

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable John C. Hayes, Circuit Court Judge

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APR 26 2019
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTOINE LAKIDA HIGHTOWER,

APPELLANT

APPELLATE CASE NO. 2018-000822

RECORD ON APPEAL

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit
1675-1A York Highway
York, SC 29745

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
State's Exhibit 1 (hotel surveillance DVD) and State's Exhibit 3 (bodycam DVD)

State of South Carolina.,) In the General Sessions
) Court of York
)
)
)
)
) Case No. 2017-GS-46-04927
County of York.) 2017-GS-46-04928
) 2017-GS-46-04932
) 2017-GS-46-04932 (A)

State of South Carolina.,)
)
Plaintiff.,)
)
-vs-)
)
Antoine Lakida Hightower.,) Transcript of Record
) Motion To Relieve Counsel
)
Defendants.)
)
)

March 27, 2018
York, South Carolina

B E F O R E:

The Honorable Daniel D. Hall, judge.

Mr. Christopher Wayne Epting
Sixteenth Circuit Solicitor's Office
1675-1A York Highway
York, SC 29745
christopher.epting@yorkcountygov.com
(803) 628-3020
Attorney for the Plaintiff

Mr. Devon Russell Nielson
York County Public Defender's Office
1675-1E York Highway
PO Box 691
York, SC 29745
devon.nielson@yorkcountygov.com
(803) 656-5046
Attorney for the Defendant

ORIGINAL

Wanda S. Nelson, CVR-M
Circuit Court Reporter
To The Honorable Daniel D. Hall
Sixteenth Judicial Circuit
Union and York Counties

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called to testify.

Court Reporter's Certificate Page P.12

I N D E XE X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF STATE VERSUS
2 ANTOINE LAKIDA HIGHTOWER TUESDAY, MARCH 27, 2018 AT 02:35
3 P.M.)

4 SOLICITOR EPTING: Can we have Hightower next please.

5 (DEFENDANT ANTOINE HIGHTOWER, BLACK MALE, ENTERS
6 COURTROOM.)

7 SOLICITOR EPTING: May it please the Court, your
8 Honor?

9 THE COURT: Yeah, Solicitor.

10 SOLICITOR EPTING: Your Honor, before the Court today
11 is Antoine Hightower represented by Devon Nielson of the
12 Public Defender's Office. We're here today to put a number
13 of matters on the record.

14 Mr. Hightower was noticed for trial for the first term
15 in April. He has currently still -- still valid an offer
16 of a cap of twenty on his charges. That offer is set to
17 expire Friday of this week. It's my understanding that Mr.
18 Hightower may have a motion he wishes to put before the
19 Court.

20 THE COURT: All right. Thank you.

21 Mr. Epting, you represent Mr. Hightower?

22 MR. NIELSON: Mr. Nielson, but yes, sir.

23 THE COURT: I'm sorry. Mr. Nielson, you represent Mr.
24 Hightower?

25 Mr. Nielson: I do, your Honor.

1 THE COURT: And what type of a matter does he wish to
2 address the Court?

3 Mr. Nielson: I would like to speak to that before we
4 get to him as well. Mr. Hightower has waffled back and
5 forth on whether or not he wants me as his attorney. We've
6 had multiple conversations about that issue as far as
7 whether or not he needs to come before a judge and ask for
8 me to be relieved and try to get a new attorney appointed.

9 I do not agree that he needs a new attorney in this
10 case. I think most of his dissatisfaction comes in he
11 doesn't like the offer that he has been presented, but does
12 not also want -- does not wish to go to trial.

13 I have told him that his trial will go forward April
14 9th whether I am relieved or whether I am not relieved. I
15 have told him that if he gets that new attorney will have
16 to be prepared to try this very serious -- these very
17 serious offenses on April 9th, and I have given him counsel
18 as to what he should do with the offer that's been given to
19 him.

20 I am just asking your Honor to speak with him and let
21 him air out whatever grievances he has and decide whether
22 or not they're legitimate enough for me to be relieved, but
23 I do not join him in asking to be relieved in this case.

24 THE COURT: Okay. All right. Mr. Hightower, how old
25 are you?

1 MR. HIGHTOWER: I'm 40 years old, sir.

2 THE COURT: How far did you go in school?

3 MR. HIGHTOWER: A GED.

4 THE COURT: Have you ever been treated for any mental
5 or emotional disability?

6 MR. HIGHTOWER: Yes, sir, I am.

7 THE COURT: Tell me about that.

8 MR. HIGHTOWER: I had kind of diagnosed back in 2000
9 with paranoid schizophrenic.

10 THE COURT: All right. Are you on any kind of
11 medication today?

12 MR. HIGHTOWER: Yes, sir, I am.

13 THE COURT: What type of medication?

14 MR. HIGHTOWER: Seroquel.

15 THE COURT: I'm sorry.

16 MR. HIGHTOWER: Seroquel.

17 THE COURT: Seroquel?

18 MR. HIGHTOWER: Yes, sir.

19 THE COURT: And have you been receiving that
20 medication while you've been in the York County Detention
21 Center?

22 MR. HIGHTOWER: Yes, I have.

23 THE COURT: And you've been treated through Catawba
24 Mental Health?

25 MR. HIGHTOWER: Not since I been in here, no.

1 THE COURT: But you've been prescribed medication?

2 MR. HIGHTOWER: Yes, sir.

3 THE COURT: The fact that you're taking Seroquel for
4 some schizophrenia, does that affect your ability to
5 understand what you're doing here?

6 MR. HIGHTOWER: No, sir.

7 THE COURT: You know what you're doing here today?

8 MR. HIGHTOWER: I know exactly what I'm doing.

9 THE COURT: All right. I'll be glad to hear from you
10 about -- Well let me do this first. You've heard what the
11 State has indicated that what their offer is in the case,
12 and what Mr. Epting has indicated, stated, is that they
13 have offered a cap of twenty years.

