. Okay. And when his head cleared, what did he do,
13 where did he go or what did he say? What's the next thing
14 he did?

15 A. The next thing I heard was someone screaming which was
16 Floyd's wife, Tabitha.

17 Q. All right. So she's screaming?

18 A. Yeah.

19 Q. You're doing fine. We're taking this like a slow
20 motion playback. Then what's the next thing that --

21 A. The next thing I remember?

22 Q. Yes.

23 A. Is him going to his car and we was all going in that
24 motion already, around - back around the privacy fence. It
25 was me, Floyd and Mike. We was all going back across, back

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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- 1 around the privacy fence to where the vehicles were. Bubba
2 never stopped. Went straight to his car to the trunk.
- 3 Q. Okay. Then what did he do? What's the next thing he
4 does?
- 5 A. He grabbed the hatchet and he started to chase me.
- 6 Q. All right. Was he saying anything to you or anybody
7 after he grabbed the hatchet?
- 8 A. He was telling me he was going to kill me and after he
9 got done with me he was going to do whatever with everybody
10 else that he had to do. Maybe not in those words but...
- 11 Q. Did he threaten to kill you?
- 12 A. Oh, yeah.
- 13 Q. Now, did he chase you?
- 14 A. Yes, sir.
- 15 Q. Did he catch you and kill you?
- 16 A. No, sir.
- 17 Q. All right. When he chased you was he running?
- 18 A. I think he was.
- 19 Q. Was he running pretty good or was he --
- 20 A. Oh, he was running.
- 21 Q. Okay. After he chased you with the hatchet and didn't
22 catch you and didn't kill you, what's the next thing the
23 defendant did or said?
- 24 A. He got mad because he couldn't catch me. I stopped
25 and I turned and I was looking at him. Maybe from me to

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 that lady.

2 (WITNESS INDICATED TO COURT REPORTER.)

3 A. So fifteen feet away from me. He's looking at me and
4 he's asking me why don't I just stand there and I told him,
5 "because you're trying to kill me." And he gets mad, puts
6 the hatchet in the ground, pulls it back up, and I don't
7 remember any words being spoken at the time. My adrenalin
8 was pumping so - and he goes to the trunk of the car, gets
9 - he puts the hatchet down and grabs the machete. Starts
10 to chase me again.

11 Q. Okay. And tell us whereabouts there at the Mahoney's
12 where you lived, whereabouts did he chase you? Where did
13 you run to? Where did he chase you to?

14 A. Well, we was in the front yard at the start but then I
15 got the idea to run through the house but not stay in the
16 house. Just run through it, through the front door and out
17 the back door is what I did. Ran through the front door,
18 through the kitchen, out the back door.

19 Q. Okay. All right. And did he chase you much longer,
20 run after you much longer after you ran through the house?

21 A. No, sir. He was getting fatigued.

22 Q. Okay. And where did the defendant go - what did he
23 say then or what did he do then? Tell us what's the next
24 thing he did. If it's speaking something, tell us what he
25 said.

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 A. When I went out the back door, I didn't wait on
2 anybody. I just kept trucking. I kept running, you know.
3 Because I mean a guy is chasing me with a machete. I'm not
4 suppose to stop. I just kept running. I ran back towards
5 the front of the house.

6 Q. Okay.

7 A. I couldn't tell you if he said anything or not.

8 Q. Okay. The next time you saw the defendant, what did
9 he do and where did he go?

10 A. The next time I seen him, Mike was trying to coerce
11 him to go to the house or go to the hospital because he was
12 hurt and he really was. He was bleeding profusely and he
13 didn't want to hear it but he kind of got - he got talked
14 into it and he went to leave but before he left, he said,
15 "I'll kill you both if it's the last thing I do."

16 Q. All right. Did he get in his car?

17 A. Yes, sir, he got in his car.

18 Q. Did you see his car start to leave?

19 A. I seen taillights going up the driveway. I had to turn
20 around and look because Mike told me to go in the house.

21 Q. All right. And did you go in the house?

22 A. Yes, sir.

23 Q. Did everybody go in the house?

24 A. Yes, sir.

25 Q. All right. When you got in the house, what's the next

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 thing you and Mike Mahoney did? Where did you go?

2 A. Well, we went to the master bathroom. He had blood on
3 his hands and I didn't know if he had done gotten stuck or
4 - excuse me. I didn't know if he had got stabbed or
5 whatnot so I went in there with him to make sure that he
6 was okay and --

7 Q. Let me stop you. Where is Amy Mahoney at that point?

8 A. As soon as you walk in the bedroom, she was in the
9 left corner.

10 Q. Okay. And what was she doing?

11 A. She was on the phone with the police - or with
12 dispatch.

13 Q. All right. What is the next thing that happened?

14 A. The next thing that happened was me and Mike was
15 standing in the master bath and, you know, he's getting
16 washed up and we can hear Amy talking to the police but,
17 you know, really wasn't paying attention of what she was
18 saying and I mean all of a sudden she screams bloody
19 murder. And I'm like what's going on now? And we went to
20 go out the bathroom to check it out and we didn't have time
21 to get out of the bathroom and he was there.

22 Q. Who is he?

23 A. Excuse me. Bubba was there and he already had the
24 machete in the air swinging down. And I don't know if I
25 bumped Mike or pushed Mike --

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 Q. Let me stop you. The machete is coming, swinging?

2 A. Yeah. It's on the way.

3 Q. All right. If the machete had fallen through the way
4 he was, who or what was it going to hit?

5 A. It was going to hit me in my head.

6 Q. All right. Show the jury where.

7 A. It would either hit me right here or right here.

8 (WITNESS DEMONSTRATED:)

9 Q. Okay. When you see the machete coming towards your
10 head, what did you do?

11 A. Threw my hand up.

12 Q. Okay. And did the machete hit your hand?

13 A. Yes, sir.

14 Q. Did it cut your thumb off?

15 (WITNESS EXPOSED HAND WITHOUT THUMB.)

16 Q. After the machete cut your thumb on that --

17 THE COURT: We need an answer on that.

18 A. Yes, sir. It did cut my thumb off most of the way.

19 It was hanging on by skin.

20 Q. Okay. So it didn't fall off and bounce on the floor

21 --

22 A. No, sir. It was hanging on by the skin on the back of
23 my hand.

24 Q. Okay. All right. After the machete cut your thumb
25 off, what did the defendant do then?

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 A. Turned and ran.

2 Q. Was he running pretty good or was he limping like he
3 was hurt?

4 A. No. He got out of the house quick, fast and in a
5 hurt. Not the way someone injured would do.

6 Q. And your hand with the thumb cut off, how did that
7 feel?

8 A. Actually I didn't feel it. I knew it and I was
9 looking at it. I knew something was terribly wrong. I
10 didn't feel it though at the time I guess because of the
11 dopamine's or dopamine that your body releases to cover
12 that kind of shock.

13 Q. Okay. Was it bleeding?

14 A. Profusely.

15 Q. Okay. Would you please point out the person that
16 swung the machete at your head and cut your thumb off,
17 please?

18 A. That's him.

19 (WITNESS INDICATED TOWARD DEFENDANT.)

20 SOLICITOR SPRINGS: Let the record show he is pointing
21 to the defendant, Hubert Floyd Brown, Junior.

22 Q. Did you or the Mahoney's, did you do something to try
23 to stop the bleeding?

24 A. Got some towels, wrapped them around my hand. I stuck
25 my hand in the icebox that was in the freezer. I went from

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 the bathroom around to the kitchen and put my hand in the
2 freezer. Just that's what I always figured you were
3 suppose to do.

4 Q. Right.

5 A. It didn't help.

6 Q. Did an ambulance come?

7 A. They did.

8 Q. And did they take you to the hospital?

9 A. Yes, sir.

10 Q. And did the doctors try to reattach your thumb?

11 A. They did.

12 Q. Let me show you what's been marked State's Exhibit
13 Seventeen. Do you recognize that scene?

14 A. That's the Mahoney's master bathroom.

15 Q. And whose blood is that all over?

16 A. Mine.

17 Q. I'm showing what's been marked State's Exhibit
18 Eighteen. Whose blood is splattered on the wall there?

19 A. Mine. It's where it was squirt'n out.

20 Q. And have you had a number of surgeries on your thumb,
21 on your hand?

22 A. The two - The initial surgery to attach it and a
23 surgery to where they pulled the pins out from where it was
24 connected to the bones and they also stretched it and
25 manipulated it while I was asleep. That way it wouldn't

CHRISTOPHER CALVERT: BY SOLICITOR SPRINGS

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1 hurt too much.

2 Q. Okay. And do you have full use of your thumb today?

3 A. I have no use of my thumb.

4 (WHEREUPON: STATE'S EXHIBIT NUMBERS TWENTY-THREE AND
5 TWENTY-FOUR, PREMARKED FOR IDENTIFICATION.)

6 Q. Mr. Calvert, I'm showing you State's Exhibit Twenty-
7 three and Twenty-four. Do you recognize what's in those
8 two pictures?

9 A. My hand.

10 Q. Okay. And does it - What sort of things does it show
11 to do with your hand?

12 A. It really just shows the sutures and it shows where my
13 thumb used to sit out to the side and it's real swollen.
14 It's leaking.

15 Q. Is this what your hand looked like after the doctors
16 reattached your thumb?

17 A. Yes, sir.

18 Q. Is it a true and accurate picture ---

19 A. Very accurate.

20 Q. --- of what your hand and your thumb looked like when
21 the doctor sewed it back on?

22 A. Yes, sir.

23 SOLICITOR SPRINGS: Your Honor, we do offer State's
24 Exhibit Twenty-three and Twenty-four into evidence.

25 MR. COOK: Without objection, Your Honor.

CHRISTOPHER CALVERT: BY MR. COOK

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1 THE COURT: In without objection.

2 (WHEREUPON: STATE'S EXHIBIT NUMBERS TWENTY-THREE AND
3 TWENTY-FOUR IDENTIFIED AND MARKED, RECEIVED INTO THE
4 RECORD.)

5 SOLICITOR SPRINGS: We would ask to publish this to
6 the jury.

7 Would you ask the jurors to pass it around so it comes
8 all the way back please.

9 (STATE'S EXHIBIT NUMBER TWENTY-THREE AND TWENTY-FOUR
10 PUBLISHED TO THE JURY.)

11 SOLICITOR SPRINGS: Thank you, Your Honor.

12 If you would, answer any questions the defense
13 attorney has of you.

14 MR. CALVERT: Yes, sir.

15 CROSS EXAMINATION

16 CHRISTOPHER CALVERT BY MR. COOK

17 Q. So you did cocaine at Hooter's. Did you smoke any
18 crack cocaine when you got back to the house?

19 A. I never smoked any crack cocaine.

20 Q. Okay. Are you sure you weren't smoking crack cocaine
21 in the truck with Mr. Mahoney when my client pulled up?

22 A. Yeah I'm sure.

23 Q. Okay. Why did you have a lighter again?

24 A. Looking for my phone.

25 Q. Okay. Didn't Mike have a flashlight?

CHRISTOPHER CALVERT: BY MR. COOK

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1 A. Yeah, on one side of the truck.

2 Q. Uh-HUH.

3 A. I have a fl - or I had my lighter in my hand looking
4 underneath the seat and in the back floorboard. If we had
5 had two flashlights, I would have had the other one.

6 Q. And you've been convicted of assault and battery of a
7 high and aggravated nature in 2009?

8 A. That and manufacturing in 2009.

9 Q. Manufacturing? That's a drug charge?

10 A. Yes, sir.

11 Q. And petty larceny also in 2009; is that correct?

12 A. Yeah.

13 Q. Did you forget about that one?

14 A. Yeah, I did because it was bull.

15 Q. I'm sorry, you said?

16 A. It was bull. It was a bogus charge but I didn't have
17 a lawyer to fight it with so I had to eat it.

18 Q. How much time did it take for your head to clear after
19 your accident?

20 A. I'd say about two and a half months.

21 Q. And you weren't --

22 A. As far as --

23 q. And you weren't struck on the head.

24 A. As far as being - no. It was through medications.

25 Q. What kind of medications? Pain medications?

CHRISTOPHER CALVERT: BY MR. COOK

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1 A. Oh, yeah. Powerful ones. Lost a lot of sleep during
2 that time. The loss of blood too.

3 Q. When did you give your statement to the police?

4 A. Maybe five, six days after I got out of the doctor -
5 out of the hospital.

6 Q. And even after that amount of time you couldn't
7 remember running through the house the first time?

8 A. Everything came back to me about maybe four or five
9 months ago. Excuse me. Started coming back to me four or
10 five months ago. Lit bits of the puzzle would start
11 filling themselves in but at the time I didn't want to give
12 my number to anyone, not even the solicitor, because I was
13 receiving threats whenever people did have my number.

14 Q. Did you think the solicitor would make threats at you?

15 A. No. Just didn't trust anybody.

16 Q. You don't trust the solicitor?

17 A. I don't trust nobody.

18 Q. Were you worried about being arrested yourself that
19 night?

20 A. No.

21 Q. Okay. So you were doing this to protect Mike?

22 A. Yes, sir.

23 Q. Then why did he ask you, "why did you do that" after
24 you hit Mr. Brown?

25 A. I don't know why he asked me that. Maybe he had some

CHRISTOPHER CALVERT: BY MR. COOK

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1 kind of feelings about it.

2 Q. Didn't you think that your defense of Mr. Mahoney was
3 disproportionate?

4 A. No.

5 Q. I suppose - Why didn't you mention my client going to
6 the car the first time in your statement?

7 A. Because I gave that statement a week after I got out
8 of the hospital.

9 Q. Did you continue to not trust law enforcement four
10 months after the episode?

11 A. Pretty much.

12 Q. Is that why you didn't call to clear up your
13 recollection when the facts started coming back to you?

14 A. Every time I would give somebody my number, something
15 was going on, so I quit giving people my number and I quit
16 receiving threats and threatening phone calls.

17 Q. What does that mean?

18 A. If I gave someone my number, it didn't matter who it
19 was, it would always go to where I was getting a phone call
20 here and there stating that if I testified something would
21 happen to me --

22 SOLICITOR SPRINGS: I'm going to object. I'm going to
23 object to my own witness as hearsay.

24 THE COURT: I sustain the objection.

25 Go ahead and ask your next question.

CHRISTOPHER CALVERT: BY MR. COOK

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1 MR. COOK: Yes, sir, Your Honor. I beg the court's
2 brief indulgence.

3 (PAUSE.)

4 Q. Why did you move out of the Mahoney's residence?

5 A. Because it was best for me to go back to my home.

6 Q. Why was it best for you to go back to your home?

7 A. Because the Mahoney's had helped me to the extent,
8 further than the extent that anyone else would have as far
9 as financially goes, and it was a good time for me to go
10 home and visit my mom because she was sick. She's not in
11 good - she's not in the best of health. She still isn't in
12 the best of health, so I needed to be around her if she
13 passes away.

14 Q. Where was Amy when you ran through the house the first
15 time? Amy being Mr. Mahoney's wife.

16 A. That's a good question. I wasn't paying attention to
17 her. I was paying attention to him.

18 Q. Did you ever notice where Amy was throughout any of
19 this episode?

20 A. When I got back in the house - whenever he left or
21 when Bubba left and got back in the house, that's when I
22 noticed she was in the bedroom. That's the only time I
23 seen her. I wasn't paying attention to anyone besides that
24 fellow.

25 Q. When you hit Mr. Brown, were you trying to kill him?

CHRISTOPHER CALVERT: BY MR. COOK

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1 A. No, sir.

2 MR. COOK: I beg the court's brief indulgence.

3 (PAUSE.)

4 Q. Did you notice Mr. Brown forming incomplete statements
5 and sentences?

6 A. No, sir.

7 Q. Did he have complete control of his faculties after
8 you hit him?

9 A. Um....

10 Q. Like was he stuttering?

11 A. I didn't hear him stutter anything. When he started
12 saying something, it was more along the lines of "I'm gonna
13 get you. I'm going to kill you if it's the last thing I
14 do."

15 Q. Did you hear Mr. Mahoney's testimony that he was
16 stuttering after he was hit?

17 A. I heard what he said but he might a been standing
18 closer to Mr. Brown than I was.

19 Q. Thank you.

20 MR. COOK: No further questions, Your Honor.

21 THE COURT: Redirect?

22 SOLICITOR SPRINGS: Thank you, Mr. Calvert.

23 THE COURT: You may step down. Thank you. Appreciate
24 your time.

25 (WITNESS LEAVING WITNESS STAND.)

AMY MAHONEY; BY SOLICITOR SPRINGS:

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1 THE COURT: Call your next witness.

2 SOLICITOR SPRINGS: We call Amy Mahoney.

19 Come on up, Mrs. Mahoney, and the Clerk will swear you
20 in on the Bible.

21 MADAME CLERK: Thank you. You may have a seat right
22 there.

23 (WHEREUPON: AMY MAHONEY,
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 DIRECT EXAMINATION

1 AMY MAHONEY BY SOLICITOR SPRINGS:

2 Q. Now you've got a soft voice so please keep your voice
3 up. No body is going to fuss.

4 A. Okay.

5 Q. You can't get too loud in this room.

6 A. Okay.

7 Q. So keep your voice up and talk towards the microphone
8 and tell us your name, ma'am.

9 A. Amy Lee Mahoney.

10 Q. What's your husband's name?

11 A. Michael Shawn Mahoney.

12 Q. And where do you live? What address?

13 A. [REDACTED], York, South Carolina 29745.

14 Q. Okay. I want to ask you about the stuff that happened
15 the night of June 8th---

16 A. Yes, sir.

AMY MAHONEY; BY SOLICITOR SPRINGS:

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1 Q. --- of last year. Who all was living in your house?

2 Who was a resident of your house that day?

3 A. Myself, my husband Mr. Mahoney, Mr. Calvert and Mr.
4 Billy Odom.

5 Q. And Mr. Odom has passed away?

6 A. Yes, he has.

7 Q. Did he have cancer?

8 A. He had a small stroke a few days before he passed
9 away. He was in the hospital. He did have throat cancer.

10 It was very hard for him to speak and swallow and the
11 morning, I believe it was August 16th, Mr. Calvert and I
12 found him passed away in bed, so yes he did pass away.

13 Q. And I take it he was a good friend?

14 A. Very, very good friend, yes. I took care of him for
15 two years.

16 Q. On June 8th of last year, that's a Friday, were you
17 working that day or did you have the day off?

18 A. I believe I had the day off.

19 Q. And do you remember what you did that day before --

20 A. Mr. - I'm sorry.

21 Q. Go ahead. Before it got to be night time.

22 A. Mr. Odom and I had been running around doing errands.

23 He's disabled. He only had one leg and I would take him

24 running errands. Go to the grocery store, go to the

25 doctors, pharmacy. Different places like that.

AMY MAHONEY; BY SOLICITOR SPRINGS:

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1 Q. All right. Do you remember what time you got back in
2 the evening?

3 A. We got back probably around 6:30.

4 Q. All right.

5 A. When we got home me saw Mr. Mahoney and Mr. Calvert
6 leaving in the truck.

7 Q. Okay. Do you remember your husband and Chris Calvert
8 getting back from Hooter's?

9 A. Yes, I do.

10 Q. When they got back were you in the house or out of the
11 house or back and forth?

12 A. Back and forth. It was a warm night outside. Mr.
13 Odom and I were in between sitting on the front steps and
14 on the - in the house on the couch and the chair.

15 Q. Okay. So Billy Odom was sitting outside?

16 A. Yes.

17 Q. Okay. And do you remember anything about the cell
18 phone being lost? People looking for a cell phone?

19 A. I remember Michael - They were looking for something
20 and Michael came to me asking me where is the red
21 flashlight. And he said "go get the flashlight" so that's
22 when I found it and I gave it to him when they were looking
23 for the cell phone in the truck.

24 Q. Did you see the defendant drive up in his car?

25 A. I don't recall. I don't recall seeing that.

AMY MAHONEY; BY SOLICITOR SPRINGS:

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1 Q. And what's the first thing that got your attention
2 that evening that concerned you, kind of scared you?

3 A. Obviously Mr. Brown was there and I heard them - it
4 was in the front yard near where the truck was parked, they
5 were like fighting and cursing. It was dark. I couldn't
6 see. I knew they were swearing and yelling at each other.
7 Mr. Odom and I were on the porch at this time and he stood
8 up and told me, "Amy get back, let's get back. I don't
9 want you to get hurt. I don't want you to get hurt."

10 Q. Mr. Odom said that?

11 A. Yes. Because he cared about me like a friend.

12 MR. COOK: Your Honor, I make an objection on anything
13 that Mr. Odom said.

14 THE COURT: I sustain the objection.

15 BY SOLICITOR SPRINGS:

16 Q. Did you go in the house?

17 A. Yes. Yes we did.

18 Q. Okay. And what's the next thing that got your
19 attention? What's the next thing that happened that you
20 saw or heard?

21 A. Okay.

22 (WITNESS CRYING.)

23 Q. Take it slow and easy.

24 A. All right. It got a little bit quieter out so Mr.
25 Odom and I went out, sat on the steps again right outside

AMY MAHONEY; BY SOLICITOR SPRINGS:

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1 in the front. And that is when Mr. Calvert and Mr. Brown
2 ran through the house the first time. They actually jumped
3 up the steps, jumped over me to get into the house whereas
4 when they ran from the front door to the back door and ran
5 out the back that way.

6 Q. Okay. All right. Now, what's the next thing that
7 happened that you remember or heard?

8 A. That I heard? Michael told me to call 9-1-1. I was
9 in the house most of the time after this. Once he jumps
10 through and over me I was in the house.

11 Q. Okay.

12 A. They were outside tussling and doing whatever. I did
13 not see any of that. I was in the house the rest of the
14 time.

15 Q. All right. Let me stop you.

16 A. Okay.

17 Q. Just thinking about this you seem to be upset. Were
18 you upset at that point that night?

19 A. Yes, I was.

20 Q. Okay.

21 A. Fearful.

22 Q. And your husband asked you to call 9-1-1. Did you?

23 A. Yes, I did.

24 Q. Okay. And as you're calling 9-1-1, where are Mike and
25 Chris Calvert?

AMY MAHONEY; BY SOLICITOR SPRINGS:

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1 A. Where are they at?

2 Q. Yes.

3 A. I guess he had asked already Bubba to leave and they
4 were in the house. The front door was shut. The bedroom
5 door was shut and they were in the master bath washing off
6 the mud, dirt and blood on their hands.

7 Q. And where were you?

8 A. I was in the corner by the window. When you walk in,
9 to the left corner.

10 Q. Did you get the 9-1-1 operator on the phone?

11 A. Yes, I did.

12 Q. And as you're talking to the 9-1-1 operator, did
13 something bad happen?

14 A. Something very bad happened.

15 Q. And what was that?

16 A. I heard the front door slam open. Mr. Brown came -
17 slammed in, came in. He then went through the bedroom door
18 and I'm like "no, no." I saw him hit Mr. Calvert on the
19 hand. He had actually - Mr. Calvert pushed my husband back
20 towards the toilet and pretty much saved his life and Chris
21 was - Chris saved his life and Bubba hit him on the hand
22 with the machete.

23 Q. Okay. After the defendant hit Calvert on the hand
24 with the machete, what did the defendant do then? Where
25 did he go?

AMY MAHONEY; BY SOLICITOR SPRINGS:

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1 A. He ran out of the house. I didn't see them leave or
2 anything. I --

3 Q. Let me ask questions. I'm a lawyer, I like to do
4 that. When the defendant ran out of the house, did he have
5 any trouble running or was he limping or anything?

6 A. No. No. He ran very quickly.

7 Q. Mrs. Mahoney, have you heard your 9-1-1 call in this
8 case?

9 A. Yes, I have.

10 (BAILIFF HANDED WITNESS CUP OF WATER.)

11 Q. I'm showing you what's been marked State's Exhibit
12 Thirteen for identification. Have you ever heard what's on
13 that disk?

14 A. Yes, I have.

15 Q. Is that the 9-1-1 call?

16 A. Yes, sir.

17 Q. And you're speaking to the operator on this disk. Is
18 it true and accurate in every respect?

19 A. Yes, sir. From that evening, from - Yes, everything
20 is correct.

21 SOLICITOR SPRINGS: Your Honor, we do offer State's
22 Exhibit Thirteen into evidence.

23 MR. COOK: Without objection, Your Honor.

24 THE COURT: In without objection.

25 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTEEN

AMY MAHONEY: BY SOLICITOR SPRINGS
BY MR. COOK

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1 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

2 SOLICITOR SPRINGS: And we'd like to publish it.

3 THE COURT: You may.

4 (STATE'S EXHIBIT NUMBER THIRTEEN PUBLISHED TO THE JURY
5 AT 03:23 P.M..)

6 BY SOLICITOR SPRINGS:

7 Q. Did the police come?

8 A. Yes, they did.

9 Q. And emotionally how were you when you met with the
10 police that night?

11 A. Hysterical. Still upset with the whole scene and the
12 whole situation.

13 SOLICITOR SPRINGS: Thank you, Mrs. Mahoney. Please
14 answer the defense attorney has.

15 MS. MAHONEY: Yes, sir.

16 MR. COOK: Beg the court's brief indulgence.

17 (PAUSE.)

18 CROSS EXAMINATION

19 AMY MAHONEY BY MR. COOK:

20 Q. Had you been drinking that night, Mrs. Mahoney?

21 A. I may have had a few beers. One or two that I
22 remember.

23 Q. Okay. You weren't intoxicated?

24 A. No.

25 Q. Then why didn't you call the police the first time

AMY MAHONEY: BY MR. COOK

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1 they ran through the house?

2 A. I don't know. I seriously don't know. I don't know
3 why I didn't.

4 Q. You testified that you were sitting on the porch with
5 Mr. Odom on the steps.

6 A. Correct.

7 Q. And that they ran past you?

8 A. They jumped up, yes, and I felt that they were -
9 Michael said that they were leav - they went on out back.
10 Mr. Odom and I then came inside and a few moments later
11 Michael came in said he's leaving, he's leaving, so that's
12 when they went to the restroom to wash everything off.

13 Q. Okay. When you came inside don't you think that would
14 have been a good time to call the police if they actually
15 had run through your house?

16 A. They ran through the - the second time when he ran in
17 and cut his thumb off --

18 Q. No, ma'am. The first time they ran through your
19 house, why did you not call the police?

20 A. I don't know why I didn't call them.

21 Q. So you almost made it appear that you and Mr. Odom
22 were just out on the porch watching them running around in
23 the yard with a hatchet after someone trying to kill them.

24 A. We weren't getting in their way. We were fearful. We
25 were coming back and forth in the house and stuff.

AMY MAHONEY: BY MR. COOK

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1 Q. Back and forth? You're going back and forth in the
2 house while someone is running around in your yard chasing
3 somebody else with a machete? What were you doing? Did
4 you go get something to drink?

5 A. No. It wasn't like that. I was just back and forth
6 in the house. I was scared. I was...

7 Q. If you were scared, why did you go back out into the
8 yard where the person with the machete was?

9 A. When he jumped over me the first time? It was hot.
10 He and I were going back and forth. Is that what you are
11 asking? I'm confused.

12 Q. Well, I'm asking - you said your testimony was that
13 while they were in the yard running around with a hatchet
14 chasing after people, that you were back and forth into the
15 house. And so my question was, why did you come back out
16 into the yard if it was dangerous and you were scared?

17 A. I'm assuming to watch my husband, make sure that him
18 and Chris were okay.

19 Q. Hadn't it crossed your mind to call 9-1-1 at that
20 point?

21 A. No, it hadn't. No.

22 Q. Did you see Bubba's head bleeding?

23 A. No, I did not.

24 Q. Well you say right here in your statement, I saw where
25 Bubba's head was bleeding.

AMY MAHONEY: BY MR. COOK

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1 A. Okay. I made a mistake.

2 Q. How many other mistakes have you made today?

3 SOLICITOR SPRINGS: Objection. That's argumentative.

4 THE COURT: I sustain the objection.

5 Just ask questions.

6 BY MR. COOK:

7 Q. All right. Did you see Bubba's head bleeding? Yes or
8 no?

9 A. Yes.

10 Q. Okay. And you claim that you made some mistakes. Did
11 you mean that you made some mistakes in your testimony
12 today or that you made some mistakes in your statement?

13 A. I may have made some mistakes in my wording today
14 because this happened a year ago, over a year ago.
15 Everything is written in my police statement when it
16 happened on that date is true and accurate.

17 Q. Okay. Has your husband and Chris Calvert, is it true
18 and accurate that they've ever done drugs in your house?

19 SOLICITOR SPRINGS: Objection. That's irrelevant.

20 THE COURT: I sustain the objection.

21 BY MR. COOK:

22 Q. Did you - Were you aware that Chris Calvert was doing
23 drugs this night?

24 A. No.

25 Q. Did you ever hear Mr. Calvert yelling threats at my

AMY MAHONEY: BY MR. COOK

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1 client, "I'm going to get you"?

2 A. I believe in my statement I did say that. I heard
3 Bubba say that, that he's going to kill Michael and kill
4 Chris.

5 Q. Ma'am, that's not my question to you.

6 A. What my statement - what was said? Is that what this
7 --

8 Q. Did you hear Mr. Calvert making threats to Mr. Brown?
9 Yes or no?

10 A. Yes.

11 Q. You never saw blood on my client's head? Even when
12 they were running past you?

13 A. I don't believe - I really don't. I said, it's been
14 over a year.

15 MR. COOK: No further questions, Your Honor.

16 THE COURT: Redirect?

17 SOLICITOR SPRINGS: No, nothing.

18 Thank you, Mrs. Mahoney, come on down.

19 THE COURT: You can step down. Thank you. Appreciate
20 your time.

21 (WITNESS LEAVING WITNESS STAND.)

22 THE COURT: Call your next witness.

23 SOLICITOR SPRINGS: The State calls Tracy Strickland.

24 (WHEREUPON: TRACY

25 STRICKLAND, BEING FIRST CALLED AND DULY SWORN, TESTIFIED

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 AS FOLLOWS:)

2 MADAME CLERK: Thank you. You may have a seat.

3 DIRECT EXAMINATION

4 DETECTIVE TRACY STRICKLAND BY SOLICITOR JONES:

5 Q. Please state your name please, sir.

6 A. Tracy Lee Strickland.

7 Q. And where are you currently employed?

8 A. With the York County Sheriff's Office.

9 Q. And what's your current rank or title?

10 A. I'm an investigator. I'm a detective.

11 Q. And how long have you been with the sheriff's
12 office?

13 A. I've been in law enforcement for twenty-eight years.

14 Q. And of that twenty-eight years, how much of that was
15 with this particular sheriff's office?

16 A. I've been with the York County Sheriff's Office for
17 about twenty-five years.

18 Q. And were you assigned to the investigation of this
19 burglary and attempted murder at [REDACTED] on June
20 8th of 2012?

21 A. Yes, sir, I was.

22 Q. And is [REDACTED] in York County?

23 A. Yes, sir, it is.

24 Q. Can you tell us when you started working on the
25 case?

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 A. I was the investigator on call on that night, June
2 8th, and I was called out to go to the scene to assist
3 the patrol officers that were already at the scene.

4 Q. Through your investigation, did you interview and
5 talk with witnesses?

6 A. Yes, I did.

7 Q. So let's go through some names now. Can you tell
8 the jury all the people who lived at [REDACTED] [REDACTED] [REDACTED]?

9 A. Mr. Michael Mahoney, his wife, Amy Mahoney;
10 Christopher Holden Calvert, and Billy Odom.

11 Q. Were you able to find out who actually owned the
12 house?

13 A. Mike Mahoney and Amy Mahoney owns the house.

14 Q. But you said a Chris Calvert and a Billy Odom lived
15 there as well. Were they just renters?

16 A. They were. Yes, sir, just renters.

17 Q. Were Mr. And Mrs. Mahoney eye witnesses to the
18 events of June 8th?

19 A. Yes, sir, they were.

20 Q. Did anyone who lived at [REDACTED] [REDACTED] [REDACTED] get injured
21 or hurt that night?

22 A. Yes, sir, Mr. Chris Calvert.

23 Q. And was he killed or did he survive?

24 A. He did survive. He was not killed.

25 Q. And can you describe his injury please for us?

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 A. He had a severe laceration to his right hand. It
2 was a - almost cut off with a large knife, machete type
3 instrument which almost chopped his thumb off.

4 Q. Was the thumb cut off so it fell to the ground?

5 A. No. It was hanging on by skin. It was not all the
6 way severed.

7 Q. And where was Chris Calvert when his thumb was cut
8 off?

9 A. He was in the master bathroom of the residence.

10 Q. So his thumb was cut off in a home where he was
11 living?

12 A. That is correct.

13 Q. When you began the investigation or during your
14 investigation, did you talk to Chris Calvert and ask him
15 what happened?

16 A. Yes, sir, I did. It was about six - five or six
17 days after the incident, after he got out of the
18 hospital.

19 Q. And did you ask him to give a written statement?

20 A. Yes, sir, I did.

21 Q. Did anyone else living at [REDACTED], or was
22 anyone else involved in an assault or a fight of any kind
23 that night?

24 A. Mike Mahoney was also involved in the altercation
25 out in the yard along with Mr. Brown, Hubert Brown.

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 Q. And did you interview Mr. Mahoney?

2 A. Yes, sir, I did that night.

3 Q. And did he tell you what happened?

4 A. Yes, sir. He relayed the incident to me. We sat
5 out in my pick up truck and he explained to me what had
6 occurred and I wrote the statement out for him.

7 Q. And where is Billy Odom today?

8 A. He has since passed away.

9 Q. But when you were investigating this case did you
10 talk to Mr. Odom?

11 A. I did. I also got a statement from him also.

12 Q. So when you started working on the crime scene that
13 night, you interviewed witnesses, did you also examine
14 the crime scene?

15 A. Yes, sir, I did.

16 Q. And did it appear in your initial investigation that
17 a crime or crimes occurred?

18 A. Yes, sir.

19 Q. And what crimes were eventually charged?

20 A. A charge of burglary first degree and a attempted
21 murder charge.

22 Q. What address did you think the burglary had
23 occurred?

24 A. The address was [REDACTED], York, South
25 Carolina.

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 Q. And what about the attempted murder?

2 A. The same address.

3 Q. And pursuant to your investigation, what time of day
4 or night did this crime take place?

5 A. It was approximately 10:30 p.m. the night of June
6 the 8th, 2012.

7 Q. What was the name of the victim of the attempted
8 murder?

9 A. Chris Holden Calvert.

10 Q. And from your investigation did you learn what kind
11 of weapon was used?

12 A. The weapon that was used was a machete.

13 Q. And were you able to recover a machete?

14 A. We did not recover the machete.

15 Q. But did you bring an example of a machete to the
16 courtroom here today?

17 A. Yes, sir.

18 MR. COOK: I'm going to object, Your Honor, if the
19 State is planning on showing the jury what a machete
20 looks like.

21 THE COURT: I think this would be a good time to
22 take a break anyway. I'll let the jury go to the jury
23 room while we take up the matter of law for our afternoon
24 break.

25 (JURY EXITS COURTROOM AT 03:47 P.M..)

1 MR. COOK: Your Honor, if I may. My client informs
2 me at this juncture that he would like to address the
3 court for some reason. I'm not sure what that reason is.

4 THE COURT: You might not - You certainly have the
5 right to address the court but do you understand that
6 whatever you say is being taken down.

7 MR. BROWN: I understand that, sir. I want it to be
8 taken down.

9 THE COURT: Well do you understand you have the
10 right to remain silent.

11 MR. BROWN: I understand that, sir.

12 THE COURT: And anything you say can be used against
13 you later in this trial ---

14 MR. BROWN: Yes, sir.

15 THE COURT: --- or at some later time.

16 MR. BROWN: Yes, sir.

17 THE COURT: And you have an attorney.

18 MR. BROWN: Yes, sir. I understand that.

19 THE COURT: And your attorney is to represent you
20 and give you advice.

21 MR. BROWN: Yes, sir. I understand that.

22 THE COURT: Have you discussed with your attorney
23 what you want to talk to the court about?

24 MR. BROWN: No, sir. I want to talk to you.

25 THE COURT: Well, I suggest and give you the

1 opportunity to talk to your attorney first.

2 MR. BROWN: I'd like you to put it on record. I'm
3 fine - he's got some kind of idea what I want to talk
4 about, about that tape right thing.

5 MR. COOK: Your Honor, my client feels that the tape
6 has been adulterated by the State and I played it for him
7 in preparation of the trial and he remembers some laughter
8 on the 9-1-1 tape.

9 MR. BROWN: Also, they didn't play it all the way to
10 the end. They didn't play that tape all the way to the
11 end, Your Honor. And if you call my wife and if you call
12 Pat Keefer, even Phil Smith, you know he was my lawyer to
13 start with, and call them in here, we ain't got to move.
14 Everybody stay just like they are right now and call them
15 in here and they'll tell you that there was laughing on
16 that tape and all the way to the end of that tape, Mike
17 Mahoney on that tape threatens that if you don't come
18 right now, I'll kill him myself and that was on the end
19 of that tape, Your Honor. And they played that tape for
20 me. They played it for my wife, the investigator did,
21 and he played it and if you call my wife in here right
22 now and ask her --

23 THE COURT: I'm not going to call her. I'm not
24 going to call any witnesses.

25 MR. BROWN: I understand.

1 THE COURT: My suggestion would be that over the
2 break if your attorney wants to talk to Mr. Smith and
3 find out what's going on about that, but - and your
4 attorney - anyway I'm not going to do anything that
5 you've asked.

6 Right now we're in the State's case and the State
7 has the right to present their case. You don't have to
8 present a case and I'll talk to you about that later
9 because as you've already heard your attorney say, you're
10 presumed innocent and need not prove your innocence. The
11 State has to prove your guilt beyond a reasonable doubt.
12 But I understand your concern but I can't present
13 evidence and I'm not going to call witnesses.

14 MR. COOK: And Your Honor, if I may just for
15 clarification sake, I informed Mr. Brown that I was going
16 to go back tonight and listen to the original tape that
17 the State had provided and if I heard anything on that
18 tape that seemed to indicate that it had been
19 adulterated, I was going to make a motion tomorrow before
20 the beginning of trial. And I just wanted to state that
21 and I apologize for the interruption.

22 THE COURT: Well, before we take our break, Mr.
23 Springs, it came in through your witness. Do you want to
24 weigh in on this?

25 SOLICITOR SPRINGS: Yes. I don't know what they

1 mean by adulterated. Did the conversation with 9-1-1
2 continue? Yes, it did. I stopped it after, basically
3 after I got to nut of the situation. I didn't get into
4 how to get to the house and everything that was said, so
5 everything on that tape as the witnesses have testified
6 to, was exactly right and then we stopped it toward the
7 end of the call.

8 THE COURT: All right. Does Mr. Cook have the
9 entire tape?

10 SOLICITOR SPRINGS: Yes.

11 THE COURT: Okay. Well you can just do it tonight
12 and advise your client and go with that however you deem
13 appropriate.

14 MR. COOK: If I may, Your Honor, now my plans have
15 changed and I planned on just cross examining Detective
16 Strickland and playing the tape in its entirety during my
17 cross examination.

18 THE COURT: How are you going to get it in? It's
19 already in the record though isn't it? Is the entire
20 tape in the record?

21 SOLICITOR SPRINGS: That disk ends where it ends.
22 Do you have the disk of the whole call?

23 MR. COOK: Yes. Well, I have what you gave me in
24 discovery.

25 SOLICITOR SPRINGS: Okay.

1 MR. COOK: And I believe that it is entire but -
2 it's in its entirety of what you gave me in discovery.

3 SOLICITOR SPRINGS: Correct.

4 THE COURT: Did you plan to play it during this
5 witness' examination?

6 MR. COOK: Yes.

7 THE COURT: Any objection?

8 SOLICITOR SPRINGS: No.

9 THE COURT: Okay. All right.

10 MR. COOK: Just to cure it.

11 THE COURT: Well we'll let you do that. That's a
12 little unusual because this witness wasn't involved in
13 the call with 9-1-1, but without objection from the
14 State, we'll certainly allow you to play it.

15 The jury has asked for a smoke break and I'm letting
16 them take one so we'll have about a ten minute break.

17 MR. COOK: And another point, Your Honor, while
18 we're out of the presence of the jury --

19 THE COURT: We have to take up the machete too. Go
20 ahead.

21 MR. COOK: Yes, sir. May I just - because I want to
22 obviously keep a clean trial, may I say while - since it
23 is awkward, may I say that Detective - you've heard the
24 9-1-1 tape, may I play it again?

25 Well, we don't have it in its entirety.

1 SOLICITOR SPRINGS: You want me to make you a copy
2 in its entirety?

3 MR. COOK: Would you mind?

4 THE COURT: During the break we'll make a copy in
5 its entirety and then - I'm not a coach but it seems to
6 me that without objection you can say to the witness do
7 you mind listening to the 9-1-1 tape and play it.

8 MR. COOK: Yes, sir.

9 THE COURT: Seems to be the most simplest way to do
10 it since nobody objects, and he can't authenticate it or
11 give it in or anything else.

12 Yes, sir, Mr. Brown

13 MR. BROWN: I apologize for any inconvenience, Judge
14 Hayes. It's just that you know I think it would be
15 relevant to my case for the jury to hear it after these
16 people tried to kill me outside and then went inside and
17 laughed about it. And I know I heard it on that tape and
18 there were several witnesses in the room here that when
19 they played the tape that we heard it. And now we're not
20 hearing it because someone is yelling or right before the
21 9-1-1 call when Amy goes to screaming there is yelling on
22 the tape and that wasn't there before.

23 THE COURT: Mr. Brown, I hate to cut you short but
24 I am. You've got an attorney and I'm not going to hear
25 from you while --

1 MR. BROWN: I understand. I apologize.

2 THE COURT: Received one other note. I don't know -
3 Be sure I covered this. "Are we allowed to discuss the
4 case during break" and I put a big "NO" on the line three
5 times and then said "do not discuss the case until I
6 instruct you to do so after I charge you the law at the
7 end of the trial."

8 Any objection to me sending that in?

9 SOLICITOR SPRINGS: No, sir.

10 MR. COOK: None from the defense, Your Honor.

11 THE COURT: Tell them to keep the note and turn it
12 in.

13 Now, go ahead.

14 MR. COOK: In regards to the machete, Your Honor, I
15 just noticed that the State has under the table - and
16 I'll be candid. I actually can't remember. I think I
17 discussed this with Solicitor Springs. It may have been
18 a few months ago and if so, I apologize that I can't
19 remember.

20 SOLICITOR SPRINGS: We're not admitting it into
21 evidence. We're using it as demonstrative evidence.

22 MR. COOK: I think that that's overly prejudicial.

23 THE COURT: Well I don't think overly prejudicial.
24 I just don't know how this witness is going to testify
25 that that's the instrument that wheeled that night.

1 We've already had two witnesses that saw it was wheeled
2 and they haven't testified as to what it was and I don't
3 know how you get through two witnesses who saw the
4 instrument and not getting it through them and get it in
5 through somebody else who is just going to identify it as
6 a machete.

7 SOLICITOR SPRINGS: That's what he's going to do.
8 Say, this is an example of a machete.

9 THE COURT: I'm not going to allow it in and of
10 course, this is Mr. Jones' witness so he is suppose to be
11 doing the arguments although everybody welcomes your - I
12 appreciate hearing it with my own ears, Mr. Springs.

13 SOLICITOR SPRINGS: Thank you.

14 SOLICITOR JONES: Your Honor, this is just going to
15 be used for demonstrative purposes. We can't be sure
16 that all the jurors know what a machete is. That might
17 sound silly but that's the State's position and we are
18 acknowledging that this is not the machete that was used
19 that night; that this is just an example of a machete.

20 THE COURT: Well, you're not following what I'm
21 saying. You had two people that saw what they had and
22 somebody could have said is this one. Now we've got
23 somebody that's just going to say it's a machete. It's
24 just like - I don't know if they're different sizes.
25 I've got a machete, I don't know if it's that same size.