14 What's the charges?

15 SOLICITOR EPTING: He's charged with multiple counts
16 of kidnaping, assault and battery of a high and aggravated
17 nature; burglary first, multiple counts of possession of a
18 weapon during a violent crime.

19 THE COURT: So what they're offer is is that if you
20 plead guilty, that the judge would give you anywhere from
21 zero to twenty years. Now that's their offer. They're not
22 required by law to give an offer. Sometimes folks believe
23 that not only are they required to make an offer, but if
24 you ask them for a counter offer then they're required to
25 make a counter offer.

1 That's not the law. They don't have to make an offer.
2 The solicitor does not have to make a counter offer by law.
3 They can set the trial date; they get to make that
4 determination. They can -- They have the right under the
5 law to say when an offer expires. That means it's no good
6 any more. What he's told the Court today is that after
7 Friday there would be no offer and that your case would be
8 scheduled for trial April the 9th.

9 And that they will be ready for trial then and you
10 would face the full amount of each of those sentences --
11 each of those charges if you're convicted. On the other
12 hand if you have a trial, and a jury could very well find
13 you not guilty, and that would be the end of it.

14 So, do you to understand all of that.

15 MR. HIGHTOWER: Yes, sir, I do.

16 Mr. Nielson: Your Honor, may I interrupt for just a
17 second?

18 THE COURT: All right.

19 Mr. Nielson: You did just tell him that he's facing
20 zero to twenty. The burg one carries a minimum of fifteen.

21 THE COURT: I'm sorry.

22 Mr. Nielson: I want to make sure that he doesn't go
23 back there and think he's getting zero to twenty.

24 THE COURT: I didn't hear the burg. I heard the
25 kidnaping. All right, so the burglary first degree you

1 have one of those charges. It's a mandatory fifteen-year
2 sentence. So really what you're looking at through their
3 offer, and I'm sure Mr. Nielson has explained this to you,
4 is that you're looking at somewhere between fifteen and
5 twenty years, if, you accepted the offer.

6 Did you understand that?

7 MR. HIGHTOWER: I didn't understand that part. But he
8 was -- I believe was trying to make me just take the
9 fifteen and it's my first time being in trouble down here.

10 THE COURT: All right. Well, we'll come back to this
11 in a minute. And so, what he's talked to you about, and
12 what he's conveyed to you, that's between you and him as
13 far as where we are today.

14 MR. HIGHTOWER: Right. Okay.

15 THE COURT: I'll be glad to hear you on whether you
16 desire for Mr. Nielson to keep representing you or you
17 rather represent yourself.

18 What does that mean?

19 MR. HIGHTOWER: I don't want to represent myself. I
20 would like to be appointed a new lawyer.

21 THE COURT: All right. Well tell me why you want a
22 new lawyer.

23 MR. HIGHTOWER: Because I seen -- Since I been coming
24 in here and I been seeing other guys with their cases I
25 have never heard nobody get that first plea to take. He's

1 trying to tell me that I need to take fifteen years and I
2 don't believe I deserve fifteen years. All I did was get
3 into a fight and the situation got out of hand, and the
4 guys locked up right now, so why should I have to sign for
5 fifteen years?

6 THE COURT: Well, I don't know anything about the
7 facts of the case and we're not here to know anything about
8 the facts.

9 MR. HIGHTOWER: I just speak to my case --

10 THE COURT: Don't tell me anything about your case.
11 That's for your protection.

12 MR. HIGHTOWER: All right.

13 THE COURT: I do know and I can tell you that
14 sometimes it's dangerous to compare everybody's case as
15 just alike back there in jail. Every case is completely
16 different. Any other reason why you want to get rid of Mr.
17 Nielson?

18 MR. HIGHTOWER: He's not -- I don't feel like -- It's
19 a conflict of interest. He's not fighting for me. He's
20 just wanting me to sign my life away and I'm forty years
21 old. Fifteen years is --

22 THE COURT: All right. Well here's the thing.

23 Mr. Nielson works for our Public Defender's Office,
24 they are one of the best criminal defense law firms in this
25 county. He's got a lot of experience, he's tried lots of

-11-

1 cases, he's tried cases in front of me in another county.

2 He's very competent. And at this point he's indicated
3 that he believes that he can effectively represent you, and
4 I find that there is not a basis by which you would be
5 relieved.

6 Here's the thing. The law says that if you cannot
7 afford an attorney you will be appointed a lawyer and
8 that's what's happened. The law does not require you to be
9 appointed another lawyer, or a lawyer of your choosing.

10 Do you understand that?

11 MR. HIGHTOWER: I understand.

12 THE COURT: All right. That concludes this hearing.

13 SOLICITOR EPTING: Thank you, your Honor.

14 -- END OF TRANSCRIPT OF RECORD --
15
16
17
18
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25

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 27th day of March, 2018.

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

Wanda Nelson

Wanda S. Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: July 3 / 2018

State of South Carolina
County of York

Court of General Sessions,

State of South Carolina	)	
	)	
	)	Transcript of Record
v.	)	2017-GS-46-04927
	)	2017-GS-46-04928
Antoine Lakida Hightower	)	2017-GS-46-04932
	)	2017-GS-46-04932(a)
<u>Defendant.</u>	)	

April 4, 2018
York, South Carolina

B E F O R E:

The Honorable Daniel D. Hall, Judge.

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

Chris Epting, Assistant Solicitor
Attorney for the State

Devon Nielson, Assistant Public Defender
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E XWITNESSPAGE

No Witnesses.

E X H I B I T SNO.DESCRIPTIONID.EVD.