1 Actually it's my wife's machete, but anyway unless you
2 can have some more definitive purpose than to say it's a
3 machete - I don't know if they come in sizes or different
4 types. I know they are used to harvest sugar cane and
5 things like that. I'm just not going to allow it in.

6 SOLICITOR JONES: Yes, sir.

7 THE COURT: Or not allowed it in but not allow it to
8 be used for demonstrative purposes.

9 MR. COOK: And finally, Your Honor, while the jury
10 is not present, I just want to bring this up. In regards
11 - I've had some time to think about this over lunch.
12 This is a transcript that the State has of a conversation
13 between Detective Strickland and my client and they
14 mentioned it in Motions for Limine.

15 I think that it is improper to bring up this
16 conversation between the Detective and my client because
17 there is a sentence in here that its incriminating on my
18 client's behalf, and it is a situation that is tantamount
19 to a custodial scenario.

20 Your Honor, the Detective starts asking my client
21 questions that basically look like an investigation.

22 THE COURT: It was an investigation. Who initiated
23 the call?

24 MR. COOK: I'm not even sure, Your Honor.

25 DETECTIVE STRICKLAND: The defendant initiated the

1 call.

2 THE COURT: The defendant calls and talks to the
3 police, that's his right to do so and they have a right
4 upon receiving the call to make inquiries to why the heck
5 you called.

6 MR. COOK: But it seems, Your Honor, that at that
7 point that law enforcement should have Mirandized my
8 client if they wanted to start asking him investigatory
9 questions.

10 THE COURT: If you objected to the statement, I
11 overrule the objection.

12 MR. COOK: I just wanted to put it on the record.

13 THE COURT: Okay.

14 MR. COOK: Thank you, Your Honor.

15 SOLICITOR JONES: Thank you, Your Honor.

16 THE COURT: All right. We'll take about a ten
17 minute break.

18 You can step down and get water or use the restroom.
19 Just don't discuss your testimony.

20 (COURT IN RECESS AT 04:00 P.M..)

21 (COURT BACK IN SESSION AT 04:11 P.M..)

13 THE COURT: Take your seats.

14 MR. COOK: May it please the Court, Your Honor.

15 THE COURT: Wait just one second.

16 All right. Yes, sir.

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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13 MR. COOK: In regards to the issue about my previous
14 allegation about adulterating the tape, I just wanted to
15 inform the Court the State has played me the tape. I as
16 the attorney for Mr. Brown have made a strategy decision to
17 not replay the tape as we had discussed it with Mr.
18 Strickland, and I'm just going to let the issue rest and
19 I'm not going to make another motion about it today, Your
20 Honor.

21 THE COURT: All right.

1 Bring in the jury.

2 (JURY REENTERS COURTROOM AT 04:13 P.M..)

3 THE COURT: Members of the jury panel, just to
4 followup on your note. It would not be proper and it would
5 be a violation of your oath for you to discuss the case at
6 any point until I instruct you to jointly deliberate and
7 return a unanimous verdict. You don't have enough
8 information to make a reasonable decision until we've
9 reached that point and it's just not allowed, so on break,
10 over night, anytime, don't discuss the case until I direct
11 you to do so.

12 MR. JONES: Thank you, Your Honor.

13 DIRECT EXAMINATION - CON'T

14 DETECTIVE TRACY STRICKLAND BY SOLICITOR JONES:

15 Q. Detective Strickland, we left off talking about a
16 machete. Were you able to find a machete?

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 A. No, sir, we did not find a weapon.

2 Q. And there's also been some discussion about a hatchet.

3 Were you able to find a hatchet?

4 A. We did not find the hatchet either.

5 Q. Through the course of your investigation when you were

6 looking into the house, did you find any marks that

7 appeared to have been made by a large blade?

8 A. Yes, sir. On the back porch, going out the back door

9 of the house going down some steps, the wooden rail had a

10 large gash in it which was made by some large type knife or

11 a large blade.

12 Q. Did you develop a suspect as a result of your

13 investigation?

14 A. Yes, sir, we did.

15 Q. And who was that?

16 A. Mr. Hubert Brown.

17 Q. And what crimes did you suspect Hubert Brown

18 committing?

19 A. Burglary first degree for entering a dwelling in the

20 night time with the intent to commit great bodily harm and

21 attempted murder.

22 Q. I think we normally think of burglary as someone

23 breaking in to steal something. Is burglary limited to

24 just breaking in somewhere and stealing things?

25 A. No, sir, it's not.

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 Q. So for instance, if a man broke into a woman's house
2 in the night intending to rape her, is he committing a
3 burglary?

4 A. That's correct. And he has to have the intent to
5 commit a crime within the residence.

6 Q. If someone breaks into another person's house
7 intending to harm them, are they committing burglary?

8 A. Yes, sir.

9 Q. And is that person breaking in, do they have to
10 actually break a window or kick open a door?

11 A. They have to enter the dwelling without consent of the
12 owner. No, sir, they do not.

13 Q. Okay. And I believe you said that you believe first
14 degree burglary and attempted murder happened at [REDACTED]
15 [REDACTED]?

16 A. That's correct.

17 Q. And did you inspect the house at [REDACTED] [REDACTED] [REDACTED] that
18 night?

19 A. Yes, sir, I did.

20 Q. Let's go back to that night at Osteen Road.

21 You testified that Mike Mahoney had been assaulted.

22 Who did you suspect of punching Mr. Mahoney?

23 A. Through the investigation we learned that Mr. Hubert
24 Brown was in an altercation with Mike Mahoney out in the
25 yard.

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 Q. And did you investigate that initial assault?

2 A. Yes, sir, I did.

3 Q. And did you find any evidence that the defendant acted
4 in self defense when you talked to Mike Mahoney?

5 A. Through our investigation we learned that after
6 talking with various witnesses that Mike Mahoney did - was
7 involved in an altercation with Mr. Brown and we did find a
8 - like a gear shifter out in the yard along with a 2 X 4
9 that had a lot of blood on it and we thought maybe that was
10 used at first also.

11 Q. Going back to my question, did you find the defendant
12 acted in self defense or was he the first aggressor?

13 A. Do what now?

14 Q. Go ahead. I'm sorry.

15 A. I'm sorry, could you repeat the question, please?

16 Q. From your investigation, did you find that with
17 regards to Mr. Mahoney and the defendant, was the defendant
18 the initial aggressor or was he acting in self defense?

19 A. Mr. Mahoney was acting in self defense.

20 Q. Mr. Mahoney was acting in self defense. So who was
21 the first aggressor?

22 A. Mr. Hubert Brown.

23 Q. And this fight between Mahoney and Brown occurred at
24 whose house?

25 A. At Mr. Mahoney's house, [REDACTED] [REDACTED] [REDACTED]

1 Q. And did you learned whether anyone went to Mr.
2 Mahoney's aid?

3 A. Mr. Chris Calvert who also resided at that residence.

4 Q. And what did Mr. Calvert do?

5 A. When he learned that, or heard that Mahoney was being
6 assaulted by Mr. Brown, Mr. Calvert went to his aid with a
7 gear shifter and struck Mr. Brown in the head with the
8 shifter to try to get him off of Mahoney.

9 Q. And when Mr. Calvert hit the defendant with the gear
10 shift, did that stop the assault, the fight, between
11 Mahoney and the defendant?

12 A. It did momentarily. It stopped the assault against
13 Mahoney at that time.

14 Q. The blow to the defendant's head by Mr. Calvert that
15 stopped that fight between the defendant and Mahoney, was
16 it hard enough to break the skin and draw blood?

17 A. Yes, sir. He had a severe laceration on his head.

18 Q. And did you at some point later see the gash on the
19 defendant's head?

20 A. I saw pictures at first of the injury, and then later
21 after Mr. Brown was arrested I interviewed him at the jail
22 and saw the injuries.

23 Q. And do you know of any other injuries the defendant
24 received that night?

25 A. He had a fractured ankle I believe is what it was.

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 Q. And did your investigation lead you to believe the
2 defendant stepped in a hole and fractured his ankle before
3 or after the burglary?

4 A. We learned that after the burglary, Mr. Brown's
5 vehicle was parked at the end of the driveway near where
6 these holes were in the ground and we learned that Mr.
7 Brown probably stepped in one of the holes to break his
8 ankle.

9 Q. Okay.

10 SOLICITOR JONES: May I approach the witness, Your
11 Honor?

12 THE COURT: Yes.

13 Q. I'm handing you State's Exhibit's Nineteen, Twenty-one
14 and Twenty-two. Would you take a look at those for me,
15 please sir.

16 (WITNESS REVIEWING EXHIBITS.)

17 Q. Do you recognize those photographs?

18 A. Yes, sir. These are the photographs I took at the
19 end of the driveway at [REDACTED] [REDACTED] [REDACTED]. These holes are
20 right beside the driveway and OSteen Road where we learned
21 that Mr. Brown's car was parked after the burglary.

22 Q. Are they a true and accurate reflection of the holes
23 at the end of that roadway?

24 A. Yes, sir. They are.

25 SOLICITOR JONES: Your Honor, I move State's Exhibit

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 Nineteen, Twenty-one and Twenty-two into evidence.

2 MR. COOK: Without objection.

3 THE COURT: In without objection.

4 (WHEREUPON: STATE'S EXHIBIT NUMBERS NINETEEN, TWENTY-
5 ONE AND TWENTY-TWO, IDENTIFIED AND MARKED, RECEIVED INTO
6 EVIDENCE.)

7 BY SOLICITOR JONES:

8 Q. Detective, do you know Hubert Floyd Brown, Junior,
9 when you see him?

10 A. Yes, sir. He's seated right there.

11 SOLICITOR JONES: Let the record reflect the witness
12 pointed to the defendant.

13 (WITNESS POINTED TO DEFENDANT AT DEFENSE TABLE.)

14 Q. So when you initially got assigned to this case, did
15 you want to find Mr. Brown?

16 A. Yes, sir, I did.

17 Q. And did you have an address for him?

18 A. Yes, sir. He lives on Cabe Road. The address is [REDACTED]

19 [REDACTED], Clover, South Carolina.

20 Q. And did you ever go by Cabe to try and find him?

21 A. We went by his residence two or three times Monday,
22 Tuesday and Wednesday of the following week and could never
23 reach him at his residence. He was never home.

24 Q. So you never found him at that residence?

25 A. No, we did not.

1 Q. Did you have a phone number for the defendant?

2 A. Yes, sir, I did.

3 Q. And did you call that number?

4 A. I called the number several times. I left several
5 voice-mail messages for him to call me back because I
6 needed to talk to him about the incident.

7 Q. So you called him and left some voice mails. Did he
8 ever call you back?

9 A. Yes, sir, h
10 did call me back.

11 Q. So he called you back and you were able to talk to him
12 on the phone?

13 A. Yes, sir, he called back. I was at the sheriff's
14 office and he called me on the morning of June the 15th.

15 Q. Can you tell us, do the police have to give *Miranda*
16 rights to people when they talk to them on the phone and
17 they're not in custody?

18 A. We do not. That's only if they're in custody is when
19 we have to give *Miranda*.

20 Q. And did you ask him some questions about the night of
21 the incident?

22 A. I did. I asked him - I needed him to come up to the
23 sheriff's office and sit down and talk to me. I wanted to
24 get his side of the story. I had already talked to a lot
25 of other people involved in the incident and I needed him

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 to come up to the sheriff's office or tell me where he was
2 at so I could go talk to him. I needed to talk to him face
3 to face.

4 Q. In your conversation, did it appear that he recalled
5 the night that this happened?

6 A. Yes, sir, he did.

7 Q. Did you ask him why he didn't just get in his car and
8 leave after the initial altercation?

9 A. I asked him several times, "Mr. Brown, why didn't you
10 just get in your car and leave? You were in this
11 altercation with Mr. Mahoney. You got hit in the head with
12 this pipe. Why didn't you get in your car, go home, go to
13 the hospital, call the police and file a police report?"

14 Q. And what did he say?

15 A. He said he should a did that but he wasn't thinking
16 about doing that but he wished he had done it now.

17 Q. Did he tell you why he went into the house?

18 A. He said he wanted to continue fighting with Mr.
19 Mahoney. He wanted to bring the fight outside so he went
20 into the house.

21 Q. So he did admit to you going into Mr. Mahoney's house?

22 A. He did.

23 Q. Did he say that he cut Mr. Calvert with a machete?

24 A. He never admitted to having a weapon.

25 Q. But he said he went into Mr. Mahoney's house because

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES

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1 he wanted to fight?

2 A. That's correct.

3 Q. Where was the defendant eventually apprehended?

4 A. In Walterboro, South Carolina at his parent's house.

5 Q. So he had gotten out of York County?

6 A. Yes, sir.

7 Q. Going back to the night this happened, did someone
8 call 9-1-1?

9 A. Yes, sir, Amy Mahoney called 9-1-1.

10 Q. And where did that call come from, what address?

11 A. She was at her residence, [REDACTED] York.

12 Q. And did that phone call take place immediately after
13 the burglary?

14 A. It took place when the burglary was taking place. It
15 was simultaneously. Happened the same time. She was on
16 the phone with 9-1-1 when Mr. Brown came busting in the
17 house.

18 Q. So why did she call 9-1-1 before the burglary actually
19 happened?

20 MR. COOK: I object. That calls for speculation.

21 THE COURT: I Sustain the objection. I sustain the
22 objection.

23 MR. JONES: Thank you, Your Honor

24 Q. After this happened, after the burglary and the
25 attempted murder, did you ever - or excuse me, did the

DETECTIVE TRACY STRICKLAND: BY SOLICITOR JONES
BY MR. COOK

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1 defendant ever call 9-1-1?

2 A. He did not.

3 Q. That you know of?

4 A. He did not. He never called the police.

5 Q. And did you eventually take out warrants for Mr.
6 Brown's arrest?

7 A. Yes, sir, we did.

8 Q. And I believe you mentioned this earlier, but where
9 was he eventually picked up?

10 A. He was picked up in Walterboro, South Carolina.

11 Q. So he never came back to York County on his own?

12 A. He did not.

13 SOLICITOR JONES: Thank you, Your Honor.

14 No further questions.

15 CROSS EXAMINATION

16 DETECTIVE TRACY STRICKLAND BY MR. COOK:

17 Q. In his conversation with you did he cite that he was
18 indigent and didn't have the money to come back?

19 A. He said he was trying to sell some of his property and
20 that's why he didn't come up right away because he thought
21 he was going to get arrested and he didn't want to spend
22 time in jail.

23 Q. Do you think he was running from the law?

24 A. Well, I asked him several times to come turn himself
25 in. He never would come up to talk to me. He never told

DETECTIVE TRACY STRICKLAND: BY MR. COOK

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1 me where he was at so I basically told him that, you know,
2 if we get warrants up on you, you know, we're eventually,
3 you know, get him, find him.

4 Q. You said "if we get warrants up on you."

5 A. Well, when we get warrants up on him. Excuse me.

6 Q. But did you have warrants up on him when you were
7 talking to him?

8 A. There was one warrant on him when he had called, the
9 attempted murder.

10 Q. When the police went to arrest him in Walterboro, did
11 he run from them?

12 A. I don't know. I wasn't down there.

13 Q. Do you think that they would have told you if he did?

14 A. I don't know what happened down there. I wasn't
15 there.

16 Q. Tell me again how you specifically came up with the
17 conclusion that my client was the first aggressor.

18 A. He and Mr. Mahoney got into an argument in the
19 backyard and through statements that were obtained from
20 Mahoney and Brown, that - just through the statements
21 that's why I thought that he was the --

22 Q. But what specifically about the statements made you
23 think that my client was the first aggressor?

24 A. Well, Mr. Mahoney was at his residence and Brown went
25 over there and got into an argument with him at his

DETECTIVE TRACY STRICKLAND: BY MR. COOK

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1 residence.

2 Q. Do you think that the force that Calvert used was
3 disproportionate in the defense of others?

4 A. I guess it was force necessary to get him off his
5 friend or somebody at his residence.

6 Q. A lesser amount of force wouldn't have achieved the
7 same goal?

8 A. It could have. I mean, I wasn't there, I don't know.

9 SOLICITOR JONES: Objection, Your Honor. That's
10 speculation.

11 THE COURT: I overrule your objection. It's cross
12 examination.

13 BY MR. COOK:

14 Q. Let me move on anyway.

15 A. Okay.

16 Q. Do you have any idea whether my client actually
17 stepped in that hole or not at the end of the driveway?

18 A. All I know is he broke his foot somehow and --

19 Q. Did you get some DNA from inside the hole?

20 A. I did not.

21 Q. Okay. My question was not did he break his foot
22 somehow. My question was do you have any idea whether my
23 client actually did that. You can't say definitively that
24 he did, can you?

25 A. That's correct.

DETECTIVE TRACY STRICKLAND: BY MR. COOK

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1 Q. You can't say definitively that he was the first
2 aggressor. You're just going off of statements from other
3 people?

4 A. That's correct.

5 Q. Photographs from holes in the ground; isn't that
6 correct?

7 A. I do have photographs from the holes of the ground
8 beside to where he was parked when he got out of the
9 vehicle and ran back to the house.

10 Q. Again, somebody just told you that he was parked
11 there. Did you see his car parked there?

12 A. I did not.

13 Q. Okay.

14 A. It was learned through the investigation that's where
15 the car was parked.

16 Q. How much time had passed between my client leaving the
17 hospital and you making the first attempt to see him at his
18 residence?

19 A. I'm not sure when he got out of the hospital, but the
20 first thing Monday morning is when I was at his house
21 wanting to talk to him. I don't know when he got out.

22 Q. Okay. First thing Monday morning?

23 A. Which would a been the 10th.

24 Q. How many days had passed?

25 A. From Saturday - or Friday night/Saturday morning to

DETECTIVE TRACY STRICKLAND: BY MR. COOK

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1 Monday morning; three days, two days.

2 Q. I apologize because I'm confusing you with the
3 question. My first question was when he got out of the
4 hospital. But your testimony was you don't know when he
5 got out of the hospital?

6 A. That's correct.

7 Q. So let me rephrase it then.

8 A. Okay.

9 Q. How much time had passed between the alleged incident
10 and when you first tried to contact me client at his house?
11 Between the alleged incident.

12 A. The incident occurred at 10:30 the Friday night, June
13 8th, and I went to his house first thing Monday morning,
14 probably 8:30, nine o'clock.

15 Q. Did you ask the hospital personnel to notify you when
16 he was going to be released because you thought he was a
17 person of suspect?

18 A. No, I did not. The hospital usually doesn't give out
19 that kind of information because of the HIPPA regulations.

20 Q. Have you in your career ever arrested somebody at a
21 hospital?

22 A. Yes.

23 Q. So do hospitals allow people to be arrested or is that
24 against HIPPA regulations?

25 In other words, had you developed my client as a

DETECTIVE TRACY STRICKLAND: BY MR. COOK

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1 suspect at this point?

2 A. I was wanting to talk to him. Because I was in the
3 middle of an investigation I wanted to see what his side of
4 the story was.

5 Q. Okay. But you had already gotten from everybody
6 else's side of the story; is that correct?

7 A. That is correct.

8 Q. When was the first warrant issued against my client?

9 A. The first warrant was issued on June the 13th. That
10 was the attempted murder warrant.

11 Q. Okay. When did this conversation between my client
12 and yourself when he allegedly admitted to going into the
13 house being mad occur?

14 A. On June the 15th. I'm sorry. Yes, that's correct.
15 The morning of June the 15th.

16 Q. So you had already issued a warrant at that point?

17 A. I did not.

18 Q. Somebody else in law enforcement had?

19 A. Yes, sir. After he sent threatening messages to Mr.
20 Mahoney and his wife about coming over there and finishing
21 the job, it was determined that we needed to go ahead and
22 get a warrant for his arrest so we could get him picked up
23 because they were fearful that he was going to come over
24 there and take care of things with - because of him sending
25 threatening text messages.

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1 Q. And when were those text messages allegedly sent?

2 A. From Mr. Brown to Mr. Mahoney on his cell phone.

3 Q. When?

4 A. When?

5 Q. Yes, sir.

6 A. June the 13th.

7 Q. When do you think my client fled the county?

8 A. I don't know when he fled to Walterboro because I
9 don't know when he got out of the hospital and he ended up
10 being in Walterboro.

11 Q. So you have no idea when he got into Walterboro?

12 A. That's correct.

13 Q. You don't know whether he got to Walterboro before or
14 after the warrant was issued?

15 A. That's correct.

16 Q. He could have been in Walterboro before the warrant
17 was issued?

18 A. That's correct.

19 MR. COOK: I beg the court's brief indulgence.

20 (PAUSE.)

21 Q. Mr. Brown was actually trying to contact you all
22 throughout this time period was he not?

23 A. Not to my knowledge.

24 Q. Did you ever receive an email from an Officer

25 Thomasson, Subject: Hubert Brown, dated June 14th and it

DETECTIVE TRACY STRICKLAND: BY MR. COOK

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1 talks about Brown trying to contact you?

2 A. Sargent Thomasson did send me that but I never talked
3 to Mr. Brown. I couldn't never get a hold to him.

4 Q. Were there photographs in evidence of a knife in the
5 sink?

6 A. Yes, sir, I believe there were.

7 Q. Okay. Did you ever follow up on how that knife got in
8 that sink?

9 A. There was many dishes throughout the kitchen. It
10 looked just like some dishes, dirty dishes in the sink.
11 There was blood everywhere throughout the house.

12 Q. Was there blood on this knife in the sink?

13 A. There was blood everywhere in the house and yes there
14 was blood on the knife. There was blood all in the sink.
15 All throughout the house.

16 Q. Just wanted to - I asked you about the email to help -
17 give you a chance to clarify because you did make the
18 statement the defendant never called the police. But in
19 fact he was making efforts to contact the police; isn't
20 that true?

21 A. Sargent Thomasson, who went out to his residence the
22 night he went to the hospital, the night when he went back
23 to his home, Sargent Thomasson had sent me an email saying
24 that he was - what was the question again? I got kind of
25 mixed up on what you are asking.

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1 Q. Well not to be rude, and my question to you was, you
2 had made the statement earlier in your testimony today that
3 the defendant never tried to call the police.

4 A. He never tried to call the police to report that he
5 was assaulted or anything like that and that's why I asked
6 him, "why didn't you call the police when this incident
7 occurred" and he never called the police. We ended up
8 going to his house because he was a suspect in the burglary
9 and attempted murder so our dispatch sent deputies to his
10 house on Cabe Road.

11 Q. Didn't my client send the sheriff's department an
12 email requesting that Mr. Calvert get arrested for
13 attempted murder?

14 A. He did.

15 MR. COOK: Thank you. No further questions.

16 THE COURT: Redirect?

17 SOLICITOR JONES: None, Your Honor.

18 THE COURT: All right. You can step down. Thank
19 you.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: Call your next witness.

22 SOLICITOR SPRINGS: May we approach, Judge?

23 THE COURT: Yes.

24 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
25 THE JURY AT 04:38 P.M..)

1 THE COURT: We're going to stop for the day and start
2 back at ten in the morning. I've got a hearing at 9:30 so
3 I'll be starting back at 9:30. Hopefully we'll be through
4 with that hearing by ten. Keep in mind not to discuss the
5 case, not let yourself be exposed to new coverage, not let
6 anyone discuss the case with you, not to do any social
7 media or Google or try to find out any information through
8 any electronic or other means. We'll see you in the
9 morning at ten o'clock. Have a pleasant evening.

10 (JURY EXITS COURTROOM AT 4:40 P.M..)

11 THE COURT: Anything before we stop for the day, Mr.
12 Springs?

13 SOLICITOR SPRINGS: No, sir, nothing from the State.

14 THE COURT: Anything from the defense?

15 MR. COOK: Nothing, Your Honor.

16 THE COURT: All right. We'll start back at 10 in the
17 morning. Have a pleasant evening.

18 MR. COOK: Yes, sir.

19 (COURT IN RECESS AT 4:41 P.M..)

20 (COURT BACK IN SESSION IN THE MATTER OF STATE V.

21 HUBERT FLOYD BROWN, WEDNESDAY, JULY 10, 2013 AT 10:09
22 A.M..)

23 (DEFENDANT, HUBERT FLOYD BROWN, WHITE MALE, REENTERS
24 COURTROOM.)

25 THE COURT: All right. The defendant is present with

DEPUTY CRYSTAL BECK: BY SOLICITOR JONES

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1 counsel. I understand we have all the jurors.

2 Before we get the jury in, anything from the State?

3 SOLICITOR SPRINGS: No, sir.

4 THE COURT: Defense?

5 MR. COOK: Nothing, Your Honor.

6 THE COURT: All right. Is State ready to proceed?

7 SOLICITOR SPRINGS: Yes, sir.

8 THE COURT: Bring in the jury.

9 (JURY REENTERS COURTROOM AT 10:11 A.M..)

10 THE COURT: Good morning.

11 Mr. Solicitor.

12 SOLICITOR JONES: The State calls Deputy Crystal Beck.

13 SOLICITOR SPRINGS: Deputy, would you ask Deputy Beck
14 to come in.

15 (WHEREUPON, CRYSTAL BECK, BEING
16 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 DIRECT EXAMINATION

18 DEPUTY CRYSTAL BECK BY SOLICITOR JONES:

19 Q. Please state your name, ma'am.

20 A. My name is Crystal Beck, B-e-c-k.

21 Q. And where are you currently employed?

22 A. The York County Sheriff's Office.

23 Q. How long have you been working there?

24 A. Approximately seven years.

25 Q. Do you have any prior law enforcement experience?

DEPUTY CRYSTAL BECK: BY SOLICITOR JONES

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- 1 A. No, sir.
- 2 Q. And what's your current rank or current position?
- 3 A. Deputy II.
- 4 Q. And were you working or on duty the night of June 8th
- 5 of 2012?
- 6 A. Yes, sir.
- 7 Q. And did you get dispatched to [REDACTED] [REDACTED] [REDACTED] that
- 8 night?
- 9 A. Yes, sir.
- 10 Q. And prior to going to [REDACTED] [REDACTED] [REDACTED], did you go to
- 11 [REDACTED] [REDACTED] [REDACTED]?
- 12 A. No, sir.
- 13 Q. Excuse me. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]?
- 14 A. No, sir.
- 15 Q. So you were dispatched directly to [REDACTED] [REDACTED] [REDACTED]?
- 16 A. Yes, sir.
- 17 Q. And who were you looking for at Cabe Road?
- 18 A. Mr. Hubert Brown.
- 19 Q. And was it your understanding that that was Mr.
- 20 Brown's home address?
- 21 A. Correct.
- 22 Q. And is that particular address on Cabe Road in York
- 23 County?
- 24 A. Yes, sir.
- 25 Q. About what time did you arrive at Cabe Road?

DEPUTY CRYSTAL BECK: BY SOLICITOR JONES

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1 A. About twenty minutes 'till eleven. About 10:40 p.m.

2 Q. And was this the same night of the incident that
3 occurred at Osteen Road?

4 A. Yes, sir.

5 Q. And when you arrived, did you have a description of
6 the defendant's vehicle?

7 A. Yes, sir.

8 Q. And do you remember what that description was?

9 A. It was a burgundy in color, Suzuki Forenza.

10 Q. And when you arrived at Cabe Road, did you see that
11 vehicle?

12 A. Yes, sir.

13 Q. Can you describe for the jury what you saw when you
14 initially pulled up?

15 A. When I initially pulled up, I observed the vehicle
16 sitting in the front yard. As I got out of my vehicle, I
17 saw what appeared to be a gentleman open the front screen
18 door and then go back inside.

19 Q. Describe that front door. You said it was a screen
20 door. Was there an actual door, just like a regular wooden
21 door that was shut or was it open?

22 A. Essentially a door with two window panes and then you
23 have a, I guess a wooden door behind that.

24 Q. So the screen --

25 A. But it was open.

DEPUTY CRYSTAL BECK: BY SOLICITOR JONES

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1 Q. So you could see through the screen door into the
2 house?

3 A. Yes, sir.

4 Q. And tell us what you did next.

5 A. What I did next is approached the residence to try to
6 make contact and see if Mr. Brown was at the residence.

7 Q. And did anyone come out?

8 A. Yes, sir.

9 Q. Can you tell us who?

10 A. His wife came out first.

11 Q. And did you then ask to speak to Mr. Brown?

12 A. Yes, sir.

13 Q. And tell us what happened after you asked to speak to
14 Mr. Brown.

15 A. His wife walked inside and asked him to step outside
16 and he walked outside and was speaking with us.

17 Q. And tell us what you said to Mr. Brown when he stepped
18 outside.

19 A. I just asked him what was going on, was he okay.

20 Q. Did you give him any instructions as he stepped
21 outside?

22 A. As he stepped outside, I observed blood coming down
23 his head so I had him sit down on the porch.

24 Q. Tell us a little more about his injuries. You
25 observed some blood. What else did you notice?

DEPUTY CRYSTAL BECK: BY SOLICITOR JONES

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1 A. I noticed that it appeared that he had taken a shower.
2 He was wearing blue jean shorts and with no shirt.

3 Q. And did you have a camera with you that night, ma'am?

4 A. Yes, sir.

5 Q. And were you able to take a photograph of the
6 defendant?

7 A. Yes, sir.

8 SOLICITOR JONES: May I approach the witness, Your
9 Honor.

10 THE COURT: Yes, sir.

11 Q. I'm handing you State's Exhibit Twenty-eight. Would
12 you take a look at that for me, please, ma'am.

13 (WITNESS REVIEWING EXHIBIT.)

14 Q. Do you recognize that?

15 A. Yes, sir.

16 Q. And what does it depict?

17 A. It depicts that Mr. Brown appears to have a laceration
18 somewhere on the head with blood coming from it.

19 Q. Is that a true and accurate representation of the
20 defendant that night?

21 A. Yes, sir.

22 SOLICITOR JONES: Your Honor, at this time I move
23 State's Exhibit Twenty-eight into evidence.

24 MR. COOK: Without objection, Your Honor.

25 THE COURT: In without objection.

DEPUTY CRYSTAL BECK: BY SOLICITOR JONES

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1 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-EIGHT,
2 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE AND PUBLISHED
3 TO THE JURY/COURTROOM LIGHTS TURNED DOWN.)

4 BY SOLICITOR JONES:

5 Q. Now, Deputy, is this the defendant the night of the
6 incident?

7 A. Yes, sir.

8 Q. And this is the photograph you took of the defendant?

9 A. Yes, sir.

10 Q. And is this the extent of his injuries that you
11 noticed?

12 A. No, sir.

13 Q. Tell us again what other injuries there were.

14 A. I noticed that he had a knot on, I believe it was his
15 right ankle if I'm not mistaken.

16 Q. But this is the extent of his head injuries?

17 A. Correct.

18 Q. Thank you.

19 Thank you, Madame Clerk.

20 (COURTROOM LIGHTS TURNED BACK UP.)

21 Q. Did Mr. Brown tell you where he had gone that night?

22 A. Yes, sir.

23 Q. Can you tell the jury what he said?

24 A. He stated that he went over to the victim's house on
25 Osteen Road.

DEPUTY CRYSTAL BECK: BY SOLICITOR JONES

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1 Q. Were you able to understand what he was saying?

2 A. Yes, sir.

3 Q. Did he appear to talk rationally and intelligently?

4 A. Yes, sir.

5 Q. Was he acting crazy?

6 A. No, sir.

7 Q. So he was able to answer all your questions?

8 A. Yes, sir.

9 Q. Did you then ask permission to look inside his
10 vehicle?

11 A. Yes, sir.

12 Q. And did you take any photographs of the vehicle?

13 A. Yes, sir.

14 SOLICITOR JONES: May I approach the witness, Your
15 Honor.?

16 THE COURT: Yes, sir..

17 Q. I'm handing you State's Exhibit Twenty-five, Twenty-
18 six and Twenty-seven. Will you please take a look at those
19 for me, ma'am.

20 (WITNESS REVIEWING EXHIBITS.)

21 Q. Do you recognize those photographs?

22 A. Yes, sir.

23 Q. And can you tell the jury what they depict?

24 A. Exhibit Number Twenty-five depicts the driver's side
25 of the vehicle with blood. I guess on the molding around

DEPUTY CRYSTAL BECK: BY SOLICITOR JONES

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1 the door frame.

2 Q. Okay.

3 A. And then State's Exhibit Twenty-six exhibits items
4 that were in his trunk.

5 Q. Okay.

6 A. And Twenty-seven also represents blood drops on the
7 trunk of the vehicle.

8 Q. And are those true and accurate representations of
9 inside the vehicle the night of the incident?

10 A. Yes, sir.

11 SOLICITOR JONES: Your Honor, at this time I move
12 State's Exhibits Twenty-five, Twenty-six and Twenty-seven
13 into evidence.

14 MR. COOK: Without objection, Your Honor.

15 THE COURT: In without objection.

16 (WHEREUPON: STATE'S EXHIBIT NUMBERS TWENTY-FIVE,
17 TWENTY-SIX AND TWENTY-SEVEN, IDENTIFIED AND MARKED,
18 RECEIVED INTO EVIDENCE.)

19 BY SOLICITOR JONES:

20 Q. Now Deputy, this is State's Exhibit Twenty-five.

21 (STATE'S EXHIBIT TWENTY-FIVE, PUBLISHED TO THE JURY ON
22 COURTROOM OVERHEAD/COURTROOM LIGHTS TURNED DOWN.)

23 Q. Can you tell the jury exactly where this is in the
24 vehicle?

25 A. This is the front driver's door.

DEPUTY CRYSTAL BECK: BY SOLICITOR JONES

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1 Q. So this is the driver's door and those knobs up on the
2 top would be how they adjust the seats?

3 A. Yes, sir.

4 Q. This is State's Exhibit Twenty-six.

5 (STATE'S EXHIBIT TWENTY-SIX PUBLISHED TO THE JURY ON
6 COURTROOM OVERHEAD.)

7 Q. Can you tell the jury what this is.

8 A. These are the items that were inside the trunk.

9 Q. So this is in the trunk to the back of the vehicle?

10 A. To the back of the vehicle. Correct.

11 Q. And tell us what items you see here.

12 A. I see what appears to be jumper cables, a white t-
13 shirt with blood on it. And it looks like to be a child's
14 juice drink.

15 Q. This is State's Exhibit Twenty-seven.

16 (STATE'S EXHIBIT TWENTY-SEVEN PUBLISHED TO JURY ON
17 COURTROOM OVERHEAD.)

18 Q. Again can you tell the jury what this depicts?

19 A. This is also the truck but it is the drops of blood
20 that are on the molding area.

21 Q. Okay.

22 Thank you, Madame Clerk.

23 (COURTROOM LIGHTS TURNED BACK UP.)

24 Q. Deputy, in your years of experience, have you
25 ever seen blood at a crime scene?

DEPUTY CRYSTAL BECK: BY SOLICITOR JONES

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1 A. Yes, sir.

2 Q. And I believe you already testified to this, but the
3 photographs of the car, did that appear to be blood in your
4 experience?

5 A. Yes, sir.

6 Q. And finally, in talking to the defendant, did he
7 appear to be coherent and answer all your questions
8 clearly?

9 A. Yes, sir.

10 SOLICITOR JONES: Thank you, Your Honor. No further
11 questions.

12 MR. COOK: No questions, Your Honor.

13 THE COURT: All right. You may step down and be
14 excused. We appreciate your time.

15 DEPUTY BECK: Thank you, sir.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: Call your next witness.

18 SOLICITOR SPRINGS: Madame Bailiff, Deputy Thomasson,
19 Sargent Thomasson.

20 THE COURT: Please come forward and put your left hand
21 on the Bible and raise your right.

22 (WHEREUPON: SHAWN THOMASSON,
23 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

24 DIRECT EXAMINATION

25 SERGEANT SHAWN THOMASSON BY SOLICITOR JONES:

SERGEANT SHAWN THOMASSON: BY SOLICITOR JONES

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1 Q. Can you please state your name, sir?

2 A. Shawn Lynn Thomasson.

3 Q. And, Mr. Thomasson, where do you currently work?

4 A. York County Sheriff's Department.

5 Q. And what is your position or your rank?

6 A. I'm a Patrol Sargent of the District II area.

7 Q. And how long have you been working for the sheriff's
8 office?

9 A. Twenty-six years.

10 Q. Do you have any prior law enforcement experience?

11 A. I worked a year in the Department of Corrections.

12 Q. And were you on patrol the night of June 8th, 2012?

13 A. Yes I was.

14 Q. And were you with a partner or another officer?

15 A. Me and Deputy Beck. We was in separate cars but we
16 was together.

17 Q. And did you arrive at Cabe Road on that night?

18 A. Yes we did.

19 Q. And did you have the chance to interact with the
20 defendant, Mr. Brown?

21 A. Yes I did.

22 Q. Can you tell us about that interaction, describe his
23 demeanor?

24 A. He had a wound to his head. Had a towel wrapped
25 around it. He was acting coherent, talking to us and

SERGEANT SHAWN THOMASSON: BY SOLICITOR JONES

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1 stuff.

2 Q. He was talking to you. Could you understand all the
3 words he was saying?

4 A. Yes we did.

5 Q. Did anything he say give you pause to think that he
6 wasn't thinking clearly?

7 A. No.

8 Q. And did he appear to be coherent?

9 A. Yes, sir.

10 SOLICITOR JONES: Beg the court's indulgence.

11 (PAUSE.)

12 SOLICITOR JONES: No further questions, Your Honor.

13 MR. COOK: No questions, Your Honor.

14 THE COURT: You can step down and be excused.

15 Appreciate your time.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: Call your next witness.

18 SOLICITOR JONES: We rest our case.

19 THE COURT: All right. Members of the jury panel, the
20 State is telling us they've presented their case. They may
21 under certain circumstances have the right to later present
22 other evidence but basically they have presented the
23 evidence they intend to present in regard to their
24 allegations against Mr. Brown, so we have to take up some
25 matters of law; even though we've only been in a short

1 period of time, we have to take up some legal matters
2 before we proceed, so I'm going to let you go to the jury
3 room at this time.

4 (JURY EXITS COURTROOM AT 10:26 A.M.)

5 THE COURT: The jury has been dismissed.

6 Anything from the state?

7 SOLICITOR JONES: No, sir.

8 THE COURT: Defense?

9 MR. COOK: Well, Your Honor, the defense at this time
10 would make a motion for a directed verdict.

11 THE COURT: That motion is denied. There is of course
12 ample direct evidence from which the jury could conclude
13 that Mr. Brown is guilty of one or both of the offenses for
14 which he is charged so I deny the motion for a directed
15 verdict.

16 Mr. Brown, can you hear me?

17 MR. BROWN: Yes, sir.

18 THE COURT: We've reach the point in the trial where
19 you have a right to present a defense if you wish; however,
20 you do not have to present a defense because you are
21 presumed innocent of the charge, set of charges, and the
22 State has to prove your guilt beyond a reasonable doubt.
23 You do not have to prove your innocence. But you can call
24 witnesses if you wish. They would take the stand and be
25 examined by your lawyer and then cross examined by the

1 State, but you do not have to present anything.

2 You have a right to testify but you also have a right
3 to remain silent. If you testify, you'll be under oath and
4 be asked questions. The State has indicated earlier that
5 even though you've have some prior offenses, they're not
6 going to bring those up so I'm not going to go over the
7 circumstances under which they could bring those up because
8 they're not going to bring them up, but they will be asking
9 you on cross examination questions involving the events of
10 that evening and other relevant questions.

11 You have a right to remain silent. If you exercise
12 your right to remain silent, I'll tell the jury that you
13 have done that. That you have an absolute right to remain
14 silent and that your exercise of that right cannot be used
15 against you in any way whatsoever. It cannot be discussed
16 by the jurors nor can the jurors factor into their
17 consideration of what verdict to return the fact that you
18 exercised your constitutional right to remain silent. As I
19 said before, I'll make sure the jury understands that you
20 do not have to prove your innocence but the State has to
21 prove your guilt beyond a reasonable doubt.

22 Do you understand all that?

23 MR. BROWN: Yes, sir.

24 THE COURT: Have you explain all that to him, Mr.
25 Cook?

1 MR. COOK: Yes, sir, Your Honor.

2 THE COURT: You believe he understands?

3 MR. COOK: I do, Your Honor.

4 THE COURT: Mr. Brown, do you have any questions about
5 any of what I've just gone over with you?

6 MR. BROWN: No, sir.

7 THE COURT: All right. And this right to exercise -
8 the right to testify or remain silent is yours. It's not
9 your attorney's or your family's or mine or the State's or
10 anyone else's. You may obtain such advice, and I'm sure
11 you already have, regarding whether or not you intend to
12 take the stand or not. It is ultimately your decision.
13 You understand that?

14 MR. BROWN: Yes, sir.

15 THE COURT: Have you made a decision yet?

16 MR. BROWN: No, sir.

17 THE COURT: You haven't?

18 MR. BROWN: No.

19 THE COURT: Okay. Well we'll going to take a break
20 and you and your attorney can talk about that.

21 And also just for planning purposes, does the defense
22 have some witnesses?

23 MR. COOK: Yes, sir, Your Honor. I don't see Dr.
24 Carol Walser, an expert witness I'm planning to call.

25 THE COURT: We'll take at least a ten minute break and

1 give you a chance to talk to Mr. Brown and also see about
2 your witness situation. Come let me know when you find
3 out.

4 MR. COOK: Yes, sir, Your Honor. I imagine she is in
5 the hallway.

6 THE COURT: All right. We'll be at ease for at least
7 ten minutes.

8 MR. COOK: Yes, sir.

9 (COURT IN RECESS AT 10:29 A.M.)

10 (DEFENDANT REENTERS COURTROOM.)

11 (COURT BACK IN SESSION AT 10:42 A.M..)

3 THE COURT: Thank you. You may take your seats.

4 Is the State ready?

5 SOLICITOR SPRINGS: Yes, sir.

6 THE COURT: Mr. Cook, you ready?

7 MR. COOK: Yes, sir, Your Honor.

8 THE COURT: You have witnesses?

9 MR. COOK: I have both of my witnesses, Your Honor.

10 THE COURT: All right.

11 Bring in the jury.

12 (JURY REENTERS COURTROOM AT 10:44 A.M..)

13 THE COURT: Call your first witness.

14 MR. COOK: Thank you, Your Honor. If it please the
15 court. Defense calls Ms. Tabitha Brown.

16 THE COURT: Please come up and be sworn.

TABITHA BROWN: BY MR. COOK

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(WHEREUPON: TABITHA BROWN,
BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MADAME CLERK: Please have a seat.

DIRECT EXAMINATION

TABITHA BROWN BY MR. COOK:

Q. Good morning, Mrs. Brown. Please state your name for
the record.

A. Tabitha Brown.

Q. And are you related to the defendant, Mr. Hubert
Brown?

A. Yes, sir.

Q. How so?

A. He's my husband.

Q. Okay. How long have you all been married?

A. Six years.

Q. All right. And do you have any children together?

A. Five.

Q. All right. Were you with Mr. Brown on the night June
of last year that's the subject of this trial?

A. Yes, sir.

Q. I believe it was June --

A. June 8th

Q. Yeah. 2012?

A. Yes.

Q. Were you with him when he went to Osteen Road?

TABITHA BROWN: BY MR. COOK

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1 A. Yes, sir, I was.

2 Q. Why did you all go to Osteen Road.

3 A. Because we were out of money and we needed money for --
4 I'm sorry.

5 (WITNESS CRYING.)

6 Q. It's all right.

7 A. We needed money --

8 Q. Hold on one second.

9 A. I'm sorry.

10 THE BAILIFF: You want some water?

11 A. Yes, please.

12 I'm sorry.

13 Q. No don't apologize.

14 (BAILIFF GIVING WITNESS WATER.)

15 A. Thank you.

16 I'm sorry. Go ahead.

17 Q. I guess my question is, you're a little upset right
18 now?

19 A. Yes.

20 Q. And a little understandably nervous?

21 A. I'm very nervous. I'm sorry. I don't do well
22 speaking in front of public.

23 Q. Okay. All right. I wasn't aware of that. Are you
24 okay?

25 A. Yeah, I'm fine.

TABITHA BROWN: BY MR. COOK

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1 Q. All right.

2 A. I'm sorry. Just go on.

3 Q. Well, tell us what you saw happen that night.

4 A. Mike had been calling us several times. My husband
5 had been calling him just trying to meet up and he finally
6 said that we could come over after they get back from the
7 restaurant or whatever. Okay. We get there and some guy
8 I've never seen before was standing by the vehicle with
9 something in his hand. I wasn't - we'd never gotten any
10 kind of problems or anything so I didn't expect anything so
11 I was just like that guy looks kind of weird just standing
12 there with a weapon in his hand. I didn't say weapon at
13 the time so --

14 Q. All right. Let me slow you down. There is one person
15 there at the scene that your talking about that you had
16 never met him?

17 A. Yes.

18 Q. Were there other people there that you did recognize?

19 A. Yes. And it that was Cal - I mean, Mike Mahoney was
20 the only one I recognized.

21 Q. Okay. Mike Mahoney.

22 A. Yes.

23 Q. And since that time, have you learned the name of the
24 person that you didn't recognize?

25 A. Yes. Calvert.

TABITHA BROWN: BY MR. COOK

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1 Q. Chris - I'm sorry?

2 A. Calvert.

3 Q. Calvert?

4 A. Uh-huh.

5 Q. All right. You say you did recognize Mike Mahoney?

6 A. Yes, sir.

7 Q. And you knew him?

8 A. Yes, sir.

9 Q. Okay. And tell us what you saw. In other words, did
10 --

11 A. My husband got out of the car ---

12 Q. All right.

13 A. --- and he approached Mike and he didn't want to
14 discuss the business in front of this gentleman so he
15 pulled Mike aside. They went - in view they went around to
16 the side of the house. In view. I could see them. And
17 they were beginning to talk and it got heated, which I
18 mean, him and Mike had been friends for years and so
19 they've gotten in brawls before. Nothing ever came of
20 them. They were buddies the next day. But what I found
21 strange was Chris was over there bouncing around with this
22 thing in his hand and I was watching him and I was like,
23 what is he doing because I'm pregnant with my child and had
24 my children in the car and I didn't know who he was so I
25 was watching him. Well, when Mike pushed --

TABITHA BROWN: BY MR. COOK

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1 SOLICITOR SPRINGS: I object to this narrative. Can
2 we just have questions and answers rather than --

3 MR. COOK: Yes, sir. All right.

4 A. I'm sorry.

5 Q. That's okay. Let me just ask you some questions.

6 What did you see in Chris Calvert's hand?

7 A. A tire iron.

8 Q. How far were you from him?

9 A. About from here to you.

10 Q. All right. And you saw your husband and Mike Mahoney
11 talking around the corner?

12 A. Yes, sir.

13 Q. And you said that you saw them get in a brawl?

14 A. Yes, sir.

15 Q. Them being Mike Mahoney and your husband?

16 A. Yes, sir.

17 Q. Could you describe that brawl?

18 A. Yeah. Mike pushed my husband because he was in his
19 face. My husband almost fell, he didn't fall, and my
20 husband went to swing at him at then Mike took him down in
21 a bear hug.

22 Q. Okay.

23 A. And they were on the ground.

24 Q. Okay. And then what happened?

25 A. And then Chris is bounced around. He takes off

TABITHA BROWN: BY MR. COOK

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1 running towards my husband. By that time, I'm screaming
2 bloody murder to stop, to leave my husband alone and for my
3 husband to watch out. I said, "watch out, Bubba, watch
4 out." And then I seen him swing. I didn't see where it
5 landed because I just seen him swing. I didn't know
6 exactly where it was hit. You want me to go on?

7 Q. Well, so you saw Chris hit your husband ---

8 A. Yes.

9 Q. --- in the head with this tire --

10 A. Yes.

11 Q. What did you say?

12 SOLICITOR SPRINGS: I've got an objection. Didn't say
13 anything about the head.

14 MR. COURT: Well, those are leading questions.

15 MR. COOK: Yes, sir, Your Honor.

16 THE COURT: Stick to the questions based on what's in
17 the evidence and don't ask leading questions.

18 MR. COOK: Okay.

19 Q. You said you saw something in Chris Calvert's hand?

20 A. Yes. I wasn't sure what it was. It was a object.

21 Q. All right. And then after he hit your husband, what
22 happened?

23 A. I jump out of the car. I'm screaming at Chris to
24 leave my husband alone because I thought he was going to
25 kill him. And when he realize - And I jump out of the car

TABITHA BROWN: BY MR. COOK

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1 and when he realizes that I'm there, I guess he didn't know
2 I was there, and he realized I was there, he turned around
3 and looked crazy and started coming at me with the tire -
4 with the object.

5 Q. Okay. And you said that you were yelling at him to
6 stop?

7 A. Yeah.

8 Q. Did he say anything when he was coming at you?

9 A. No. He just looked crazy. He just had crazy eyes.

10 Q. All right.

11 A. I was scared to death. I was pregnant.

12 Q. How close did he get to you?

13 A. Probably from about here to the end of the stand
14 there. Right there.

15 Q. Is what you're saying --

16 A. I jumped to the side of my car and I get down and I'm
17 looking for a weapon, something to get him off - to scare
18 him away.

19 Q. Okay. Did he still have the object in his hand?

20 A. Yes, sir.

21 Q. Did you get a good look at it?

22 A. No, not really to be honest.

23 Q. Okay.

24 A. I was more concerned trying to find something to
25 protect myself with.

TABITHA BROWN: BY MR. COOK

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1 Q. Did you find anything to protect yourself with?

2 A. A box cutter from Lowe's when I used to work at Lowe's
3 and it retracts when you let go of the thumb and I just
4 hold it up and I screamed at him that to leave me alone. I
5 was pregnant and my kids were in the car. I was so scared.

6 (WITNESS CRYING.)

7 A. I was yelling for my husband to come help me.

8 Q. Had you heard from Chris Calvert or seen anything that
9 he's said since that date about this incident?

10 SOLICITOR SPRINGS: I'm going to object to hearsay.

11 THE COURT: I sustain the objection.

12 BY MR. COOK:

13 Q. So what happened next? Did you have any conversations
14 with him?

15 A. I just was yelling at him to leave me alone and that I
16 was pregnant and that I wasn't going to hurt him. Just
17 leave me alone. Then he - something stopped him. When he
18 got near to the car something stopped him and he turns
19 around and goes back towards my husband.

20 Q. Okay. Did you have - What happened next?

21 A. I finally after he stops and he goes back towards my
22 husband, I kind of take a breath because I'm like, thank
23 God he didn't kill me, and I look at my husband and my
24 husband was like - he was - it's kind of hard to explain.
25 I would kind of have to show you.

TABITHA BROWN: BY MR. COOK

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(WITNESS STOOD.)

A. He was like this and his blood was everywhere and he was trying to talk and it was like his mouth had gotten hit because he was talking like one word sentences. I didn't understand him and I'm screaming at him to come on and he's like, I can't. Hurt. Mike. He wasn't making sense and I thought all his teeth were knocked out because previously he had gotten in a horrible accident and there was that much blood when he got his teeth knocked out at a four wheeling accident and Chris is over there screaming, "I'll get you, I'll kill you".

SOLICITOR SPRINGS: Objection to the hearsay.

Q. You can't --

A. I'm sorry.

Q. You can't say anything that other people said.

A. Oh, I didn't know. I'm sorry.

I apologize, Solicitor.

Q. So your husband was in pretty bad shape?

A. Yeah it was bad. I was scared he was gonna die.

Q. Okay. Did you try to take him to the hospital?

A. We -- No because like I told him, we needed to go. We needed to go to the hospital and he's like, home.

SOLICITOR SPRINGS: Objection to the hearsay.

A. Oh, I can't say that. Well.

THE COURT: I sustain the objection.

TABITHA BROWN: BY MR. COOK

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1 A. I'm sorry. I apologize. No. Because I was gonna -
2 My thoughts at the time was I wanted to get him home. I
3 wanted to wash his head. See how bad his injury really was
4 and then take him to the hospital because I knew it was bad
5 because it was squirting. It was squirting.

6 MR. COOK: Mark these as Defense One and two, please,
7 ma'am.

8 (WHEREUPON: DEFENDANT'S EXHIBITS ONE AND TWO
9 PREMARKED FOR IDENTIFICATION.)

10 Q. Okay. I'm going to hand you what I've had marked as
11 Defendant's One and Two.

12 A. Uh-huh.

13 (WITNESS REVIEWING EXHIBITS.)

14 Q. Have you ever seen those photos?

15 A. Yes. I took them.

16 Q. Did you take them when?

17 A. This one I took in the hospital after they cleaned it
18 up and seen how bad it was.

19 This one I took when we got home.

20 Q. Do you think that these pictures accurately represent
21 the way your husband looked ---

22 A. Oh, God yes. There were blood clots everywhere.

23 Q. --- that night?

24 A. That night. He had my necklace on our mirror right
25 here and it had a big huge baseball size blood clot on it.

TABITHA BROWN: BY SOLICITOR SPRINGS

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1 MR. COOK: Your Honor, at this time I move to have
2 these admitted as Defense Exhibits One and Two.

3 SOLICITOR SPRINGS: I'm old, I can't see that far.

4 MR. COOK: I apologize.

5 SOLICITOR SPRINGS: No objection.

6 MR. COOK: So these are the photographs we're talking
7 about.

8 (WHEREUPON: DEFENDANT'S EXHIBITS ONE AND TWO
9 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

10 (MICROPHONE FELL.)

11 MADAME COURT REPORTER: Mr. Cook?

12 MR. COOK: Yes, ma'am.

13 MADAME COURT REPORTER: Could you pause for just a
14 moment, please.

15 MR. COOK: Yes, ma'am.

16 (COURT REPORTER REPLACED MIKE ON STAND.)

17 MADAME COURT REPORTER: Yes, sir.

18 MR. COOK: Thank you, ma'am.

19 MR. COOK: No further questions. Please answer
20 anything the State may have for you.

21 CROSS EXAMINATION

22 TABITHA BROWN BY SOLICITOR SPRINGS:

23 Q. Good morning, Mrs. Brown.

24 A. Good morning, Solicitor.

25 Q. Your husband got out of the hospital the next

TABITHA BROWN: BY SOLICITOR SPRINGS

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1 afternoon didn't he?

2 A. Yes at our request. They wanted him to stay longer.

3 Q. But he got out of the hospital --

4 A. Yes because we have five children we have to take care
5 of.

6 Q. But he got out of the hospital ---

7 A. Yes.

8 Q. --- about 3:30 the next day?

9 A. Yes, sir.

10 Q. He was released?

11 A. Yes, sir.

12 Q. Now, when you talked to the police after your husband
13 was arrested some - a week or so later, you didn't tell the
14 police that Chris Calvert had a tire iron when you first
15 drove up. I think you just said that. Did he have a tire
16 iron?

17 A. It's in my statement.

18 Q. When you first drove up?

19 A. Yeah. It's in my statement.

20 Q. Let me show you a copy of your statement.

21 A. Yes, sir.

22 Q. I'm not trying to trick you or fool you. Just take a
23 look at it and make sure that is a copy of your statement.

24 (WITNESS REVIEWING DOCUMENT.)

25 A. Well, I had my children with me and I was distracted

TABITHA BROWN: BY SOLICITOR SPRINGS

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1 but I did - I have said it before. I have it in emails
2 where I sent it in my first statement to the police, to Mr.
3 Strickland.

4 Q. You didn't tell the police when you talked to them and
5 made a written statement that Chris Calvert had a tire iron
6 when you first drove up did you?

7 A. I guess - apparently not. I thought I did. But like
8 I said, I had my two small children, two and one years old,
9 with me and my autistic son. I was a little distracted.

10 Q. You did tell the police though that later during the
11 altercation that Chris runs at you with the tire iron in
12 one hand and another object in another hand.

13 A. That is true.

14 Q. He had something in both hands?

15 A. Yeah.

16 Q. You didn't say that a little while ago though did you?

17 A. No, sir. I didn't but... This doesn't happen every
18 day, sir. I'm not used to recanting every detail.

19 Q. When you made your statement to the police on June
20 18th after your husband had been arrested down in, where
21 was it, Walterboro?

22 A. Walterboro. Yes, sir.

23 Q. Walterboro. You said Mike had an axe. Mr. Mahoney
24 had an axe didn't you?

25 A. Uh-huh.

TABITHA BROWN: BY SOLICITOR SPRINGS

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- 1 THE COURT: You've got to say yes or no.
- 2 A. Yes, sir. I'm sorry.
- 3 Q. Mike Mahoney had no axe did he?
- 4 A. He had something.
- 5 Q. Mike Mahoney had no axe did he?
- 6 A. I don't know what it was but he had something in his
- 7 hand at one point time.
- 8 Q. Why did you tell the police Mike Mahoney had an axe?
- 9 A. Because that's the word I used. I mean, that's what
- 10 he had. He had something in his hand.
- 11 Q. But you didn't say that a little while ago.
- 12 A. I left it out. I wasn't trying to deceive anybody.
- 13 Q. Has anybody told you what to say here today?
- 14 A. No, sir. What not to say, not...
- 15 Q. You said you finally convinced your husband to leave.
- 16 A. Uh-huh. He's a big man. I couldn't drag him in the
- 17 car.
- 18 Q. You had to convince him to leave?
- 19 A. Well, I mean, I don't know if convince was a good word
- 20 but I got him in the car. I guess I should have said,
- 21 finally got him in the car.
- 22 Q. But your statement does say, I finally convinced my
- 23 husband to leave?
- 24 A. Yes.
- 25 Q. And you told the police in your statement that your

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1 husband was arrested down in Walterboro and brought back
2 here. That he started to drive away --

3 A. But --

4 Q. Let me read it to you.

5 A. Okay. I'm sorry.

6 Q. I'm not going to try to fool you.

7 A. I know.

8 Q. All right. Started to drive away but when we got to
9 the end of the driveway my husband stops me and he goes to
10 the porch.

11 A. Uh-huh. Because that's as far as I could see him, was
12 to the porch.

13 Q. But he did get out of the car ---

14 A. Yes, sir.

15 Q. --- at the end of the driveway.

16 A. It wasn't at the end. It was when I backed up and
17 turned around.

18 Q. He did get out of the car?

19 A. Yes, sir.

20 Q. And go back to the house?

21 A. Yes, sir.

22 Q. And you said there was a guy on the porch ---

23 A. Yes.

24 Q. --- with one leg.

25 A. Yes. He is deceased.

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1 Q. You said your husband had two skull fractures didn't
2 you?

3 A. He did have two skull fractures. That's what it says
4 in the medical report. I gave it to my lawyer. It was two
5 different bones that were broke is the way they described
6 it.

7 Q. A skull fracture and an ankle fracture.

8 A. Yes.

9 Q. Not two skull fractures.

10 A. Yes, two skull fractures. They said two skull
11 fractures because it was two different bones in the head.
12 That's the way it was explained to me. I'm not a doctor
13 but...

14 Q. Your husband got hit in the head one time. Correct?

15 A. Correct.

16 Q. He had one skull fracture. Correct?

17 A. Correct.

18 Q. Did you have a cell phone that night?

19 A. Yes, sir, I did.

20 Q. But you didn't call 9-1-1 did you?

21 A. No, sir, I didn't.

22 Q. You did not?

23 A. No, sir, I didn't.

24 Q. And back in 2007 you were convicted of conspiracy to
25 obtain drug by fraud?

1 A. Yes, sir. Doesn't make any difference.

2 SOLICITOR SPRINGS: Nothing further.

3 MR. COOK: No questions, Your Honor.

4 THE COURT: You can step down. Appreciate your time.

5 THE WITNESS: Thank you, sir.

6 (WITNESS LEAVING WITNESS STAND.)

7 THE COURT: Call your next witness.

8 MR. COOK: I beg the court's brief indulgence for just
9 a second.

10 THE COURT: All right.

11 (PAUSE.)

12 MR. COOK: At this time, Your Honor, I call Doctor
13 Carol Walser.

14 THE COURT: If you'll step up here there is a Bible.
15 If you'll put your left hand on the Bible and raise your
16 right.

17 (WHEREUPON: CAROL WALSER, BEING
18 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 DOCTOR WALSER: Ma'am, is there any water?

20 MADAME COURT REPORTER: Water? Yes, ma'am.

21 DOCTOR WALSER: Great.

22 MADAME COURT REPORTER: I got it.

23 (COURT REPORTER POURED AND HANDED WITNESS A CUP OF
24 WATER.)

25 MR. COOK: Good morning, Doctor. Take your time to

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1 get settled in there.

2 DOCTOR WALSER: Pardon me?

3 MR. COOK: I said take your time and get settled in.

4 DOCTOR WALSER: Thank you.

5 DOCTOR WALSER: May I set it here please?

6 MADAME COURT REPORTER: Sure. Thank you, ma'am.

7 DOCTOR WALSER: Okay. Let me get my stuff out.

8 This doesn't move.

9 (WITNESS TRYING TO MOVE WITNESS STAND CHAIR.)

10 MADAME COURT REPORTER: No, ma'am, it's stable.

11 DOCTOR WALSER: All right. I guess I...

12 This way and that way?

13 MR. COOK: Yes, ma'am.

14 DIRECT EXAMINATION

15 DOCTOR CAROL WALSER BY MR. COOK:

16 Q. How are you this morning?

17 A. I'm fine thank you.

18 Q. And if you could just state your name for the record.

19 A. My name is Carol Bebe Walser, Ph.D.

20 Q. Okay. And, Doctor Walser, I just wanted to talk
21 briefly about some of the points on your resume.

22 A. All right.

23 Q. I understand that you are a neurological psychologist.

24 A. Yes. It's called a neuro-psychologist.

25 Q. Neuro-psychologist.

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1 A. Yes.

2 Q. Thank you, ma'am.

3 A. It's more than just a psychologist. We have
4 additional training and neuro-logical disorders and
5 conditions.

6 Q. I understand. And you'll have to forgive me but I
7 want to begin at the beginning. And I see that in the
8 1960's you did some work as a psycho-therapist and a group
9 therapist and at the University of Texas in Austin; is that
10 correct?

11 A. No. That was at Allentown State Hospital in
12 Pennsylvania.

13 Q. I apologize.

14 A. Yes.

15 Q. Okay. And that was in '63 to '66 but in ---

16 A. It was.

17 Q. --- '69 --

18 SOLICITOR SPRINGS: May I object to him telling her
19 what --

20 THE COURT: Yeah, I think you might go over - ask her
21 her background and what her qualifications are.

22 MR. COOK: Yes, sir.

23 Q. Can you tell us your background?

24 A. Yes. Would you like to start at the back - the end
25 or?

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1 Q. Whatever you think is appropriate.

2 A. Okay.

3 THE COURT: Why don't you just talk - Don't go back to
4 grammar school. College and post graduate and that kind of
5 educational background.

6 A. You want me to give my education?

7 THE COURT: Please.

8 A. Okay. My education involved - First I got a
9 Bachelor's Degree in Psychology at Cedar Crest College in
10 Allentown, Pennsylvania. That's where he was referring to
11 when I worked at the Allentown State Hospital. That was in
12 the sixties.

13 Then I got a Master's Degree in Behavioral Sciences,
14 Clinical Psychology, from the University of Houston at
15 Clear Lake City. That was in 1978. Then I went on and got
16 - Went to a doctoral training program. I got my Ph.D., in
17 clinical psychology from the California School of
18 Professional Psychology in Berkeley, California.

19 And beyond that, I did a post-doctoral fellowship
20 again in Texas at the Texas Research Institute of Mental
21 Sciences. It's also - it's now part of the University of
22 Texas Medical School. And that post-doctoral fellowship
23 was in neuropsychology in geriatrics so that's the
24 educational background.

25 Q. Let me get you talk a little bit about some of your

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1 career.

2 A. Yes. All right.

3 Q. When did you begin working in this field?

4 A. I began during my Bachelor's training or education. I
5 started a program at the Allentown State Hospital for
6 students to do some internship-type work there and I myself
7 worked for three years there doing mostly group therapies
8 with different populations. In the State Hospital one year
9 it was with children; another with adolescents; and another
10 with adults and these were severely disturbed people that
11 had been in the state hospital for a long time.

12 Let's see. After that I worked at the University of
13 Texas at Austin and I was a research associate there. Then
14 I went on from there, I didn't work for about three or -
15 about four years when I was in my raising children phase
16 and then I went back to work at doing my - I also did an
17 internship during my Master's Degree and I worked in an
18 outpatient clinic and inpatient clinics at that Texas
19 Research Institute of Mental Sciences.

20 At the same time I was getting that Master's Degree, I
21 also had employment there, and these were done
22 concurrently, and I was the director of volunteer community
23 services and I formed a nonprofit corporation with the
24 board of directors to help the people in the state
25 hospitals. We would get things donated for them such as we

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1 got a twelve-passenger van to help transport them.

2 We built a ground park in the medical center. We did
3 some big things and it was very exciting. But that was at
4 the same time I was getting my Master's Degree and I did an
5 internship then too.

6 Then I went on for my doctorate work and during that,
7 I did a internship in a outpatient clinic for adolescents
8 and families, and, so this was working doing therapy with
9 runaway kids and their families and things like that. Then
10 I went on during my doctorate program, I became the Chief
11 Psychology Intern at California Pacific Medical Center in
12 San Francisco and I was doing that - I did that for two
13 years and worked all over the medical center, outpatient,
14 inpatient, all of that. I was elected as the Chief Intern.

15 After that, let's see, I went to work at the John Muir
16 - well, I did my post-doctoral fellowship in Texas Medical
17 Center and then I came back to California and worked at
18 John Muir Medical Center there and I worked as a neuro-
19 psychologist. Did that for about almost a year and then I
20 got a job at Davies Medical Center in San Francisco, which
21 is now called the California Pacific Medical Center at
22 Davies Campus.

23 This was a very large rehabilitation hospital and
24 general hospital and I focused mostly on the acute
25 rehabilitation unit. That's where we had people with all

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1 kinds of head injuries and different kinds of neurological
2 disorders and whatnot. I did everything with them from
3 testing to testing their abilities, to therapy, to group
4 therapy. I led a family education group every week to
5 teach the families of the patients what was happening to
6 their loved one and trying to explain it to them.

7 I have to stress that this was a very unique and
8 premier rehabilitation center in San Francisco. We had
9 patients that came in in coma and went all the way through
10 to being discharged. Sometimes they were in the hospital
11 for up to two years, so I've seen the full range of head
12 injuries and traumatic brain injuries through full
13 recovery. Some of them didn't get full recovery, but then
14 at the same time I was starting a private practice and so I
15 saw on the side from that. I was doing psychotherapy and
16 neuropsychological testing as well of people, individuals
17 and referrals, from doctors and things like that.

18 A lot of the patients from Davies Medical Center I
19 would see periodically over the years; sometimes ten,
20 fifteen years out. So I got to see the outcome of what
21 their injury did to them and how they fared from that.

22 And then I was at Davies Medical Center as the Chief
23 Neuro-psychologist for eleven years. I also had a private
24 practice on the side. Then in 1997, I believe it was, I
25 went into full-time private practice and that is what I've

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1 been doing since 1997. And in my private practice, I do a
2 full array of services. I've done psychotherapy, testing,
3 psychological testing, neuropsychological testing,
4 psychological testing, neuropsychological testing; couples,
5 families. All of the above. I think that brings us to the
6 present.

7 Q. Very well. Thank you, Doctor. And have you had
8 experience testifying as an expert witness in the past in
9 court proceedings?

10 A. Yes, I have. When I was at Davies Medical Center, the
11 vast - many of the patients there had been in accidents and
12 so many of them were involved in legal proceedings. And I
13 got pulled into that arena by the fact that these were my
14 patients, and so I started doing work and was asked to do
15 work as an expert witness to talk about patients and what
16 their situation was and their injuries and their
17 recoveries.

18 Q. Thank you, ma'am.

19 MR. COOK: Your Honor, at this time I move to have --

20 A. Have been doing that since.

21 Pardon me?

22 Q. I apologize. I thought you were done speaking.

23 Did I interrupt you?

24 A. I just said that I've been doing that since.

25 Q. Okay. Very well and thank you, ma'am.

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1 MR. COOK: Your Honor, at this time I move to have
2 Doctor Walser admitted as an expert witness in the field of
3 neuro-psychology.

4 THE COURT: Any voir dire?

5 SOLICITOR SPRINGS: No, sir.

6 THE COURT: I find she is qualified.

7 MR. COOK: Thank you.

8 Q. Doctor, did you have the chance to do an evaluation of
9 Mr. Hubert Brown?

10 A. Yes, I did.

11 Q. What did your evaluation consist of?

12 A. Well, I saw him on three occasions in May. May 7, May
13 18 and May 20th. And I did interviews of him and also
14 extensive neuro-psychological testing. I also did
15 personality testing. So I got IQ, all of the different
16 asp - I looked at him from all angles. Let's put it that
17 way.

18 THE COURT: I think the record ought to reflect,
19 that's May of this year?

20 A. Yes. I'm sorry. Yes.

21 Q. And Doctor, how many hours do you think total that
22 you've spent with Mr. Brown?

23 A. I spent thirteen hours with him.

24 Q. And that you said it was a lot of face to face?

25 A. That was all face to face in a contact room because to

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1 do testing I have to work with the individual and hand them
2 things and back and forth. I also did a telephone
3 interview with Mr. Brown's wife and I also did a telephone
4 interview with Mr. Brown's mother.

5 Q. And what type of records did you review in your
6 investigation?

7 A. I reviewed a number of records and --

8 SOLICITOR SPRINGS: May I stop her a minute, please.
9 Approach the bench?

10 THE COURT: Yes, sir.

11 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
12 THE JURY AT 11:21 A.M.)

13 SOLICITOR SPRINGS: Thank you.

14 MR. COOK: Go ahead, Doctor.

15 A. Well, I reviewed records of the medical centers, the
16 two hospitals that he went to, Piedmont Medical Center and
17 also the Carolinas Healthcare System. He first went to
18 Piedmont and then they transferred him to Carolinas
19 Healthcare Center because they were concerned about him
20 having hemorrhaging in the brain.

21 I also reviewed photographs of Mr. Brown and his
22 injury. I looked at different emails and things of that
23 sort. I also read some voluntary statements of various
24 individuals in the case. And I have read two reports by a
25 Doctor Shannon Hanson who is a forensic psychiatry fellow

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1 at the University of South Carolina Medical School.

2 Q. Okay. And we'll discuss those later. Let me ask you,
3 what types of tests did you give Mr. Brown?

4 A. Yes. Well, first I always do the clinical interview
5 and that includes a mental status exam which is my
6 observations of the person and how they present themselves.
7 Then I gave him a test for malingering and malingering
8 means whether or not the person is faking. And there were
9 also two personality tests that had validity scales that
10 looked at that also.

11 I gave him the Wechsler Adult Intelligence Scale IV
12 which is the standard test and basis of most psychological
13 and neuropsychological tests. It is an IQ test, but it
14 does look at the whole overall abilities of the person. I
15 gave him the Wechsler Memory Scale IV which is the most
16 commonly used assessment of memory functioning test. Most
17 of the tests that I - all the tests that I use are very
18 commonly used. These are not anything unusual.

19 Then I gave him some neuropsychological tests and the
20 difference there is they look at specific brain
21 functioning. So I gave him some of the sub-tests of the
22 Halstead Reitan Neuropsychological Test Battery. Halstead
23 Reitan is a premiere battery. It's the one that has been
24 most accepted in court situations. I gave him a couple
25 more neuropsychological tests, a strength color and word

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1 test and the draw a clock.

2 Then I assessed his personality and his personality
3 functioning and I gave him three tests for that, including
4 the MMPI II which you may have heard of. The MCMI III,
5 which is also a personality test, and the Trauma Symptom
6 Inventory which is a test to look to see if the person has
7 post-traumatic stress disorder.

8 Q. And, Doctor, let me stop you there and ask you. I'm
9 curious about drawing a clock.

10 A. Yes.

11 Q. What is that?

12 A. They simply are asked to draw the face of a clock ---

13 Q. Uh-huh.

14 A. --- and I ask them to make it read ten minutes after
15 eleven. Now, this test is used because it can show
16 differences between, if there are any, the right and left
17 hemispheres of the brain. Whether they include all the
18 parts. Whether they get the hands in the correct order,
19 things like this. It seems like - it may sound like a
20 simple test, but there are plenty of people that I see that
21 show significant difficulties with it.

22 Q. I'm sorry. I was just curious about that. I've seen
23 that before. Let me ask you to pick back up with the last
24 test I believe that you said, or had you completed
25 discussing the tests that you used?

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1 A. That's fine. Yeah.

2 Q. So you have talked about all the tests that you've
3 given him.

4 A. I mentioned them, yes. I'll go into what they do when
5 I tell the results.

6 MR. COOK: I beg the court's brief indulgence.

7 (PAUSE.)

8 Q. What were the injuries that you saw Mr. Brown had?

9 A. He has a very, obvious large scar on the left side of
10 his head that goes from here to here with very --

11 (WITNESS DEMONSTRATED.)

12 A. It was a deep cut from a blow on the head and which
13 cut him as well. And the injury was in my opinion caused a
14 traumatic brain injury.

15 Q. I understand.

16 A. He also had other injuries. He broke his ankle.

17 Q. Do you know what type of treatment he received for
18 this brain injury?

19 A. Well, it's very unfortunate but he almost got none.
20 They -- This happens a lot and I -- it's unfortunate but when
21 someone goes to the hospital, yes they can see that the
22 person is bleeding all over. They tend to address that.
23 They sutured him with staples. He had eleven staples in
24 his head.

25 THE COURT: Excuse me just one minute.

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1 (JUROR INDICATED TO THE COURT.)

2 THE COURT: Do you need a break?

3 Okay. Let's take a break. We'll take a short break.

4 Thank you.

5 (JURY EXITS COURTROOM AT 11:28 A.M.)

6 THE COURT: You can step down if you wish and have
7 some water. It will be about ten minutes.

8 DOCTOR WALSER: Okay. Thank you. I'm just gonna
9 leave my things here.

10 THE COURT: We'll be at ease for about ten minutes.

11 (COURT IN RECESS AT 11:29 A.M..)

12 (COURT BACK IN SESSION AT 11:48 A.M..)

13 THE COURT: Thank you. Take your seats.

14 Get the jury back in.

15 (JURY REENTERS COURTROOM AT 11:49 A.M..)

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 DOCTOR CAROL WALSER BY MR. COOK:

19 Q. Doctor, I believe I was asking you if you saw from the
20 records what type of treatment Mr. Brown received for his
21 head injury in the hospitals.

22 A. Yes. As I mentioned, they sewed up his wound by
23 putting staples in it to help it heal. One thing I didn't
24 mention before was that the blow was so hard on his head
25 that it fractured his skull so he did have a fractured

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1 skull as well. But usually with this kind of injury I can
2 only - you know, they apparently were focusing on the cut
3 part. They didn't test for - Usually they are given either
4 a CAT scan or an MRI - I did not see any evidence of that -
5 to look for any underlying brain injury so I don't think
6 there was any done and apparently they didn't catch that.

7 Oftentimes neuropsychological testing is the only way
8 that is identifying. So they didn't do any of that and
9 they basically patched him up and sent him home, which he
10 was nauseous, vomiting, all these things that are very
11 common with a traumatic brain injury. I know his mother
12 was going to get an appointment for him. She was
13 starting, trying --

14 SOLICITOR SPRINGS: I'm going to object to what his
15 mother may have been planning on doing.

16 THE COURT: I sustain the objection.

17 BY MR. COOK:

18 Q. Doctor, did you want to continue on without saying
19 anything that would be hearsay? I don't want to interrupt
20 your sentence. The question being again, you were talking
21 about the treatment.

22 A. Well just that the family recognized the need for a
23 neurologist, evaluation, but he was arrested before that
24 could happen.

25 Q. In your investigation, do you know if he was able to

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1 remember the whole incident, Mr. Brown?

2 A. That is a very critical part of the evaluation is to
3 see what the person does remember. It is very common for
4 them to have either retro-grade amnesia, which is
5 forgetting what happened up until the time of the injury,
6 or interior-grade amnesia, which is forgetting what
7 happened after the injury.

8 We always ask, and I certainly asked him, what is the
9 last thing you remembered was before being hit, what's the
10 first thing he remembers after being hit. It was very
11 obvious that he has interior-grade amnesia so that he was
12 not able to recall much of what happened after he was hit.
13 He had bits and pieces. And when I interviewed him, it was
14 clear too that he had read a lot of the records so that
15 gets confounded in there as to what the person has read
16 versus what do they actually remember, But as far as actual
17 memory, it appeared that it was very minimal.

18 Q. Let me go back again to the issue of malingering. How
19 do you test for that? And again, if you wouldn't mind
20 defining it one more time.

21 A. Sure. This is a standard part of an evaluation.
22 Malingering means faking and it usually means the person is
23 trying to appear worse than they actually are so it's an
24 important thing for us to rule out, that this isn't part of
25 what they are presenting to me, is some sort of made up

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1 story.

2 The tests for malingering - There are specific tests
3 for malingering and in giving those, I did find all of them
4 showed no malingering. In other words, he was not trying
5 to fake something. It was clear that this was a - he was
6 giving a forthright, open account.

7 Q. Could you talk about those tests and briefly the
8 process?

9 A. Right. The main one in his case that was important
10 was the Rey Fifteen Item Test. This is a test of whether
11 or not the person is malingering memory deficits. Of
12 course, since memory is a big issue in a case like this of
13 what does he remember, what doesn't he remember, I have to
14 know whether or not he is faking that.

15 The fifteen item test is very simple. They give - I
16 show him a page that includes fifteen items and I allow him
17 to view it for ten seconds only. Then I take it away, wait
18 a minute or two, and then I ask him to draw it. And there
19 is a cutoff score and if they can produce a certain number
20 of the items on there, they are not malingering.

21 People that are malingering will claim they can't
22 remember it or they'll only do three or four or something
23 like that. Now he gave a very good performance on that
24 test and it was clear he was not malingering his memory
25 issues.

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1 The other two tests, the personality tests, the MMPI
2 II and the MCMI III, also have validity scales and that
3 means that - These are personality tests and that means in
4 the validity scales, it looks at the same kinds of things.
5 In fact, it can pick up malingering and so we get a profile
6 out of their - the MMPI II is a 567 question - true false
7 questionnaire, so it's lengthy.

8 And it's also the most used test in psychology. It
9 dates back to the 1940's and it's highly reliable and
10 valid. His validity scales on that test were remarkably
11 good. In other words, he wasn't confused, he wasn't overly
12 tired and just marking right and left, whatever comes and
13 goes. He wasn't trying to make more complaints than are
14 real for him. There's a couple of scales that go way up if
15 somebody does that and his were right in the normal range
16 so he wasn't trying to sway the results in any particular
17 direction. In other words, was he trying to look worse
18 than he actually is or was he trying to look better than he
19 actually is. Both of those are possibilities. Neither of
20 those were found. He was giving an open and forthright
21 account of himself.

22 Q. So in your expert opinion, these tests are accurate
23 and objective and when you applied them to Mr. Brown, you
24 found that he wasn't malingering?

25 A. They are very accurate and they did not show

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1 malingering. They have been used for - well the MMPI has
2 been used for sixty, seventy years and improved constantly.

3 Yes, they are used all the time and they are accurate
4 and they are valid.

5 Q. Thank you, Doctor. Let me ask you, before this injury
6 was he a healthy man, Mr. Brown?

7 A. Yes, he was. He was quite healthy from my
8 understanding of his medical history. The only thing that
9 he had that was of any concern was he had a - what's called
10 necrotizing fasciitis which is a terrible flesh eating
11 bacterial infection and he had it on his arm and he has a
12 very large scar there where they had to open it up and
13 drain out the infection and treat him with antibiotics but
14 that healed.

15 Q. Doctor, let me ask you. What medications did he
16 report taking?

17 A. At the time --

18 Q. Just in general; not necessarily about what you were
19 just talking about. Just in general.

20 A. Right. Right. He had been placed on Neurontin when
21 he was at the correctional facility, which is a medication
22 for neurological problems, so obviously at some level that
23 was noted. He found himself not needing that shortly
24 before I went to see him. But he was taking Advil,
25 Ibuprofen, around the clock, .800 milligrams because he has

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1 a continuing headache and a post-traumatic headache is very
2 common with a traumatic brain injury. And in fact, it can
3 go on for sometimes years. It's a big -- That's a problem.
4 And he was using Advil only to medicate his headache and
5 that's all he was taking, Advil. He didn't want any other
6 medications.

7 Q. So in your investigation, did you determine -- has he
8 ever had any psychiatric problems in the past?

9 A. No. He has no history of any psychiatric problems.
10 He's never -- had never been in outpatient psychotherapy and
11 he had never been hospitalized for psychiatric reasons. He
12 didn't have any form of psychological help.

13 Q. Now, you mentioned a report from Doctor Hanson, a
14 forensic psychiatrist I believe. Talk about that if you
15 don't mind.

16 A. Yes. That was one of the records that I reviewed.
17 She wrote two reports. She is a psychiatry fellow at the
18 University of South Carolina Medical School, which means
19 that she is still in training, just as I did a fellowship
20 back --

21 Q. Oh, so she is an intern?

22 A. It said fellow, and they are basically very similar.
23 I mean, they're both training positions. Usually the
24 fellow, or fellowship, which I am, comes after your degree
25 but it's additional but it's still training. You're still

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1 in training. The internships usually come before your
2 degree so it's just - it's all training.

3 Q. Okay. And you've read her report; is that correct?

4 A. I have yes.

5 Q. How long did she spend with Mr. Brown?

6 A. She spent one hour total.

7 Q. Okay. And what did she conclude?

8 A. Well, she was asked to comment on whether or not she
9 thought he was competent. And she was also asked to
10 comment on whether or not she thought he was criminally
11 responsible. Those were the two reports. She basically
12 interviewed him for that one hour. She didn't do any
13 testing or anything like that.

14 She did find him competent to stand trial. And she
15 also said that he was - she thought he was criminally
16 responsible. Now, she also gave him a series of - She also
17 gave the series of diagnoses that we use in psychology and
18 psychiatry, all of mental health --

19 Q. Doctor, I'm - let me stop you. I'm sorry. Before we
20 get to the diagnoses that you were about to talk about,
21 could you just give an explanation of what competency and
22 criminal responsibility, is that how you phrased it?

23 A. Right.

24 Q. What are they and how are they different?

25 A. Okay. Competency is the ability to understand what is

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1 happening if you go to trial. Do you know what a judge is?
2 Do you know what the jury is, what their jobs are? Can you
3 assist your attorney in your trial? There's a series of
4 questions along that line that decide whether the person is
5 mentally capable to basically understand what's going on,
6 appreciate the consequences, and assist their attorney.
7 That's what competency evaluations are.

8 There are tests that one can give to assess
9 competency. She didn't give him a test, she just
10 interviewed him.

11 Q. And then what was the other concept?

12 A. The other concept was criminal responsibility and
13 that's a little more - let me see here. It basically
14 refers to whether the person - If she thinks the person is
15 - I don't know really how to explain that. It's
16 responsible.

17 Q. Do you want to refer to her report? Take your time
18 and read it, that's fine.

19 A. Sure.. Okay. Well, it involved her asking him what
20 happened in the incident and just basically an account of
21 everything. What his memories were. Where he went to the
22 hospital. Things like this. Whether - the basic line -
23 The basic bottom line of this kind of evaluation is whether
24 or not the doctor thinks the person has - is suffering from
25 a mental illness that would have impaired their ability to

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1 distinguish legal or moral right from legal or moral wrong.
2 That's the basic part of it. And if the doctor thinks they
3 can, then they will decide the person was criminally
4 responsible.

5 Q. And if they think that they can't?

6 A. And if they can't, then there's - usually it's due to
7 some kind of mental defect. But she didn't test or go
8 beyond anything to really look at that.

9 Q. Do you agree with her findings?

10 A. No I don't.

11 Q. Okay.

12 A. I believe --

13 Q. Why not?

14 A. Well, I agree that he is competent. I do think that's
15 - I agree with that.

16 Q. Competent to stand trial?

17 A. Yes, he is competent to stand trial. I don't agree
18 that he is criminally responsible because he does have a
19 mental defect that prevented him at the time from
20 appreciating and understanding and being able to think
21 through and comprehend what all was going on. That because
22 of his traumatic brain injury, people that have this kind
23 of blow to the head are often, they're confused. He showed
24 signs of aphasia. In other words, he couldn't talk right
25 which is common especially when it's to the left side of

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1 the brain. That was consistent with his injury. All he
2 could do is he stood up and he went pa pa pa pa. He
3 couldn't talk right for a few minutes because it had
4 effected the left side of his brain which controls language
5 functioning.

6 And his memory was disrupted which is also the left
7 temporal lobe also over here. All of this was consistent
8 with his injury so he was very confused. People with this
9 kind of injury are often agitated. They can be combative.
10 When we've had them in the hospital, sometimes we have to
11 restrain them because they are just sort of flailing about,
12 not knowing what they're doing, so we would often restrain
13 them. Sometimes we would have to keep them in a bed that
14 had netting around it so that they couldn't just get out of
15 bed and wander down the hall not knowing what they were
16 doing. It can be very dramatic how a person has erratic
17 behavior after a traumatic brain injury.

18 Q. You gave Mr. Brown a mental status exam; is that
19 correct, and you reported your observations on him?

20 A. I did, yes. I gave him the mental status exam.

21 Q. Right. The other doctor - the other person --

22 A. I didn't see any note of anything but just talking to
23 him.

24 Q. Okay, but will you explain the mental status exam that
25 you gave?

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1 A. Yes. That's a standard part of an evaluation and
2 basically what it is, I mean, while the individual tells me
3 their story and presents themselves as ever they present
4 themselves, I have to give my observations of what I see in
5 this person and that's what I report in a mental status
6 exam and behavioral observations so I gave those results.

7 Would you like me to talk about that?

8 Q. Yes, ma'am.

9 A. All right. At the time I saw him, it was almost a
10 year after his injury and so - and I'll discuss this when
11 we talk about the testing. A majority of his cognitive
12 abilities, his thinking skills, had resolved; that is to be
13 expected. But there were things that had not resolved and
14 some were, and it was obvious, he still has balance
15 problems and so he can get unsteady on his feet at times
16 although he could walk adequately. Balance problems is
17 typical of a traumatic brain injury. A lot of people have
18 that.

19 The headaches were still going on and something he had
20 to pay attention to constantly and it was clear that he was
21 at times experiencing the headaches. His ability to
22 control his emotions, what we call emotional liability, was
23 obviously to me. In other words, he - if we talked about
24 anything sad, he would start crying and that is not
25 uncommon especially with the left hemisphere injury. A

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1 left hemisphere tends to - People with a left hemisphere
2 injury tend to be more aware of their deficits. It also
3 affects their emotional control more and it's very common
4 for them to cry.

5 I've had to train students about this. They say, well
6 he's crying. And I wanted him to tell more, tell me more,
7 and say no that's not the right thing to do when it's an
8 organic brain syndrome. You have to change the subject
9 because they'll just get worse and worse and worse if you
10 try to dig into it and say what happened, you know. They
11 can't control that. He does have that emotional liability
12 still, so he cries very easily.

13 He - let's see. He also appeared depressed. He did
14 report that, feeling that too. I always ask what is that
15 on a scale. How you feel on a scale of one to ten, with
16 one the best, no depression at all; ten, really horrible
17 depression, and he gave his depression a five or six.

18 Now, I asked the same question about anxiety and he
19 gave that a seven or eight, so he was, at the time I saw
20 him, his depression would come and go. He did a lot of
21 things to help himself to get over the depression. He's a
22 very religious man. He was raised in the Church of God.

23 SOLICITOR SPRINGS: I'm going to object that he's a
24 very religious man. She doesn't know that.

25 THE COURT: I sustain the objection.

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1 A. All right.