No Exhibits.

- - -

P R O C E E D I N G S

* * * * *

MR. EPTING: Can we have Antoine Hightower next, please?

(The defendant was personally present, together with counsel.)

THE COURT: Was Mr. Hightower supposed to be last week?

MR. NIELSON: He was, Your Honor.

MR. EPTING: Yes, Your Honor.

THE COURT: Okay. All right.

MR. EPTING: May it please the Court?

THE COURT: Yes, sir.

MR. EPTING: Your Honor, I'm Chris Epting, E-p-t-i-n-g, on behalf of the State.

In front of the Court today is Antoine Hightower represented by Devon Nielson of the Public Defender's Office.

My understanding is there are two motions before Your Honor. One for a continuance. Mr. Hightower is on the trial board for next week on the backup board, and also a motion to have a mental evaluation.

Your honor, as to the continuance motion, the State wishes to put on the record that we noticed

1 this case for trial on March 15th. We -- we're
2 opposing that motion. We believe that we -- we --
3 that we will be -- we should be able to try this
4 case next week. It's a relatively serious case, but
5 from a factual perspective, at least from the
6 State's view, not terribly soon -- not terribly
7 complicated.

8 As to the mental evaluation notice, Your Honor,
9 we'd ask that you not grant that. We don't -- we
10 have -- up until today, we've heard no reason to
11 doubt Mr. Hightower's competency, and we believe
12 this is a delay tactic to try to push the trial off
13 even further.

14 THE COURT: All right. Thank you. All right.
15 Mr. Nielsen, I'll be glad to hear from you.

16 MR. NIELSON: Yes, Your Honor.

17 THE COURT: Let's do this, let's talk about the
18 mental evaluation first.

19 MR. NIELSON: Okay. That was the reverse order
20 that I was going to go, but that's fine.

21 That rule -- the -- Mr. Hightower came before
22 Your Honor last Tuesday, March 27th, and he told
23 Your Honor that he had -- he had suffered throughout
24 his lifetime from schizophrenic episodes. He --
25 that was -- that was the first I believe I've

1 heard -- heard the -- of these mental disorders, but
2 at this time I believe it's in my duty to pursue any
3 mental health disorder that my client claims he has.

4 He does say that he has a list of places that
5 he can give me of places where he's been treated for
6 this. I do not have that information yet, but I am
7 working on ascertaining that.

8 My -- my paralegal is working on putting
9 together an evaluation -- an evaluation order for
10 Your Honor should you be willing to sign it.

11 I believe that -- that if he was going through
12 a schizophrenic episode and he tells me it's part of
13 what he's on disability for is because of that
14 issue, then it's in the -- it's -- it's in -- I
15 don't believe it's my discretion to not ask Your
16 Honor to allow him to go through the process of at
17 least being evaluated and having -- having that
18 process done.

19 I -- I know that at times that that process has
20 been fairly lengthy. The last couple that I've sent
21 down have been done fairly quickly, within about a
22 month or so period of time. I don't know that it
23 needs to be an extremely lengthy period of time.
24 This is not a delay tactic in any way. My client
25 just wants to make sure that he has every

1 opportunity afforded to him to get himself -- to --
2 to prepare his defense in the best way we possibly
3 can for this case.

4 He understands that this will not open up any
5 kind of plea offer for him. He let the plea offer
6 expire end of last week, and this will not open that
7 back up. He understands that. We're just asking
8 Your Honor to consider allowing him to be evaluated
9 by the Department of Mental Health before we
10 proceed -- proceed to trial.

11 THE COURT: Do you have any objections to me
12 asking him some questions about his mental state?

13 MR. NIELSON: No, Your Honor.

14 THE COURT: All right. Mr. Hightower, how old
15 are you?

16 THE DEFENDANT: Forty years old, sir.

17 THE COURT: How far did you in school?

18 THE DEFENDANT: GED.

19 THE COURT: Have you ever been treated for any
20 mental disability?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: When?

23 THE DEFENDANT: I've been treated pretty much
24 all my life. It started maybe at the age of 15.

25 THE COURT: Fifteen?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: When was the last time you saw a
3 doctor for a mental?

4 THE DEFENDANT: 2016.

5 THE COURT: 2016?

6 THE DEFENDANT: End of 2016.

7 THE COURT: Are you normally on any kind of
8 medication?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What -- what is that?

11 THE DEFENDANT: I'm on Seroquel. And I want to
12 say it's got two names, Cogentin and Risperdal.

13 THE COURT: All right. And are you on that
14 medication now?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: And that's being administered to
17 you by -- by the jail?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And your lawyer indicated that
20 you're on disability.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: How much do you get for your
23 disability?

24 THE DEFENDANT: 735.

25 THE COURT: 735?

1 THE DEFENDANT: Yes.

2 THE COURT: And are you the payee or is
3 somebody else the payee?

4 THE DEFENDANT: I'm the payee.

5 THE COURT: You're the payee?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: How far did you go in school?

8 THE DEFENDANT: GED, sir.

9 THE COURT: What's the last job you had?

10 THE DEFENDANT: I was working at Ruby Tuesday,
11 but they had stopped working me because of my mental
12 situation.

13 THE COURT: And do you live -- do you live --
14 who do you live with?

15 THE DEFENDANT: Right now, I don't live with
16 anyone. I'm homeless.

17 THE COURT: Where did your check go?

18 THE DEFENDANT: It was direct deposited into my
19 bank.

20 THE COURT: It was direct deposited to your
21 bank?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you have any children?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How many?

1 THE DEFENDANT: I have three.

2 THE COURT: Three?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. I'm going to deny the
5 motion for a mental evaluation. I find that he
6 certainly has obtained a GED. He appears to be
7 properly medicated. He understands what's going on
8 here in court today.

9 There doesn't appear to be any basis by which
10 the Court believes that his ability to understand
11 the difference between right and wrong at the time
12 of the occurrence was affected by his mental state.
13 There's no basis for that.

14 You certainly appear to be able to assist and
15 understand the Court and assist his lawyer in
16 preparation for trial. In fact, his lawyer has
17 indicated that they have discussed the -- his
18 options, that he has clearly rejected any plea
19 offer.

20 This is the second time he's been in front of
21 the Court. He was in front of this Court last week.
22 I was able to observe the same apparent ability to
23 clearly understand what he's doing. He communicated
24 with the Court. He's very -- is articulate, and so
25 I find no basis by which this Court will order a

1 mental evaluation.

2 All right. So now let's move to the motion for
3 continuance.

4 MR. NIELSON: Your Honor, if I can back up ---

5 THE COURT: Yes.

6 MR. NIELSON: --- one step quickly.

7 I would like to just put on the record that at
8 the time of the occurrence, you did not ask him any
9 questions about that, and he was not on his med --
10 medications at the time of the occurrence. And I
11 just want to make sure that you're considering that
12 as part of your denial of the mental health
13 evaluation.

14 THE COURT: Well, I mean, I -- yeah, I -- what
15 I put on the record that he, through his lawyer, has
16 indicated that he was not on his medication at the
17 time of the occurrence; however, again, there
18 doesn't appear to be any basis by which that -- that
19 in and of itself would merit an evaluation as far as
20 his ability to know the difference between right and
21 wrong, criminal responsibility at the time.

22 I will note that court judges have been just
23 very recently cautioned on being -- on signing an
24 evaluation for mental evaluations, that there needed
25 to be a -- that we needed to be very -- I think in

1 this particular case, the hearing is proper and in
2 not to rush to just sign mental evaluations, and I
3 find him to be -- there's no need for that in this
4 particular case.

5 All right. Let's talk about his motion for
6 continuance.

7 MR. NIELSON: Thank you, Your Honor.

8 The trial board came out yesterday. I
9 understand that I was noticed for trial starting
10 tomorrow -- or starting next week on this case, and
11 it has been about a month since I was given notice.

12 I have notice of about ten cases in my office,
13 Your Honor, that were all noticed for next -- that
14 are all currently under trial notice. Some that are
15 in different level of preparation on each of those
16 cases.

17 And I have a case that is currently set
18 starting for trial on Tuesday and -- with another
19 client that is a domestic violence first degree case
20 that is a serious offense. It is a -- it is an
21 offense that's going to take some time in preparing.

22 And then I was also put as backup trial for
23 Mr. Hightower. This -- Mr. Hightower's case is a
24 violent offense. It's a serious offense. It
25 carries a mandatory minimum 15-years in prison and I

1 don't want to treat it lightly. And I believe that
2 I do not have the ability to finish my preparations
3 on both of those two cases in a week's time.

4 The -- the Solicitor's Office has -- has 15
5 lawyers in our office, plus the entirety of the
6 private bar, which they choose to put a backup case
7 in front of off the trial docket. They are the ones
8 who set the trial docket.

9 I don't know why two -- two serious offense and
10 this case being a most serious offense cases need to
11 be prepared by the same attorney. They were on --
12 their office was under notice that the same attorney
13 was handling both those matters. They knew that
14 when they put them on the trial board.

15 I am simply asking for one more term so that I
16 can handle the case that's actually on the trial
17 board and is scheduled for trial and have a
18 continuance for one court term on Mr. Hightower's
19 case.

20 THE COURT: All right. And, Solicitor, would
21 you -- do you wish to be heard on his motion for --
22 on his -- on the motion to continue?

23 MR. EPTING: Very briefly, Your Honor.

24 In my discussion with Mr. Nielsen based upon
25 our discussions of the case, I believe that he has a

1 fairly good grasp of what potential defenses are out
2 there. And as to this potentially being a motion
3 to -- to push the trial off, a delay tactic, I do
4 not mean to impute that Mr. Nielson. I believe
5 that's mostly on the part of his client. I just
6 want to state that.

7 Your Honor, we do have other trial -- I do
8 personally have other trials scheduled for that
9 court term.

10 THE COURT: All right. Well, I'm going to
11 grant the motion to continue and ask that it be
12 scheduled for the next term, which would be
13 April 23rd. Judge Sprouse and Judge Hayes, John
14 Hayes, will be holding court here, but I'll grant
15 the motion for continuance. We will continue to the
16 week of the 23rd.

17 MR. NIELSON: Thank you, Your Honor.

18 MR. EPTING: Thank you.

19 THE COURT: Thank you.

20 (The proceedings concluded at 11:10 a.m.)

21 * * * * *

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF YORK

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for York County, South Carolina, on the 4th day of April, 2018.

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

July 6, 2018

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	GENERAL SESSIONS COURT
COUNTY OF YORK	)	2017-GS-46-4927
	)	2017-GS-46-4928
	)	2017-GS-46-4932
	)	2017-GS-46-4932A
	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	PARTIAL
vs.	)	TRANSCRIPT OF RECORD
	)	
ANTOINE LAKIDA HIGHTOWER,	)	
DEFENDANT.	)	
_____	)	

April 23 - 24, 2018
 Rock Hill, South Carolina

B E F O R E:

THE HONORABLE JOHN C. HAYES, III, JUDGE.

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

CHRIS EPTING, ESQ.
 DAN PORTER, ESQ.
 Attorney for the Plaintiff

DEVON NIELSON, ESQ.
 MARK MCKINNON, ESQ.
 Attorney for the Defendant

SHIRLEY BROOM
 Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
 (DW) - Denotes Defense Witness

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All Exhibits were retained by the Clerk of Court for York County.