2 Q. Carry on, Doctor.

3 A. Use of that is how he -- of reading the Bible is how he
4 controlled his depression. The anxiety was a more
5 prominent feature at the time I saw him. And he was very
6 anxious, very anxious. And he worried about everything.
7 His future. Particularly, --

8 SOLICITOR SPRINGS: I'm going to object to the
9 hearsay.

10 Q. Ma'am, let me ask you another question.

11 A. All right.

12 Q. I guess in regards to the hearsay, just to explain,
13 you can't say anything that Mr. Brown necessarily said.
14 So, but we were talking about the results of the mental
15 status exam; is that correct?

16 A. Yes.

17 Q. Okay. Do you have anything else to say on that topic?

18 A. Yes. It's clear that he has some paranoia. I
19 observed this and --

20 Q. How did you observe that?

21 A. Well, I had a necklace on that had a drop on it and at
22 one point he questioned whether it was -- He looked at it
23 with suspicion and asked what it was. I had to turn it
24 over and show it to him, that it was truly a necklace. He
25 thought it might be a microphone or a video recording.

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1 But he also gave me many instances of times that he
2 has had periodic paranoia. Just questioning things.
3 Questioning his wife. Questioning things like this, that
4 he didn't normally do, and this apparently was a new
5 behavior since his traumatic brain injury. Paranoia can
6 occur with a traumatic brain injury. It's kind of linked
7 in with the whole limbic system of the brain which controls
8 the emotions. And as I've already described, he doesn't
9 have the full control of his emotions and the paranoia can
10 come and go with that. It's not a constant thing. It
11 would come and go. And he could recognize it which means -
12 which is a good thing because I observed that he, you know,
13 he - it's something that might go away eventually.

14 Q. I see. Then you gave Mr. Brown a number of tests; is
15 that correct?

16 A. Yes, I did.

17 Q. Okay. And what were the purposes of these tests?

18 A. Well, the purposes were to look at his brain
19 functioning. Did he have an underlying brain injury?

20 Nobody seemed to address that in his medical care. They
21 were apparently very distracted by and focused on his cut
22 and they didn't realize the severity of the blow that had
23 injured the brain.

24 Now one thing I want to say. When somebody gets hit
25 on the head on this side, they get what's called a

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1 contrecoup injury. It tosses the brain back and you get an
2 injury on this side too so you can have problems from both
3 the left hemisphere and the right hemisphere. It also can
4 cause twisting and turning. The brain is in there, it's in
5 sort of like a liquid and it can kind of jostle around so
6 you can get different injuries all over the brain as well.

7 Q. Have you had --

8 a. The tests were to look at all of that and also his
9 personality.

10 Q. Have you had an opportunity to see these photos or
11 photos of something similar of his injuries?

12 A. Yes, I have. These are very dramatic and this one
13 really shows the huge, open wound and this --

14 THE COURT: Reference the numbers.

15 MR. COOK: Yes, sir, Your Honor.

16 This is Defendant's Exhibit Number Two and number One
17 that I just handed up to the Doctor.

18 A. And this shows the --

19 THE COURT: Well she says this.

20 A. He had profuse bleeding.

21 Q. And when you say this, you have to - if I wouldn't -
22 If you wouldn't mind, let me ask you. The one that you
23 were talking about that was a picture of the cut on the top
24 of his head ---

25 A. Yes.

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1 Q. --- that was Defendant's Number Two?

2 A. Yes. That's Number Two. That's this one that shows
3 his profuse bleeding is Number One. And there was some
4 reference, I believe, in the record that they might have
5 thought that they had hit an artery.

6 Q. And so the battery of tests that I just asked you
7 about, the purposes of that test, again you were assessing
8 malingerer?

9 A. That's the first thing we look at because that can
10 affect everything. If the person is faking or trying to
11 sway the results in one way or another, I have to take that
12 into account to all of the test results, but that was not
13 an issue with him.

14 Q. IQ?

15 A. The IQ test, which is the Wechsler Adult Intelligence
16 Scale IV, is the standard basis of any psychological
17 battery, whether it's psychological or neuropsychological.
18 That's always given first. We have to see what their
19 ability level is and also the ways can show a differential
20 between right and left hemispheres as well and that occur
21 with any kind of head injury.

22 Q. What was the results of the IQ tests? What were the
23 results of the IQ test?

24 A. The IQ test did show a differential between his left
25 and right hemisphere. But I have to say that the left

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1 hemisphere controls verbal abilities. As I mentioned,
2 language, even memory, whatnot. The right hemisphere
3 controls what we call visual spacial abilities. Things
4 like constructional abilities, things like that.

5 My best description of that is a lawyer would be a
6 left hemisphere person and an architect would be a right
7 hemisphere person because they've got to place things in
8 spacial relationships. So, now he had already told me that
9 he was very mechanically inclined so I expected his right
10 hemisphere to be better.

11 And also his education level was extremely low. He
12 basically got no more than the fifth or sixth grade of
13 education and that low education affects the verbal IQ so
14 that was pulled down somewhat by his educational level
15 because it has a couple of sub-tests that look - that are
16 very affected by education with what one's learned.

17 So the result was yes, his right hemisphere or
18 perceptual reasoning was 117, which is above average and at
19 the 87th percentile. So yes, that's a very good finding
20 and it does show that he is very mechanically inclined and
21 still has that ability and that will abode well for him in
22 the future as far as work goes.

23 His verbal IQ was as I expected because of his low
24 education, a little bit lower. It was 98 and at the 45th
25 percentile. Now that's average. There's nothing wrong

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1 with that. In fact, I'm surprised it wasn't a little lower
2 given his education. His full scale culmination of the two
3 was 1-0-8, which is average range but at the top of the
4 average range, sort of a combination of the two. But you
5 do see the difference between his left and his right side
6 hemispheres in his brain.

7 It also - This test also looks at attention and
8 concentration. And that's - he did well on that. He had a
9 score of 114, which is above average. That too was a good
10 finding because that attention and concentration can be
11 something that is almost always a deficit in the very - in
12 the early stages of a traumatic brain injury. And then
13 some people recover it and some don't so I was happy to see
14 that.

15 The part of the WAIS IV which is the Wechsler Adult
16 Intelligence test was most likely to show result of his
17 traumatic brain injury was his processing speed. While
18 this was average, at 97, it was at the 42nd percentile and
19 lower than everything else. And this is a common finding
20 in a traumatic brain injury. The thing that is most easily
21 affected is how quickly we can think things through and a
22 slowing of that is common with brain injuries or dementia,
23 anything like that; any kinds of neurological disorders.
24 So while it's still average, it's probably - it's low for
25 him most likely.

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1 MR. COOK: I beg the court's indulgences.

2 Doctor.

3 If we may approach?

4 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
5 OF THE JURY AT 12:25 P.M..)

6 THE COURT: I'm being told that this may be a good
7 time to break for lunch so it's almost 12:30 so we'll break
8 until let's say a quarter till two. Have a pleasant lunch
9 and we'll see you back at 1:45.

10 (JURY EXITS COURTROOM AT 12:26 P.M..)

11 THE COURT: We'll be at ease until 1:45 .

12 (COURT IN RECESS AT 12:28 P.M..)

13 (COURT BACK IN SESSION AT 01:50 P.M..)

14 THE COURT: Thank you. You may take your seats.

15 SOLICITOR SPRINGS: Before we resume, may defense
16 counsel and I approach?

17 (BENCH CONFERENCE OFF THE RECORD AT 01:50 P.M..)

18 (DEFENDANT, FLOYD BROWN, REENTERS COURTROOM.)

19 THE COURT: Bring in the jury.

20 (JURY REENTERS COURTROOM AT 01:54 P.M..)

21 THE COURT: Mr. Cook, you may proceed.

22 MR. COOK: Thank you, Your Honor. May it please the
23 court.

24 DIRECT EXAMINATION - CON'T

25 DOCTOR CAROL WALSER BY MR. COOK:

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1 Q. Okay. Doctor Walser, I believe before we broke for
2 lunch, I was discussing with you about you gave a battery
3 of tests to my client; is that correct.

4 A. Yes.

5 Q. And one of them was a memory test; is that accurate?

6 A. Yes.

7 Q. And can you tell me what a memory test is and what the
8 results are from that test?

9 A. Yes. I gave him the Wechsler Memory Scale, Roman
10 Numeral IV, which is the most recent edition, and this is
11 to test the person's memory functioning. It looks at both
12 verbal memory which is what we remember of what we hear,
13 and it also looks at visual memory which is what we
14 remember of what we see. So we get both of those views of
15 the person and also kind of a combined view.

16 The results of the test showed that his immediate
17 verbal memory, which we call auditory memory, was a 115,
18 which is above average and it's 84th percentile so that's
19 good. Now we have to remember that this is almost a year
20 later. Then his visual memory, which is what he remembers
21 of what he sees, tested at a 108, which is in the average
22 range and at the 70th percentile, so he's a little better
23 in verbal or auditory memory than he is in visual memory.

24 Then we give - and those are immediate so I will give
25 them information and or read him information that he then

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1 has to respond to immediately. Then I come back about
2 thirty minutes later, twenty, thirty minutes later, and ask
3 for it again to see what the delayed memory is.

4 That's more what we see with what we call these days
5 short term memory. And his short term memory or that - I
6 should say the delayed memory, was at the - let's see here,
7 again it was in the - for the auditory memory, it was in
8 the high average, above average range. And for the visual
9 memory it was in the average range so it didn't change over
10 a delay, which is a good thing. So he has either recovered
11 or maintained. He's recovered probably a lot of his memory
12 functions to most likely his pre-morbid or before the
13 accident level.

14 Now, these are the types of memory we test for. There
15 is also two other aspects that I need to address and that
16 is again he did have this anterior grade amnesia, which is
17 as I mentioned before, remembering well what happened after
18 he was hit and that continues to be impaired, which we
19 would expect. Usually people don't get that back.

20 I frankly have explained it to many patients as
21 probably nature's way of protecting them that they don't
22 remember all the details of what happened to them.

23 The other thing that he does continue to have, which
24 is typical of a traumatic brain injury, is he has periods
25 where he blanks out. This is common with concussions,

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1 brain injuries, so the person will be clocking along and
2 then all of a sudden its as if they have no idea what they
3 were talking about. They blank out. I have described this
4 to people or to patients as the best description I could
5 think of is, okay there's been some injury to the brain so
6 most likely most - some of that doesn't ever recover and
7 when the person is thinking or trying to remember
8 something, it's as if, you know, the parts that are working
9 work fine and it's as if they're going down a road or a
10 highway or something and then all of a sudden, they hit
11 that area where maybe there is still some small deficit and
12 it just - it's like hitting a wall.

13 The memory's ability for memory doesn't come through
14 and they blank out and it's very obvious when you're
15 talking to somebody because they will do it right there in
16 front of you. They'll just - and they often react like
17 that. It's almost as if you can see that hitting the wall
18 where they can't recall all of a sudden, so he does still
19 do that and that was clear and that is also - we call it
20 blanking out. That's all that way and you know, that does
21 not show on a memory test like this, or, it could I suppose
22 but in generally - generally it doesn't because it usually
23 happens in spontaneous discussion.

24 Q. And, Doctor, so just to retouch briefly, you can
25 score well on the memory test but still have interior grade

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1 memory loss; is that correct? Amnesia.

2 A. That's true and you can still have the blanking out.

3 Q. All right. What were the results of your neuro-
4 psychological tests?

5 A. All right. As I mentioned, I gave him some of the
6 test of the Halstead-Reitan.

7 Q. Let me stop you. What's the difference between a
8 neurophysiological test and a memory test?

9 A. Well, a memory test really is a neuropsychological
10 test but it's not - it's generally done separately. In
11 fact the Wechsler memory scale is generally done separately
12 from a neuropsychological battery although there are tests
13 within a neuropsychological battery that tests memory also.
14 It's just sort of the way we do it.

15 Q. I understand. And what were the results of those
16 tests?

17 A. Okay. Well, I gave him the aphasia screening exam and
18 the aphasia refers to language abilities and as he - After
19 the injury he was unable to speak in a clear, coherent and
20 fluid way. That's a sign of aphasia and not uncommon
21 because he was hit on the left side of the brain. But he
22 does still continue to have some mild symptoms of that.

23 He had deficits in word finding so, you know, he'd be
24 talking along and then he couldn't think of the word that
25 was going to - that he needed. This is something we

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1 usually don't see in people until their 60's and 70's, and
2 then it becomes pretty common, and it's normal at that age
3 but it's not at 43.

4 He had what we call central dysarthia and that means
5 that he had trouble pronouncing difficult or complex words.
6 He couldn't get it out so you still saw some of that
7 problem with speaking. His spelling was poor. He had
8 trouble with computations although, you know, it wasn't too
9 bad. Actually I did give him an achievement test for that.
10 His word reading which is amazing was at the twelfth grade
11 level and I was floored with somebody that had the level of
12 education that he has so he's educated himself a lot beyond
13 his formal education.

14 And I think he might not have never been good in
15 spelling. I don't know. And the computations were
16 variable. Sometimes he was good with them and sometimes
17 not. They actually tested at the ninth grade level which
18 is above what he learned in school so. But primarily that
19 covers the aphasia symptoms. Then I gave him - would you
20 like me to go on?

21 Q. Sure.

22 A. Okay. What's called the trail making tests, parts A
23 and B. This is a very simple test. Takes about five
24 minutes to do.

25 Q. Is it a personality test?

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1 A. No.

2 Q. Okay.

3 A. It's a neuropsychological test.

4 Q. Okay.

5 A. And part A is a test of simply drawing a line from one
6 to two to three to four, on up to twenty-five, and we time
7 the person, and it's graded very much on the timing and
8 also errors, but primarily timing. That's a simple
9 sequencing test and he was able to do that. That was good.

10 Then part B is a more complex task. They have to
11 change -- what we call change mental sets. They go from one
12 task to another task, back to the first task to the second
13 task, back and forth and back and forth. This tests mental
14 flexibility.

15 Both of the trailing making A and B tend to be frontal
16 lobe functions of the brain and he was able to do that
17 within the time limit, which was within that normal range,
18 but he did make an error. So he made a switching error and
19 that's pretty -- I wasn't surprised. That's one of those
20 small remnant deficits still from his traumatic brain
21 injury. Then --

22 Q. Oh, I'm sorry.

23 A. Go ahead.

24 Q. Please continue. I thought you were done.

25 A. I gave him a Halstead category test. This is a very

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1 difficult test. It is a test of higher level abstract
2 thinking and reasoning. It's very sensitive to brain
3 injury. It is primarily frontal lobe again, and as we
4 know, his injuries were more left side to right side kind
5 of jostling perhaps sometimes the frontal lobes can be
6 included.

7 But the Halstead category test is highly - it's
8 difficult. And I was very pleased to see that he did this
9 quite well and that was a good sign as far as his ability
10 to hold a job at a more complex level in the future, and
11 thinking in a more abstract and advanced way. So that was
12 a good finding and I was happy to see that for his sake for
13 his work ability.

14 Then I gave him the strip color and word test, which
15 is another test of the executive system which is the
16 frontal lobe. It can probably include some other areas
17 too. He was in the normal range on these and this was
18 good. He was able to inhibit distracting information which
19 is also a good sign. And he was able to complete the task
20 in a - within the normal time period.

21 And then finally I gave him the draw a clock, which we
22 discussed earlier, and asked him to make it read ten
23 minutes after eleven. He did this with a perfect
24 performance. One of the things we look for in the draw
25 clock is what's called visual neglect. Whether some people

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1 with brain injuries, or depending on where the injury is,
2 especially if it's on the right side, sometimes they
3 literally can't see a whole visual field and they'll draw
4 only part of the clock and not even realize it. So that -
5 he did not have visual neglect. He did the sequencing well
6 and it was a good performance so that was a good sign also.
7 Those are the neuropsychological tests.

8 Q. Okay. So did you perform some personality tests also
9 and what is the personality test?

10 A. A personality test is a test that looks at the
11 person's e-functional functioning. Are they depressed; are
12 they anxious. Do they have certain qualities of someone
13 who is a hypochondriac or schizophrenia or mania. It does
14 a lot of things that looks for psychiatric conditions. And
15 I gave him three personality tests.

16 Q. And what were the results?

17 A. Okay. The first one was the MMPI II, which is an
18 acronym for the Minnesota Multi-Faceted Personality
19 Inventory. And as I mentioned earlier, this is one of the
20 oldest tests in existence back to the 1940's. It is highly
21 reliable and valid. It's probably the most used test in
22 psychological testing.

23 His validity scales looked at the test takers approach
24 and attitude during the test. As I mentioned earlier, it
25 can pick up malingering and there was none. It can look to

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1 see if they're trying to sway the results to over
2 complaining or even under complaining. None of that
3 showed. He was giving an open and forthright report of
4 himself. He wasn't trying to sway the results. Most
5 people who take this test have no idea it can do that but
6 it does.

7 He produced a valid profile. In other words, there
8 are a number of validity scales and then there are a number
9 - there are ten clinical scales that look at the things
10 like depression, anxiety, paranoia, schizophrenia and
11 mania, hypochondriasis, hysteria; male, female interests,
12 et cetera. Okay.

13 He had elevations on this test which showed depression
14 for one thing. It showed he has health concerns, which I
15 was not surprised of with his head injury, and it showed
16 that he also had a number of other things. His anxiety was
17 high. He did have - As I mentioned earlier he has some
18 paranoia and that did show. Let me look here further.

19 He had a number of elevated scales and a couple of the
20 scales are typically elevated in a head injury person so we
21 can take that into account. Overall, it showed - I would
22 say the primary thing that it showed was his health
23 concerns, the possibility of an organic condition which
24 I've already found in the neuropsychological testing and
25 his depression, so he feels - it's noted that he feels self

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1 alienated and that the world is a threatening place at this
2 time.

3 He reported seeing himself as being unjustly blamed
4 for other's problems and behavior and it noted that in
5 relationships, in a personal relationship, he tends to be
6 fairly passive and dependant. That's particularly with the
7 opposite sex.

8 Q. Thank you, Doctor. So you performed a number of tests
9 on my client; is that correct?

10 A. I did.

11 Q. And did you come to a diagnosis?

12 A. Oh, yes.

13 Q. And what were your diagnoses of Mr. Brown?

14 A. Well, it was clear to me that he had a traumatic brain
15 injury. There are two methods of diagnosis. The medical
16 field uses the ICD-10-CM and on that, on their scale, I
17 gave him the diagnosis of traumatic brain injury with skull
18 fracture with loss of consciousness of unspecified
19 duration, which was noted in the medical records by the
20 way. Probably - and we're only estimating it was seconds
21 to minutes. It wasn't more than thirty minutes. And also
22 the resulting neuro cognitive deficit.

23 Then I used the other method which we use in mental
24 health which is the Diagnostic Statistical Manual and it's
25 Edition V which is the most recent edition. On that, out

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1 of that manual which there are over 2,000 diagnosis in
2 there, and this is what all the mental health professional
3 use, this particular manual, he satisfied the criteria and
4 I diagnosed him with a mild neuro-cognitive disorder due to
5 traumatic brain injury with behavioral disturbance at the
6 time of the injury, but no current behavioral disturbance.

7 Then I also gave him a diagnosis of depressive
8 disorder due to another medical condition, which was the
9 traumatic brain injury with depressive features, and then I
10 also noted that, and this was true on all the tests that I
11 gave him, the personality tests, there was no indication
12 that he had a personality disorder.

13 I noticed that Doctor Hanson also commented that she
14 didn't see any evidence of that even though she didn't have
15 more information, so there was no personality disorder. He
16 didn't - he was not - and when I say that, we're talking
17 about things like is he narcissistic? No, he didn't test
18 as narcissistic. Is he psychopathic which is a kind of
19 like the serial murderer criminal, hard criminals. No, he
20 did not test as psychopathic. None of the personality
21 disorders actually, that's a good finding in his case.

22 And then I noted that he had had, as I mentioned
23 earlier, the fractured skull and broken ankle. And I noted
24 his stress was as legal problems and illness in himself and
25 that was the series of diagnoses.

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1 Q. So, I'm sorry, did you touch on how you diagnose a
2 traumatic brain injury and the definition from the American
3 Congress of Rehabilitation of Medicine?

4 A. Yes. That's the definition of a traumatic brain
5 injury that most all the neuro psychologists tend to use
6 today and it is - it's also - there's also one from the
7 World Health Association that is very similar. I'm looking
8 for it right now.

9 Q. And using these criteria from either one, did you -
10 again you concluded that he does - did -

11 SOLICITOR SPRINGS: I'm going to object.

12 THE COURT: Yeah. It's a leading question.

13 She didn't answer the last one either.

14 A. Did what now?

15 Q. I'm sorry. I interrupted you first.

16 THE COURT: I think he ask you, tell us what TBI,
17 what that means other than traumatic brain injury.

18 A. Oh, okay.

19 THE COURT: I think that was the question.

20 MR. COOK: Yes, sir.

21 Q. My question was a definition of traumatic brain injury
22 from the American Congress of Rehabilitation Medicine. You
23 were talking about there is another society, the World --

24 A. The World Health Organization also has a definition.
25 Most neuro psychologists - and they're almost identical.

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1 Q. Yeah.

2 A. Most neuro psychologists today use the American
3 Congress of Rehabilitation Medicine's definition and it
4 includes a number of - it goes through a very - a number of
5 symptoms. Do you want me to go through that?

6 Q. No, that's okay. I was wanting you to focus on the
7 traumatic brain injury itself and your diagnosis of that.
8 What does it mean - again, so I was just trying to confirm,
9 you did diagnose that Mr. Brown had a traumatic brain
10 injury?

11 A. Oh, absolutely. No doubt

12 Q. And what does that diagnosis mean in terms of his
13 functioning of the night of the incident, June 8th of 2012
14 last year, the reason we're in court?

15 A. At the time of the incident, you know, it's an acute
16 blow to the head that causes an acute traumatic brain
17 injury, and things that occur with that are often loss of
18 consciousness, which the records indicated and it may have
19 been as little as a few seconds to a couple of minutes
20 which we don't know. That's very hard to assess, but it is
21 most likely.

22 Confusion. As I mentioned, he had the aphasia of not
23 being able to speak correctly. It's sort of a sometimes
24 erratic behavior and oftentimes the person becomes sort of
25 chaotic. They're just sort of flailing around and, you

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1 know, you can actually picture this where if your brain has
2 been really severely hit like this, I mean you can see the
3 brain is actually doing this inside of your head.

4 (WITNESS DEMONSTRATED.)

5 A. The person when they get up from such an injury often
6 acts like that. Just they're sort of going around looking
7 and they can be quite disorganized and not able to think
8 clearly. Not able to really know what they're doing.
9 They're unable to, you know, form consistent thoughts.
10 They're being - They look like they are kind of completely
11 confused and out of it really. And sometimes this
12 persists. I mean, people can do this on and on. I don't
13 think his went on probably more than a few hours but I
14 don't know that for sure. I can certainly say that that
15 kind of traumatic brain injury will cause that kind of
16 behavior and inability to think and plan and organize and
17 control erratic behavior and things like that.

18 Q. Now, let me ask you. Does he still have some of his
19 symptoms from the traumatic brain injury today?

20 A. Yes. Yes.

21 Q. Okay. Did he suffer from post traumatic stress
22 disorder in this incident?

23 A. That's something I always have to assess. Because he
24 remembers pretty clearly all the way up to the point he was
25 hit, and he saw it coming, the hit, he turned back and saw

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1 the man with the object coming at him to hit him, that
2 circumstance and the fact that it had the potential to kill
3 him would immediately satisfy the first criteria for PTSD,
4 post traumatic stress disorder.

5 And then I have to go through and look at the other
6 criteria. My conclusion was, and that's one reason I gave
7 him the test for that, my conclusion was he had some
8 elements of PTSD but he didn't have the full criteria and
9 that might be because of his anterior grade amnesia. It
10 might have prevented that from developing into a full PTSD.

11 But he still has one very difficult and disturbing
12 symptom, which is that he can't sleep well. He wakes up
13 about every thirty minutes which is common with a
14 concussion or TBI. We call it TBI. And when he wakes it's
15 with a jolt and he hears the cracking noise that was
16 clearly his head being cracked open so he was reliving that
17 particular event. He is reliving the actual hit on the -
18 the cracking noise of his head.

19 SOLICITOR SPRINGS: I'm going to object. She can't
20 know he's reliving his -

21 THE COURT: I sustain the objection.

22 A. Okay.

23 Q. Let me move you on, Doctor. Earlier you cited some
24 language about having a mental disease or defect, lacking
25 the capacity to distinguish moral or legal right from moral

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1 or legal wrong, or to recognize particular acts as morally
2 or legally wrong. In your professional opinion, does my
3 client - did my client at the time of the alleged
4 commission of the crime, due to a mental defect or disease,
5 lack the capacity to distinguish moral or legal right from
6 moral or legal wrong?

7 A. Yes. As I - definitely as I mentioned, his brain was
8 injured and he was not able to at that - right around that
9 time, to be able to think clearly, speak clearly, act in a
10 rational way.

11 Q. Let me ask you a few follow up questions and then I'm
12 done. Could two county sheriff deputies that went to the
13 scene where my client was at his house immediately after
14 this accident, make the type of diagnosis that you're
15 making today?

16 A. No.

17 Q. Could they determine whether he was crazy or not quote
18 unquote?

19 A. No. It takes a mental health professional.

20 Q. Was my client quote unquote crazy or insane in your
21 opinion at this time?

22 A. I wouldn't call it - I wouldn't use the word insane.

23 I would use the word he clearly had a mental defect. His
24 brain was injured. That's a mental defect. That's a
25 traumatic brain injury; is a mental defect.

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1 Q. Did he lack the capacity to distinguish between moral
2 and legal right or wrong?

3 A. I think he did lack that ability because he couldn't
4 think clearly.

5 Q. So the fact that our State's statutes use the phrase
6 in saying "not guilty by reason on insanity" you're saying
7 that he in fact met the statutory requirements for that
8 type of --

9 SOLICITOR SPRINGS: I'm going to object. That's a
10 conclusion she can't come to. She can give her opinions.

11 MR. COOK: I was asking for --

12 THE COURT: I know what you're trying to ask but I
13 think -- I sustain the objection. I think you can ask it in
14 another way to --

15 Q. Well, and, ma'am, I think I've asked you so I'm just
16 going to move on.

17 A. I can't comment?

18 THE COURT: No.

19 MR. COOK: No, ma'am.

20 THE COURT: You got to ask her a question.

21 Q. I've already asked you the question. You know, I'll
22 just rephrase it to remove any ambiguity. Did you think my
23 client had a mental disease or defect at the time of the
24 commission of this crime?

25 A. Absolutely.

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1 Q. And he lacked the capacity to distinguish moral right
2 and legal right?

3 A. Yes.

4 Q. Okay. Let me ask you this. Did - In your opinion did
5 Hubert Brown want you to come to the conclusion that you
6 came to?

7 SOLICITOR SPRINGS: Objection.

8 THE COURT: I sustain the objection.

9 MR. COOK: Okay.

10 Q. If he could formulate sentences clearly, some of the
11 officers testified that at his house he was formulating
12 some sentences clearly to them, would that mean that -
13 Would that change your opinion if I told you that?

14 A. No, because I think that that ability can be - well,
15 kind of come and go. Fade in and out. One minute, maybe
16 so; maybe not the next minute. It's variable. It's not
17 consistent so it is not reliable.

18 Q. And finally, Doctor Hanson's report, it had a lot to
19 do about alcohol levels in my client's blood. Do you agree
20 with that statement that I just made?

21 A. I did read that.

22 Q. Does that have anything in your opinion whatsoever to
23 do with the analysis that I'm asking you about today?

24 A. No. It's a whole separate issue. I'm talking about a
25 traumatic brain injury, of him being injured.

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1 Q. Did you see the alcohol levels that were allegedly in
2 his system at the time?

3 A. I'm sorry?

4 Q. Did you see the alcohol levels that were allegedly in
5 his system at the time?

6 A. I read the level in the Carolinas Medical Center and
7 it didn't make any sense because it said it was a 129.

8 Q. The other center said it was .08. Do you agree?

9 A. Apparently --

10 SOLICITOR SPRINGS: Objection.

11 THE COURT: I sustain the objection.

12 SOLICITOR SPRINGS: I -

13 THE COURT: Don't give her the answer. Ask a
14 question.

15 SOLICITOR SPRINGS: Please ask the jury to disregard
16 that -

17 THE COURT: Disregard this lawyer's testimony;
18 basically what it was.

19 Just ask questions.

20 MR. COOK: I apologize, Your Honor. I didn't meant to
21 -- I'll just close with this.

22 Q. Does the alcohol level in his system, pursuant to that
23 doctor's report, have any whatsoever bearing on whether he
24 could distinguish the difference between moral or legal
25 right or wrong at the time of the alleged crime?

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1 A. No. That was completely -- His ability was completely
2 impaired by his traumatic brain injury. He could have been
3 sober or drunk; it wouldn't matter.

4 MR. COOK: Thank you, Doctor. No further questions.

5 THE COURT: All right.

6 Mr. Springs.

7 DIRECT EXAMINATION

8 DOCTOR CAROL WALSER BY SOLICITOR SPRINGS:

9 Q. Doctor, does part of the documents that you have that
10 you referred to, you told the defense attorney you had
11 Doctor Shannon Hanson, the forensic psychiatrist, you had
12 her evaluation of Mr. Brown?

13 A. Yes.

14 Q. And I think you said she found him responsible. Did
15 you not?

16 A. Yes, I did.

17 Q. And that's a fancy name of saying "sane" at the time?

18 People say responsible instead of saying sane is that

19 --

20 A. She found that he did not have a mental illness. I
21 think she used that term in her report.

22 Q. Okay. Are you getting your copy of her report?

23 A. I do.

24 Q. Okay. The last paragraph, her conclusion --

25 A. Which report?

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1 Q. This is on responsibility.

2 A. Okay.

3 Q. She's got her conclusion regarding capacity to
4 conform.

5 A. Yes.

6 Q. Would you read that paragraph for the jury.

7 A. "Although Mr. Brown received treatment for head trauma
8 around the time of his charges for attempted murder and
9 burglary first degree, he did not report a compulsion,
10 delusion, command audiology hallucination, or other
11 symptoms of mental illness that would have impaired his
12 ability to conform his conduct to the requirements of the
13 law."

14 Q. And then that's signed by Shannon L. Hanson, MD?

15 A. Yes. Yes.

16 Q. Forensic Psychiatry Fellow, University of South
17 Carolina School of Medicine?

18 A. Yes.

19 Q. Does the report indicate she did this for the South
20 Carolina Department of Mental Health?

21 A. Yes.

22 Q. And she is a psychiatrist?

23 A. I don't know if she's --

24 Q. She's got MD after her name?

25 A. Yes. She's a medical doctor. I don't know if she's

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1 yet a full psychiatrist.

2 Q. Right. Psychiatrists have an MD. They're a medical
3 doctor as well as getting into psychology?

4 A. Yes, but a psychiatrist has a residency in psychiatry
5 and I don't know - I can't tell from this if she does have
6 that.

7 Q. Okay. But you agree she is a medical doctor as well?

8 A. That is the only thing I can say for sure.

9 Q. Now, you're not a medical doctor?

10 A. No. I'm a Ph.D.

11 Q. And you refer to yourself as a neuro psychologist?

12 A. Yes.

13 Q. And would you agree that that self attribution could
14 be adopted by any psychologist, just start calling
15 themselves neuro psychologists?

16 A. No.

17 Q. You would disagree with that?

18 A. Yes.

19 Q. You've testified for criminal defendants quite a few
20 times. Have you not?

21 A. Yes.

22 Q. And your background goes back to California for the
23 most part?

24 A. Yes.

25 Q. And you've testified for fellows and charged with

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1 shooting someone?

2 A. I'm sorry. What?

3 Q. You've testified as an expert for the defense in
4 trials of someone charged with shooting someone?

5 A. Yes.

6 Q. Stabbing someone?

7 A. Yes.

8 Q. Even a fire where children were killed?

9 A. Even what?

10 Q. A fire where children were killed?

11 A. Oh. A fire, yes.

12 Q. Now, Mr. Brown was released the day after the incident
13 about 3:30 in the afternoon on June 9th. Is that your
14 understanding?

15 A. Yes.

16 Q. And he was treated at two different hospitals. Is
17 that your understanding?

18 A. Yes. The first one just sewed up his open wound and
19 then transferred him to the second one.

20 Q. Because Carolinas Medical Center ---

21 A. Yes.

22 Q. --- is much more renown for head injury. Is that your
23 understanding?

24 A. I believe it's a trauma center.

25 Q. Okay. And their diagnosis, the doctor's, the medical

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1 doctor's diagnosis, was a fractured skull, a cut on one of
2 his fingers and a fractured tibia which is the ankle; is
3 that correct?

4 A. Yes.

5 Q. And the medical doctors report no brain injury at all
6 do they?

7 A. It said that they did not --

8 Q. Well answer my question then you can talk all you
9 want.

10 A. Okay.

11 Q. The medical doctors, the MD's, report no brain injury
12 of any kind do they?

13 A. No underlying brain impairment is what they said based
14 on simply their observation of him. No tests.

15 Q. They didn't do the clock test?

16 A. No.

17 Q. And the Minnesota test?

18 A. No.

19 Q. That Doctor Bruce Leonard diagnosed him with a
20 fractured skull, a fractured tibia, ankle, and a cut on one
21 finger?

22 A. Yes. I've already explained that. They didn't do an
23 MRI, a CAT scan. Did they? I don't have that but it
24 doesn't even -- even if those were done, they frequently do
25 not show and typically neuropsychological testing is the

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- 1 only way to determine if there is a brain injury.
- 2 Q. And Doctor Michael Dobson also diagnosed him with a
- 3 fractured skull, fractured tibia, a cut finger?
- 4 A. Yes. In medical centers like that one person gives
- 5 the diagnosis. It tends to repeat itself through the
- 6 records.
- 7 Q. You're not saying these doctors didn't actually
- 8 examine Mr. Brown are you?
- 9 A. No, but they were - It's typical for them to follow
- 10 what the previous person found and state the same
- 11 diagnosis. It's very common.
- 12 Q. And that would be why Doctor Jerry Warden was
- 13 concurring; he was probably just going right along with the
- 14 crowd?
- 15 A. That happens a lot.
- 16 Q. But would you agree that he got some treatment?
- 17 A. I wouldn't - well --
- 18 Q. Did he get some treatment at the two hospitals?
- 19 A. He got treatment for the open wound.
- 20 Q. And then he was discharged?
- 21 A. There wasn't much of an assessment of any underlying
- 22 brain disorder and there was no treatment for a brain
- 23 disorder which my testing shows there was.
- 24 Q. So you feel like he should have gotten an MRI and a
- 25 CAT scan?

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1 A. Or a neuropsychological testing. He should have been
2 sent to a rehabilitation unit or a neurology unit,
3 somewhere where he would have gotten more extensive
4 evaluation by people that work in these kinds of injuries.
5 That's what typically happens.

6 Q. Well if they sewed up a big cut in his head, put a
7 cast on his ankle and put a stitch in his finger, and he
8 was orientated and appropriate in his dealings with them
9 and his speech --

10 A. Not always.

11 Q. Are you saying he -- They didn't say that he was
12 appropriate and orientated in there?

13 A. There are records that do show; that do state that.

14 Q. I'll wait until you find those.

15 (PAUSE.)

16 A. This is in the emergency department documentation.
17 The history of present illness it says, "he does not
18 recall the specifics of the event" --

19 Q. Wait, wait. Just a minute.

20 A. Okay.

21 MR. COOK: Your Honor, I would ask that the witness be
22 able to finish -- to answer the question the State posed --

23 SOLICITOR SPRINGS: I object to hearsay. I'm talking
24 about a doctor saying he is not orientated and not --

25 MR. COOK: I think the State opened the door, Your

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1 Honor.

2 THE COURT: Let's don't both talk at the same time.

3 MR. COOK: I'm sorry.

4 THE WITNESS: I'm sorry.

5 THE COURT: I'm going to allow you to ahead and answer
6 the question. GO ahead and finish.

7 A. Okay. The record -- the history present illness says
8 that "he does not recall the specifics of the event. He
9 was told that he was confused and not acting his typical
10 self." If a person is confused, they're usually not
11 orientated. Then it goes on about his - fractures of his
12 ankle. It's called fracture. They focus mostly on those
13 events but this is what we see so commonly with a traumatic
14 brain injury, confusion and not acting their typical self.
15 It also notes headache --

16 Q. At this point you're what we call non-responsive to my
17 question. Thank you very much.

18 THE COURT: And I don't know that you told us exactly
19 which medical record you were reading from.

20 A. The Carolinas Medical Center Emergency Department.

21 THE COURT: That's fine. I just didn't know which
22 hospital.

23 A. Okay.

24 Q. All right. Now, when did you have his CAT scan and
25 his MRI done?

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1 A. That's not my area of expertise. My area of expertise
2 is neuropsychological testing. And as I mentioned before,
3 oftentimes a CAT scan and an MRI can be normal and the
4 person still has a brain injury that is only detected
5 through neuropsychological testing and that is very much
6 why our profession exists.

7 Q. Well since virtually all of the data you relied on
8 came from Mr. Brown's own lips, didn't you think it was
9 more important - was important to actually scan his brain
10 and see what it looked like physically if there was any
11 damage?

12 A. Oh, I could see it.

13 Q. I'm not talking about the cut on his skull. I'm
14 talking about inside where you go with a scan.

15 A. It was not necessary because my testing showed the
16 existence. And it wasn't just what he told me. The tests
17 are objective tests, either they can do them or they can't.
18 It's not me - them telling me something. At least most of
19 it isn't. Sometimes they have to.

20 Q. You said he had no indication of malingering.
21 Malingering is basically fooling, faking, deceiving; is it
22 not?

23 A. Yes.

24 Q. And you had to rely on information you got from him to
25 determine he was not a malingerer did you not?

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1 A. It was not information I got from him. It was how he
2 performed on valid and reliable tests. He didn't tell me
3 anything about that. He just took the tests and he passed
4 them.

5 Q. And he wasn't trying to fool you?

6 A. No.

7 Q. He wasn't trying to fool you. You're convinced?

8 A. No.

9 Q. You didn't find him to perhaps exaggerate and misstate
10 things at times?

11 A. No. Not at all. If anything, he didn't realize that
12 many - that some of the things he was telling me has
13 anything to do with the brain injury, such as his problem
14 with balance and he has an odd odor or smell odor. This is
15 something that you see. He had no idea that had something
16 to do with a traumatic brain injury so he wasn't trying to
17 prove it to me. He didn't even know the symptoms he was
18 giving me or symptoms of TBI.

19 Q. Okay. Let's continue to talk about malingering and
20 fooling people. How many skull fractures did he have?

21 A. Well, he had from what I understand one. Now because
22 it crossed two different hemispheres, his family, they seem
23 to think it's two but it's really one. A large one.

24 Q. Okay. So if he told police Detective Strickland he
25 had two skull fractures.

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1 A. That's his lack of medical knowledge.

2 Q. And it wouldn't be fooling and embellishing?

3 A. No. If somebody says okay, your cranial lobe and your
4 temporal lobe or your occipital lobe were fractured, it's,
5 you know, to a lay person they're going to think they had
6 two or three fractures. But we know that it just -- it was
7 so long and so large that it crossed several lobes.

8 Q. Okay. And if he told Detective Strickland on the
9 phone, "I died in the ambulance. They had to shock treat
10 me. I died in the ambulance." That wouldn't be fooling
11 and faking?

12 A. Well, as I mentioned, people can do very erratic
13 things after a traumatic brain injury.

14 MR. COOK: Your Honor, I'm going to objection to the
15 question. I hadn't heard any testimony today about
16 somebody dying in the ambulance from anybody.

17 THE COURT: I sustain the objection.

18 BY SOLICITOR SPRINGS:

19 Q. Now, you said Doctor Hanson was a psychiatrist, an MD,
20 down at the South Carolina Department of Mental Health,
21 spent one hour with the defendant. Where did you get that
22 information?

23 A. From her report.

24 Q. Would you show me?

25 A. Yes. I would have to read the whole report to find

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1 it. I didn't underline it.

2 Q. You take your time.

3 A. Okay.

4 (PAUSE AT 02:48 P.M..)

5 A. It says that in her list of sources of information,
6 Number 22, a one hour clinic forensic interview for the
7 defendant on March 7, 2013.

8 Q. Okay. Thank you. Now, you said someone with a head
9 injury can be combative?

10 A. Absolutely.

11 Q. And can flail around?

12 A. Yeah. Sometimes we have to restrain them. As I
13 mentioned, sometimes they need netting around their bed to
14 keep them from just getting up and wandering around.

15 Q. Right.

16 A. Pardon me?

17 A. They could even wander down the hall of the hospital?

18 A. Yes.

19 Q. Things that would be inconsistent with rational
20 thought, reasoning?

21 A. It's usually problems within impulsivity, which is part
22 of -- often parts of some traumatic brain injuries have
23 that. Not all, but some do. And that particular thing,
24 wandering down the hospital, would usually happens with the
25 more serious injuries.

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1 Q. Would you agree that someone that runs to his car and
2 retrieves a weapon from the trunk of his car is using some
3 reasoning ability?

4 A. Well, I can't really know what was in his mind at that
5 moment except that I can just tell you what is to be
6 expected and it can be part of chaotic behavior if that
7 occurred. It can be part of paranoia that's occurred from
8 the injury. It could be - There is a multitude of things
9 that one such as myself would have to evaluate, to look at
10 that if it occurred.

11 Q. Would you not agree though if you go from Point A over
12 to Point B and open up the trunk of a car and grasp --

13 MR. COOK: Your Honor, I'm going to object on the
14 grounds it's calling for speculation more so than an expert
15 opinion.

16 THE COURT: Well, I think there is some testimony that
17 in the record that supports the Solicitor's question and I
18 think he's got a right to ask her regarding that.

19 MR. COOK: Yes, sir.

20 THE COURT: So I overrule the objection.

21 SOLICITOR SPRINGS: Thank you.

22 Q. Doctor, do you not agree that it takes some thought,
23 some reasoning, some intellect for a person to go from one
24 place to another, open up the trunk of a car and grasp a
25 weapon and then go back where he started from? Doesn't

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1 that take a brain working?

2 A. Well, but we don't know what is the intention there.

3 As I said, it could be based on some paranoid thinking
4 which he definitely has had and that is not rational.

5 Q. Let me ask my question one more time. Do you have to
6 have some brain power going, some intellect, some thought,
7 some reasoning to go from one place to another, open the
8 trunk of a car, grasp a weapon and go back to where you
9 started from? Can that take thought?

10 MR. COOK: Your Honor, I'm going to ask for
11 clarification. I'm going to make an objection on the
12 grounds that its overly ambiguous. I think that he, that
13 Mr. Solicitor mentioned four or five different aspects
14 which I'm not trying to stop him from asking the question.
15 I'm just asking for some clarification.

16 THE COURT: Well, I overrule the objection. She
17 outlined a set of facts that arguably are supported by the
18 record. She was ask if that made a difference in her
19 reaching the conclusion she reached.

20 BY SOLICITOR SPRINGS:

21 Q. Doctor, doesn't that take reasoning?

22 A. Well, if you did that, you said doesn't it take some
23 thought and then you mentioned a couple of things and
24 reasoning. It does, you know - clearly there are thoughts.
25 It doesn't mean that they are well thought out. It doesn't

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1 mean that they're not paranoid. It doesn't mean that they
2 aren't chaotic behavior. You can't just say this means
3 that. There are various explanations and for him, we
4 already, or I already knew that he has these traumatic
5 brain injury symptoms that would cause all these things;
6 paranoia, chaotic behavior, erratic behavior, you know, not
7 clear thinking. Maybe there's - nothing is usually totally
8 one thing or the other. That's not typical. There are
9 pieces and parts of things so, you know, but it's not one
10 hundred percent normal.