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

MR. EPTING: May it please the Court?

THE COURT: Yes, sir.

MR. EPTING: We have Mr. Hightower.

THE COURT: Can I see both counsel up here?

(Bench conference.)

MR. EPTING: May it please the Court?

THE COURT: Yes, sir.

MR. EPTING: Your Honor, before the Court today is the matter of Antoine Lakida Hightower. We are proceeding on his charges to trial this week on indictments 2017-GS-46-04927, that's one count of burglary in the first degree, 2017-04928, that is one count of kidnapping, and 2017-04932 and 04932A, that's one count of assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime.

Your Honor, it's my understanding that based upon scheduling, we are going to have a Biggers and Denno hearing this morning and we will start with the Defendant's pretrial tomorrow morning and proceed with the trial in chief for the remainder of the day. It is the State's belief that we would have all of our witnesses called and done by the end of the day Tuesday.

THE COURT: Okay.

1 MR. EPTING: Our understanding based upon the
2 discussion in chambers is the Defense does have a motion
3 regarding the statements that the State may intend to
4 introduce at trial and, also, a matter regarding possible
5 suggestive identification procedures. We would seek the
6 Court's permission to go forward on both the Biggers and
7 Denno hearing at this time.

8 THE COURT: All right. You may proceed.

9 MR. EPTING: Thank you, Your Honor.

10 Your Honor, the State calls Detective Grady Gonzales.

11 GRADY GONZALES,

12 after being duly sworn, testified as follows:

13 THE WITNESS: I do.

14 DIRECT EXAMINATION (IC)

15 BY MR. EPTING:

16 Q Good morning, Detective.

17 A Morning, sir.

18 Q Were you involved in the investigation involving the
19 Defendant, Mr. Hightower, for the charges mentioned in court
20 earlier?

21 A I was.

22 Q At some point during this investigation, did you have
23 the opportunity to speak with the Defendant?

24 A I did.

25 Q Could you relate to the Court the circumstances

1 surrounding that conversation?

2 A I could, sir. On the night in question, I was the
3 on-call CID detective for the sheriff's office. I was
4 contacted by the duty sergeant, Sergeant Clay Brown. I
5 responded to the Hillside Inn in York -- or excuse me, in
6 Rock Hill, it's in the jurisdiction of the County of York,
7 in reference to a burglary, some type of assault.

8 When I first arrived on scene, I spoke to Sergeant
9 Brown briefly. They had indicated to me that they had
10 located the suspect nearby, at which time, he was in a
11 county vehicle. I walked over to the vehicle just to
12 introduce myself and to check on his wellbeing. I did not
13 interview him or question him at that time. And I went on
14 and concluded with my investigation while on scene. Then I
15 went to the hospital and spoke to the victim and did my
16 duties, which later, I concluded.

17 Q Going back to your conversation with Mr. Hightower back
18 at the hotel, what, if anything, did you say to him?

19 A I just checked on his wellbeing, was he hurt, did he
20 need any medical attention or anything like that.

21 Q And your testimony is he was in the back of the patrol
22 car?

23 A Yes, sir, he was.

24 Q Was he in handcuffs?

25 A He was.

1 Q And after you asked you how he was and whether he was
2 hurt or anything like that, did he say anything to you?

3 A Yeah, he said that he didn't need any medical help. He
4 said, Sir, I got a question for you. He said, If somebody
5 takes something from you and you get it back, how do you get
6 charged with it?

7 Q What, if anything, did you say in reply to that?

8 A I just told him that I'd like to speak with him at a
9 later time, but I wasn't prepared to speak with him right
10 then, but I would come and speak with him later.

11 Q Were you aware at that point that he had been read his
12 Miranda Rights?

13 A No, sir, I was not.

14 Q Did you offer him anything to get him to make that
15 statement?

16 A No, sir.

17 Q Did you deprive him of anything to get him to make that
18 statement?

19 A No, sir.

20 Q Any threats?

21 A No.

22 Q Did any officers have their guns out at the time he was
23 making that statement?

24 A No, sir.

25 Q Did you ask him any questions that caused him to make

1 that statement?

2 A No.

3 Q And your testimony indicates you then went to the
4 hospital; is that correct?

5 A I did, sir.

6 Q Who did you meet with at the hospital?

7 A The victim, Tymel.

8 Q Is that Tymel McCullough?

9 A Yes, sir.

10 Q Where was Tymel?

11 A He was in the ER, sir, receiving medical treatment for
12 his injuries he sustained during the assault.

13 Q Did you have an opportunity to speak with him?

14 A I did.

15 Q What was his state of mind?

16 A Obviously, he was injured. He was pretty coherent. He
17 was able to make complete sentences, somewhat delayed, you
18 know, given his injuries. I believe a lot of it was from an
19 adrenaline dump from the excitement from everything that had
20 transpired at the hotel.

21 Q What, if anything, to your knowledge, had Tymel told
22 people regarding the description of his assailant?

23 A He indicated to me that the person that had done this
24 to him was a very tall, well-built black gentleman, had
25 dreadlocks and had some type of eye injury or distinct eye.

1 Q Did he indicate to you that he was able to see his
2 assailant's face?

3 A He did.

4 Q When did he say he saw the assailant's face?

5 A During the conversation, he said that he knew the guy
6 that was responsible for this.

7 Q In your conversation, did he indicate to you that he
8 knew Mr. Hightower from prior instances?

9 A Yes, he did.

10 Q And what did he say about that?

11 A Just said that he knew him from around about, from the
12 area, but he only knew him by a street name.

13 Q What was the street name?

14 A Angel.

15 Q Was the description he gave you consistent with the
16 description of Mr. Hightower when he was placed in custody?

17 A Yes, sir.

18 Q Did he mention anything about Mr. Hightower's eye?

19 A He said that he had a -- it was like a dead eye.

20 Q Did he indicate which eye was his dead eye?

21 A I can't remember, sir.

22 Q At some point, did you show --

23 A And dreadlocks, he mentioned about his hair, that he
24 had dreadlocks.

25 Q At some point, did you show him a picture?

1 A I did, sir.

2 MR. EPTING: Beg the Court's indulgence.

3 (Pause.)