11 Q. Let's try this one more time. Yes or no. Does it
12 take some reasoning for a person to go from one place to
13 another, open a trunk, grasp a weapon and go back to where
14 he started from? Does that take some reasoning of the
15 brain? Yes or no?

16 A. It can take reasoning, yes, but it can be based on
17 erroneous thoughts.

18 Q. Was that a yes?

19 A. I said yes to the first part and no to the second if
20 there's a way to explain that. You are using the word
21 reasoning ---

22 Q. Reasoning.

23 A. --- and we think of reasoning as something that is
24 normal. We assume. And I'm saying a schizophrenic can
25 have reasons why they think God told them to go kill

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1 somebody. That's their thinking, their reasoning, but it's
2 based on false information or false thinking so you can't
3 just divide it up like you're trying to do.

4 Q. Now you said his memory of the incident was destructed
5 and you got that from his lips did you not? Mr. Brown told
6 you that?

7 A. I asked him to --

8 Q. Let's go the routine way.

9 A. Okay.

10 Q. Yes or no. Did he tell you that he didn't have a full
11 memory or the incident yes or no? And then you can talk
12 all you want.

13 A. Yes.

14 Q. Okay.

15 A. He also told me that a lot of what he knows now is
16 based on ---

17 SOLICITOR SPRINGS: I object to that. That's not what
18 I asked you.

19 A. --- what's he's read.

20 THE COURT: Well --

21 Q. Now, you said he has balance problems and you got that
22 from Mr. Brown's lips did you not?

23 A. Yes.

24 Q. And you said he cries easily at sad things. Do you
25 know whether or not he cried easily at sad things before

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1 this incident?

2 A. He and his wife and his mother --

3 THE COURT: Don't go into what his wife and mother
4 said.

5 A. All right.

6 Q. Do you know of your knowledge whether he cried easily
7 at sad things before this incident?

8 A. Well, I never met him before the incident but I do
9 have to go on what people tell me on things like that.
10 That's a typical thing we have to do in a head injury case.
11 We have to ask family members what the person was like
12 before the injury.

13 Q. Let me ask you again. Do you know of your own
14 knowledge, yes or no, that he cried at sad things before
15 this incident? Yes or no?

16 MR. COOK: Your Honor, I believe that she answered
17 that she didn't know before that.

18 THE COURT: But she can answer it again then.

19 Did you or did you not know his --

20 A. Not of my own personal knowledge and observation.

21 THE COURT: That's what the question was.

22 All right.

23 A. Okay.

24 BY SOLICITOR SPRINGS:

25 Q. You said he had some paranoia, suspicion of others.

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- 1 You knew that because he told you?
- 2 A. No. I observed it.
- 3 Q. You observed it?
- 4 A. Yes.
- 5 Q. Things he did without moving his lips showed you he
- 6 was paranoid?
- 7 A. Yes.
- 8 Q. Okay. You say he has got a fifth or sixth grade
- 9 education and you got that information from Mr. Brown as
- 10 well?
- 11 A. Also the family.
- 12 Q. And the amnesia he talked about, what he remembers and
- 13 doesn't remember, you got that from Mr. Brown?
- 14 A. Also what I observed in his --
- 15 Q. Let's -- yes or no? Did you get that information from
- 16 Mr. Brown? It's either yes or no. It's all I want.
- 17 A. He didn't use the word amnesia. No. No, he did not
- 18 use that word.
- 19 Q. Memory, recollection. You said he had amnesia and
- 20 couldn't remember everything. Did you get that information
- 21 as not remembering some things from Mr. Brown? Yes or no?
- 22 A. Yes. He said he couldn't remember everything and I
- 23 observed it.
- 24 Q. You could see that, that he wasn't remembering things?
- 25 A. Yes.

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1 Q. You could see that in something he did, the way he
2 moved. Not just the words he spoke through his lips?

3 A. No. It's the interview. Yes. What he could answer.
4 What could he answer; what he could not answer.

5 Q. Okay. And the blanking out. Like I've got the
6 occasion now. Do you know if he did that losing train of
7 thought. That blanking out, do you know if he did that
8 before the incident? Yes or no?

9 A. No. I never met him before the incident.

10 Q. And you said he had trouble pronouncing difficult or
11 complex words and that's part of his traumatic brain
12 injury.

13 A. Yes.

14 Q. Could a poor education have anything to do with not
15 pronouncing difficult or complex words?

16 A. No. It was the way he had trouble saying it and then
17 I tried to get him to say it three or four times and he
18 still couldn't say it so we went over it and over it and
19 that's typical of a symptom of aphasia.

20 Q. He did well on a number of tests, including the clock
21 test; is that right?

22 A. Yes.

23 Q. So you diagnosed him as having a traumatic brain
24 injury. Even though the medical doctor's note is no brain
25 injury, you've decided in your considerate opinion he has a

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1 brain injury; is that right?

2 A. Absolutely, yes.

3 Q. Now I notice you say the word traumatic which rhymes
4 with dramatic. How come you don't say mild, moderate or
5 severe brain injury? Why do you use the term traumatic?

6 A. Well, that's what it's called and that's what the
7 America Congress of Rehabilitation Medicine terms it as.
8 That's the typical term that is used now in all the
9 literature, and professionally, and in the diagnostic
10 manuals.

11 Q. For neuropsychology?

12 A. No. For any mental health worker.

13 Q. That American Congress Rehabilitation, what are they
14 known for?

15 A. Let me see if I can find that. It's in my papers.

16 MR. COOK: Your Honor, I'm going to object on the
17 grounds of relevance.

18 THE COURT: I overrule the objection.

19 A. I just had that. I'm looking. I know I have it.

20 Q. That's all right.

21 A. I do have it.

22 Q. Does their definition concur with the American
23 Psychological Association?

24 A. Um...

25 Q. Let me rephrase the question. Does the American

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1 Psychological Association, a professional organization, do
2 they acknowledge traumatic brain injury?

3 A. Oh, absolutely. There's an enormous amount of
4 literature on this. Articles, studies. Yes, definitely.

5 Q. American Congress of Rehabilitation. And then we've
6 got the World Health Organization. They have a similar
7 definition of traumatic --

8 A. They're similar. There's only a slight difference.

9 Q. And what is the definition of traumatic brain injury?

10 A. I have that somewhere. Can I have a copy here?

11 MR. COOK: Your Honor, I believe that the Doctor gave
12 me ---

13 A. Here it is.

14 MR. COOK: --- the portion of her notes that she's
15 looking for. I apologize.

16 A. I'm sorry. I have too many papers here.

17 Now, do you want me to go through this?

18 Q. The definition of traumatic brain injury ---

19 A. All right.

20 Q. --- as given by the American Congress.

21 A. Yes. "A patient with mild traumatic brain injury is a
22 person who has had a traumatically induced physiological
23 disruption of brain function as manifested by at least one
24 of the following: Number 1: Any period of loss of
25 consciousness. Number 2: Any loss of memory for events

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1 immediately before or after the accident. Number 3: Any
2 alteration in mental state at the time of the accident such
3 as feeling dazed, disorientated or confused. Number 4:
4 Focal neurological deficit that may or may not be transient
5 but where the severity of the injury does not exceed the
6 following: loss of consciousness of approximately thirty
7 minutes or less; after 30 minutes an initial Glasgow Coma
8 Scale by 13 to 15; and post traumatic amnesia (PTA) not
9 greater than twenty-four hours and the definition includes,
10 Number 1: The head being struck. Number 2: The head
11 striking an object. Number 3: The brain undergoing an
12 acceleration deceleration movement such as a whiplash
13 without direct external trauma to the head. It excludes
14 stroke, anoxia which is lack of oxygen to the brain; tumor
15 encephalitis which is a disease; computed tomography which
16 is a CAT scan, magnetic resonance imaging which is an MRI,
17 electroencephalogram or routine neurological evaluations
18 may be normal. Due to the lack of medical emergency are
19 the realities of certain medical systems. Some patients
20 may not have the above factors medically documented in the
21 acute stage. In such cases, it is appropriate to consider
22 symptomatology that when linked to the traumatic head
23 injury could suggest the existence of a mild traumatic
24 brain injury."

25 Q. Thank you. Now, --

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1 A. Then it goes through the symptoms, which are mostly -
2 many of which I've already discussed. Nausea, vomiting,
3 dizziness, headache, blurred vision, sleep disturbance,
4 fatigue, lethargy problems and attention to concentration,
5 perception memory, speech/language, or the executive
6 functions. And behavioral changes such as irritability,
7 quickness to anger, disinhibition, which means unable -
8 just doing things without thinking, an emotional liability.

9 Q. You've answered my question. Thank you.

10 Let's get back to that reasoning of the mind again.

11 There at the very end with the defense attorney, you
12 said the defendant, Mr. Brown, he couldn't process
13 information so he wouldn't be criminally liable. If
14 immediately after the blow to the head, the head injury, if
15 he was able to form the words and the intent to tell
16 someone "I'm going to kill you" wouldn't that take some
17 thought process? Actually some reasoning showing intent to
18 say that to the person that hit on him on the head?

19 A. Well, --

20 Q. Yes or no and then you can go ahead and go on and
21 talk. Yes or no.

22 A. Say it again. I'm sorry.

23 Q. Okay. If shortly after the blow to the head, seconds
24 really after the blow to the head, he says to the person
25 that hit him "I'm gonna to kill you, I'm gonna to kill you"

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1 does that not show some mental reasoning? It shows some
2 verbalization, it shows some processing of information. He
3 is recognizing the person that hit him and saying I'm gonna
4 to kill him. Doesn't that take reasoning?

5 A. Well, it - I have to qualify it because again you're
6 talking about reason and I would describe that same thing
7 as disinhibition as I just mentioned, quickness to anger,
8 irritability, these kinds of things that may or - that are
9 more brain organically caused rather than some person with
10 full faculties who is reasoning at a one hundred percent
11 normal level. So this is the difference between, and I
12 have to explain this all the time to people, between a
13 neuro psychologist who understands the organic causes
14 behind certain things and the lay person, and you're a
15 professional, not necessarily a lay, but to neuro-
16 psychology you are, using terms in a way that doesn't fit
17 when there is an organic injury.

18 Q. Let's go back to what you said with the defense
19 attorney. You said, Mr. Brown couldn't process, he
20 couldn't process what was going on and he had a mental
21 defect at the time so that he could not know right from
22 wrong. You said that didn't you? Am I misquoting you?

23 A. I don't remember saying process at that moment. Maybe
24 I did. He did have a mental defect. Yes, I did say that.

25 Q. Such that he didn't know right from wrong; is that

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1 right?

2 A. I think he was incapable of doing that at that moment
3 yes.

4 Q. Now we get back to my question, the yes or no
5 question.

6 If seconds after he got hit in the head, he was
7 telling the person that hit him "I'm going to kill you, I'm
8 going to kill you" doesn't that take processing of
9 information? Doesn't that show mental ability to speak the
10 words, to direct the words towards the person that just
11 popped you in the head? Yes or no?

12 A. Yes, but it's - I'd have to qualify that. I'm sorry.

13 Q. You get to qualify your answer and you said yes. Go
14 ahead.

15 A. Okay. When I say a person is - what I'm talking about
16 with an organic condition doesn't, and especially in a mild
17 traumatic brain injury or concussion like he had, doesn't
18 mean that they are one hundred percent unable to think at
19 all. It may come and go. It's not consistent and
20 therefore it's not reliable and you can't say they are
21 reliably able to reason. No, I don't think so.

22 Q. Doctor Walser, how much did you charge for those many
23 hours you spent with Mr. Brown? How much did you charge
24 him?

25 A. I agreed upon and have been paid in total for

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BY MR. COOK

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1 everything that I've done, including this testimony here
2 today, Three Thousand Dollars.

3 Q. Does getting paid Three Thousand Dollars, does that
4 effect how you testify? What you say here?

5 A. Absolutely not. That's way under what I normally
6 testify - I mean, receive, but no. No. Not at all.

7 Q. Getting that Three Thousand Dollars hasn't effected
8 the way you responded to my questions?

9 A. No. I have to go on test results and my knowledge and
10 my experience. I don't do that.

11 SOLICITOR SPRINGS: Thank you.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 DOCTOR CAROL WALSER BY MR. COOK:

15 Q. Doctor, has anybody ever paid you in the past and all
16 of your professional services and you've rendered an
17 opinion that their attorney didn't like?

18 A. That who?

19 Q. Their attorney or the attorney the person -

20 SOLICITOR SPRINGS: I'm going to object to that. It's
21 leading and it's argumentative.

22 THE COURT: Well, I let him rephrase it. I'll allow
23 the question.

24 BY MR. COOK:

25 Q. I guess what I'm saying is, has anybody ever paid you

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1 and you told them something they didn't want to hear?

2 A. I just did it two days ago.

3 Q. Doctor Hanson who did this report after her hour's
4 time with my client, did she formulate all of her opinions
5 off of things that came out of his mouth?

6 A. Entirely.

7 Q. Thank you.

8 SOLICITOR SPRINGS: Nothing further.

9 THE COURT: You can step down and be excused. We
10 appreciate your time.

11 DOCTOR WALSER: Thank you. Will I be called back or
12 do I leave or stay?

13 THE COURT: You can leave.

14 DOCTOR WALSER: I can leave?

15 THE COURT: You better check with Mr. Cook, he's the
16 one who called you as a witness. Why don't you go ahead
17 and have a seat out there for a minute.

18 MR. COOK: I'm sorry, Your Honor, the question would I
19 release her as a witness.

20 THE COURT: I was just asking her to sit out there
21 just a minute.

22 MR. COOK: Yes, sir. I prefer not. I prefer she
23 stick around.

24 DOCTOR WALSER: Do I wait?

25 THE COURT: Well let her --

1 Do you have any other witnesses?

2 MR. COOK: No, sir, Your Honor.

3 THE COURT: All right. This is a good time to take a
4 break. While we hash this out, I'm going to let you go to
5 the jury room and we'll take our break.

6 (JURY EXITS COURTROOM @ 03:17 P.M..)

7 THE COURT: Doctor Walser, why don't you just have a
8 seat back there in the audience so to speak.

9 DOCTOR WALSER: Pardon me?

10 THE COURT: Just have a seat back in the gallery.

11 DOCTOR WALSER: Thank you.

12 (WITNESS LEAVING WITNESS STAND.)

13 THE COURT: Now, no further witnesses' on behalf of
14 the defense?

15 MR. COOK: May I confer with my client, Your Honor.

16 (PAUSE.)

17 MR. COOK: No further witnesses, Your Honor.

18 THE COURT: Does the State have anything in reply?

19 SOLICITOR SPRINGS: Yes, sir.

20 THE COURT: All right. We'll take about a ten minute
21 break and let everybody get refreshed and come back in.

22 MR. COOK: Thank you, Your Honor.

23 (COURT IN RECESS AT 03:17 P.M..)

24 (COURT BACK IN SESSION AT 03:30 P.M..)

25 THE COURT: Thank you. Take your seats.

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1 Is the State ready?

2 SOLICITOR SPRINGS: Yes, sir, we are.

3 THE COURT: You ready as soon as you get your client
4 out?

5 MR. COOK: Yes, sir.

6 (DEFENDANT, FLOYD BROWN, REENTERS COURTROOM AT 03:31
7 P.M..)

8 THE COURT: You can bring in the jury.

9 (JURY REENTERS COURTROOM AT 03:33 P.M..)

10 THE COURT: The defense has rested and the State has
11 if it wishes the right to call witnesses in reply.

12 Mr. Springs.

13 SOLICITOR SPRINGS: Thank you, Judge Hayes.

14 We call Doctor Richard Frierson.

15 Step right up here and take the oath, Doctor.

16 (WHEREUPON: RICHARD
17 FRIERSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
18 FOLLOWS:)

19 MADAME CLERK: Thank you.

20 DIRECT EXAMINATION

21 DOCTOR RICHARD FRIERSON BY SOLICITOR SPRINGS:

22 Q. Good afternoon, sir. Would you tell us your name?

23 A. Yes. My name is Richard Lesane Frierson.

24 Q. And what is your occupation, sir?

25 A. I am a forensic psychiatrist and professor of

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1 psychiatry at the University of South Carolina School of
2 Medicine in Columbia.

3 Q. Since you are a psychiatrist, do you have a medical
4 doctor degree as well as the psychological degree?

5 A. Well I have a medical doctor, an MD, from the
6 University of South Carolina School of Medicine. I then
7 completed four years of residency in general psychiatry and
8 a one year fellowship after that in forensic psychiatry.

9 Q. All right. Thank you. Have you done some work with
10 the South Carolina Department of Mental Health?

11 A. Yes.

12 Q. And do you have a relationship with them now?

13 A. Yes.

14 Q. And have you had occasion to supervise the work of
15 Doctor Shannon Hanson?

16 A. I have.

17 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-NINE,
18 PREMARKED FOR IDENTIFICATION.)

19 Q. Doctor Frierson, we are here conducting the trial, the
20 State versus Hubert Floyd Brown --

21 THE COURT: Mr. Springs, you're between the witness
22 and the jury.

23 SOLICITOR SPRINGS: Excuse me.

24 Sorry.

25 Q. Did you have occasion to supervise and review Doctor

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1 Hanson's work in the evaluation of Hubert Floyd Brown?

2 A. Yes.

3 Q. And I'm showing you what's been marked State's Exhibit
4 Twenty-nine for identification, and if you would, take a
5 look at that and see if that is in fact a copy of her
6 report finding him responsible.

7 A. Doctor Hanson had written two reports. This is the
8 second on criminal responsibility.

9 Q. Yes. The first was on competency.

10 A. Yes.

11 Q. All right. And this one is - you've looked at it. Is
12 it her report on the criminal responsibility?

13 A. Let me look at it.

14 Q. Sure.

15 (WITNESS REVIEWING DOCUMENTS.)

16 SOLICITOR SPRINGS: Just one second, Judge.

17 Just one second.

18 May we approach?

19 THE COURT: Yes.

20 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
21 THE JURY AT 03:37 P.M..)

22 THE COURT: Doctor, there's some material that has
23 been x'd out or blacked out which may not - which may mean
24 what you're looking at doesn't purport with what you've
25 seen before, but for reasons satisfactory to the court and

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1 anybody else in the world but the lawyers and me, certain
2 information has been stricken.

3 A. Yes, sir.

4 THE COURT: So that report does not look identical to
5 the way it did when it left the mental health department.

6 A. That's correct. It appears that there are two
7 paragraphs that are stricken. Other than that I saw that
8 and well, wait a minute. Something is wrong. That's it.

9 THE COURT: The Court takes the responsibility for
10 doing that.

11 A. Two paragraphs are missing but other than that, that's
12 the report.

13 SOLICITOR SPRINGS: Thank you very much.

14 We do offer State's Exhibit Twenty-nine into evidence.

15 MR. COOK: Without objection.

16 THE COURT: In without objection.

17 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-NINE
18 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

19 SOLICITOR SPRINGS: Would it be fair to say the court
20 made me do that?

21 THE COURT: Yes, the court made you do that.

22 SOLICITOR SPRINGS: Okay.

23 Q. Doctor Frierson, Shannon Hanson, is she a
24 psychiatrist?

25 A. She is a board certified psychiatrist. She has

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1 completed her residency and taken the board certification
2 examination. She was a fellow in forensic psychiatry.
3 That's one extra year. After you become a psychiatrist to
4 become a forensic psychiatrist and do forensic work, you do
5 one extra year of training. We call that a fellowship.

6 Q. Thank you. Have you had a chance to look at the
7 medical records from when Mr. Brown was treated for his
8 injuries at the hospital?

9 A. I have looked at the Piedmont records.

10 Q. Okay. Looking at it with your eyes, an MD, does it
11 indicate - did he get a CAT scan?

12 A. He did get a CAT scan.

13 Q. Okay. I want to ask you some questions. If someone
14 was hit in the head and received a vicious blow to the
15 head, received a traumatic brain injury, would - Here's the
16 first scenario. Would that person moments after the blow
17 going to an automobile, walking straight to an automobile,
18 lifting the trunk and retrieving and grasping a weapon and
19 going back to where he started, would that show some reason
20 and intellect?

21 A. That would show an ability to plan.

22 MR. COOK: Your Honor, I would object just simply on
23 the grounds at this time the witness hasn't been qualified
24 as an expert witness and that's calling for an opinion.

25 SOLICITOR SPRINGS: He's quite right. I'll fix it.

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1 THE COURT: I sustain the objection.

2 BY SOLICITOR SPRINGS:

3 Q. You said that you are a psychiatrist?

4 A. A forensic psychiatrist, yes.

5 Q. Forensic psychiatrist. And I think you said you were
6 in a supervisory capacity at South Carolina Department of
7 Mental Health?

8 A. Yes.

9 Q. And have you had experience in diagnosing and
10 evaluating a wide variety of mental diseases?

11 A. Yes.

12 Q. How long have you been doing this?

13 A. Since 19 --

14 THE COURT: Excuse me.

15 I hate to be rude but you're distracting the jury, Mr.
16 Cook.

17 MR. COOK: I'm sorry. I apologize entirely, Your
18 Honor. I don't mean to be rude.

19 BY SOLICITOR SPRINGS:

20 Q. How long have you been a psychiatrist?

21 A. Since 1992.

22 Q. And how long have you had the supervisory role at the
23 Department of Mental Health?

24 A. I became the -- I was Chief of Outpatient Forensic
25 Services at the Department of Mental Health starting in

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1 1995.

2 MR. COOK: And, Your Honor, I definitely do not mean
3 to continue to be rude, but for time sake I at this point
4 am willing to stipulate that the witness is an expert
5 witness.

6 THE COURT: In psychiatry?

7 MR. COOK: Yes, sir.

8 THE COURT: Okay. I find he is met and is qualified
9 to testify in the area of psychiatry.

10 SOLICITOR SPRINGS: All right.

11 Q. I had asked you about a hypothetical situation of
12 somebody hit in the head and moments later going to the car
13 and retrieving a weapon and going back to where he started.
14 Would that take reasoning and intellect?

15 A. It would take the following skills. I would say yes
16 to your question but let me explain. First of all, it
17 would demonstrate that he has intact memory, that I have a
18 hatchet in the trunk of my car so he remembers that he has
19 a hatchet. That he's able to go into the trunk and grab
20 the hatchet. He's not so confused that he pulls out a car
21 jack or a flat tire or even a spare tire or whatever. He
22 specifically picks out the weapon so as he is able,
23 depending upon what is in his trunk, distinguish between
24 objects in the trunk.

25 Q. Okay.

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1 A. Then come back - remembers where he was and where he
2 wants to go and is able to get there. So that also
3 demonstrates not only memory, but some planning. A
4 sequencing of events.

5 Q. And if that person went back to the person that had
6 just hit him in the head, went to that person and said
7 repeatedly "I'm going to kill you. I'm going to kill you"
8 what sort of mental functioning, brain functioning would
9 that indicate?

10 A. It means that he is able to speak, communicate in a
11 voice that's understandable to the witnesses or the victims
12 who reported that he said that. It also goes to the
13 ability to state an intent as to what he is planning on
14 doing. He has to be able to plan or to state what he's
15 planning on doing.

16 Q. If that same person in a very short period of time
17 after the blow to the head, a hard blow to the head, that
18 same person drove an automobile some miles down the road,
19 what sort of mental and brain functioning would that show
20 to be to operate an automobile and keep it on the road and
21 get somewhere?

22 MR. COOK: Your Honor, I'm going to object simply
23 because there's been no evidence put forward that, and I
24 realize it's a hypothetical situation, but it still tends
25 to lead to the belief that the defendant drove the vehicle

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1 and there's been no evidence put forth of that.

2 THE COURT: I sustain the objection.

3 SOLICITOR SPRINGS: May we approach? There is some
4 circumstantial evidence..

5 MR. COOK: I realize the blood pattern -

6 THE COURT: No, no, don't.

7 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
8 THE JURY AT 03:45 P.M..)

9 THE COURT: I sustain the objection.

10 BY SOLICITOR SPRINGS:

11 Q. Doctor, I'm withdrawing that question. Let me ask you
12 another question. If the person who had been hit on the
13 head, removes himself from the jurisdiction, flees to
14 another place, what sort of mental functioning would that
15 show?

16 A. Either Number one, that he realized he'd done
17 something wrong; he wanted to get away from the stigma of
18 the alleged offense. Or he was afraid of retaliation by
19 the people he's alleged to have assaulted.

20 Q. Would it take some thought and reasoning though to --

21 A. I need to get out of here.

22 Q. Have you - Well you have, you just looked over Doctor
23 Hanson's report?

24 A. I looked over her report. I looked over the medical
25 records and the police and witnesses statements as part of

DOCTOR RICHARD FRIERSON: BY SOLICITOR SPRINGS
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1 my supervision of her.

2 Q. Okay. And you had done that back in the day, back
3 when he was evaluated down in Columbia?

4 A. Yes.

5 Q. And you signed off with the evaluation?

6 A. I did and Doctor Musick signed off as well.

7 Q. I see.

8 SOLICITOR SPRINGS: Doctor Frierson, thank you very
9 much. The defense attorney may want to ask you some
10 questions.

11 CROSS EXAMINATION

12 DOCTOR RICHARD FRIERSON BY MR. COOK:

13 Q. Good afternoon, Doctor Frierson. When you said you
14 signed off on it, when did you sign off on it?

15 A. Well, let me --

16 Q. Today?

17 A. Say again?

18 Q. Today?

19 A. No.

20 Q. Okay. My question remains then, sir.

21 A. Okay. I approved the report and that's what I'm
22 assuming you mean by signed off.

23 Q. I was --

24 A. That's what I'm interpreting -- I didn't physically --

25 Q. Go ahead.

DOCTOR RICHARD FRIERSON: BY MR. COOK

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1 A. I didn't physically sign it.

2 Q. Okay.

3 A. What happens is - let me explain the supervision
4 process.

5 Q. Yes, sir.

6 A. She reviews the case. She sees the defendant. Then
7 we meet two hours every week to discuss her active cases
8 and what's going on. Sometimes I say, I think you might
9 want to call - in this case for example, call the
10 defendant's wife and interview her, and that took some time
11 to get her, to be able to speak to her. It was not until
12 May until they were able to connect.

13 Q. So calling the family is important?

14 A. It can be.

15 Q. Okay.

16 A. Not necessarily. We've talked to - We already had a
17 social worker that had talked to his wife and gathered a
18 social history before we even - Doctor Hanson ever saw him.
19 Then I wanted her to call the wife back and get some more
20 specific information about what he was doing right after -
21 at the scene of the alleged offense.

22 So she does all that and then we finalize what the
23 opinion is going to be. She tells me. I make her support
24 it. I said well what about the head injury? You know,
25 could that have made him not know what he was doing was

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1 wrong? We had plenty of evidence from the police reports
2 and other things that he certainly appeared to know what he
3 was doing and we found no evidence that he lacked the
4 ability to distinguish right from wrong.

5 So then she writes the report and then she sends it to
6 me. And then I go through the report and look at editing
7 and make suggestions and then she finalizes it and sends it
8 to Doctor Musick, who is the current head of Forensic
9 Outpatient Services --

10 Q. I'm going to stop you there, sir, just because he's
11 not in the courtroom today.

12 A. Well, this is his signature, but anyway.

13 Q. I understand. So you didn't actually sign that paper
14 then but another doctor did?

15 A. No. I never sign these.

16 Q. Did another doctor other than Doctor Hanson sign it?

17 A. A psychologist, yes.

18 Q. This two hour meeting that you staffed, did you just
19 talk about this case or do you talk about a lot of cases?

20 A. We have two hours every week.

21 Q. How many cases do you talk about during that two hour
22 period as State psychologists?

23 A. It varies. It could be one case. It could be five
24 cases. It varies from week to week depending on what's
25 finished and what's left over.

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1 Q. I want to ask you some hypothetical questions also. A
2 person that is exhibiting memory, or planning, or
3 sequencing of events as you stated, is there any way
4 possible that that person could lack criminal
5 responsibility?

6 A. If they had a specific delusion that is motivating
7 what they're doing, then yes.

8 Q. Okay. So the fact that he has memory planning and
9 sequencing of events per your words doesn't preclude the
10 fact that he could be criminally irresponsible does it?

11 A. And the fact that he doesn't have a delusion.

12 Q. Sir, let me just get you to answer my question yes or
13 no, please. Yes or no.

14 A. Would you repeat the question.

15 Q. Does it preclude the fact that -- Okay, I'll phrase it
16 again. If somebody is having memory planning, or
17 sequencing of events, does that preclude the fact that they
18 have criminal irresponsibility?

19 A. Does that preclude --

20 Q. Could somebody -- I'll rephrase it because that was
21 confusing to me. If somebody is exhibiting memory, or
22 planning, or sequencing of events, could they be criminally
23 responsible? Yes or no?

24 A. Yes.

25 Q. Thank you. Now, --

DOCTOR RICHARD FRIERSON: BY MR. COOK

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1 A. They could be criminally responsible. That's your
2 question?

3 Q. That's the question.

4 THE COURT: That's what he ask.

5 A. They could be; they could not be.

6 Q. Yes, sir. And you're of course allowed to qualify
7 your questions but I just wanted a yes or no. I also want
8 a yes or no for this. If somebody speaks, or communicates,
9 or is in an understandable voice, could they be criminally
10 irresponsible?

11 A. They could lack criminal responsibility is how we
12 would phrase it. Yes.

13 Q. Yes. Sorry, I'm just a lay person. You understand
14 what I'm asking?

15 A. Well, you are a lawyer; this is legal terms.

16 Q. Sure. If somebody states their intent of what they
17 want to do, could they be criminally irresponsible?

18 A. Yes, if their intent is based in delusion. For
19 example, if I say, I'm going to kill you because I think
20 you are poisoning my well water and my wife is sick because
21 of it and none of that's true, but I believe that, and I
22 believe that I've gone to the health department and they've
23 tested my water and they say nothing is wrong with it but I
24 still believe this person is trying to kill me, and I go
25 and do something to that person, I can say I'm going to go

DOCTOR RICHARD FRIERSON: BY MR. COOK

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1 get him. I can express intent but I might not have known
2 that what I was doing was wrong if I had a delusion about
3 the person that I'm going to harm.

4 Q. The State was using words like reasoning and
5 processing. Could somebody exhibit reasoning or process
6 something and be criminally irresponsible?

7 A. Yes.

8 Q. Is Doctor Hanson still with the State?

9 A. No.

10 Q. When did she leave?

11 A. The funny thing is she left on June 30th and I was
12 called. She got a subpoena on July 1st, which is why I got
13 drafted.

14 Q. I understand that. And since you mentioned it, I
15 subpoenaed her, did I not?

16 A. Yes. I think both sides subpoenaed her.

17 Q. I understand. You've looked at the medical records
18 you stated?

19 A. I looked at the Piedmont medical records. Yes.

20 Q. If a medical record says that the parietal bone and
21 the temporal bone are broken, could a lay person confuse
22 that that was two head injuries?

23 A. I think the term in the medical record is there is
24 contiguous, if they didn't understand that word contiguous,
25 which means adjacent, one continual fractured line, then I

DOCTOR RICHARD FRIERSON: BY MR. COOK

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1 would say they might be able to confuse it.

2 Q. If a person had no knowledge that there were warrants
3 out against them and left the area, would you call it
4 flight?

5 A. I don't think you have to have a warrant out against
6 you if you realize that you've committed something that is
7 grounds for the police to come arrest you and get a
8 warrant.

9 Q. I don't believe that answered my question though, sir.

10 A. Repeat the question.

11 Q. If you don't know you have warrants and you leave the
12 area, does that necessarily mean you're fleeing? Or could
13 you be going to your mother's house after sustaining a
14 traumatic brain injury?

15 MR. COOK: I'll withdraw the question.

16 Thank you, Your Honor. No further questions.

17 THE COURT: Redirect?

18 SOLICITOR SPRINGS: No, sir.

19 THE COURT: Doctor Frierson, you can be excused. We
20 appreciate your time. Thank you.

21 SOLICITOR SPRINGS: May the doctor go back to
22 Columbia?

23 THE COURT: Sure.

24 SOLICITOR SPRINGS: Thank you.

25 (WITNESS LEAVING WITNESS STAND.)

1 THE COURT: Anything further from the State?

2 SOLICITOR SPRINGS: No, sir.

3 MR. COOK: I stood, Your Honor, just to say that at
4 this point I don't mind releasing Doctor Walser either.
5 I apologize.

6 THE COURT: And the State has nothing in reply?

7 SOLICITOR SPRINGS: That was reply and we're finished.

8 THE COURT: All right. Members of the jury panel,
9 we've reached another point where I have to let you go into
10 the jury room and we'll send for you in about ten minutes.

11 (JURY EXITS COURTROOM @ 03:56 P.M..)

12 THE COURT: Anything from the State? The jury has
13 been dismissed.

14 SOLICITOR SPRINGS: No, just that Mr. Cook asked me,
15 if the court was willing, we'd like to finish this thing
16 today.

17 MR. COOK: I anticipate ten to fifteen minutes.

18 THE COURT: I'm not gonna finish today. It's already
19 four o'clock.

20 MR. COOK: Yes, sir.

21 THE COURT: We hadn't had a charge conference.

22 MR. COOK: Yes, sir.

23 THE COURT: It's going to be a lengthy charge. If I
24 understand what I'm having to charge it's gonna be a
25 complicated verdict form if I understand the correct law at

1 this time, so we're not going to go any further today. But
2 I wanted to make sure we were in that posture to do that.

3 So there's nothing else from the State?

4 SOLICITOR SPRINGS: Nothing else.

5 THE COURT: And nothing from the defense?

6 MR. COOK: No, sir.

7 THE COURT: All right. Well, I'm going to let the
8 jury go and we'll start back at 9:30 in the morning. I
9 need the attorneys in chambers to go over and bring if they
10 have any request to charge and we'll have a charge
11 conference and go over the verdict forms.

12 Bring the jury back in even though they're probably
13 all in the restroom.

14 (JURY REENTERS COURTROOM AT 03:59 P.M..)

15 THE COURT: Members of the jury panel, it's four
16 o'clock, we still have arguments and charge and I have to
17 go over certain legal matters with the attorneys. We're
18 not going to give this to you at 5:30 or six tonight so
19 we're going to stop for the day and start back at 9:30 in
20 the morning. We'll start back at 9:30; when you get here,
21 we should be in a position to start with the attorneys
22 making their closing statements and then my charge on the
23 law and then place the case in your hands.

24 You're not yet in the position to make up your mind or
25 discuss the case or do any outside research or read

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1 anything in the newspaper or try to make up your own mind.
2 We haven't quite gotten there yet so don't do any of those
3 things. Keep in mind all my admonitions and we'll see you
4 at 9:30 in the morning. Thank you.

5 (JURY EXITS COURTROOM AT 04:01 P.M..)

6 THE COURT: We'll be at ease until 9:30. If the
7 lawyers will give me about ten minutes.

8 You might want to talk to your client before they take
9 him -

10 MR. COOK: Yes, sir.

11 THE COURT: --- to the holding cell, I mean back to
12 the detention center and we'll go over the charges and see
13 everybody else at 9:30 in the morning.

14 (COURT IN RECESS IN THE MATTER OF STATE V. HUBERT
15 BROWN AT 04:05 P.M..)

16 (COURT BACK IN SESSION IN THE MATTER OF STATE V.
17 HUBERT FLOYD BROWN, THURSDAY, JULY 11, 2013 AT 09:40 A.M..)

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

19 Get Mr. Cook and Mr. Brown out.

20 (DEFENDANT, FLOYD BROWN, REENTERS COURTROOM.)

21 (ATTORNEY COOK REENTERS COURTROOM.)

22 THE COURT: Is the State ready?

23 SOLICITOR SPRINGS: Yes, sir.

24 THE COURT: Defense ready?

25 MR. COOK: Yes, Your Honor. I just need to take a few

1 sheets of paper out. And I am ready, Your Honor.

2 THE COURT: All right. The State waives opening?

3 SOLICITOR SPRINGS: The State does waive opening.

4 THE COURT: Mr. Cook, you ready to go forward?

5 MR. COOK: Yes, sir, Your Honor.

6 THE COURT: For the record, we've had a charge
7 conference and I believe everyone was satisfied with the
8 charges we've got fashioned. I'll give each side an
9 opportunity to put on the record anything about the charges
10 if they wish but I think we've got it reconciled.

11 Anything on the charge? Not at this point obviously
12 after I'll get the charge I'll ask for comments but
13 anything about my proposed charge at this point from the
14 State?

15 SOLICITOR SPRINGS: No, Your Honor, nothing from the
16 State.

17 THE COURT: Defense?

18 MR. COOK: Nothing, Your Honor.

19 THE COURT: All right. Bring in the jury.

20 (JURY REENTERS COURTROOM AT 09:45 P.M..)

21 THE COURT: The jury is present.

22 Good morning. Now the closing arguments will be
23 presented by counsel. The State will go second, the
24 Defense - second and last. The Defense will go first.

25 I turn it over to Mr. Cook for closing arguments.

CLOSING ARGUMENT: BY MR. COOK

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1 MR. COOK: Thank you, Your Honor. If it pleases the
2 Court?

3 THE COURT: Yes, sir.

4 MR. COOK: Good morning, ladies and gentlemen of the
5 jury, again my name is Dave Cook and I'm the attorney for
6 Hubert Brown, and would like to begin my closing arguments.
7 I want to remind everyone that these are simply arguments;
8 that all of the evidence of the case is finished being
9 presented to you.

10 And so I'm going to give you closing arguments and the
11 solicitor is going to give you closing arguments this
12 morning. And this is us arguing simply. I just would like
13 to try to show you my side of the case. And forgive me if
14 I'm a little informal but I want to just explain things to
15 you. This is a rather complex case with a lot of moving
16 parts and I just simply want to speak on the law a little
17 bit or my interpretation of the law.

18 I told you in the opening arguments that the State has
19 the burden of proving my client guilty beyond a reasonable
20 doubt for every element of the crime. And we talked a
21 little bit about the standard beyond a reasonable doubt.
22 And I also mentioned a different standard the preponderance
23 of the evidence standard and I noted that there are
24 differences in those two standards. And first just let me
25 tell you what a standard is.

CLOSING ARGUMENT: BY MR. COOK

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1 It is the bench mark I suppose the jury is supposed to
2 use when they are forming a decision. And in other words
3 if we just said to you do you think he's guilty or not and
4 didn't mention any standard, in my opinion you would revert
5 back to as what I called earlier the sandbox mentality of
6 grade school were, you know, do I think he's guilty or not.
7 Well, what criteria are you using?

8 So the legislature and the Constitution have developed
9 these standards in criminal trials and the first thing I
10 want to talk about is beyond a reasonable doubt. And what
11 it says is that after you've heard all of the evidence, and
12 you've heard all of the evidence, and after you've had a
13 chance to deliberate which you have not yet; you will soon,
14 if you hesitate; if a reasonable person hesitates then the
15 State hadn't met the burden of beyond a reasonable doubt.

16 That's right here, beyond a reasonable doubt. It's a
17 very high standard. Okay.

18 The other standard is preponderance of the evidence.
19 And I mentioned it to you that it's mostly used in civil
20 cases but it's going to be used in today's trial as well so
21 I want you to have an understanding of it. Okay.

22 Preponderance of the evidence simply means that if you
23 think that fifty-one percent of the evidence weighs in the
24 favor of one party versus the other, then you should find
25 for that party. And I told you that attorneys - and I'm

CLOSING ARGUMENT: BY MR. COOK

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1 about to do it - they use the analogy of the scales of
2 justice perfectly level and plum. If they tip one degree
3 in one direction then this party has met by a preponderance
4 of the evidence and you should rule in their favor on that
5 topic.

6 Now, the State has the burden of proving the charges.
7 But under our statutory scheme if my client is gonna put
8 forth the defense, and an affirmative defense, which I
9 maintain that he has put forth, of insanity then a burden
10 shifts to me, the defense, and we have to prove the
11 elements of insanity by a preponderance of the evidence,
12 not beyond a reasonable doubt.

13 So you've heard a lot of testimony in this trial but
14 what this essentially means is that if through the
15 testimony, and I'm specifically talking about the expert
16 witness, Doctor Carol Walser, if that testimony has
17 convinced you that my client was insane during the
18 commission of this crime - and I'll talk about definitions
19 what all these words mean in a second but just simply by a
20 preponderance of the evidence then you have a duty to
21 render a verdict of not guilty by reason of insanity.

22 And I say the word duty because I go back to what
23 Winston Churchill said about jury service. It's not a
24 privilege, it's a duty that every citizen has to perform.
25 And again, we've got a chance to either excuse you or seat

CLOSING ARGUMENT: BY MR. COOK

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1 you as the jury. And the reason that I sat you each and
2 everyone of you is because I was hoping that you would give
3 me a fair shake simply by listening to my arguments and
4 listening to the evidence and not reverting to the sandbox
5 mentality of that was a gruesome heinous crime so I want to
6 convict him.

7 If after you've heard all of my arguments and all of
8 the evidence, and the State's arguments, and you go into
9 deliberation and you think that I haven't proven insanity
10 by a preponderance of the evidence then render a verdict
11 accordingly. But if you can fight the sandbox mentality
12 and listen to some what I consider credible evidence by an
13 expert Ph.D., neuropsychologist who maintained on the
14 record in front of everybody yes I think that Mr. Brown
15 meets the statutory requirements of being not guilty by
16 reason of insanity at the commission of the crime. If you
17 think that she convinced you by a preponderance of the
18 evidence then I'm asking you to do your civic duty and
19 render a verdict of not guilty by reason of insanity. And
20 it's complex.

21 Please let me continue. And I'll go over that one
22 last time before I rest but that's the basic gist of the
23 differences in the standards of beyond a reasonable doubt
24 and a preponderance of the evidence. And I hope that I
25 explained to you as the jury the burden shifts; it's the

CLOSING ARGUMENT: BY MR. COOK

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1 burden on the state to prove the crime itself occurred
2 beyond a reasonable doubt. And then if the defendant's
3 want to put forth a defense in this case of insanity the
4 burden shifts to him to prove that defense by a
5 preponderance of the evidence. And that is very important
6 to me that you have that straight in your mind because in
7 my opinion that's what is guiding your deliberation.

8 Now, let me talk a little bit about the statutory
9 scheme regarding not guilty by reason of insanity. You're
10 going to get a jury verdict form from the judge and His
11 Honor's going to explain everything so that's his Honor's
12 purview is he's going to explain the form and he's gonna
13 talk about all of these preponderance standards, burdens,
14 everything. And again I'm just arguing what the judge
15 tells you is the law. But the statutory scheme, and again,
16 I just want to remind you this case isn't about what you
17 think necessarily its about the evidence. And I just want
18 to be rather direct.

19 I mean some of you may be like my grandpa and I don't
20 know nothing about all that psycho mumbo jumbo, you know.
21 I can understand that; it's all complex. He knew what he
22 was doing. I can imagine that's gonna be the State's
23 argument - processing. And if you are of that mind set and
24 if you're gonna maintain that mind set regardless of what I
25 say then there's nothing I can do. I'm just simply asking

CLOSING ARGUMENT: BY MR. COOK

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1 you if you were of that mind set coming in to just open
2 your mind during the arguments and see because the
3 legislature of South Carolina has enacted statutes that
4 speak on this very point.

5 And I don't think from the statutory scheme that they
6 think it's a bunch of psycho mumbo jumbo or else they
7 wouldn't have passed the statutes. And the language of the
8 statute reads essentially - first it talks about the
9 preponderance of the evidence and the defendant has proven
10 by a preponderance of the evidence that at the time of the
11 commission of the act constituting the offense; not hours
12 later, not moments later, but at the time of the offense
13 the defendant as a result of mental disease or defect
14 lacked the capacity to distinguish moral or legal right
15 from moral or legal or to recognize a particular act
16 charged as morally or legally wrong then you must find him
17 not guilty by reason of insanity.

18 Let me talk about some of those terms because this is
19 the rub. This case isn't about what I think the State is
20 gonna try to frame it as he knew what he was doing at the
21 time or anything like that. Okay. It is in other words
22 processing. How can somebody do this if they are crazy?
23 How can somebody do that if they're insane? That's not
24 what the statutory scheme is talking about. The statutory
25 scheme simply says that if the jury think that at the time

CLOSING ARGUMENT: BY MR. COOK

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1 of the crime because of a mental defect.

2 Now I grappled with putting these into evidence
3 because they are gruesome. There is a lot of blood coming
4 off of here and I know it may have a tendency to shock the
5 conscious. And I apologize about that but its what
6 happened to my client and this is reality.

7 This picture shows an open cut. You've heard evidence
8 that he had eleven staples in his cranium - not stitches in
9 his skin - to close an open wound from exposed brain
10 matter. Is that a mental defect? I'm not saying this is a
11 disease. This isn't anything that my client contracted
12 through some type of viral or bacterial situation. This
13 was contracted by a gear shifter, a big blunt metal gear
14 shifter that you use to change gears in a truck and you can
15 screw out and take and hit somebody's head with as hard as
16 you can.

17 Let's look at the evidence presented. Chris Calvert
18 himself said "I hit him really hard." Yeah, I would say
19 so. Could that gash, the crack to the skull, cause what
20 the legislature may deem a mental defect? I say yes.
21 These are available for you in deliberation and you can
22 take them back and look at them. I would just posit that
23 if you close your eyes while I was walking around and I
24 don't know if you hadn't looked at them you can't really
25 render a verdict in this case because you hadn't

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1 deliberated on all of the evidence. So please force
2 yourself to look at it and take a good look at it. The
3 State also put a picture in that's very similar. Bloody
4 head.

5 Now I think that caused a mental defect in my client.
6 So does Doctor Carol Walser, Ph.D. I went through all of
7 her credentials for a reason to show you that she's just
8 not some person that has no idea what they're talking
9 about. The Judge qualified her as an expert witness. She
10 thinks that it caused a mental defect also and she's a
11 neurological psychologist.

12 The next question according to the statutory scheme is
13 if you think that there is a mental defect, did it cause
14 the defendant to lack the capacity to distinguish moral or
15 legal right from moral or legal wrong? To know the
16 difference between right or wrong morally or legally. Now
17 that can be interpreted as did you know what you're doing.
18 But from the standpoint of did you know what you were doing
19 was morally or legally right or wrong? You can know what
20 you're doing and I think that this is maybe going to be a
21 point in this case. The doctor said crazy people know what
22 they're doing. I can't remember her exact analogy. A
23 serial killer has to pick up the gun - uh - so there is a
24 difference between knowing legal and moral right and wrong
25 versus walking back to a trunk.

CLOSING ARGUMENT: BY MR. COOK

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1 You can be - And here's where I start using the lay
2 terms. You can be crazy and do all kinds of things, touch
3 things, grab things, say things, do things but that doesn't
4 necessarily mean you have the capacity to distinguish
5 between moral - moral and legal right and wrong. Or to
6 know that - Here is another way that they rephrased it. Or
7 to recognize the particular act charged is morally or
8 legally right or wrong. I almost feel like I should sit
9 down because that's the case. That's in my assessment what
10 you have to deliberate on.

11 Now, let me just say a little bit more. Preponderance
12 of the evidence. There's one doctor in front of you that
13 says one thing and then there's another doctor in front of
14 you and says something entirely different. A swear off of
15 who's right. Look at the evidence that was presented in
16 front of you. First of all, the psychiatrist the State
17 presented never even treated my client, never even saw him.
18 He's sitting in a room down in Columbia on Bull Street with
19 papers coming across his desk having these weekly two hour
20 meetings with his staff. How much time do you really think
21 he put into this? They spent one hour an intern, a
22 fellow, somebody's learning how to do that; somebody who
23 Doctor Walser used to teach back in her teaching career,
24 those fellows. Okay. This person Doctor Hanson who did
25 not testify, and I will say I released her from her

CLOSING ARGUMENT: BY MR. COOK

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1 subpoena. It's not her fault she wasn't here just to be
2 fair. Okay. But the point is that what criteria did she
3 use? You have her report. I didn't object to it coming
4 into the evidence. I want you to read it especially Line
5 22 that says she spent one hour. But for those of you who
6 are interested read on to - there is bunch of paragraphs
7 here that talks about - Well let me just tell you.

8 Statement of non-confidentiality some boiler plate
9 language. The sources of information that are relevant.
10 These are the things that she looked at. You know on here
11 the voluntary statement by the victims, I wonder what that
12 has to do with my client's sanity. But anyway, read it
13 through carefully and you will see that she basis her
14 findings on the blood alcohol level of my client. I'm not
15 a Ph.D., in psychology but what does that have to do with
16 insanity? Can crazy people be drunk; can crazy people be
17 sober? Can sane people be drunk; can sane people be sober?
18 When you get drunk does that mean you can't be crazy? Is
19 the levels that she's talking about in there - You know
20 just to fancy that notion do they even say that he's drunk?
21 I have no idea what a 1-2-9 is. Usually blood alcohol
22 levels are .0 something; .1 something. I don't want to get
23 caught up in that. The point is, is that she basis her
24 entire report off the fact that he was just drunk after her
25 hour long extensive investigation.

CLOSING ARGUMENT: BY MR. COOK

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1 I wonder how much of that hour was actually spent
2 investigating or going through background information?

3 Tell me about your childhood type stuff. The intern after
4 an hour bases her report on the fact of this blood level
5 alcohol. There is one doctor to look at. She's not with
6 the State any more.

7 The next doctor, years of experience. Sure I'm a
8 gentleman I claim to be, I know it's embarrassing to ask a
9 lady you started in the 1960's but she did and all that
10 means is she's got forty years of doing this. She wasn't
11 in grade school in the '60s, she was in college going from
12 one university to another as a fellow. And then as a
13 Ph.D., then working in hospitals on staffs, then teaching
14 and then hanging a shingle on a private career and having a
15 lot of courtroom experience. I don't know, you divide the
16 thirteen hours that she spent with Mr. Brown and then add
17 to that the day that she spent in court add to that her
18 compiling all of her notes twenty hours divided by Three
19 Thousand Dollars how much would she make in an hour? I
20 mean did she render her opinion because she got paid to do
21 that and you know because of all that money she got she's
22 gonna change her findings and put her licensure in jeopardy
23 by lying on a report?

24 Or do you think that testimony that she rendered was
25 based off of her investigation as a Ph.D., a neurological

CLOSING ARGUMENT: BY MR. COOK

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1 psychologist with all of these test? I didn't hear this
2 guy that was the supervisor of the intern mention one
3 single test that they administered to come to their
4 conclusion. All of those fancy test - and I don't know
5 what they do I'm not a psychologist. I heard her testify
6 but I can't sit here and rattle them off for you. There's
7 the Minnesota which is the basic one. A battery, one test
8 after another drawing things and she comes to a conclusion.
9 She was in my opinion very definitive on the stand when I
10 ask her from the statutory language I formed my question
11 "DO you tink that my client because as a result of a mental
12 disease or defect lacked the capacity to distinguish moral
13 or legal right from moral or legal wrong or recognize a
14 particular act to charge as morally or legally wrong? And
15 she said - I can't remember, you heard her own testimony -
16 I think she said the word definitively yes I think that he
17 lacked the capacity, I think that the jury should render a
18 verdict of not guilty by reason of insanity.

19 And so you have before you evidence that I maintain
20 shows by a preponderance of the evidence that the
21 affirmative defense that my client has put forth is valid.
22 Can you be held responsible for something that you don't
23 understand what you're doing? Do you think that blow to
24 the head that causes black outs and all of these things to
25 him during the commission of the crime do you think that he

CLOSING ARGUMENT: BY MR. COOK

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1 understood and had the capacity to know the difference
2 between legal and moral wrong or legal and moral right?

3 The doctor who treated him for thirteen hours says
4 yeah he lacked that capacity. The boss from intern who
5 drove up and looked over the paperwork real quick said he
6 didn't. I wonder how hard he got hit on the head? Calvert
7 himself admitted to a lot of things didn't he? Conviction
8 of assault and battery with intent to kill.

9 SOLICITOR SPRINGS: Objection. That's incorrect.

10 MR. COOK: I apologize.

11 THE COURT: I don't recall, but you remember what he
12 testified to, and if the attorney inadvertently misstates
13 some testimony, remember as it as it was delivered from the
14 witness stand. And I'm sure any incorrect, if it was one,
15 was inadvertent.

16 MR. COOK: I apologize. I can sit here and say to you
17 I don't mean to misrepresent anything to you. It may have
18 bean assault and battery of a high and aggravated nature,
19 it was some type of crime and I'm positive the State's
20 gonna clear that up in their closing arguments and I did
21 not mean to intentionally mislead you.

22 It wasn't selling lemonade his conviction on the side
23 of the road, it wasn't for taking a boy scout troop
24 camping, it was for some crime. There was a petit larceny
25 in there. He had a crime against a person. He had a

CLOSING ARGUMENT: BY MR. COOK

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1 property crime. He had a drug conviction. What else did
2 he admit to? Snorting powder cocaine up his nose at
3 Hooter's just before this incident. He didn't admit to
4 smoking crack in the truck but again you as the juror's get
5 to use your assessment of him.

6 I told you, you know, if some of you are parents you
7 know when your kid's lying to you. I don't think he was
8 out there with that lighter going off in the truck looking
9 for some car keys. Why didn't he cut the truck light on or
10 use the flashlight that the guy has right there? You heard
11 testimony that he was bouncing around; that after he hit
12 Brown he ran after Brown's wife, his pregnant wife that was
13 there with his children in the car. You heard Mahoney say
14 or I believe Calvert, I ask him "did Mahoney say why did
15 you do that after you hit him"? I mean even the guy that
16 he claims he was going to protect said "why did you hit him
17 that hard"? I think that my client would have probably
18 died from that if he didn't get medical treatment.

19 SOLICITOR SPRINGS: I'm going to object.

20 THE COURT: I sustain the objection. We can't
21 speculate. Just disregard the attorneys thoughts.

22 MR. COOK: I will say this. When the police came to
23 my client's house they called EMS immediately to come take
24 him. That was a brain defect. How much time passed
25 between the allegation of my client getting hit on the head

CLOSING ARGUMENT: BY MR. COOK
BY SOLICITOR SPRINGS

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1 and the allegations of what he did which I'm sure the
2 State's gonna go through piece meal. Days or minutes?

3 Now enough time for his capacity to return. You heard
4 testimony that he couldn't even form sentences. You heard
5 testimony from the victims that he could not form
6 sentences. Does that point to a brain defect by a
7 preponderance of the evidence? Da, ha, cha, ha, ha.

8 When he got back to his house you heard the cop say he
9 could form sentences. You also heard me ask the doctor does
10 it come and go? And she said yeah. But again there is no
11 commission of a crime back at his house.

12 I beg the Court's brief indulgence, I just want to
13 review my notes.

14 (PAUSE.)

15 MR. COOK: Thank you very much, ladies and gentlemen.

16 THE COURT: Mr. Springs.

17 SOLICITOR SPRINGS: Thank you, Judge Hayes.

18 Ladies and gentlemen of the jury, Madame Forelady,
19 thank you for your patience. You've all paid wonderful
20 attention, thank you for that. I want to start out by
21 commending the defense attorney when your client is
22 absolutely in a box with evidence all the way around him he
23 hasn't given up. He's fought like a tiger for his client
24 and tried to come up with anything he could. That's the
25 way our system works. But you're not gonna have any

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 problem with this case when you go back there.

2 Let's talk about what happened because it's clear as a
3 bell what happened. Mr. Brown lost his job. Mike Mahoney
4 still worked there. Chris Calvert was working where Mr.
5 Brown used to work. Mike Mahoney out of kindness of
6 friendship is giving Mr. Brown work, handyman type things
7 like building a fence to help him out. You would think Mr.
8 Brown would have been appreciative of that. But that
9 Friday night, June 8th of last year, he was drinking and
10 clearly got a mad thought. So he goes over to their house,
11 their house, the Mahoney's house where Chris Calvert lived.
12 That's his house at that time. Mr. Brown goes to their
13 house looking for trouble. And how do we know he's looking
14 for trouble? Because as soon as he gets there, as soon as
15 he gets out of his car, he goes up to Mike Mahoney and says
16 "I want to talk to you" and they step around the side of
17 the house and he immediately starts going off on him. He's
18 immediately mad.

19 The conversation doesn't start out friendly and then
20 he gets mad. He's mad when he gets there; right off the
21 bat goes off on Mike Mahoney. He gets up in Mike Mahoney's
22 face which by the way is an assault. Did you know that?
23 You've heard the term assault and battery. An assault is
24 the action that gives somebody some fear that I'm about to
25 get hit. The battery is when that person follows through

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 and touches you, hits you. So when he gets up in Mike
2 Mahoney's face, literally in his face, that's the first
3 aggressive move. That's the first assault. He started
4 this evening with that assault. And Mike Mahoney is
5 certainly entitled to do - pushed this man out of his face.

6 He was already swinging, he was already acting to
7 complete the assault into an assault and battery when Mike
8 Mahoney pushed him because his fist was already flying to
9 Mike Mahoney's face. He goes there looking for a fight,
10 looking for a fight. The minute he gets around there with
11 Mike Mahoney he's going off on him about the job. He's
12 mad, he's in his face and then his fist is already flying
13 when Mike Mahoney pushes him away.

14 Then they go to the ground and start graplin on the
15 ground. And Chris who is a very small fellow, much
16 smaller than Brown, runs to help Mike Mahoney and he picks
17 up the first thing he sees and that's the gear shifter from
18 whatever car or truck that was being worked on. And he
19 runs over and he pops him in the head to stop him attacking
20 Mike Mahoney as he was entitled to do. He came to their
21 house, he started it, and Chris Calvert ran to help and
22 defend Mike Mahoney. And he got that rough justice, he got
23 popped in the head with the metal gear shifter. And he got
24 up and he was stunned and when his head cleared he didn't
25 leave their house; he didn't leave their yard.

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 When he cleared his head just like a boxer in the ring
2 clears his head from a punch in the face, or the head,
3 what's he do? He runs up to his car. He runs to his car
4 he opens the trunk and he grabs the weapon, the hatchet,
5 and runs back to Chris Calvert "I'm gonna kill you, I'm
6 gonna kill you." He's talking, he's forming ideas and he
7 has intent. What's his intent? He's told us, "I'm gonna
8 kill you, I'm gonna kill you. And when I get through
9 killing you I'm gonna kill you." He has said what he
10 want's to do. He has said what he intends to do.

11 He runs around and he can't catch Calvert because
12 Calvert is a smaller wiry guy. And he gets madder still.
13 He got there, arrived there mad, and he's just getting
14 madder and madder and madder and more and more violent. He
15 gets so mad he hits the hatchet to the ground and says "on
16 my children if it's the last thing I do I'll kill you."

17 He goes back to his car. He goes back to get a better
18 weapon, a machete and he starts chasing Calvert again.
19 Calvert runs through the house; runs though the house and
20 him chasing him with a machete. Amy Mahoney is seeing all
21 this going on and she's starting to go to pieces. They run
22 though the house, Calvert runs - he's still leaving him -
23 Calvert's still faster, he takes the machete and chops down
24 on the back porch rail - and you'll see that picture.

25 Mike Mahoney is saying "leave get off my property,

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 leave, you're bleeding, you need to go to a doctor leave,
2 go, get off my property." Tabitha his wife she's trying to
3 get him to leave. What did she say in her statement to the
4 police? "I finally convinced him to leave. I finally
5 convinced him to leave." And he gets in the car. And what
6 did Tabitha say? "We start driving up the driveway then he
7 stops the car and gets out and goes back to the house."

8 Imagine Tabitha Brown the way she's feeling at that
9 point. She's watched her husband chase somebody around
10 threatening to kill people, try to kill people. She
11 finally gets him back in the car and he isn't finished.
12 She's probably thinking oh God. Calvert and Mahoney they
13 see his taillights going down the driveway, they think he's
14 leaving, they think they've gotten him to go. They go back
15 in the house. They go back to the bathroom to wash. Mike
16 tells Amy to call 9-1-1- and she does. She's already
17 upset. He's already chased Calvert though the house
18 swinging a machete. She gets on the 9-1-1- call and the
19 door bust open, the door that was closed, after he was told
20 to leave get off the property. No he's gotten out of the
21 car and he has run back. He's run back to the house, bust
22 in the front door, runs back into the bedroom, Amy screams.

23 How many times does a jury get a case where the crime
24 is on a recording? He bust in the bedroom and Amy screams
25 bloody murder. Calvert and Mike Mahoney are in the

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 bathroom, Calvert looks out and here comes the machete.
2 He's swinging a machete straight at his head. He wasn't
3 playing around. He was doing just what he said he was
4 gonna do. "I'm gonna kill you. I'm gonna kill you. And
5 when I get through with you I'm gonna kill you." He's
6 making good on his threat. He's doing just what he
7 intended on doing. And as the machete comes down Calvert
8 throws up his hand to block it before it cleaves his head
9 into and he cuts his thumb off.

10 Blood starts spurting everywhere and he leaves. He
11 flees. He doesn't stick around and discusses it like a
12 crazy person might do. He realizes I better get out of
13 here. I better get the heck out of Dodge. He runs back to
14 his car. He's been running around all this time; his
15 ankles are fine and when he gets to the end of the driveway
16 clearly he steps in one of the old post holes and breaks
17 his ankle. That's called circumstantial evidence.

18 The judge will define circumstantial evidence and he
19 will tell you it's just as good as direct evidence. Direct
20 evidence being something somebody tells you they saw and
21 observed with their own eyes like him swinging the machete
22 down and cutting Calvert's thumb off. Chasing Calvert
23 around in the yard, running through the house. That's
24 direct evidence. People get up there and they say this is
25 what I saw, this is what happened. They saw it.

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 Circumstantial evidence is you put a couple of facts
2 together to figure out another fact. So if he's running
3 all around trying to kill people, running around the yard,
4 running through the house after Calvert has gone to Mike
5 Mahoney's aide and popped him in the head, he's running all
6 around. Calvert only hit him that one time. Calvert
7 didn't break his ankle. He's running. Runs out of the
8 house, runs back to the car. When he gets home he's got a
9 broken ankle. The officer saw his ankle was swollen when
10 they got to his house. So you take the running that's one
11 fact. You take the holes out at the end of the driveway
12 where Tabitha says they stopped and you can conclude, you
13 can infer, circumstantial evidence that he ran back to the
14 car and stepped in a hole and broke his ankle.

15 You can conclude he knew what he was doing by all the
16 things that he did that show reason, intent, planning,
17 clear headiness. He knew where to find his weapons. He
18 knew how to talk, he knew how to express what was in his
19 mind. "I'm gonna kill you. I'm gonna kill you and when I
20 get through with you I'm gonna kill you." He knew what he
21 was doing. He had a head injury, a skull injury. He
22 didn't have a brain injury. People get hit in the head all
23 the time in automobile wrecks, on the job things fall off
24 shelves and they don't get up and go look for a machete and
25 decide to kill people.

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1 He knew what he was doing and he knew the difference
2 between right and wrong because after he did these crimes
3 he got the heck out of Dodge. He talked on the telephone
4 with the detective. And did he meet up with the detective?
5 Did he come in and tell his side? Huh-huh, they had to
6 come and find him. He knew good and well what he did was
7 wrong. He was mad, he was furious, he was homicidal.

8 So he goes home, goes home. He doesn't go to the
9 hospital, he goes home. The police have responded to Amy's
10 9-1-1- call they immediately know who the suspect is. They
11 go to his house he's talking, he's rational, he's clear
12 headed, but he's got a head wound. And you know from your
13 own common sense and day to day experience head wounds
14 bleed like the devil. He's got blood all over him and the
15 officers say you need an ambulance and they call one and he
16 goes to the hospital. And they treat him including a CAT
17 scan. Boy that CAT scan said so much about the difference
18 between a psychiatrist and a psychologist because a
19 psychiatrist not only has the mental and psychological
20 training they are a full medical doctor. I never recall
21 the fact that there was a CAT scan in that big stack of
22 medical records, neither did Doctor Walser because she's
23 not a doctor, she's not an MD.

24 Doctor Frierson caught it immediately. Oh he got a
25 CAT scan. And then checked him out of the hospital the

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 next day about 3:30 in the afternoon the next day. They
2 sewed up his head, they sew up people that have been in
3 auto wrecks and people that have had boxes fall off shelves
4 and hit them in the head like people that get in fights and
5 get popped in the head. Checked him out - -

6 MR. COOK: Your Honor, I'm going to object to that. I
7 believe that that evidence showed that my client checked
8 himself out of the hospital in the trial.

9 THE COURT: Just remember again the evidence that came
10 from the witness stand and while the attorney has - and I'm
11 not saying he has or has not - has states the testimony you
12 remember as it was delivered by the witness.

13 SOLICITOR SPRINGS: You will remember the testimony
14 from the stand that he left the hospital the next day about
15 3:30 the next day, June 9th. Got his head sewed up, got a
16 cast on his ankle, got his finger and I think he got a
17 stitch in his finger and then he hits the road and then he
18 flees and he goes to Walterboro and won't come back and
19 they have to go find him. So that's what happened.
20 Clearly that's what happened.

21 Let's talk about the witnesses. The State's
22 witnesses' got up told you what happened. The Defense's
23 disparage the guy that got his thumb cut off, Chris
24 Calvert, because he's rough around the edges. Yes he is
25 he's rough as he can be. He's been in trouble with the law

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 and he's somebody if somebody offers him cocaine in the
2 men's room he'll sniff it. But you know what? He deserves
3 justice just like everybody else. The people that deserve
4 justice here are the Mahoney's who had their home violated;
5 had this burglary come in their house uninvited intending
6 to kill somebody. And Chris Calvert. Just because
7 somebody has a record or they'd sniff cocaine up their nose
8 we don't say you get no justice. We're not here for you;
9 we're only here for the people that go to church and don't
10 use drugs and have clean criminal records. We don't do it
11 that way, everybody gets it - justice. That door is open
12 to everybody to come in and ask for justice.

13 So the State's witnesses' testify and Tabitha Brown
14 testified. And I ask her about some obvious
15 embellishments, the things she said. "Well Mike Mahoney
16 had an axe. And Calvert not only had a tire iron, he had
17 something else." And I ask Ms. Brown "Did somebody tell
18 you what to say?" She said "No, but they sure told me
19 what not to say." That kind of sums it up. "They told me
20 what not to say."

21 MR. COOK: Your Honor, I'm gonna object there as well.

22 THE COURT: No she testified to that. I sustain the
23 objection. I mean I over rule the objection. She
24 testified to that.

25 SOLICITOR SPRINGS: Then we had a lady doctor who

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 comes from California, Doctor Walser, who does this for a
2 living. She gets money for this - gets money for this.
3 Has helped people in cases where people were shot, people
4 who were stabbed, people who were burn up in fire. She
5 gets paid for this. And she meets with Mr. Brown she says
6 for about thirteen hours, about a day and a half in a
7 working persons' life and she gives him all these test.
8 And no matter what he tested out as everything showed that
9 he was out of his mind the night of the June 8th last year.
10 Everything, everything. He can't pronounce big complicated
11 words; that conclusively shows he was out of his mind the
12 night of June the 8th last year. He gets occasionally
13 headaches. Clearly that shows he was out of his mind the
14 night of June 8th last year.

15 He occasionally has poor smell sensations so you know
16 that shows that the night of June the 8th of last year he
17 was out of his mind. All the information she got she got
18 from his lips, not that she wasn't receptive to it. She
19 got Three Thousand Dollars to come in here and try to help
20 him avoid justice. She did it for money. She was a talker
21 wasn't she? Boy she could talk until you ask her to answer
22 something with a yes or no. I wanted so badly to ask her,
23 Doctor, yes or no, does the sun rise in the east or the
24 west? I took nine pages of notes of Doctor Walser. Let's
25 file that in the appropriate place.

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 (SOLICITOR PLACED PAPERWORK IN TRASH CAN.)

2 SOLICITOR SPRINGS: That's garbage. She did
3 everything she could to earn that Three Thousand Dollars;
4 everything she could to help him avoid justice.

5 People are presumed sane and they have to prove to you
6 that he's insane. You know good and well they didn't do
7 that. He got hit in the head; he had a head injury but he
8 wasn't insane. He knew just what he was doing and he tried
9 everything he could to follow through with his intent to
10 kill you and you.

11 (SOLICITOR INDICATED TO VICTIMS IN COURTROOM GALLEY.)

12 SOLICITOR SPRINGS: Then Doctor Frierson testified,
13 the psychiatrist, the supervisor psychiatrist down at the
14 Department of Mental Health, who supervised another
15 psychiatrist who checked him out and said you knew what you
16 were doing; you're responsible. Was he drinking when he
17 did this? Yeah there was alcohol in his body and the
18 drinking may have been what fueled his mad that night that
19 got him going over to the Mahoney's about 10:15.

20 There is no diminished capacity defense. Just because
21 you're drunk you cannot avoid responsibility for what you
22 do. You can be so drunk that you were blacked out but the
23 next morning not remember but you are responsible for what
24 you do even though you're drinking. So don't let his
25 drinking get you confused. There is no diminished capacity

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 in this. He is presumed sane; they have to prove him
2 insane.

3 The charges here are attempted murder. That's just
4 what it sounds like. You try to kill somebody. You tell
5 somebody I'm gonna kill you and you try to follow through
6 with it. That's clear cut. By law in this state the judge
7 has to give you the charge of attempted murder, which the
8 judge will explain how that is phrased, and he has to give
9 you every assault degree all the way down to a punch in the
10 nose underneath it. And he'll tell you you start out with
11 attempted murder and if you find that he attempted to
12 murder Chris Calvert when he swung that machete down at his
13 head, you find him guilty of attempted murder. And then
14 Judge Hayes will go through all the lesser's. If you find
15 the assault wasn't that high a degree, the highest degree
16 in the State of course is murder, he actually did it. You
17 have murder, attempted murder. The next one down is
18 assault and battery of a high and aggravated nature and
19 then you come down to assault and battery of a first
20 degree, assault and battery of a second degree, assault and
21 battery in the third degree. A third degree is a punch in
22 the nose, assault and battery. And he has to give you all
23 of them, it's the law, so I'll tell you now you're gonna
24 hear that.

25 Burglary: Burglary in the first degree means you go

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 into somebody's house without permission. And he had no
2 permission. He was told to get the heck off his property,
3 leave, go. He had no permission to bust in their front
4 door and come running in the house with a machete that
5 night trying to kill Chris Calvert. And to be burglary in
6 the first degree you had to have any one of these things
7 and the judge will tell you this. You come in somebody's
8 house intending to commit any kind of crime, slap somebody,
9 try to kill somebody, try to rape somebody, try to rob
10 things out of the house. You come to somebody's house,
11 their home, trying - intending to commit a crime, whatever
12 the crime is and you have to have one of these; anyone of
13 these will do. Well it's in the nighttime, that would be
14 enough to make the burglary first degree. This was in the
15 nighttime. You come in any time of day intending to
16 commit a crime and you're armed with a deadly weapon,
17 that's burglary first degree. He runs in with a machete
18 clearly a deadly weapon.

19 Or he causes physical injury to a person who is not a
20 participant in the crime. And he clearly injured Chris
21 Calvert in the house when he tried to kill him and tried to
22 cleave his head into and cut his thumb off. So he did
23 that, uses, or threatens the use of a dangerous instrument.
24 Well he did that, he used a machete. Displays, just
25 shows, goes in the house to commit some kind of crime or

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 whatever it may be, and just shows a knife or a pistol, so
2 we get that one. Pretty much ring all the bells on that
3 one.

4 So they put up an insanity defense. They have to
5 prove to you he was insane, didn't know what he was doing.
6 I think you'll dispose of that right quickly and come to
7 the right conclusion. The standard is beyond a reasonable
8 doubt and that's had a lot of definitions over the years.
9 The one that's in fashion now is it's the kind of doubt
10 that causes you to hesitate to act. But it doesn't mean we
11 don't want you to sit around the table back there and talk
12 about it and deliberate. That's not the kind of hesitation
13 we're talking about. Go back there and talk about it.
14 You'll have all these pictures; you'll have the 9-1-1-
15 recording and a player if you want to play that. You'll
16 have the aerial photo. So that's not the kind of
17 hesitation their talking to. Don't get me wrong. You're
18 not gonna hurt my feelings if you go back there and ten
19 minutes later got a verdict. That's fine too.

20 You'll be good jurors. The judge ask you when you
21 were sitting out in the audience "can you do that"? Is
22 there anything, any religious, philosophical, anything that
23 will not allow you to judge this case and you all swore you
24 could do that. You will be good jurors. You represent all
25 of York County. These people, the Mahoney's, Chris

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 Calvert, this is their day in court. This is it, you're
2 it. This is their day for justice. Just be a good umpire.
3 That's all you have to do. You're not judging his soul and
4 whether he's a good or bad person. Your judging facts just
5 like an umpire does.

6 The umpire doesn't go oh my the Orioles they been
7 having a bad season I'm gonna help them out a little bit
8 with these calls. You can't do that, that's offensive.
9 You just call it like it is and you'll be just fine.
10 You'll have kept your oath and you will have done the right
11 thing. Thank you.

12 THE COURT: Before we do the charge, we're gonna take
13 a short refresher break. Do not start discussing the case
14 because you haven't heard the charge on the law and you are
15 not yet in a position to make up your mind as to what your
16 verdict should be. So we'll take a short refresher break
17 and when you come back I'll charge you the law and then
18 we'll put the case in your hands for deliberations.

19 (JURY EXITS COURTROOM AT 10:45 A.M..)

20 THE COURT: We'll take a ten minute break.

21 (COURT IN RECESS AT 10:45 A.M..)

22 (WHEREUPON: COURT'S EXHIBIT FOUR AND FIVE, IDENTIFIED
23 AND MARKED, RECEIVED INTO EVIDENCE.)

24 (COURT BACK IN SESSION AT 11:01 A.M..)

25 THE COURT: Thank you. Take your seats. We'll get

CHARGE TO THE JURY:

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1 Mr. Brown back in.

2 (DEFENDANT, FLOYD BROWN, REENTERS COURTROOM.)

3 THE COURT: We're back on the record. Mr. Brown is
4 present, counsel is present. I had not planned to give
5 what is commonly referred to as involuntary intoxication
6 charge; however, based on the presentation in closings of
7 both attorneys I considered it to pull my charge on
8 involuntary intoxication and allow both party, counsel, to
9 view it and each indicated that they did not request such a
10 charge. And since neither wishes it I'm - I did not see it
11 in this case. It was pulled only because of the way the
12 closing argument was structured and neither side requested
13 it I'm not going to charge it. I'll make a copy of it a
14 Court's Exhibit.

15 Is that correct, Mr. Springs?

16 SOLICITOR SPRINGS: That is correct.

17 THE COURT: Mr. Cook?

18 MR. COOK: Yes, sir, Your Honor. I've read that and I
19 do not request the charge.

20 THE COURT: All right. Bring in the jury.

21 (WHEREUPON: COURT'S EXHIBIT NUMBER SIX, IDENTIFIED
22 AND MARKED, RECEIVED INTO EVIDENCE.)

23 (JURY REENTERS COURTROOM AT 11:03 A.M..)

24 THE COURT: Members of the jury panel, I am now going
25 to charge you the law applicable to this trial that you are

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1 to apply to the facts. I will not send in a written
2 charge; I got a note from the jury asking if I sent in a
3 written charge. I do not do that. We generally do not do
4 that here in South Carolina however I will then tell you
5 that and that also if you wish me to go over any part or
6 all of my charge on the law you can let me know and I'll
7 bring you back and here in open court make sure my charge
8 any particular points that you feel are necessary.

9 Now, Mr. Brown is charged with two indictments. One
10 is with attempted murder and one with burglary in the first
11 degree. He has entered pleas of not guilty to each of
12 these. They allege that this occurred on June 8th, 2012,
13 the address of [REDACTED], York, South Carolina. And
14 that the burglary occurred at the dwelling occupied by
15 Michael and Amy Mahoney and Christopher Calvert. And that
16 on that same date at that same place at around 10:30 at
17 night Mr. Brown, the defendant, attempted to kill the
18 victim Mr. Christopher Calvert.

19 Each indictment charges a separate and distinct
20 offense. Now you will have with you in the jury room these
21 indictments. They are not evidence. They are the
22 paperwork by way of which this case - these cases are
23 processed through our court system. They contain the
24 charge, the allegations, what the state says Mr. Brown did
25 in violation of the laws of this state. But they are not

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1 evidence so do not consider them as evidence. They also
2 have a place where ultimately the verdict of the jury will
3 be enrolled.

4 You will be ask to write a separate verdict as to each
5 charge. That is, what you find on one does not dictate
6 what you find on the other. Each has to be supported on
7 it's own legs or some merit by the facts in this case with
8 the law as I charge it to you applied thereto.

9 The fact that Mr. Brown has been charged, the fact
10 that he was arrested, the fact that he is on trial and the
11 fact that he was indicted is not any evidence that he
12 committed these offense - offenses. This is simply the way
13 our system works. An individual is if thought to have
14 committed an offense is arrested, charged, indicted, and
15 brought to trial and that is where we are in this case.
16 The fact that he is on trial is not any evidence that he
17 committed either of these offenses.

18 Now, as to these charges Mr. Brown is presumed
19 innocent. He is presumed innocent of each of these
20 charges. Anyone charged with any offense in our system is
21 presumed innocent of that charge until such time as the
22 State is able to prove if it can that person's guilt beyond
23 a reasonable doubt. This presumption of innocence is not
24 just a mere legal theory or a mere legal phrase. The
25 presumption of innocence is a substantial right, a

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1 substantial legal right that adheres to anybody charged
2 with any offense including Mr. Brown. The presumption of
3 innocence in his favor attached at the time of his arrest;
4 has remained with him as the case has been processed
5 through our court system and has remained with him
6 throughout this trial, and remains with him at this time.

7 In fact the presumption of innocence remains with him
8 even as you deliberate. He is presumed innocent until such
9 time as you, if you do, unanimously determine - the jury
10 unanimously determines that the State has proved his guilt
11 beyond a reasonable doubt.

12 Now the State is not required to prove his guilty
13 beyond any and all or every doubt but beyond a reasonable
14 doubt. Our courts have described a reasonable doubt as
15 the kind of doubt that would cause a reasonable person to
16 hesitate to act. Proof beyond a reasonable doubt is proof
17 that leaves you firmly convinced of someone's guilt. There
18 are very few things in our world that we can know with
19 absolute certainty and absolute certainty is not required
20 in a case such as this. If based on your consideration of
21 the evidence you are firmly convinced that Mr. Brown is
22 guilty of one or both of the charges you would find him
23 guilty. If on the other hand you think there is a real
24 possibility that he is not guilty of one or both of the
25 charges you would give him the benefit of that doubt and

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1 find him not guilty. He is entitled to the benefit of any
2 reasonable doubts you have in regard to this case.

3 Now you heard Mr. Cook mention that as to the defense
4 of insanity, which I will talk about later, there is a
5 different burden of proof and it's lower. The State has to
6 prove Mr. Brown's guilt beyond a reasonable doubt. Mr.
7 Brown has asserted what's called an affirmative defense
8 which he must prove but he has a lower standard. His
9 standard is the burden of proof is that of by the greater
10 weight or preponderance of the evidence. I can explain
11 this to you best by describing for you or asking you to
12 imagine rather Lady Justice. You remember blind folded
13 Lady Justice holds scales that are even. As to Mr. Brown's
14 claim regarding insanity, as to that claim you would
15 consider that between the State and Mr. Brown the scales of
16 justice are even. That is, there is no tipping of the
17 scales to one proposition or the other, that is, one way or
18 the other. What you would do and what you must do is weigh
19 the evidence in this case and of course you can't do it
20 mechanically. You have to mentally weigh the evidence.
21 And you mentally weigh the evidence and mentally place it
22 on these scales. If the scales remain even, that is if
23 they do not tip one way or the other, then Mr. Brown has
24 failed to carry his burden of proof regarding his defense
25 of insanity.

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1 If when you weigh the evidence the scales tip toward
2 the State Mr. Brown has failed to carry his burden of proof
3 regarding his defense of insanity. However, if when you
4 weigh the evidence the scales tip to his favor in any
5 degree whatsoever once the scales tip in his favor and he
6 has carried his burden of proof by the greater weight of
7 the preponderance of the evidence regarding his affirmative
8 defense of insanity. And I will define that defense more
9 for you later.

10 I am the sole judge of the law in this case. I've
11 already discussed that with you and you must take accept
12 and apply the law as I charge it. This is true even if you
13 think I charge the law in error or even if you think the
14 law should be different. Your oath requires you to take
15 and accept and apply the law as I charge it. You are not
16 to infer from anything I have said or done or anything I
17 now say or do as indicating an opinion of mine on the
18 facts. Our law does not allow a trial judge to formulate
19 or express to a jury any opinion on the facts. That is
20 solely your job; it is solely your job as the trial jury in
21 this case to determine the facts. In doing this you may
22 believe one witness as opposed to several; several
23 witnesses' as opposed to one. You may believe all, part or
24 none of a witness's testimony. It is up to you to decide
25 what weight to be given to a witness's testimony.

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1 As judges of the facts use your common sense, your
2 sense of logic, your sense of reason; use your experiences
3 in life. As judges of the facts you must judge the
4 credibility, that is, the believability of the individuals
5 who have testified - the witnesses' who have testified. In
6 assessing credibility use those things I've already
7 discussed with you. Use those things that you find in your
8 day to day life as being indicative of truthfulness. And
9 you can use certain evaluators, whether a witness has a
10 criminal record, whether a witness had any reason to help
11 or hurt one side or the other, that is, whether a witness
12 is biased or prejudiced. You can consider the opportunity
13 a witness had to know about the things they actually
14 testified to. You can consider a witnesses' demeanor, how
15 they act on the stand, are they hesitant or
16 straightforward. And you can look at the consistencies in
17 a witnesses' testimony as given at trial or as compared
18 with testimony or statements made at an earlier time.

19 You weigh the credibility of the witnesses and look at
20 the facts and determine the facts and you will be in a
21 position to return a verdict that speaks the truth and you
22 apply the law.

23 Now we've had two individuals who testified in this
24 case that were qualified as what we call experts.
25 Ordinarily under our rules of evidence an individual can

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1 only testify as to something they've observed with one of
2 their five senses. It's usually something they have seen
3 or heard but it can be taste, touch or smell. However
4 where an individual has certain training, skill, experience
5 and knowledge in a certain area, that person can be
6 qualified to give an expert opinion. That is, to take
7 facts and from those facts reach an opinion.

8 The opinions of experts are allowed into evidence to
9 assist you, they are not binding on you. You may take,
10 accept or reject an expert witnesses' testimony. In fact
11 you look at an expert witness just as you look at the other
12 witnesses' and judge their credibility and you can use all
13 the factors I talked about. You determine just like you do
14 with the other witnesses the truth, the value and effect
15 that witnesses' - all witnesses including an expert
16 witness. You also as to an expert you even though I
17 qualified that expert as an expert, you look at the
18 qualifications. You determine whether in your opinion that
19 witness had the expertise, based on their testimony, to
20 render the opinion they rendered. And you can also examine
21 and look at the reason they reached the opinion they
22 reached.

23 Testimony of an expert is allowed into evidence to
24 assist you, it is not binding on you. You consider it to
25 whatever degree you determine it should have and give it

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1 such weight as you deem appropriate. You may accept any
2 part or all and you may disregard an expert's testimony as
3 to insanity. That is solely up to you to determine.

4 I instruct to you and emphasize to you the fact that
5 Mr. Brown exercised his right to remain silent cannot be
6 used against him. He has as I've already told you an
7 absolute right to remain silent and he's presumed innocent.
8 The fact that he exercised that right cannot be used to
9 mitigate against him in any way whatsoever. It cannot be
10 discussed by you in your deliberations and it cannot be
11 even factored into your own considerations. I remind you
12 that Mr. Brown is presumed innocent and need not prove his
13 innocence. The State however must prove his guilt beyond a
14 reasonable doubt. And this is true even where he has
15 exercised his constitutional right to remain silent. He is
16 presumed innocent and the State must prove his guilt beyond
17 a reasonable doubt.

18 There are two types of evidence which are generally
19 presented in a case such as this, direct and circumstantial
20 evidence. Direct evidence is the testimony of someone who
21 claims to have actual knowledge of a fact such as an
22 eyewitness. It is evidence which immediately establishes
23 the main fact sought to be proven. Circumstantial evidence
24 is proof of a chain of facts and circumstances which
25 indicate the existence of a fact. Circumstantial evidence

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1 is evidence which immediately establishes collateral facts
2 from which the main fact may be inferred. Circumstantial
3 evidence is based on inference and not on personal
4 knowledge or personal observation.

5 Our law makes absolutely not distinction between the
6 weight or the value to be given to either circumstantial or
7 direct evidence. Our law does not require a greater degree
8 of certainty to circumstantial evidence as opposed to
9 direct evidence. What you should do in this case is weigh
10 all of the evidence. After weighing all of the evidence if
11 you are not convinced of Mr. Brown's guilt as to one of
12 these offenses you would as to that offense give him the
13 benefit of that reasonable doubt and find him not guilty.

14 The first charge I'm gonna go over is that of first
15 degree burglary. Here the State must prove beyond a
16 reasonable doubt that Mr. Brown entered a dwelling without
17 consent. And after I go over burglary, attempted murder,
18 and what are called lesser included offenses of attempted
19 murder I will then talk to you about the insanity defense.

20 But first degree burglary must be proven by the State
21 - it must be proven by the State that Mr. Brown entered a
22 dwelling without consent. Our law defines a dwelling as
23 any building or portion of a building in which a person
24 ordinarily sleeps. The State does not have to prove that
25 force was used to gain entry. An unlawful entry without a

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1 breaking is sufficient to constitute a burglary.

2 Next as to burglary in first degree the State must
3 prove beyond a reasonable doubt that the Defendant intended
4 to commit a crime therein either a felony or a misdemeanor
5 and that he had intended to do that at the time of the
6 entry. The mere entry into a dwelling without consent
7 alone is not burglary. If the intent to commit a crime is
8 formed after the entry it is not burglary. On the other
9 hand if one intended to commit a crime at the time of entry
10 it is burglary even if that person abandoned the intent
11 once they enter. It does not matter whether or not the
12 intended crime was completed.

13 Intent may be shown by acts and conducts of a
14 defendant and other circumstances from which you may
15 naturally and reasonably infer intent. The State must
16 prove beyond a reasonable doubt one of the following and
17 need not prove all but must prove at least one of the
18 following for this to rise to any burglary as alleged here
19 to rise to first degree burglary.

20 It must either to have been one of these or more at
21 least one must have occurred that while entering - that
22 when entering and while in the dwelling or when fleeing the
23 defendant was armed with a deadly weapon. A deadly weapon
24 is any article, instrument, or substance which is likely to
25 cause death or great bodily harm. Whether an instrument

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1 has been used as a deadly weapon depends on the facts and
2 circumstances of each case. A machete is an example of a
3 deadly weapon.

4 The second option is that when entering or while in
5 the dwelling or in fleeing the defendant caused physical
6 harm to someone, anyone, who was not a participant in the
7 crime.

8 The third option would be that when entering while in
9 the dwelling or in fleeing the defendant used or threatened
10 to use a dangerous object.

11 The next option is that while entering - when entering
12 while in the dwelling or in fleeing the defendant displayed
13 what was or what appeared to be a knife.

14 The final option, and again, the State does not have
15 to prove all of these but has to prove at least one beyond
16 a reasonable doubt, that the defendant entered or remained
17 in the dwelling in the nighttime. Our law defines
18 nighttime as the period between sunset and sunrise during
19 which there is not enough daylight to recognize a person's
20 face except by artificial light or moon light.