4 MR. EPTING: May I approach, please, Your Honor?

5 THE COURT: Yes.

6 BY MR. EPTING:

7 Q I'm handing you what's been marked as State's Exhibit
8 No. 1 -- Court's Exhibit No. 1, pardon me. Do you recognize
9 Court's Exhibit 1?

10 A I do, sir.

11 Q And where do you recognize it from?

12 A This is the color photograph that I showed Mr.
13 McCullough while he was receiving treatment at the hospital.

14 Q And where did you receive that color photograph from?

15 A It was emailed to me and we printed out a color copy.

16 Q Is that the only photograph he was shown to make his
17 ID?

18 A Yes.

19 Q Were you able to make a six-pack lineup that night?

20 A I didn't have time to do it.

21 Q Could you explain why you didn't have time?

22 A During the procedure, given the hour, how much I had
23 going on, as the case was developing, I wanted to make sure
24 that we did have him. My understanding was, was that he was
25 already custody. He matched the description perfectly per

1 the descriptions that were given. I wanted to make sure
2 that we had the right person in custody, so I was doing my
3 due diligence. And I got a quick copy of him -- and since
4 he said he knew the person, even only by name, by Angel, I
5 wanted to make sure was this, in fact, the man. And Mr.
6 McCullough did, in fact, pick him out, said this is the man
7 that hurt me. And I may be indulged, his description at the
8 bottom, this is the man who attacked me. I know him by
9 Angel. And he signed and dated it.

10 MR. EPTING: Your Honor, we'd ask that be made a part
11 of the record, Court's Exhibit No. 1.

12 MR. NIELSON: No objection.

13 (WHEREUPON, Court's Exhibit No. 1 was marked for
14 identification.)

15 BY MR. EPTING:

16 Q Approximately how long --

17 MR. NIELSON: Without objection to it being a part of
18 the Court's record.

19 THE COURT: Yes, Court's Exhibit.

20 BY MR. EPTING:

21 Q Approximately how long or shortly after the assault was
22 that picture shown to the victim?

23 A Best recollection, sir, a few hours.

24 Q And do you feel like the victim's memory was still
25 fresh at that time?

1 A I do.

2 Q Would the Defendant have had opportunity to alter his
3 looks?

4 A Not in the short amount of time that he had been taken
5 into custody, no.

6 Q And if the victim would have said that's not the person
7 who assaulted me, would that have expedited the release of
8 him as a suspect?

9 A Absolutely.

10 Q Based upon your observations, did the victim hesitate
11 at all in identifying that as his assailant?

12 A No, sir.

13 Q Did he appear to understand what you were showing him
14 and asking about?

15 A Yes, sir.

16 MR. EPTING: Beg the Court's indulgence.

17 (Pause.)

18 MR. EPTING: That's all the questions I have for you at
19 this time. Please answer any questions the Defense may
20 have.

21 THE WITNESS: Yes, sir.

22 CROSS-EXAMINATION (IC)

23 BY MR. NIELSON:

24 Q Detective Gonzales, you're a trainer police officer,
25 correct?

1 A Yes, sir.

2 Q You've been to the law enforcement academy?

3 A Yes, sir.

4 Q Received continuing training?

5 A Yes, sir.

6 Q And you've been trained on how to do pictures, lineups,
7 show-ups, all those different kinds of things?

8 A Yes, sir.

9 Q You said you didn't have time to do a six-pack?

10 A Yes, sir.

11 Q Let's talk about that.

12 A Okay, sir.

13 Q How long does it take to compile a six-pack of photos?

14 A There's several different factors that culminate in
15 this. Time of day, I have to have -- I have to be at a
16 special computer, desktop at the facility, which I was never
17 at. We also have time constraints that if I'm having to
18 pick -- we did not have a picture of him at this time. I
19 had to get a direct picture from him emailed to me.

20 The other problem was that given the distinct features
21 of your client, the Defendant, it would have made that
22 request to go outside of our normal channels and that would
23 take several, several, several hours, maybe even days.

24 Q So you might not have even done one within 24 hours?

25 A It's possible, sir.

1 Q But you did not try to run all those parameters in this
2 case?

3 A No, sir, because we already had him ID'd. We already
4 had a picture and the fact that he knew the Defendant by
5 name.

6 Q Okay.

7 A And the Defendant, your client, was apprehended a short
8 distance from where the crime scene occurred at that time.

9 Q And no other pictures were shown to Mr. McCullough?

10 A No, sir, I did not show him any.

11 Q Okay. Do you know if any other officer did?

12 A No, sir.

13 MR. NIELSON: Nothing further, Your Honor.

14 MR. EPTING: Nothing from the State, Your Honor.

15 We ask this witness be released.

16 THE COURT: You can be excused.

17 MR. EPTING: Your Honor, the next witness for the State
18 would be Anthony Ellis.

19 ANTHONY ELLIS,

20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. EPTING:

23 Q Please state your name for the record.

24 A Anthony Ellis.

25 Q And what rank are you?

1 A I'm a sergeant.

2 Q Sergeant Ellis, were you involved in the investigation
3 regarding the Defendant on August 23rd, 2017?

4 A Yes, sir.

5 Q Did you encounter the Defendant that night?

6 A I did, sir.

7 Q Please tell the Court how you encountered him.

8 A We had a call for service to assist the county in a man
9 with a gun call at the Hillside Inn -- a burglary and a man
10 with a gun at the Hillside Inn. And we were in the area, so
11 we responded to the scene.