21 Now before you could convict Mr. Brown of burglary
22 first degree, you have to find that the State has proven
23 those elements that I've just gone over beyond a reasonable
24 doubt.

25 Mr. Brown is also charged with attempted murder. In

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1 order to prove this crime the State must prove that the
2 defendant attempted to kill another person with malice
3 aforethought either expressed or implied. Now I will not
4 set out in these - this indictment for attempted murder,
5 our law establishes what are called lesser included
6 offenses of the charge of attempted murder. I can best ask
7 you to imagine this like a set of stairs, the top step
8 would be attempted murder. Down one notch is of a lesser
9 degree would be assault and battery of a high and
10 aggravated nature. And you step down again to assault and
11 battery in the first degree and on down second degree
12 assault and battery and first degree assault and battery.

13 So the lesser included's while not set out or if you
14 determine worthy of your consideration are things you can
15 consider if you find the State has failed to prove a higher
16 offense such as the one charge attempted murder. Or one of
17 the lower ones but has proven at least one of those charges
18 beyond a reasonable doubt. Again, the charge is attempted
19 murder and here the State must prove Mr. Brown attempted to
20 kill another person with malice aforethought either
21 expressed or implied.

22 Malice is hatred, ill will, hostility toward another
23 person. Malice is the intentional doing of a wrongful act
24 without just cause or excuse, and with the intent to
25 inflict an injury, or, under circumstances from which the

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1 law would infer an evil intent. Malice aforethought does
2 not require that any malice exist for any particular time
3 before a particular act is committed. Malice however must
4 exist in the mind of a defendant just before and at the
5 time of the act, that is, at the time that the act is
6 committed. Therefore there must be a combination of
7 previous evil intent and the act itself.

8 Malice aforethought may be expressed or inferred.
9 These terms do not mean different kinds of malice but
10 merely the manner in which malice may be shown to exist,
11 that is, by direct evidence or by inferences from the facts
12 and circumstances from which have been proven. Expressed
13 malice is shown when a person speaks words which express
14 hatred or ill will of another, or, when a person prepares
15 to do the act which was later accomplished and they
16 prepared beforehand, that is, before doing the act.

17 I have already defined a deadly weapon to you when I
18 defined that - I defined a deadly weapon for you when I was
19 talking about burglary. That same definition here applies.
20 Facts are proven - I'm sorry, if facts are proven beyond a
21 reasonable doubt to raise an inference of malice to your
22 satisfaction this inference would simply an evidentiary
23 fact to be considered by you along with the other evidence
24 in this case and you may give it the weight you decide it
25 should receive. A specific intent to kill is not an

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1 element of attempted murder but it must be a general intent
2 to commit serious bodily injury. Intent means intending
3 the result which actually occurs, it means something which
4 - acts which is not accidental or involuntary. Intent may
5 be shown by acts and conducts of a defendant and other
6 circumstances from which you may naturally and reasonably
7 infer intent.

8 Evidence of the character of the act, the character of
9 the instrument used, the manner in which it was used, the
10 purpose to be accomplished, and the resulting wounds and
11 injuries may be considered in determining intent from which
12 the act was committed. Intent may also be inferred when it
13 is demonstrated that the defendant voluntarily and
14 willfully committed an act the natural tendency of which is
15 to destroy another's life.

16 Now the State must prove those elements. That is,
17 that Mr. Brown committed attempted murder and the State
18 must prove beyond a reasonable doubt - prove this by
19 proving that he attempted to kill another person with
20 malice aforethought either expressed or implied.

21 Now, on the stair steps the lesser included offenses I
22 will go over now. They deal with assault and battery. An
23 assault occurs when a person unlawfully attempts or offers
24 to commit a violent injury upon another person and has the
25 present ability to complete the attempted injury. An

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1 assault is the intentional creation of reasonable fear of
2 immediate bodily harm. It is not necessary that the
3 attempted injury or harm actually take place. For example
4 if I walk up to you and I'm within striking distance and I
5 rare back my fist in a rude and angry manner and I'm close
6 enough to strike you and I place you in fear I have
7 assaulted you. A battery is the unlawful touching of
8 another person by a person who has committed an assault.

9 An unlawful touching can be caused by a part of the
10 accused body or by any object the accused puts in motion.
11 A battery is the completion of the assault by using or
12 applying force to another person however slight in a rude,
13 angry, or resentful manner without legal justification for
14 doing so. Using my earlier example, if I carry through my
15 assault and I strike you, then my assault has become a
16 battery. I have assaulted you and then by touching you I
17 have committed a battery.

18 If you find the State has not proven Mr. Brown guilty
19 of assault and battery - Sorry, let me start over. If you
20 find the State has not proven Mr. Brown guilty of attempted
21 murder, then you would determine whether the State has
22 proven his guilt of a high and aggravated nature. Assault
23 and battery of a high and aggravated nature includes an
24 assault as I defined it, plus, the State must prove in
25 addition to an assault and battery as I've defined them

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1 that there was an aggravated circumstance accompanying the
2 assault and battery. Circumstances of aggravation include
3 the use of a deadly weapon, the intent to commit a felony,
4 the infliction of serious bodily injury. These are only
5 examples of circumstances aggravation and the State must
6 prove assault and battery with aggravating circumstances
7 for you find Mr. Brown guilty of that lesser included
8 offense of assault and battery of a high and aggravated
9 nature.

10 Now there are three lesser degree assaults and battery
11 charges which you may, if you determine the facts suffice,
12 consider. Going down the ladder they are - down the
13 steps, assault and battery in the first degree. If you
14 find the State has not proven Mr. Brown guilty of attempted
15 murder, or of assault and battery of a high and aggravated
16 nature, then you must determine whether the State has
17 proven beyond a reasonable doubt that Mr. Brown is guilty
18 of assault and battery in the first degree.

19 The person commits the offense of assault and battery
20 in the first degree if the person unlawfully injures
21 another and the act occurred in the commission of a
22 burglary. And they also commit the offense of assault and
23 battery in the first degree if the person unlawfully
24 attempts to injure another with the present ability to do
25 so and the act is either accomplished by means likely to

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1 produce death or great bodily injury, or, occurred during
2 the commission of the burglary.

3 Great bodily injury means bodily injury which causes a
4 substantial risk of death or which causes serious permanent
5 disfigurement or contracted loss or impairment of a
6 function of a bodily member or an organ.

7 The next step down would be assault and battery in the
8 second degree. If the State has failed to prove Mr. Brown
9 guilty of attempted murder, or assault and battery in the
10 first degree, you may consider whether the State has proven
11 him guilty beyond a reasonable doubt of assault and battery
12 in the second degree. A person commits the offense of
13 assault and battery in the second degree if the person
14 unlawfully injures another person or offers or attempts to
15 injure another person with the present ability to do so and
16 moderate bodily injury to another person results or
17 moderate injury to another person could have resulted.

18 Our law defines moderate bodily injury to mean
19 physical injury requiring treatment to an organ system of
20 the body other than the skin, muscles, and connected
21 tissues of the body except when there is penetration of the
22 skin, muscles, and connected tissues that require surgical
23 repair of a complex nature, or, when treatment of the
24 injured person requires the use of a general anesthesia.

25 If the State has failed to prove attempted murder,

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1 assault and battery in the first degree or assault and
2 battery in the second degree you may consider whether the
3 State has proven Mr. Brown guilty of assault and battery in
4 the third degree. A person commits the offense of assault
5 and battery in the third degree if he unlawfully injures
6 another person with a simply assault and it does not rise
7 to first or second degree assault and battery. Again the
8 State must prove any of those offenses beyond a reasonable
9 doubt before you could convict Mr. Brown as to any.

10 Mr. Brown has raised the defense of insanity.
11 Criminal intent is required to prove an individual guilty
12 of a charged crime. A person who is insane cannot have
13 criminal intent and therefore could not be found guilty of
14 a crime. In order to be found not guilty by reason of
15 insanity it must be shown that at the time of the crime the
16 defendant had a mental disease or defect which made him
17 unable to distinguish moral or legal right from moral or
18 legal wrong, or, to recognize the crime as morally or
19 legally wrong. By raising the defense of insanity the
20 defendant does not necessarily admit that the crime was
21 committed. The State must still prove beyond a reasonable
22 doubt that Mr. Brown committed the crime. However, the
23 defendant must prove his insanity by a preponderance of the
24 evidence of the evidence at a lesser burden of proof that I
25 described earlier.

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1 If you find there is evidence in the record that at
2 the time the crime was allegedly committed, it is more
3 likely than not because of a mental disease or defect, that
4 Mr. Brown did not know the alleged crime was morally or
5 legally wrong, the State must prove beyond a reasonable
6 doubt that he was sane. It is for you to decide whether
7 the state or the condition of the defendant's mind at the
8 time of the alleged crime was committed. There is also
9 another defense raised by - by raising the defense of not
10 guilty by reason of insanity the defense of guilty but
11 mentally ill has also been raised. It's not really a
12 lesser included like the lesser included's I talked about
13 on the charges. This defense, guilty but mentally ill, is
14 not a lesser degree of defense and not guilty by reason of
15 insanity, but simply a different type of insanity defense.

16 One is guilty of mentally ill at the time of the
17 crime; however, if they were able to distinguish at the
18 time moral or legal right from moral or legal wrong, or if
19 they were at the time capable of recognizing their act as
20 being morally or legally wrong, but, because of a mental
21 disease or defect they did not have sufficient ability to
22 follow the law, that would constitute being guilty but
23 mentally ill.

24 The State still has the burden of proof to prove
25 beyond a reasonable doubt that the defendant committed the

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1 crime; however, as I stated earlier the defendant, Mr.
2 Brown, has the burden of proving that he was guilty but
3 mentally ill by a preponderance of the evidence as I've
4 explained that to you.

5 A criminal defendant is presumed to be sane. The
6 State does not have to prove sanity. I stated a minute ago
7 that the State did have to prove one to be sane. I correct
8 myself. The State does not have to prove sanity. However
9 when a defendant offers evidence of insanity the State no
10 longer enjoys that presumption but must present evidence to
11 you from which you could find him sane. So that basically
12 says the same thing, that while he is presumed to be sane
13 when evidence is presented that he was insane the State
14 must prove that he was sane at the time.

15 The jury may disregard expert testimony on insanity
16 and you are free to rely on circumstantial evidence to find
17 a defendant sane even if expert testimony fails a finding
18 of insanity.

19 Now your verdict in this case must be unanimous. All
20 twelve jurors must agree. Once all twelve jurors have
21 agreed, Madame Forelady, you will write the unanimous
22 verdict of the jury. Your verdict cannot be based on
23 passion, prejudice, sympathy, public opinions or matters
24 outside the record. If you have any questions please write
25 them down, knock on the door give them to the bailiff, the

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1 bailiff will bring them out to me. I will confer with
2 counsel and then answer the note. It may be that I can
3 write an answer on the note itself and send it back. If I
4 do that keep the note and return it with the evidence as it
5 must be part of the record.

6 If you want to have testimony replayed we can do that.
7 You will have the exhibits in with you and the boom box to
8 play the 9-1-1- tape if you wish. As I told you earlier we
9 do not send in a written charge but if you wish for me to
10 go over any part or all of my charge please let me know and
11 I'll bring you back out and here in open court give you a
12 written - give you orally whatever charge you wish me to
13 refresh your memory on.

14 Once you've reached a verdict knock on the door and
15 tell the bailiff. The bailiff will come and get us. I may
16 be working on some other things but we will send for you as
17 promptly as we can once you've reached a verdict. We are
18 going to order lunch, when it comes you can work while
19 you're eating lunch or you can take a break. But since the
20 verdict has to be unanimous all twelve of you are working
21 or all twelve of you are on break. And I know we have some
22 smokers and if you want to have a smoke break we certainly
23 will accommodate that but if someone's out on a smoke break
24 and everybody else is not working because you've got to
25 either be all working together or not working at all.

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1 Ms. Earl and Mr. Beasley, you will remain here in the
2 courtroom when you go out as we do not need you as
3 alternates.

4 Now, I prepared verdict forms in this case. On the
5 verdict form burglary in the first degree there are four
6 options depending on your unanimous decision. The first -
7 The order these are in is of no importance. They have to
8 be in some order and this is the order in which I always
9 put them. The first says we find the defendant guilty of
10 burglary in the first degree. You use that if you find the
11 State has proven under the law as I charge it and the facts
12 in this case that Mr. Brown is guilty of burglary in the
13 first degree.

14 The second says we find the defendant not guilty of
15 burglary and not guilty of burglary in the first degree and
16 you would use that line if the State has failed to prove he
17 committed this offense.

18 If you find that the State has proven the commission
19 of this offense, but that Mr. Brown is not guilty of a
20 burglary by reason of insanity you would use the first line
21 - the third line. If you find that the State has proven -
22 that he committed the crime but that he was at the time
23 guilty of the burglary but suffered a mental illness as I
24 defined it for you earlier you would use the forth line we
25 find the defendant guilty of burglary first degree but

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1 mentally ill. So you have four options, guilty of
2 burglary, not guilty of burglary, not guilty of burglary by
3 reason of insanity or guilty of burglary but mentally ill.

4 Now, as to the attempted murder, there are quite a few
5 other ones in the hierarchy of options because as I went
6 over there are some lesser degree offenses. The first is
7 we find the defendant guilty of attempted murder which
8 means the State has proven beyond a reasonable doubt the
9 charge against Mr. Brown.

10 You then go down the list of lesser included offenses.
11 We find the defendant guilty of a lesser included charge of
12 assault and battery of a high and aggravated nature, or,
13 first degree assault and battery, second degree assault and
14 battery, third degree assault and battery. If you find the
15 State has failed to prove Mr. Brown guilty of attempted
16 murder and you find he is guilty of one of the lesser
17 included offenses, Madame Forelady, you would put a check
18 mark or an X in front of the sentence that says whatever
19 the jury has determined he is guilty of if you so find.

20 And on the burglary form also there is a line for you
21 to put a check mark on it.

22 The sixth line down it says we find the defendant not
23 guilty and you check that line if you find the State has
24 failed to prove Mr. Brown guilty of any - of attempted
25 murder or any of the lesser included offenses, if you find

CHARGE TO THE JURY:

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1 the State has failed to prove any of those beyond a
2 reasonable doubt you would mark the line that says we find
3 the defendant not guilty.

4 The last two lines again deal with the insanity
5 defense. If you find that the State has proven Mr. Brown
6 guilty of committing the offense but you find by a
7 preponderance of the evidence that he is not guilty by
8 reason of insanity, and that's true for burglary or
9 attempted murder, you would use the line that says we find
10 the defendant not guilty by reason of insanity. Again if
11 you find the State has proven Mr. Brown guilty of the
12 offense but mentally ill at the time, you would use the
13 last line that says we find the defendant guilty but
14 mentally ill.

15 Keep in mind that the State must prove his guilt
16 beyond a reasonable doubt and that the affirmative defense
17 of assault - not guilty by reason of insanity and the
18 defense of guilty but mentally ill the burden is on Mr.
19 Brown to prove those by a greater weight or preponderance
20 of the evidence.

21 Now I'm gonna let you go to the jury room but do not
22 start deliberating yet. I have to go over with the
23 attorneys my charge if I have made an error I will have to
24 bring you back in and correct it. If not I will send in to
25 you the exhibits, the verdict forms, and the indictments

CHARGE TO THE JURY:

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1 and the bailiff will tell you to start deliberating. As I
2 told you when you've reached a verdict knock on the door
3 and let us know and we will send for you as promptly as we
4 can. We will order lunch which usually takes about an hour
5 to get here. And again you can work through lunch or you
6 can stop and rest. So I'm going to ask the two alternates
7 to stay in here and the other twelve to back to the jury
8 room but do not start deliberating. And don't get too
9 comfortable either because if I have to send for you it
10 will be just very promptly.

11 (JURY EXITS COURTROOM TO DELIBERATE AT 11:47 A.M..)

12 THE COURT: We will be with you in just a minute.

13 All right, anything from the State?

14 SOLICITOR SPRINGS: Judge Hayes, when you were talking
15 about attempted murder, my mind was watery a little bit but
16 I thought you said deadly weapon.

17 THE COURT: I did. I did not charge that that raised
18 an inference of malice.

19 SOLICITOR SPRINGS: Okay.

20 THE COURT: I simply defined it and I shouldn't have.
21 It was not necessary there. I picked it up in my charge
22 and shouldn't have. But, it did not really relate to
23 anything unless it relates, and it may, to the charge about
24 taking into consideration the character of the act to show
25 intent. Not malice but intent where I talk about evidence

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1 or the character of the act, the character of the
2 instrument used. So while I didn't mean to put it in
3 there, and it really didn't tie into anything it arguably
4 at least falls into having some applicability where I
5 charge about the intent being based on character.

6 SOLICITOR SPRINGS: Good.

7 THE COURT: I picked up on that as soon as I said it
8 and I apologize for that.

9 MR. COOK: And, Your Honor, just for the record, I'm
10 perfectly fine with the charge in regards to what you just
11 discussed with the inference. I would respectfully bring
12 up a point that I thought that I heard the Court say that
13 we raised the defense of guilty but mentally ill. And I
14 would request if Your Honor just cure that by saying that
15 the defense didn't raise that but I have to read you - -

16 THE COURT: I have no problem with that. I think
17 that's factually - I don't remember how exactly how I said
18 it but I did try to distinguish it from a lesser included.
19 But I think you are entitled for me to correct that.

20 MR. COOK: Thank you, Your Honor.

21 THE COURT: All right.

22 Just bear with us. This is the way we do things.

23 Bring the jury back in.

24 And that's all you have?

25 MR. COOK: That's it, Your Honor.

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1 THE COURT: While the jury is coming in, I'll dismiss
2 you in just a minute. You will not have to call back
3 because we are through for the week but if you want to stay
4 you are certainly entitled to and will make a place for you
5 to be comfortable and if you want to stay we will include
6 you in lunch. It's pizza. I'll tell you in advance it's
7 not anything fancy. That's up to you but just remain with
8 us when the jury comes back in and after I send them back
9 out after I make this adjustment in my charge.

10 (JURY REENTERS COURTROOM AT 11:45 A.M..)

11 THE COURT: Can all of you in the back - Well sit up
12 here. That's good. That's good.

13 I have one correction to make. I talked to you about
14 Mr. Brown having raised the affirmative defense of being
15 not guilty by reason of insanity and I explained all of
16 that to you. And then I explained to you a second option
17 guilty of committing the offense but mentally ill.

18 That was not raised by Mr. Brown, that is simply an
19 option that the law allows a jury to consider where one has
20 entered a plea when one has affirmatively - when one has
21 entered an affirmative defense of not guilty by reason of
22 insanity the law says that the jury can consider if he has
23 not proven that by the greater weight or preponderance of
24 the evidence whether or not the evidence supports the
25 finding of guilty but mentally ill. So it's kind of a

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1 narrow distinction but it's an important distinction
2 because Mr. Brown did not raise it, it was just part of the
3 mix because of the way our law is structured.

4 I'm gonna let you go back to the jury room but don't
5 start deliberating quite yet.

6 (JURY EXITS COURTROOM TO DELIBERATE AT 11:47 A.M..)

7 THE COURT: Any followup on the charge?

8 SOLICITOR SPRINGS: No, sir, nothing.

9 THE COURT: Anything on followup?

10 MR. COOK: No, sir, Your Honor. Thank you, I think
11 that cured it.

12 THE COURT: Well to me its an anomaly because that's
13 the legal - for lawyers to talk about. That's not anything
14 for right now.

15 Take a look at the exhibits and the verdict forms and
16 we'll send them back and tell them to start deliberating.

17 And just remain close by and you two can leave if you
18 like or we'll make arrangements for you to be comfortable
19 while you wait and see what the jury does and have lunch if
20 you like. That's your call. So you all go ahead and step
21 out while and talk to the bailiffs and we'll start looking
22 at the verdict forms and the indictments and the exhibits
23 and send them back and Ms. Rutledge will order lunch.

24 We'll be at ease for a few minutes and see if the
25 Solicitor has any work to do before the pizza arrives.

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1 (COURT IN RECESS AT 11:48 A.M..)

2 (WHEREUPON: COURT'S EXHIBIT NUMBER SEVEN, IDENTIFIED
3 AND MARKED, RECEIVED INTO EVIDENCE.)

4 (COURT BACK IN SESSION AT 12:09 P.M., FOR PLEAS.)

5 (COURT IN RECESS AT 12:45 P.M..)

6 (WHEREUPON: COURT'S EXHIBIT NUMBER EIGHT IDENTIFIED
7 AND MARKED, RECEIVED INTO EVIDENCE.)

8 (COURT BACK IN SESSION AT 12:55 P.M. FOR PLEA.)

9 (COURT IN RECESS AT 12:56 P.M..)

10 (COURT BACK IN SESSION IN THE MATTER OF STATE V FLOYD
11 BROWN AT 02:03 P.M..)

12 THE COURT: Take your seats. Get Mr. Brown in.

13 (DEFENDANT, FLOYD BROWN, REENTERS COURTROOM.)

14 THE COURT: All right. I received a note from the
15 jury that indicate they want a recharge - it said attempted
16 murder on - I'll clarify that and find out if they want me
17 to go on to the insanity also or just the attempted murder
18 and the various assaults and batteries so that's what we're
19 gonna do. Any comments?

20 SOLICITOR SPRINGS: No comments from the State.

21 MR. COOK: None from the defense, Your Honor.

22 THE COURT: All right. While its on my mind, I
23 understand that between some of the family members, or
24 there has been some dialogue and perhaps some threats made
25 regarding the outcome of this case, and I just ask that

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1 nobody put themselves in a situation where they can go to
2 jail doing something as a result of something that's
3 already a bad situation. And if anybody does of course
4 make any threats they will be reported to the sheriff and
5 the sheriff will do whatever needs to be done.

6 All right, bring in the jury.

7 (JURY REENTERS COURTROOM AT 02:05 P.M..)

8 THE COURT: Madame Forelady, I received your note and
9 I want to clarify what the jury would like me to do at this
10 time. As I understand it is to go back through the charge
11 of attempted murder and the lesser included offenses with
12 those. And that's all you want at this time?

13 (MADAME FORELADY RESPONDED IN THE AFFIRMATIVE.)

14 THE COURT: Mr. Brown is charged as I talked to you
15 about several times with attempted murder in this case, in
16 one of the two indictments, in order to prove Mr. Brown
17 guilty of attempted murder the State must prove he
18 attempted to kill another person with malice aforethought
19 either expressed or implied.

20 Malice is hatred, ill will, or hostility towards
21 another person. Malice is the intentional doing of a
22 wrongful act without just cause or excuse and with intent
23 to inflict an injury or under circumstances that the law
24 would infer an evil intent.

25 Malice aforethought does not require that malice exist

RECHARGE TO THE JURY:

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1 for any particular time before the act is committed but
2 malice must exist in the mind of the defendant just before
3 and at the time the act is committed; therefore, there must
4 be a combination of the previous intent and the act.

5 Malice aforethought may be expressed or inferred.
6 These terms expressed and inferred do not mean different
7 kinds of malice but merely the manner in which the malice
8 may be shown to exist. That is either by direct evidence
9 or by inferences from facts and circumstances which are
10 proven.

11 Expressed malice is shown when a person speaks words
12 which express hatred or ill will for another, or, when the
13 person prepared beforehand to do the act which was
14 accomplished. Malice may be inferred from conduct showing
15 a total disregard for human life. The facts are proven
16 beyond a reasonable doubt sufficient to raise an inference
17 of malice to your satisfaction this inference would be
18 simply an evidentiary fact to be considered by you along
19 with the other evidence in the case and you should give it
20 such weight, if any, you decide it should receive.

21 A specific intent to kill is not an element of
22 attempted murder but there must be a general intent to
23 commit the serious bodily injury. Intent means intending
24 the results. Intent is something which actually occurs and
25 it's something which is not accidental or voluntary.

RECHARGE TO THE JURY:

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1 Intent may be shown by acts and conducts of the
2 defendant and other circumstances from which you may
3 naturally and reasonably infer intent. Evidence of the
4 character of the act, the character of the instrument used,
5 the manner in which it was used, the purpose to be
6 accomplished, and the resulting wounds or injury may be
7 considered in determining the intent with which the act was
8 committed. Intent may also be inferred when it is
9 demonstrated that the defendant voluntarily and willfully
10 commits an act a natural tendency of which is to destroy
11 another's life.

12 The State must prove those elements as to attempted
13 murder beyond a reasonable doubt before you could convict
14 Mr. Brown of attempted murder.

15 Now that being the top step the stair steps down
16 through the three - four other charges involving assault
17 and battery with intent to - assault and battery. I
18 described assault for you by telling you an assault was a -
19 an assault occurred when a person unlawfully attempts or
20 offers to commit a violent injury upon another person and
21 has the present ability to complete the attempted injury.

22 An assault is the intentional creation of reasonable
23 fear of immediate bodily harm. Remember my example if I
24 rare back and in a rude and angry manner and I'm close
25 enough to strike you and fearful that I may strike you I

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1 have assaulted you. A battery is the unlawful touching of
2 another person by a person who has committed an assault.
3 An unlawful touching can be caused by part of one's body or
4 any object the accused has put in motion.

5 A battery is the completion of the assault by using or
6 applying force to another person however slight in a rude,
7 angry, or resentful manner without legal justification for
8 so doing.

9 Following my earlier example, if I have assaulted you,
10 put you in fear, and I follow through and actually strike
11 you with my fist I have assaulted you by putting you in
12 fear and committed the battery upon you by actually
13 touching you. If you find the State has failed to prove
14 Mr. Brown guilty of attempted murder, you must determine
15 whether the State has proven him guilty of assault and
16 battery of a high and aggravated nature. Assault and
17 batter of a high and aggravated nature must be proven
18 beyond a reasonable doubt, that is, an assault and battery
19 took place and in addition the State must prove beyond a
20 reasonable doubt the existence of an aggravating
21 circumstance.

22 Circumstances of aggravation include the use of a
23 deadly weapon, the intent to commit a felony, the
24 infliction of serious bodily injury, and any other
25 circumstance of aggravation which the jury determines to

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1 exist if any. If the State has failed to prove assault and
2 batter of a high and aggravated nature you may consider
3 assault and battery in the first degree.

4 A person commits the offense of assault and battery in
5 the first degree if that person unlawfully injures another
6 person and the act occurred during the commission of a
7 burglary. A person may also commit the offense of assault
8 and battery in the first degree if the person unlawfully
9 offers or attempts to injure another person with the
10 present ability to do so and the act is either accomplished
11 by means likely to produce death or great bodily injury,
12 or, it occurs during the commission of a burglary.

13 Great bodily injury means bodily injury which causes -
14 let me start over. Great bodily injury means bodily injury
15 which causes a substantial risk of death, or, which causes
16 serious permanent disfigurement, or, protracted loss or
17 impairment of the function of a bodily member of organ.

18 If the State has failed to the jury's satisfaction to
19 prove any of the higher offenses beyond a reasonable doubt
20 you may consider assault and battery in the second degree.
21 A person commits the offense of assault and battery in the
22 second degree if that person unlawfully injures another
23 person, or, offers or attempts to injure another person
24 with the present ability to do so and moderate bodily
25 injury to another person results, or, moderate bodily

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1 injury to another person could have resulted.

2 Moderate bodily injury means physical injury requiring
3 treatment to an organ system of the body other than the
4 skin, muscles, and connective tissues of the body, except
5 when there is penetration of the skin, muscles, and
6 connective tissues that require surgical repair of a
7 complex nature, or, with the treatment of the injuries
8 requires the use of a regional or general anesthesia.

9 If you find the State has failed to prove Mr. Brown
10 guilty of any of those higher offense, you may consider
11 assault and battery in the third degree. A person commits
12 the offense of assault and battery in the third degree when
13 a person unlawfully injures another person, or, attempts to
14 injure another person with the present ability to do so.
15 That is sometimes referred to as a simple assault.

16 Now that covers those charges of attempted murder and
17 the lesser includes and I'll let you go back to the jury
18 room until I hear from you further.

19 (JURY EXITS COURTROOM AT 02:14 P.M..)

20 THE COURT: Anything from the State on the recharge?

21 SOLICITOR SPRINGS: Yes, sir. The first time you
22 charged this morning I was daydreaming and I wasn't
23 daydreaming this time and I heard you say that only a
24 general and not a specific intent for attempted murder is
25 required. I think all attempts requires a specific intent

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1 and I don't think the legislature has given us any leeway
2 on that.

3 THE COURT: Well that's what I've got in my charge and
4 - A specific intent to kill is not an element of attempted
5 murder. There must be a general intent to commit serious
6 bodily injury.

7 SOLICITOR SPRINGS: I know it was general when we had
8 ABWIK but when we went to attempted - -

9 THE COURT: That's what I charged them earlier. If
10 you find some law that says that that's not right, that's
11 in my charge and it's in my charge under the heading of
12 Attempted Murder under 16-3-29. I don't see a case cited.
13 But you take exception to that part of the charge?

14 SOLICITOR SPRINGS: I'm just concerned because the way
15 I was taught all attempts are specific intent. And so when
16 we went from ABWIK which is a general intent to attempted
17 murder I'm afraid maybe we kicked in a specific intent.

18 THE COURT: You mean if I have a general intent to
19 harm you and I harm Chris instead, or have a general intent
20 to hurt everybody in here and the only person except Chris
21 and he's the one I hurt and - -

22 SOLICITOR SPRINGS: Well that can be transferred
23 intent.

24 THE COURT: Well you're on the record for that.

25 SOLICITOR SPRINGS: All right.

1 THE COURT: Anything?

2 MR. COOK: Nothing from the defense, Your Honor.

3 THE COURT: Okay. Thank you. Certainly open to any
4 further review on that.

5 SOLICITOR SPRINGS: Yes, sir.

6 THE COURT: All right, Solicitor, I understand we have
7 some further work to do. We'll be at ease.

8 MR. COOK: Can I confer with my client two minutes,
9 Your Honor, here?

10 THE COURT: Sure.

11 We'll be at ease for a few minutes.

12 (COURT IN RECESS AT 02:16 P.M..)

13 (COURT BACK IN SESSION IN THE MATTER OF STATE V FLOYD
14 BROWN AT 03:08 P.M..)

15 THE COURT: Thank you. Get Mr. Brown in. I
16 understand we have verdicts.

17 Be seated please.

18 (DEFENDANT, FLOYD BROWN, REENTERS COURTROOM.)

19 THE COURT: I understand from the jury they have a
20 verdict in Mr. Brown's case. Now, I don't know what the
21 verdict is of course, but whatever the verdict, I will not
22 tolerate any outburst or any shows of emotion or any
23 comments from anyone in the courtroom. If there are any
24 outburst that person can just go ahead and plan on spending
25 about thirty days in jail and will be leaving through that

VERDICTS

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1 metal door over here where Mr. Brown just emerged from
2 rather than the door that takes him home.

3 And what I'm going to also do is after the verdicts
4 are returned I'm going to allow the jury to exit before
5 anybody is allowed to leave the courtroom and allow them to
6 leave the building before anybody of course other than
7 court personnel leaves the courtroom.

8 So bring in the jury, Mr. Dunlap.

9 If you can't control yourself you better leave now.

10 (JURY REENTERS COURTROOM AT 03:11 P.M..)

11 THE COURT: Madame Forelady, I understand the jury has
12 reached verdicts. Before you hand them to the bailiff, I
13 received your note and making arrangements for your exiting
14 after the verdicts have been returned. I've taken care of
15 all of that so if you'll hand the verdicts to the bailiff.

16 (VERDICTS RECEIVED UP BY THE COURT.)

17 MADAME CLERK: In the State of South Carolina versus
18 Hubert Floyd Brown, Junior, under Indictment 2012-GS-46-0-
19 3-1-8-7 for attempted murder, we find the defendant guilty
20 of attempted murder signed by the foreperson and dated
21 today's date.

22 Indictment 2012-GS-46-0-3-1-8-5 for burglary in the
23 first degree, we find the defendant guilty of burglary in
24 the first degree. Signed by the foreperson and dated
25 today's date.

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1 If this be your verdict so say you all by raising your
2 right hand.

3 (CRYING FROM THE COURTROOM GALLEY.)

4 MADAME CLERK: Let the record show all jurors affirmed
5 this verdict..

6 (ALL JURORS AFFIRMED VERDICT.)

7 THE COURT: Anything from the State before the jury is
8 dismissed?

9 SOLICITOR SPRINGS: No, sir.

10 THE COURT: Anything from the Defense before the jury
11 is dismissed?

12 MR. COOK: No, Your Honor.

13 THE COURT: All right. Members of the jury panel,
14 this concludes your work for the week. Thank you so very
15 much. If you'll go out the bailiffs they'll make sure
16 you're escorted out to your cars or whatever. And you'll
17 be mailed a check. Thank you so much for your help.

18 Madame Forelady, I need you to come up to sign the
19 indictments. I don't know where they are.

20 (JURY EXITS COURTROOM AT 03:15 P.M..)

21 THE COURT: Mr. Kruger.

22 MR. KRUGER: Yes, sir.

23 THE COURT: Do you see the indictments over there?

24 MR. KRUGER: Two?

25 MADAME CLERK: Yeah. Two.

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1 THE COURT: You just need to write guilty on both of
2 those and sign and date it.

3 (MADAME FORELADY SIGNING INDICTMENTS.)

4 THE COURT: Thank you.

5 (JURY FOREPERSON DISMISSED.)

6 (CRYING FROM THE COURTROOM GALLEY.)

7 THE COURT: The jury has been dismissed.

8 Ms. Rutledge, would you hand this to the court
9 reporter.

10 (WHEREUPON: COURT'S EXHIBITS NUMBER NINE, RECEIVED
11 AND ENTERED INTO THE RECORD.)

12 THE COURT: Anything from the State?

13 SOLICITOR SPRINGS: No, sir, we're just ready to go to
14 sentencing when the court is ready, Your Honor.

15 THE COURT: Anything from the Defense?

16 MR. COOK: Your Honor, a motion for a new trial and
17 judgment not - J.N.O.V - Judgment Non Obstante Veridicto.

18 THE COURT: Any motions for the court to change the
19 verdict of the jury or to grant a new trial or an arrest of
20 judgment to the extent they had been made, or denied, that
21 is all motions are denied.

22 MR. COOK: Yes, sir, Your Honor.

23 THE COURT: All post trial motions are denied.

24 All right, if you'll bring Mr. Brown around and I'll
25 be glad to hear from the State about sentencing and then

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1 Mr. Brown and anyone on Mr. Brown's behalf.

2 You can come right there.

3 SOLICITOR SPRINGS: Again, the attorney - you put the
4 two sentencing sheets, I have signed those sheets.

5 THE COURT: I understand this is LWOP?

6 SOLICITOR SPRINGS: Yes, Your Honor. Your Honor, of
7 course the two offenses that he was convicted of this day
8 are most serious offenses. Back in 1989 Mr. Brown was
9 convicted down in the Charleston area of burglary in the
10 first degree and criminal sexual conduct in the first
11 degree. Basically he raped a woman at gun point in her
12 home. Those are two most serious offenses. He was
13 released from prison around 2009.

14 We served his first attorney, Phil Smith, with written
15 notice of intention to seek life imprisonment without the
16 possibility of parole because of his prior record. I put a
17 copy of that into Mr. Brown's hand and Mr. Phil Smith's
18 hand on July 12th of 2012. You were presiding that day.

19 I would like to go head and make a copy of that notice
20 a part of the record and of the proceeding today if I may.
21 I'd also like to make a copy of his convictions in '89 of
22 burglary first degree and criminal sexual conduct first
23 degree a part of the record.

24 When Mr. Cook here got on the case in January of this
25 year, 2013, and I gave him discovery, I also gave him a

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1 copy of the notice of our intention to seek life
2 imprisonment without possibility of parole.

3 So I had neglected to check the appropriate box on the
4 two sentencing sheets that this is a LWOP case. I'd ask
5 the court to please check those two boxes but that's the --

6 THE COURT: That's 17-25-45?

7 (WHEREUPON: COURT EXHIBITS TEN, ELEVEN AND TWELVE
8 IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)

9 SOLICITOR SPRINGS: Yes, sir. He's been in jail
10 since he was arrested on June 18 of 2012, by my
11 calculations that's three hundred and eighty-eight days
12 ago.

13 THE COURT: The victims, do the victim's want to add
14 anything?

15 SOLICITOR SPRINGS: They say not. They say they do
16 not wish to speak.

17 THE COURT: All right. Mr. Cook, I'll be glad to hear
18 from you and then anybody on behalf of Mr. Brown and Mr.
19 Brown himself.

20 MR. COOK: Yes, sir, Your Honor.

21 First of all, my client advised me that he's been
22 detained since the 16th, so he maintains that's two more
23 days than the State represented. And, Your Honor, in
24 regards to mitigation, my client is forty-three years old.
25 Your Honor knows a good bit about the background of my

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1 client just from the testimony in the trial. He's got a
2 fifth grade education, he's married, he has five children
3 under his care; his family is present in the courtroom
4 today.

5 He certainly wishes for Your Honor to consider not
6 imposing a life without parole sentence it being that - and
7 he understands entirely that the jury has found him guilty
8 but there are mitigating circumstances which perhaps don't
9 excuse the act, but the fact that he suffered from a
10 traumatic brain injury at the time of the commission of
11 this crime he's hoping Your Honor would take that into
12 consideration and perhaps give him a sentence other than
13 life without parole.

14 He's requesting - He realizes that there is a
15 mandatory minimum of fifteen years for the burglary charge,
16 that the attempted murder charge has a range from zero to
17 thirty, and he's asking Your Honor to consider giving a
18 fifteen year sentence in this matter. He also has some
19 severe medical problems. I beg the Court's indulgence for
20 one second.

21 (PAUSE.)

22 MR. COOK: He has hepatitis C, Your Honor, and it's
23 the bad form. He may not very well make it past fifteen
24 years. Having said that, Your Honor, I hadn't had a chance
25 to talk with the family but at this point if any of them

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1 would like to say anything?

2 I think his wife is indicating that she would.

3 THE COURT: All right.

4 MR. COOK: Her name is Tabitha Brown, Your Honor.

5 MS. BROWN: We have five children, sir.

6 (MS. BROWN CRYING.)

7 MS. BROWN: One has never even seen him, sir.

8 (MS. BROWN CRYING.)

9 MS. BROWN: I can't do it alone.

10 (MS. BROWN CRYING.)

11 MS. BROWN: Sir, I'm sorry. He's not a bad person,
12 Your Honor. We need him. I can't do without him. We're
13 gonna be homeless.

14 (MS. BROWN CRYING.)

15 MS. BROWN: My children have post traumatic stress
16 syndrome from this injury and so do I.

17 (MS. BROWN CRYING.)

18 MS. BROWN: It was a horrible night, sir, and I'm not
19 making excuses for anybody but we need my husband. My
20 children are gonna grow up without a father and if they do
21 that they're gonna end up in jail themselves. We have
22 nobody, sir.

23 (MS. BROWN CRYING.)

24 MS. BROWN: I don't know what to do. I'm sorry.

25 THE COURT: Thank you, Ms. Brown.

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1 MR. COOK: I'll digress from here, Your Honor.

2 THE COURT: Mr. Brown, anything you want to say?

3 MR. BROWN: Yes, sir, Your Honor. I apologize to the
4 Court. I wish I had took Mr. Springs offer to start with
5 you know. It ain't too much I can say. I miss my kids. I
6 wish I had took him up on his offer to start with. A lot
7 of the lawyers that I had if they'd come and sit down and
8 talk with me and what the evidence was. There was just so
9 much stuff. I don't know, Your Honor. I really did this.

10 It's true but, you know, you get hit in the head like
11 that you don't remember a lot of stuff. I don't remember a
12 lot of it. I apologize to the Court and any inconvenience.
13 I know you said something about the family said something
14 or something. I don't know that my family said anything
15 and I apologize If they did. Go ahead and do whatever you
16 want to do.

17 THE COURT: It's not so much what I want to do, it's
18 what I think is appropriate. Number One, under 17-25-45
19 (a) I don't believe I have a choice. Even if I had a
20 choice I think I would - Not think, I know that I would
21 give the same sentence based on prior record and the
22 heinous nature of the senseless of what happened in this
23 case.

24 I've marked and given you credit for time served. I
25 don't know how in the world it would make any difference

SENTENCING:

-383-

1 under the sentence that I'm imposing which is, Mr. Brown,
2 I'm sentencing you to two life without parole sentences on
3 each of these charges. Thank you.

4 MR. BROWN: Can I ask you one more thing?

5 THE COURT: Yes, sir.

6 MR. BROWN: How do I - How do I request - you know
7 like how do I go about you know getting someone I could
8 write to seek personal judgment for myself for being
9 assaulted?

10 THE COURT: You can talk to your attorney and that's
11 about all I can --

12 MR. BROWN: Nobody has never told me nothing. I mean
13 this man he admitted, he admitted in a statement of trying
14 to kill me and ain't nobody ever done anything to him. I
15 was just wondering. Nobody's ever told me -

16 THE COURT: I can't give you that kind of advice.

17 MR. BROWN: I ain't even -

18 (DEFENDANT, FLOYD BROWN, JUNIOR, ESCORTED FROM
19 COURTROOM.)

20 THE COURT: All right, we'll be at ease for about ten
21 minutes and then see if the Solicitor has anything else.
22 It's not even 3:30, not even in the shadow of the
23 afternoon. And I appreciate the courtesies of all three
24 attorneys in the manner in which you handled yourselves and
25 handled your case.

1 (COURT ADJOURNED IN THE MATTER OF STATE V FLOYD BROWN,
2 JUNIOR THURSDAY, JULY 11, 2013 AT 03:25 P.M..)

3 (END OF TRANSCRIPT OF RECORD.)
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 9th, 10th and 11th days of July, 2013.

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



Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 9-23 / 2013

County: York
 Date: July 9 - 11. 2013

VOIR DIRE/BATSON SHEET

Case No: 2012-GS-46-01471 Judge: John C. Hayes, III

State/Plaintiff: State State/Pl's Atty: Sol, EB Springs
Sol. Chris Jones

Defendant: Hubert Floyd Brown, Junior Defense Atty: Mr. Dave Cook

Court Reporter: Wanda Nelson

Juror #	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
200	Louis A. Shaffner	M	W				X
89**	Amanda M. Hall	B	F				X
25	Delores Biering-Hodge	F	W				X
134	Michael T. Love	M	W		X		
27	Candace B. Boyd	M	M			X	
105	Robert J. Holmes	F	W		X		
201	Shelly A. Shope	F	w				X
208	Lucinda D. Sutton	F	W			X	
243	Carolyn S Wood	F	B				X
42	Eileen F. Casey	F	W			X	
2	Kerri M. Adams	F	W				X
43	Christopher L. Centeno	M	W			X	
68	Susie S. Edwards	F	W				X
233	Belinda K. Wike	F	W		x		
211	Matthew D. Talford	B	M			X	
147	Erika S. Mejia	F	N/A				X
188	Tiffany S. Robbins	F	F		X		
36	Brandi L. Caminiti	F	W				X
116	Jordanie A. Kimbrell	F	W				X
35	Anna K. Burton	F	W			X	
77	James M. Friday	M	M			X	
157	Kelley S. Motley	F	W				X

73	Edward J. Feeley, III	M	W					X	
20	Daniel S. Beasley	M	W						X
67	Sharon I. Earle	F	W						X

**** Foreperson.**

In the Court's column, indicate who made the motion to strike the jurors for cause. C-Court; P-Plaintiff; D-Defense.

COOK LAW FIRM, L.L.C.

DAVID C. COOK, ESQ.

LAW OFFICES AT
300 NORTH WHITE STREET
P.O. BOX 1449
LANCASTER, SOUTH CAROLINA 29721

July 16, 2013

South Carolina Court of Appeals
Clerk of Court
1015 Sumter Street
Columbia, SC 29201

RECEIVED
JUL 18 2013
SC Court of Appeals

VIA US MAIL

Re: Hubert Brown v. State of South Carolina
Case No.: 2011-GS-46-00253

Dear Sir or Madame:

Please find enclosed the original and a copy of the Notice of Appeal for the above referenced case. If you would please clock both documents with your court and return the clocked copy to our office in the enclosed self-addressed, stamped envelope. If you should have any questions or concerns, please feel free to call our office. Thank you for your time and consideration.