12 Q And once you responded to the scene, did you get a
13 description of the assailant?

14 A We got to the scene and one of the deputies at the
15 scene said they were looking for a tall, black male with
16 dreadlocks and a bad eye, no shirt, wearing gray sweatpants.
17 And myself and Officer Penuela had left the QT going towards
18 the Hillside Inn and had passed Mr. Hightower on the way to
19 the Hillside Inn and remembered that description. So we got
20 back in our car and left immediately and made contact with
21 Mr. Hightower about a half a mile down the road.

22 Q And how many officers were present when you first made
23 contact?

24 A When we first made contact, it was just me and Officer
25 Penuela.

1 Q What, if anything, did you do once you made contact?

2 A We got out with Mr. Hightower and patted him down and
3 we placed him in handcuffs. And we explained to him that he
4 was just being detained and that the handcuffs were for our
5 safety. We also explained to him that we were city
6 officers, but the officers that were going to be talking to
7 him were county deputies and that we were going to take him
8 back up to the hotel and have them meet with him there.

9 Q Was he under arrest when you placed him in handcuffs?

10 A He was not, sir.

11 Q Did you read him his Miranda Rights at that time?

12 A We did not, sir.

13 Q Did you have a conversation with Mr. Hightower?

14 A We did. I explained to him, basically, the call that
15 we got. And he explained to us, myself and Officer Penuela,
16 that someone had taken some money of his and they tried to
17 hit him with a brick and he punched him and knocked him
18 down.

19 Q Did he say anything further that you can recall?

20 A I think we explained to him, also, that there was some
21 talk of a gun. We wanted to make sure he didn't have it on
22 him or didn't throw it in the bushes or something. And he
23 said no, they had the gun.

24 Q Did you make any promises to get him to speak to y'all
25 that night?

1 A No, sir.

2 Q Did you make any threats to get him to speak to you
3 that night?

4 A No, sir.

5 Q Approximately how long was your interaction?

6 A From start to finish, maybe three to five minutes.

7 Q And had he asked for refreshment or anything on the
8 side of the road, would you have provided that?

9 A Absolutely.

10 Q At some point -- what, if anything, did you do after
11 you were done speaking with him on the side of the road?

12 A Officer Primes came to the scene and I had Officer
13 Primes place Mr. Hightower in the back of his Tahoe and
14 transport him back to the Hillside Inn.

15 Q And you said an Officer Penuela was with you that
16 night?

17 A Office Penuela was driving my vehicle. He was being
18 evaluated for his final phase of field training.

19 Q So he was a trainee?

20 A Yes, sir.

21 Q And is that P-i-n-u-e-l-a?

22 A P-e-n-u-e-l-a.

23 Q Were you or Officer Penuela equipped with a body camera
24 or other recording equipment that night?

25 A Yes, Officer Penuela's camera was on. Mine was not

1 working. I'm assuming because I had just left the QT, I
2 didn't turn it back on when I left the restroom.

3 MR. EPTING: For the record, I'm handing Sergeant Ellis
4 what's been marked as Court's Exhibit 2.

5 BY MR. EPTING:

6 Q Do you recognize Court's Exhibit 2?

7 A Yes, sir, this is the video of us that we watched.

8 Q So you've reviewed a copy of Court's Exhibit 2?

9 A I have, sir, yes.

10 Q Is it fair and accurate?

11 A It is, sir. "

12 Q And this is Penuela's body camera?

13 A This is Officer Penuela's body camera, yes, sir.

14 MR. EPTING: Your Honor, I ask this be made part of the
15 record.

16 MR. NIELSON: Without objection.

17 THE COURT: Court's Exhibit 2.

18 (WHEREUPON, Court's Exhibit No. 2 was marked for
19 identification).

20 MR. EPTING: Permission to publish?

21 THE COURT: Yes, sir.

22 (Video was played for the Court.)

23 MR. EPTING: Your Honor, that's all the questions I
24 have for the witness at this time.

25 Please answer any questions the Defense counsel may

1 have for you.

2 CROSS-EXAMINATION

3 BY MR. NIELSON:

4 Q Sergeant Ellis?

5 A Yes, sir.

6 Q Is that your name?

7 A Yes, sir.

8 Q Okay. I want to make sure I don't get it wrong.

9 A Okay.

10 Q Was he in Rock Hill City jurisdiction by the time he
11 was picked up?

12 A We had picked him up inside the City of Rock Hill, yes,
13 sir.

14 Q Okay. So he was -- he had walked back into your
15 jurisdiction?

16 A Yes, sir. The way the City and the County works, I'm
17 sure you've noticed that there's all these places where it's
18 in and out, in and out. So yeah, he was not too far from
19 our operations center, actually.

20 Q And you said that he was not under arrest, correct?

21 A That's exactly what I told him.

22 Q Was he in handcuffs?

23 A Yes, sir.

24 Q Was he free to leave?

25 A No, sir, he was being detained.

1 Q So he was in handcuffs and was not free to leave, but
2 he was not under arrest?

3 A No, sir. I didn't arrest him.

4 Q Okay. What do you have to do to arrest him other than
5 put him in handcuffs and not allow him to leave?

6 A I would believe that I would have a reason to arrest
7 him at that point. But I did have a reason to detain him.

8 Q Okay. But you then did ask him some questions?

9 A I probably did.

10 Q I mean, I heard where did that blood come from? I
11 mean, I heard a few questions on the video we just watched.

12 A That was Officer Penuela that asked him about --

13 Q Oh --

14 A I just asked him about the gun because I wanted to know
15 if he had dropped the gun somewhere. I just didn't want a
16 kid to pick it up.