Sincerely,

David C. Cook / gnc

David C. Cook

Encl.: Notice of Appeal

THE STATE OF SOUTH CAROLINA FILED-RECEIVED
In The Court of Appeals

2013 JUL 15 AM 10:00

APPEAL FROM YORK COUNTY
Court of General Sessions

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

John Hayes, III, Circuit Court Judge

Case No. 2011-GS-46-00253

Hubert Brown,

Appellant,

v.

State of South Carolina,

Appellee.

RECEIVED

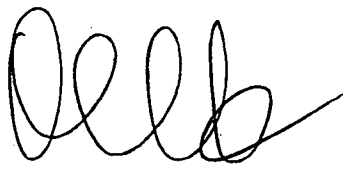
JUL 18 2013

SC Court of Appeals

NOTICE OF APPEAL

Hubert Brown appeals the Sentence of the Honorable John Hayes, III dated July 11, 2013 and filed with the Court on July 11, 2013.

July 12, 2013


David C. Cook
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Other Counsel of Record:
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Moss Justice Center
1675 York Highway
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PROOF OF SERVICE

Hubert Brown

v.

State of South Carolina

2011-GS-46-00253

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JUL 18 2013

SC Court of Appeals

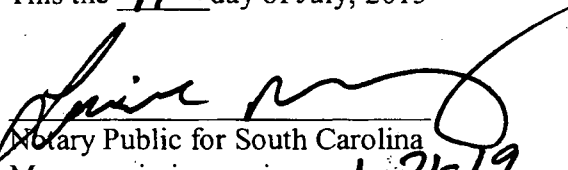
The undersigned hereby certifies that she is paralegal for David C. Cook, the attorney for the Plaintiffs in the within matter, and that the within Notice of Appeal was served upon the following persons by depositing a copy of same in the United States Mail, with sufficient postage annexed thereto, addresses as follows:

York County Solicitor Office
EB Springs
1675-1A York Hwy.
York, SC 29745

This 17th day of July, 2013

Gretchen Presson
Paralegal
Cook Law Firm, LLC
300 N. White Street
Lancaster, SC 29720
803-285-4848 phone
803-283-3680 fax

Sworn to and subscribed before me

This the 17th day of July, 2013
Notary Public for South CarolinaMy commission expires: 1-21-19

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUL 01 2014

SC Court of Appeals

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HUBERT FLOYD BROWN, JR.,

APPELLANT,

APPELLATE CASE NO. 2013-001543

FINAL BRIEF OF APPELLANT

CARMEN V. GANJEHSANI
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Appellant is entitled to a new trial where the Trial Court erred in instructing the jury that the charge of attempted murder does not require a specific intent to kill.

STATEMENT OF THE CASE

On September 13, 2012, Appellant Hubert Floyd Brown was indicted by the York County Grand Jury for (1) attempted murder and (2) first degree burglary. R. 264 - 267.

Appellant was tried before the Honorable John C. Hayes, III and a jury on July 9-11, 2013. R. 1. Appellant was represented by David C. Cook, and the State was represented by Assistant Solicitor E.B. Springs. Id.

On July 11, 2013, the jury found Appellant guilty as charged. R. 258, ll. 17-25. Pursuant to S.C. CODE ANN. § 17-25-45, the State had served notice of its intention to seek life imprisonment without the possibility of parole ("LWOP"). R. 259, l. 5 – 260, l. 9. Judge Hayes sentenced Appellant to two LWOP sentences on each of the charges. R. 262, ll. 2-3; R. 263, 266 (Sentencing sheets).

Appellant timely filed and served the Notice of Appeal on July 12, 2013.

STATEMENT OF FACTS

The charges against Appellant stem from an altercation he was involved in on the evening of June 8, 2012 with Michael Mahoney and Christopher Calvert. Mahoney had been a good friend of Appellant and had worked with Appellant at Rock Hill Industrial Pipe and Fabrication. R. 22, l. 9 – 23, l. 12. Appellant had been laid off of work at Rock Hill Industrial Pipe and Fabrication approximately six months prior to the night of the incident. R. 23, ll. 3-9. After Appellant was laid off from work, Mahoney hired Appellant to complete certain jobs around Mahoney's house, such as building a chicken coop and constructing a privacy fence. R. 23, ll. 13-25.

On June 8, 2012, Mahoney and Christopher Calvert worked a half day at Rock Hill Industrial Pipe and Fabrication. R. 28, ll. 6-10. Calvert also resided at Mahoney's home, along with Mahoney's wife, Amy, and another individual named Billy Odom who had passed away by the time of trial. R. 22, ll. 2-8. Mahoney and Calvert first went home after they got off of work for the day. Around dinnertime, the two decided to go to Hooter's restaurant. R. 28, l. 16 – 29, l. 6.

Around 9:00 p.m. that evening, while Mahoney and Calvert were still at Hooter's, Mahoney had a telephone conversation with Appellant. Mahoney asked Appellant if he wanted to join Mahoney and Calvert at the restaurant, but Appellant declined. Mahoney invited Appellant to meet them back at Mahoney's house a little while later, and Appellant agreed. R. 29, l. 12 – 30, l. 2.

Mahoney and Calvert left Hooter's shortly thereafter and returned home. Approximately five minutes after they arrived at the house, Appellant pulled up in his vehicle. R. 30, ll. 3-12.

Appellant's wife and children were with him when he went to Mahoney's house. R. 30, l. 25 – 31, l. 2; 70, ll. 4-8. Appellant got out of his vehicle and came over to talk to Mahoney. Appellant asked Mahoney if the two could go around back to talk by themselves. The two walked around to the back of the house to talk. R. 31, ll. 5-14.

According to Mahoney, the two eventually began talking about work, and Mahoney alleged that Appellant told him "you wouldn't have your job if I wasn't there to watch your back." Mahoney said Appellant got in his face and began pointing at him with his right finger. Mahoney testified that he pushed Appellant. R. 33, ll. 2-11. After Mahoney pushed Appellant, Mahoney alleged that Appellant began swinging at him and the two ended up tussling on the ground. R. 34, l. 12 – 35, l. 14.

Calvert had remained by Mahoney's truck when Appellant and Mahoney went around back to talk. R. 32, ll. 15-17. At trial, Calvert admitted that he had snorted cocaine in the bathroom of Hooter's earlier that evening. R. 68, ll. 15-18. Calvert also admitted to previous convictions of assault and battery of a high and aggravated nature and petty larceny. R. 83, ll. 6-12.

Calvert heard a commotion so he went around back. He saw Mahoney and Appellant wrestling on the ground and said Appellant had rolled on top of Mahoney. Calvert then hit Appellant on the head with a gear shift. R. 71, l. 2 – 72, l. 21.

Mahoney testified that after Calvert hit Appellant on the head, "a whole bunch of blood started gushing down [Appellant's] face. R. 36, ll. 7-8. Mahoney said Appellant was "completely dazed," and Appellant was "mumbling trying to get the words out of his mouth that he ha[d] been hit" R. 36, ll. 2-10.

Calvert admitted to hitting Appellant hard and testified that Appellant had come to after being hit. R. 73, ll. 2-11. Appellant had a severe laceration on his head and suffered a skull fracture that crossed both the left and right cerebral hemispheres. R. 91, l. 17; 94, ll. 17-18; 156, l. 20 – 157, l. 7. Dr. Carol Walser, a neurological psychologist, would later evaluate Appellant, and she testified at trial that Appellant had suffered a traumatic brain injury as a result of the blow to Appellant's head by Calvert. R. 97, ll. 19-25; 137, ll. 13-15; 138, ll. 4-6; 140, l. 9 – 141, l. 20; 143, ll. 23-25. Dr. Walser opined that immediately following the blow to Appellant's head, Appellant was not able to think clearly, speak clearly, and act in a rational way due to the head injury. R. 143, ll. 2-10; 144, ll. 3-4.

At trial, Mahoney testified that after Calvert struck Appellant on the head, Appellant eventually went back to his vehicle, pulled out a hatchet, and began chasing Calvert around the yard. R. 37, ll. 17 – 38, l. 7. Mahoney claimed that Appellant yelled he would kill them. R. 37, ll. 10-24. According to Mahoney, Appellant then went to his vehicle to retrieve a machete and began chasing Calvert again, at one point running through the house. R. 38, l. 22 – 39, l. 22. Mahoney testified that Appellant eventually got back in his vehicle. Mahoney saw the vehicle leave the driveway. R. 42, ll. 3-8.

Mahoney and Calvert went inside the house to the bathroom to wash up. R. 43, ll. 23-24. While they were washing up, Appellant allegedly appeared in the bathroom swinging the machete. R. 77, ll. 14-24. Calvert threw his hands up, and the machete hit his hand. His thumb was partially severed. R. 78, ll. 9-23.

Mahoney's wife, Amy Mahoney, also testified at trial as to her observation of the events on the evening of June 8, 2012. During the incident, she heard Calvert making threats to Appellant. R. 89, ll. 25 – 90, l. 10.

Appellant was later charged with attempted murder and first degree burglary. No charges were ever brought against Calvert for the severe head injury he inflicted upon Appellant.

ARGUMENT

Appellant is entitled to a new trial where the Trial Court erred in instructing the jury that the charge of attempted murder does not require a specific intent to kill.

The Trial Court charged the jury that “[a] specific intent is not an element of attempted murder but it must be a general intent to commit serious bodily injury.” R. 233, l. 25 – 234, l. 2. The jury later requested to hear the charge on attempted murder again. R. 249, ll. 14-19; R. 269 (Court’s Ex. 9). The Trial Court again repeated the charge that specific intent to kill is not an element of attempted murder but there must be a general intent to commit the serious bodily injury. R. 251, ll. 21-22. Following the re-charge, the solicitor informed the Trial Court that attempted murder requires a specific intent to kill and not just a mere general intent. R. 255, l. 21 – 256, l. 2. The Trial Court disagreed and declined to charge that attempted murder requires a specific intent to kill, stating: “Well that’s what I’ve got in my charge and – a specific intent to kill is not an element of attempted murder. There must be a general intent to commit serious bodily injury.” R. 256, ll. 3-6.¹

The Trial Court’s ruling was erroneous. Attempted murder is defined by statute as: “A person who, *with intent to kill*, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” S.C. CODE ANN. § 16-3-29 (emphasis added). This statute became effective on June 2, 2010 and replaced the

¹ While Appellant’s counsel did not also object, the issue is nonetheless preserved for this Court’s review where the Trial Court considered the issue and ruled upon it. Any further objection by Appellant’s counsel would have been futile. See State v. Alexander, 309 S.C. 495, 499 n.1, 424 S.E.2d 526, 529 n.1 (Ct. App. 1992). This Court does not require the parties to engage in futile actions to preserve issues for appellate review. Fettler v. Gentner, 396 S.C. 461, 469, 722 S.E.2d 26, 31 (Ct. App. 2012).

common law statute of assault and battery with intent to kill, formerly S.C. CODE ANN. § 16-3-620.

The statute defining attempted murder requires a specific intent to kill. In State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000), the South Carolina Supreme Court declined to recognize the offense of attempted murder which had not yet been codified. The court, in its reasoning, observed that an attempt to commit murder requires a specific intent to kill:

In general, “[a]ttempt is a specific intent crime.” 21 Am.Jur.2d Criminal Law § 176 (1998). “The act constituting the attempt must be done with the intent to commit that particular crime.” Id. See also Wharton's Criminal Law Attempt §§ 694-695 (1996) (“To constitute an attempt, there must be an intent to commit a particular crime ... Although a murder may be committed without an intent to kill, an attempt to commit murder requires a specific intent to kill.”) In the context of an “attempt” crime, specific intent means that the defendant consciously intended the completion of acts comprising the choate offense. In other words, the completion of such acts is the defendant's purpose. United States v. Calloway, 116 F.3d 1129 (6th Cir.1997). ***Attempted murder would require the specific intent to kill and conduct towards that end.*** ABIK requires an unlawful act of violence to the person of another with malice. Clearly, each offense has an element the other does not. However, simply because convictions for both offenses would not violate double jeopardy, we are not constrained to recognize the offense of attempted murder.

Sutton, 340 S.C. at 397, 532 S.E.2d at 285 (footnote omitted) (emphasis added).

By charging the jury that specific intent to kill was not an element of attempted murder, the Trial Court incorrectly stated the law to the jury. “To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). “A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues.” State v. Lee-Grigg, 374 S.C. 388, 405, 649 S.E.2d 41, 50 (Ct. App. 2007). A trial court commits reversible error

where it fails to give a requested charge on an issue raised by the evidence. Id. at 406, 649 S.E.2d at 50.

Appellant was prejudiced by the Trial Court's charge to the jury that attempted murder did not require a specific intent to kill. There was ample evidence presented at trial that despite Mahoney's and Calvert's allegations that Appellant was yelling that he was going to kill them, Appellant had just suffered a serious and traumatic head and brain injury that caused him to behave irrationally: R. 91, l. 17; 94, ll. 17-18; 97, ll. 19-25; 137, ll. 13-15; 138, ll. 4-6; 140, l. 9 – 141, l. 20; 143, ll. 2-10, 23-25; 144, ll. 3-4; 156, l. 20 – 157, l. 7. The State's expert, Dr. Richard Frierson, a forensic psychiatrist, agreed that if a person was operating under a specific delusion while making certain statements or engaging in certain actions, then that person would lack criminal responsibility. R. 174, ll. 23-25; 186, ll. 1-7; 188, ll. 5-7. Dr. Frierson further acknowledged that if someone stated their intent of what he or she planned to do, that person could be criminally irresponsible if his or her intent was based in delusion. R. 187, ll. 16-18. Thus, there was evidence that Appellant did not know what he was doing immediately after he suffered the blow to his head and that any statements he made or actions he took may have been based in delusion, thus negating any specific intent to kill.

Had the Trial Court correctly charged the jury that attempted murder required a specific intent to kill, the evidence presented at trial certainly could have supported a jury finding that Appellant lacked this requisite intent. Instead, the jury was informed that the law did not require a specific intent to kill for the charge of attempted murder.

It cannot be said, beyond a reasonable doubt, that a charge that Appellant must have specifically intended to kill Calvert would not have made a difference in the

outcome of the case. See Lee-Grigg, 374 S.C. at 414, 649 S.E.2d at 55 (“For the error to be harmless, [this Court] must determine beyond a reasonable doubt the error complained of did not contribute to the verdict obtained.”); see also State v. Buckner, 341 S.C. 241, 247, 534 S.E.2d 15, 18 (Ct. App. 2000) (“In making a harmless error analysis, [the Court’s] inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered.”). The Trial Court’s erroneous charge to the jury that attempted murder does not require a specific intent to kill mandates reversal in this case.

The Trial Court’s erroneous jury charge on attempted murder further requires reversal of Appellant’s convictions for both attempted murder and first degree burglary. While the erroneous jury charge only related to attempted murder, the indictment against Appellant for first degree burglary alleged that Appellant entered the dwelling with “the intent to commit the crime of assault on a person or persons inside the dwelling.” R.*. The attack on Calvert was therefore the underlying offense for the charge of first degree burglary.

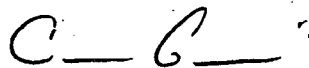
The jury may have based its guilty verdict for attempted murder on the erroneous jury charge. It may have then based its guilty verdict for first degree burglary on the premise that Appellant entered the dwelling to commit attempted murder. The two charges against Appellant are accordingly inextricably intertwined such that the erroneous jury charge on attempted murder could have influenced the jury’s decision to find Appellant also guilty of first degree burglary. The Trial Court’s correct statement of law on first degree burglary over an erroneous charge on attempted murder only fosters prejudice and confusion. See State v. Robinson, 306 S.C. 399, 401-02, 412 S.E.2d 411,

413 (1991). Appellant is therefore entitled to a new trial on both attempted murder and first degree burglary.

CONCLUSION

For the reasons set forth herein, Appellant Hubert Floyd Brown respectfully requests this Court to reverse his convictions for attempted murder and first degree burglary and remand for a new trial.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

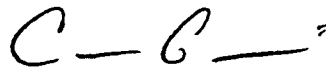
ATTORNEY FOR APPELLANT

This 1st day of July, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 1st, 2014



Carmen V. Ganjehsani
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Division of Appellate Defense
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from York County
John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HUBERT FLOYD BROWN, JR.,

APPELLANT.

CERTIFICATE OF SERVICE

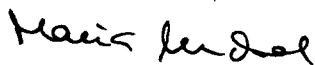
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer E. Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of July, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of July, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2013-001543

THE STATE,

Respondent,

v.

HUBERT FLOYD BROWN, JR.,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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<u>State v. Brown</u> , 402 S.C. 119, 740 S.E.2d 493 (2013) (citing Jean H. Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 57 (2nd ed. 2002))	8
<u>State v. Foust</u> , 325 S.C. 12, 479 S.E.2d 50 (1996)	10
<u>State v. Stone</u> , 285 S.C. 386, 330 S.E.2d 286 (1985)	7
<u>State v. Sutton</u> , 340 S.C. 393, 532 S.E.2d 283 (2000)	12
<u>State v. Todd</u> , 264 S.C. 136, 213 S.E.2d 99 (1975)	7, 8
<u>State v. Williams</u> , 266 S.C. 325, 223 S.E.2d 38 (1976)	7
<u>State v. Zeigler</u> , 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005)	9

Other Authorities:

http://www.judicial.state.sc.us/juryCharges/GS%20InstructionsJune2013.pdf	9
Rule 20(b), SCRCrimP	8
S.C. Code Ann. § 16-3-29 (Supp. 2013)	9

STATEMENT OF ISSUE ON APPEAL

Appellant's issue is not preserved for appellate review, but even if it is preserved, the trial court properly instructed the jury on attempted murder.

STATEMENT OF THE CASE

A York County Grand Jury indicted Appellant for attempted murder and first-degree burglary. (R.p.264-265; R.p.267-268.) On July 9-11, 2013, Appellant proceeded to trial before a jury. David C. Cook, Esquire, represented Appellant, and Assistant Solicitor E.B. Springs represented the State. The jury found Appellant guilty on both charges. (R. p.258.) The Honorable John C. Hayes, III, sentenced him to two sentences of life without parole pursuant to § 17-25-45. (R. p.261-262.)

Appellant filed a timely Notice of Appeal and then filed an amended Notice of Appeal, dated July 31, 2013, upon the direction of this Court.

STATEMENT OF FACTS

On June 8, 2012, Appellant went to the home of his friend and former coworker, Michael Mahoney, to confront him about Mahoney's keeping his job while Appellant had lost his, which led to Appellant punching Mahoney. (R. p.28, lines 3-8; R. p.31, lines 5-14; R. p.33, line 2-R. p.35, line 7.) They ended up wrestling on the ground. (R. p.35, lines 7-14.) While they were wrestling, Chris Calvert, who was living with Mahoney at the time, came up behind Appellant and hit him in the head with a gear shift to stop his attack on Mahoney. (R. p.71, line 21-R. p.73, line 1.) Appellant then grabbed a hatchet from the trunk of his vehicle and began chasing Calvert, telling him he was going to kill him. (R. p.74, lines 1-14.) At some point, Appellant put down the hatchet and got a machete out of his trunk and began to chase Calvert with it. (R. p.75, lines 5-10.) Appellant was bleeding profusely at this point, and Mahoney tried to convince him to go to the hospital. After threatening to kill both men, Appellant got in his car and started to drive away. (R. p.76, lines 10-19.) Mahoney and Calvert went inside Mahoney's house and began to clean themselves up in the bathroom, while Mahoney's wife called 911. (R. p.77, lines 2-12.) Suddenly, Mahoney's wife started screaming; Appellant was in the house with the machete. (R. p.77, lines 14-24.) Appellant swung the machete toward Calvert's head and Calvert threw his hand up. (R. p.78, lines 1-11.) The machete hit his hand, cutting his thumb off most of the way so that it was hanging by the skin. (R. p.78, lines 12-23.) When Deputy Mark Whitesides arrived on the scene in response to the 911 call, he talked to the witnesses and developed Appellant as a suspect. (R. p.19, line 18-R. p.20, line 4.) Police eventually arrested Appellant in Waltherboro, and he was charged with attempted murder and first-degree burglary. (R. p.92, lines 3-4; R. p.93, lines 5-10; R.p.264-265; R.p.267-268.)

Appellant proceeded to trial before the Honorable John C. Hayes, III, and a jury. The trial judge gave the standard charges on reasonable doubt, burden of proof, and presumption of innocence, as well as a charge on guilty but mentally ill. (R. p.222, line 18-R. p.225, line 9; R. p.239, line 8-R. p.240, line 18.) When the trial judge instructed the jury regarding the attempted murder charge, he stated:

A specific intent to kill is not an element of attempted murder but it must be a general intent to commit serious bodily injury. Intent means intending the results. Intent is something which actually occurs and it's something which is not accidental or voluntary.

Intent may be shown by acts and conduct[] of the defendant and other circumstances from which you may naturally and reasonably infer intent. Evidence of the character of the act, the character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injury may be considered in determining the intent with which the act was committed. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully committed an act a natural tendency of which is to destroy another's life.

(R. p.233, line 25-R. p.235, line 11.) At the completion of the jury charges, defense counsel asked the trial judge to cure his charges regarding the defense of guilty but mentally ill. (R. p.246, lines 9-15.) The trial judge agreed and brought the jury back in for a curative instruction. (R. p.246, line 16-R. p.248, line 3.) The trial judge specifically asked defense counsel, "And that's all you have?" to which he replied, "That's it, Your Honor." (R. p.246, lines 24-25.)

Later, the jury sent a note requesting to be recharged on attempted murder. (R. p.249, lines 14-19.) The trial judge recharged attempted murder, again stating, "A specific intent to kill is not an element of attempted murder but there must be a general intent to commit the serious bodily injury." (R. p.251, lines 21-23.) When the trial judge

asked whether there was anything from the State on the recharge, the following exchange took place:

[The State]: The first time you charged this morning I was daydreaming and I wasn't daydreaming this time and I heard you say that only a general and not a specific intent for attempted murder is required. I think all attempts require[] a specific intent and I don't think the legislature has given us any leeway on that.

The Court: Well that's what I've got in my charge and -- A specific intent to kill is not an element of attempted murder. There must be a general intent to commit serious bodily injury.

[The State]: I know it was general when we had ABWIK but when we went to attempted --

The Court: That's what I charged them earlier. If you find some law that says that that's not right, that's in my charge and it's in my charge under the heading of Attempted Murder under 16-3-29. I don't see a case cited. But you take exception to that part of the charge?

[The State]: I'm just concerned because the way I was taught all attempts are specific intent. And so when we went from ABWIK which is a general intent to attempted murder I'm afraid maybe we kicked in a specific intent.

The Court: You mean if I have a general intent to harm you and I harm Chris instead, or have a general intent to hurt everybody in here and the only person except Chris and he's the one I hurt and --

[The State]: Well that can be transferred intent.

The Court: Well you're on the record for that.

[The State]: All right.

The Court: Anything?

[Defense counsel]: **Nothing from the defense, Your Honor.**

(R. p.255, line 21-R. p.257, line 2.)

Ultimately, the jury found Appellant guilty on both charges, and Judge Hayes sentenced him to concurrent sentences of life without parole pursuant to § 17-25-45. (R. p.258, 261-262.)

ARGUMENT

Appellant's issue is not preserved for appellate review because he did not request a particular jury charge or object to the given charges, but even if it is preserved, the trial court properly instructed the jury on attempted murder.

Appellant argues the trial court erred in instructing the jury that the charge of attempted murder does not require a specific intent to kill. However, because Appellant did not object to the given jury instructions or request a particular charge, this issue is not preserved for this Court's review. Even if preserved, the trial court gave proper jury instructions according to the current and correct law of South Carolina.

Issue Preservation

Appellant argues the trial judge erred in charging the jury that attempted murder does not require a specific intent to kill. However, at trial, Appellant raised no objection to this charge in any form or fashion. See State v. Avery, 333 S.C. 284, 296, 509 S.E.2d 476, 483 (1998) (holding when an appellant fails to object to a jury instruction, the issue is not preserved for appeal); State v. Stone, 285 S.C. 386, 387, 330 S.E.2d 286, 287 (1985) (holding in order to preserve an objection to a jury charge, a defendant must object to the charge as given or request an additional charge when afforded the opportunity to do so); State v. Williams, 266 S.C. 325, 335, 223 S.E.2d 38, 43 (1976) ("The rule in this State is firmly established that failure to object to a charge, or failure to request an additional charge when the opportunity is afforded, constitutes a waiver of any right to complain on appeal of an alleged error in the charge."); State v. Todd, 264 S.C. 136, 139, 213 S.E.2d 99, 100 (1975) ("In cases too numerous to cite, . . . it has been held that the failure of a defendant to object to the charge as made or to request additional instructions, when the opportunity to do so is afforded, constitutes a waiver of any right

to complain of errors in the charge.”) (citations omitted); see also Rule 20(b), SCRCrimP (“Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires. Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule shall constitute a waiver of objection.”). Because Appellant failed to object, the issue is not preserved for appellate review.

In a footnote, Appellant suggests the issue is preserved because the trial court considered it and ruled upon it. However, this suggestion ignores well-established error preservation requirements. The only party that brought up the issue was the State, and our preservation rules make it clear that the party appealing must have been the one to object. “There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity.” State v. Brown, 402 S.C. 119, 125 n.2, 740 S.E.2d 493, 496 n.2 (2013) (emphasis added) (citing JEAN H. TOAL, SHAHIN VAFAI & ROBERT A. MUCKENFUSS, *Appellate Practice in South Carolina* 57 (2nd ed. 2002)). After the State commented to the trial court that specific intent was required, the trial court asked the State if it could “find some law that says that that’s not right.” At that point, defense counsel could have provided law to the trial court to support the claim that attempted murder required specific intent. However, he did nothing. Thus, no issue was “raised by Appellant.”

Moreover, even if this Court accepts Appellant’s notion that the State’s comments regarding specific intent somehow qualified as an “objection” on behalf of Appellant, it is important to note the comments came after the trial court’s recharge rather than in

response to the original jury charges. Thus, the “objection” was not made at the first opportunity. See Lundy v. Lititz Mut. Ins. Co., 232 S.C. 1, 10, 100 S.E.2d 544, 548 (1957) (“Appellant cannot now complain of the Court’s repeating substantially the same instructions to which counsel failed to object when given an opportunity to do so.”). Additionally, his argument that it would have been futile to make any “further objection” misconstrues the record. Appellant did not make *any* objection so he certainly could not have made a further one.

Merits

“Generally, the trial judge is required to charge only the current and correct law of South Carolina.” State v. Zeigler, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005). “A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.” Id.

Even if this Court finds the issue was preserved, the trial court properly instructed the jury on attempted murder. “A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” S.C. Code Ann. § 16-3-29 (Supp. 2013). The trial judge stated in his instructions that specific intent is not an element of attempted murder, which is an accurate statement of the law.¹ The word “specific” is not used in the statute. Because jury charges must be read as a whole to determine if they are correct, the entire charge on intent must be considered. Although the trial judge stated that “specific” intent is not an element of the crime charged, he went over “intent” extensively:

¹ Indeed, the trial court’s jury instruction came directly from the current version of the Criminal Charges Bench Book, which the judicial department updates each year and distributes to judges and that is now published on the S.C. Judicial Department’s website. <http://www.judicial.state.sc.us/juryCharges/GS%20InstructionsJune2013.pdf>.

Intent means intending the results. Intent is something which actually occurs and it's something which is not accidental or voluntary.

Intent may be shown by acts and conduct[] of the defendant and other circumstances from which you may naturally and reasonably infer intent. Evidence of the character of the act, the character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injury may be considered in determining the intent with which the act was committed. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully committed an act a natural tendency of which is to destroy another's life.

(R. p.234, line 2-R. p.235, line 11.)

The standard jury instruction for attempted murder is based on State v. Foust, 325 S.C. 12, 15-16, 479 S.E.2d 50, 51-52 (1996), which is still good law in South Carolina.

Although the cases indicate that **some** intent must be demonstrated before an accused may be convicted of ABIK, we do not believe they stand for the proposition that a **specific** intent to kill must be shown. We hold that it is sufficient if there is shown some general intent, such as that heretofore applied in cases of murder in this State. Accordingly, we hold that, in charging juries the law of ABIK, South Carolina trial judges should give a standard "intent" charge, but need not advise the jury that the defendant must have a **specific** intent to kill before he may be convicted of ABIK.

Id.

Even though Appellant did not object to any portion of the jury charges, he is not even arguing that the trial court erred in all its other instructions on intent. He only now objects to the trial judge saying that specific intent is not an element of attempted murder. When the whole charge on intent is considered, it is clear there was no prejudice to Appellant simply from the trial judge's statement that specific intent is not an element of attempted murder. Appellant argues he was prejudiced because if the jury had been told

it had to determine that Appellant had specific intent to kill in order to find him guilty of attempted murder, it may have acquitted. He contends there was ample evidence presented that he was operating under a delusion due to a traumatic brain injury and could not have had a specific intent to kill. However, due to the remainder of the intent language charged, the jury could still have considered: (1) whether his conduct was accidental or voluntary; (2) acts and conduct and other circumstances from which it could naturally and reasonably infer intent; (3) evidence of the character of the act, the character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injury; and (4) whether Appellant voluntarily and willfully committed an act a natural tendency of which was to destroy another's life. As noted above, Appellant had no objection to these additional charges, either at trial or now on appeal. Based on the considerations regarding intent, the jury could certainly have found Appellant guilty based on his conduct, the weapons he used, and the injury to the victim.

Furthermore, Appellant's argument that the first-degree burglary conviction must be reversed along with the attempted murder conviction is utterly without merit. As the trial court pointed out in its jury instructions, there were many crimes Appellant may have intended to commit while inside Mahoney's house and any one of them would support a guilty verdict on the burglary charge. The different crimes presented were: (1) entering while armed with a deadly weapon; (2) entering to cause physical harm to someone; (3) entering using a dangerous object; (4) entering while displaying what appeared to be a knife; or (5) entering in the nighttime. (R. p.230, lines 20-R. p.231, line 20.) Therefore, Appellant's argument that the trial court erred in his instructing the jury that no specific intent is required for attempted murder has nothing to do with the jury's

finding Appellant guilty of first-degree burglary. There is no way to now determine what the jury based its finding on. Thus, the first-degree burglary conviction should stand on its own.

Appellant cites language from State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000), in support of his argument, stating, “Attempted murder would require the specific intent to kill” Id. at 397, 532 S.E.2d at 285. Appellant then argues, “By charging the jury that specific intent to kill was not an element of attempted murder, the Trial Court incorrectly stated the law to the jury.” (App. Br. 10.) To the contrary, Sutton did not make specific intent an element of statutory attempted murder because it was decided prior to the codification of the crime in 2010. Thus, the trial court’s charge was not an incorrect statement of the law based on Sutton.

In sum, Appellant did not object to the trial court’s jury instructions regarding attempted murder. Any comments by the State to the recharge regarding specific intent did not operate as an objection on the part of Appellant. Therefore, the issue is not preserved for appellate review. Regardless, the trial court properly charged the jury based on the current and correct law. Accordingly, this Court should affirm the trial court.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

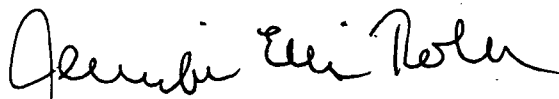
Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY:



Jennifer Ellis Roberts
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ATTORNEYS FOR RESPONDENT

June 19, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2013-001543

THE STATE,

Respondent,

v.

HUBERT FLOYD BROWN, JR.,

Appellant.

CERTIFICATE OF COUNSEL

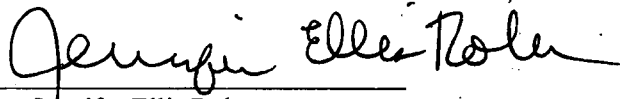
The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY:



Jennifer Ellis Roberts
Bar # 79818

RECEIVED

JUN 19 2014

SC Court of Appeals

Office of the Attorney General
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ATTORNEYS FOR RESPONDENT

June 19, 2014

STATE OF SOUTH CAROLINA

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Appeal from York County
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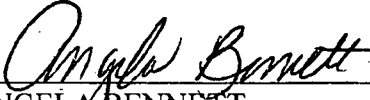
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 19th day of June, 2014.


ANGELA BENNETT
Administrative Assistant

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JUN 19 2014

SC Court of Appeals

Office of the Attorney General
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Hubert Brown, Appellant.

Appellate Case No. 2013-001543

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2014-UP-425
Submitted October 1, 2014 – Filed November 26, 2014

AFFIRMED

Appellant Defender Carmen Vaughn Ganjehehnsani, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson,
Assistant Attorney General Jennifer Ellis Roberts, both
of Columbia; and Solicitor Kevin Scott Brackett, of
York, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Brown*, 402 S.C. 119, 125 n.2, 740 S.E.2d 493, 496 n.2 (2013)

("There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity."); *State v. Stone*, 285 S.C. 386, 387, 330 S.E.2d 286, 287 (1985) ("[A] defendant's failure to object to the charge as made or to request an additional charge, when an opportunity has been afforded to do so, results in a waiver of his right to complain about the charge on appeal.").

AFFIRMED.¹

WILLIAMS, GEATHERS, and McDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 12, 2014

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Hubert Brown
Lower Court Case No. 2011GS4600253
Appellate Case No. 2013-001543

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Carmen Vaughn Ganjehsani, Esquire
Jennifer Ellis Roberts, Esquire
Kevin Scott Brackett, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF YORK

HUBERT F. BROWN #161888

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

(Please Print)

Submitted By: Tommy A. Thomas

Address: 7588 Woodrow Street

Irmo, SC 29063

SC Bar #: 005536

Telephone #: (803) 732-5507

Fax #: (803) 781-4226

Other:

E-mail: thomaslaw@me.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

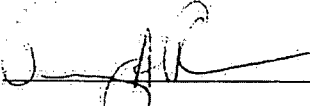
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Label (300)	☐ Claim & Delivery (450)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Other (299)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)		☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Other (399)	☐ Building Code Violation (460)
			☐ Other (499)
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☒ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☐ Worker's Comp (960)
			☐ Zoning Board (970)
			☐ Administrative Law Judge (980)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)
Special/Complex/Other			
☐ Environmental (600)	☐ Pharmaceuticals (630)		
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)		
☐ Medical (620)	☐ Other (699)		

Submitting Party Signature: 

Date: December 5, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

430
2014-CP-46-4219

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

HUBERT F. BROWN #161888)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR)

POST-CONVICTION RELIEF)

FILED-RECORDED
2014 DEC 31 PM 2:33
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4460 Broad River Rd., Columbia, SC 29210
2. Name and location of Court which imposed sentence York County General Sessions, 2 Congress Street, York, SC 29745
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Burglary 1st Degree - 12-GS-46-3185
 - (b) Attempted Murder - 12-GS-46-3187
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) July 13, 2013 - Life Sentence
 - (b) July 13, 2013 - Life Sentence
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. November 26, 2014
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2014-UP-425
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) _____
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 - (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? yes
 - (c) your sentencing? _____
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. David Cook, Esq., P.O. Box 1449, Lancaster, SC 29721
 - ii. Carmen Vaughn Ganjehsani, Esq., Appellate Defense, 1330 Lady St., Suite 401, Columbia, SC 29201
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Appeal
 - iii. _____
19. State clearly the relief you seek in filing this application:
New Trial
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA

County of Richland

)

)

)

VERIFICATION

I, Hubert F. Brown, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Hubert Floyd Brown

SWORN to and subscribed before me this 3rd
day of December, 2014

[Signature] (L.S.)
Notary Public

My Commission Expires: Nov 2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Hubert F. Brown, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Hubert Floyd Brown
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of December, 2014.

[Signature]
Notary Public

My Commission Expires: Nov. 2014

STATE OF SOUTH CAROLINA

COUNTY OF YORK

HUBERT F. BROWN #161888

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

437
IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014 - CP - 46 - 4219

(Please Print)

Submitted By: Tommy A. Thomas

Address: 7588 Woodrow Street
Irmo, SC 29063

SC Bar #: 005536

Telephone #: (803) 732-5507

Fax #: (803) 781-4226

Other:

E-mail: thomaslaw@me.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

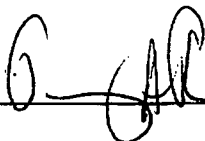
*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Other (299)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)		☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Other (399)	☐ Building Code Violation (460)
			☐ Other (499)
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☒ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☐ Worker's Comp (960)
			☐ Zoning Board (970)
			☐ Administrative Law Judge (980)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)
-
Special/Complex /Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Other (699)

Submitting Party Signature:



Date: January 25, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2014-CP-46-4219

HUBERT F. BROWN #161888)
)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent,)
 _____)

AMENDMENT TO APPLICATION
 FOR POST CONVICTION RELIEF

Pursuant to the Respondent's Return and Motion for More Definite Statement, the Applicant by and through his attorney, Tommy A. Thomas would respectfully amend and supplement his original application for Post-Conviction Relief filed December 31, 2014, by adding the following:

1. That the Applicant specifically re-alleges his claim of ineffective assistance of counsel.
2. That the Applicant is informed and believes that his Trial Counsel was ineffective for the following additional reasons:
 - a. That he did not point out inconsistencies in the Solicitor's opening statement. That these comments were not supported by any of the testimony or evidence presented at trial.
 - b. That the motive for the alleged assault was that the applicant had been laid off from his employment. That Counsel was ineffective for not bringing witnesses who could have testified that the Applicant had voluntarily left his employment.

c. That all of the information and evidence was not provided to Defense Counsel through Rule 5 and/or Discovery processes. That Counsel was ineffective for failure to pursue this information.

d. That counsel was ineffective for not objecting to lay witnesses identifying blood in their testimony. No proper foundation was laid for these witnesses to testify in regards to blood evidence.

e. That counsel was ineffective for failure to object to lay testimony introduced regarding the type of weapon or blade that caused the injuries to the victim.

f. That counsel was ineffective for not clarifying evidence regarding a text supposedly sent by the Applicant to the victim stating that he would finish the job.

g. That counsel was ineffective for failure to object to Detective Strickland's testimony regarding the elements of Burglary 1st and Self Defense.

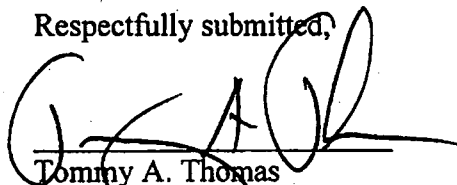
h. That counsel was ineffective for improperly advising the Applicant regarding the possibility of being found guilty at Jury Trial.

i. That counsel was ineffective for not properly consulting the Applicant regarding his case. Most of the case information was conveyed through the Applicant's wife and that Defense counsel very rarely met with the Applicant regarding preparation for trial.

j. That counsel was deficient in not properly presenting evidence to refute the allegations of the State that the Applicant had fled the scene.

- k. That counsel was ineffective for not challenging the State's evidence of the Applicant's bloody shirt. When in fact this shirt was stained by a cherry red juice drink.
- l. That counsel was ineffective for not properly challenging the expert testimony of Dr. Richard Friarson.
- m. That counsel was ineffective for not challenging the introduction of the 911 tape. This tape appeared to be adulterated and the beginning and end of this recording were either erased or modified in some manner.

Respectfully submitted,



Tommy A. Thomas
Attorney for the Applicant
Post Office Box 88
Irmo, South Carolina 29063
(803) 732-5507

January 22, 2015
Irmo, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

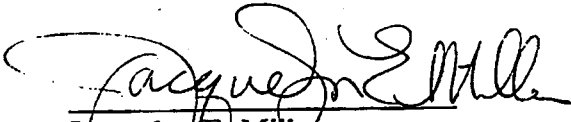
DOCKET NO.: 2014-CP-46-4219

HUBERT F. BROWN #161888)
)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent,)
 _____)

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of an Amendment to PCR Application with postage prepaid and the return address clearly shown on said envelope to Justin Hunter with the Office of the Attorney General at:

Justin Hunter, Esq.
 Office of the Attorney General
 P.O. Box 11549
 Columbia, SC 29211-1549


 Jacquelyn E. Miller
 Secretary to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

January 25, 2016

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Hubert F. Brown, #161888

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-46-4219

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET****Plaintiff's Attorney:**

Tommy A. Thomas, Esquire, Bar No. _____

Address:

PO Box 88 Irmo, SC 29063

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Justin J. Hunter, Bar No. 101254

Address:

PO Box 11549 Columbia, SC 29211-1549

Phone: 803-734-3737 Fax 803-734-4113

E-mail: _____ Other: _____

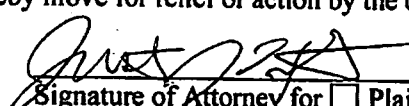
- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for ☐ Plaintiff / ☒ Defendant
July 8, 2015
Date submitted**SECTION III: Motion Fee**☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2014-CP-46-4219
Hubert F. Brown,	)	
S.C.D.C. No. 161888,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR
v.	)	A MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In making its Return to the application for post-conviction relief (PCR) filed by Hubert F. Brown (Applicant) on December 31, 2014, Respondent would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted by the York County Grand Jury for burglary- first degree (2012-GS-46-3185) and attempted murder (2012-GS-46-3187). Applicant was represented by David C. Cook, Esquire. Applicant proceeded to a jury trial before the Honorable John C. Hayes, III. Pursuant to S.C. Code Ann. § 17-25-45, the State served notice of its intention to seek life imprisonment without the possibility of parole. On July 11, 2013, Applicant was found guilty as charged and was sentenced to imprisonment for a term of life without the possibility of parole on each charge.

Applicant filed a notice of appeal and a direct appeal was perfected by Appellate Defender Carmen V. Ganjehehnsani of the South Carolina Commission on Indigent Defense, Division of Appellate Defense. After both parties briefed the issues, the South Carolina Court of

Appeals affirmed Applicant's convictions by unpublished opinion filed. State v. Wright, Op. No. 11-UP-363 (S.C. Ct. App. filed November 26, 2014).

II.

In his current application, Applicant alleges the following grounds for relief:

1. Ineffective Assistance of Counsel

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the York County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at

117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

In his application, Applicant alleges ineffective assistance of counsel. However, Applicant has wholly failed to set forth any "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of trial counsel's supposed errors. Respondent and trial counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices Respondent and trial counsel. Respondent respectfully submits that it is incumbent on Applicant to amend the application and provide specifics so that adequate preparation is possible. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. Rule 15(a), SCRCP.

V.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's trial counsel was ineffective.

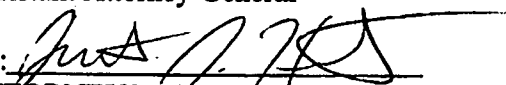
Respectfully submitted,

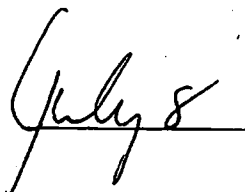
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

 2015

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS)

2014-CP-46-4219)

HUBERT F. BROWN, #161888)

Applicant,)

vs)

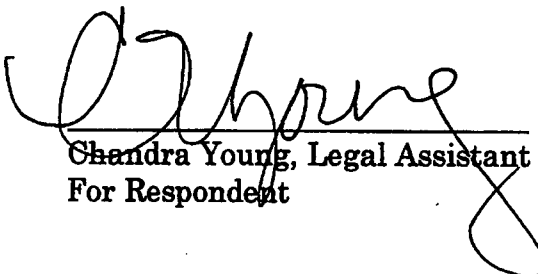
AFFIDAVIT OF SERVICE BY MAIL)

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss for A More Definite Statement in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas
PO Box 88
Irmo, SC 29063

DATED this 8th day of July, 2015.


Chandra Young, Legal Assistant
For Respondent