17 Q But y'all did ask him some questions?

18 A We did, yes, sir.

19 Q After he was in handcuffs?

20 A Yes, sir.

21 MR. NIELSON: No further questions, Your Honor.

22 MR. EPTING: Nothing further from this witness from the
23 State, Your Honor.

24 THE COURT: You can step down.

25 MR. EPTING: May this witness be excused?

1 THE COURT: You may be excused.

2 MR. EPTING: Your Honor, the State's last witness is
3 Tymel McCullough. He's in the holding cell.

4 TYMEL MCCULLOUGH,

5 after being duly sworn, testified as follows:

6 THE WITNESS: I do.

7 DIRECT EXAMINATION

8 BY MR. EPTING:

9 Q Good afternoon, Mr. McCullough. Would you please state
10 your name for the record?

11 A Tymel Dajwan McCullough.

12 Q Mr. McCullough, were you involved in the incident on
13 August 23rd of 2017 at the Hillside Inn?

14 A I was.

15 Q Were you assaulted?

16 A I was.

17 Q Do you see the person who assaulted you here in court?

18 A I do.

19 Q Where is this person seated?

20 A To the right in the orange.

21 Q In the orange? You're referring to the Defendant?

22 A I am.

23 Q Prior to August the 23rd, 2017, had you seen the
24 Defendant?

25 A I had.

1 Q Approximately how many times?

2 A Three or four.

3 Q And did you know him by any name?

4 A Angel.

5 Q And did he work with anyone that you're related to, to
6 your knowledge?

7 A My dad.

8 Q Did you recognize him on August 23rd?

9 A I did.

10 Q Was he wearing any mask or anything concealing his
11 face?

12 A No, sir.

13 Q Did you speak with him that night?

14 A I did.

15 Q How close were you to the Defendant when y'all spoke?

16 A Face to face.

17 Q Face to face?

18 A Yes, sir.

19 Q And did you have an opportunity to view his face?

20 A I did.

21 Q At some point, did he come to your hotel room?

22 A He did.

23 Q Was he wearing anything covering his face then?

24 A No, sir.

25 Q Were you able to recognize him?

1 A I was.

2 Q Inside the hotel room, what, if anything, transpired?

3 A Say it again, sir.

4 Q Did he forcibly enter into your hotel room at some
5 point?

6 A He did.

7 Q What happened inside the hotel room?

8 A He entered the room with a pistol.

9 Q What, if anything, did he say?

10 A Where is the guy with the gold.

11 Q Who did you believe him to be referring to?

12 A Myself.

13 Q Is that how the Defendant knew you, as Gold?

14 A Possibly.

15 Q At some point, did you come face to face with him in
16 the room?

17 A I did.

18 Q At some point, did y'all have any other interaction?

19 Did you stay in the room, Tymel?

20 A No, I ran out.

21 Q And did you --

22 A I was --

23 Q And what happened after you ran out?

24 A The Defendant chased me with the pistol.

25 Q Did he catch up to you?

1 A He did.

2 Q What, if anything, happened when he caught up to you?

3 A I was picked up and carried and slammed. I was beaten
4 pretty bad.

5 Q Were you able to see his face as this was going on?

6 A I was.

7 Q Was the lighting sufficient?

8 A It was.

9 Q Were you afraid?

10 A Very.

11 Q Is he saying anything as this is going on?

12 A Not at that moment.

13 Q Okay. At some point, do you get away and go back to
14 the room?

15 A Yes.

16 Q Do you see the Defendant again?

17 A Yes.

18 Q Where?

19 A Inside of my room.

20 Q And do you see his face inside the room?

21 A I did.

22 Q How certain are you it was the Defendant that night?

23 A Very certain.

24 Q After the Defendant left, did you speak to the police?

25 A I did.

1 Q And did you give them a description?

2 A I did.

3 Q What description did you give?

4 A A guy with a messed up eye, tall, dreads.

5 Q Did you give height descriptors?

6 A 6'4".

7 Q Weight descriptors?

8 A 240.

9 Q At some point after the Defendant left, were you shown
10 a picture, a lineup by law enforcement?

11 A Yes.

12 Q Do you remember the name of the officer who showed you
13 that picture?

14 A It was Gonzales, something like that.

15 Q Gonzales. And do you remember where he showed you that
16 picture?

17 A I was in the hospital.

18 Q And did you identify anybody when you saw that picture?

19 A The Defendant.

20 Q The Defendant? And you said you had prior knowledge of
21 the Defendant?

22 A I did.

23 Q If he walked down the street when this happened, would
24 you have recognized him?

25 A I would have.

1 Q Do you believe he would have recognized you?

2 A Yes.

3 Q The person you picked out of that lineup, is that the
4 person who robbed you?

5 A Yes.

6 Q Any doubt in your mind?

7 A No, sir.

8 MR. EPTING: Beg the Court's indulgence.

9 (Pause.)

10 MR. EPTING: That's all the questions I have for you at
11 this time. Please answer any questions Defense counsel may
12 have.

13 CROSS-EXAMINATION

14 BY MR. NIELSON:

15 Q You said you had seen Angel a few times?

16 A Yes, sir.

17 Q Had he ever stayed with you?

18 A No, sir.

19 Q Had you ever stayed with him?

20 A No, sir.

21 Q Y'all have friends in common?

22 A I'm not sure about that.

23 Q Where did you see him the few times you saw him?

24 A The first time I saw him was on a job when I was
25 picking my dad up.

1 Q Okay. Because you said he works with your dad, right?

2 A Yes.

3 Q Where did he work with your dad at?

4 A Ruby Tuesday.

5 Q Okay. And then you saw him -- when else did you see
6 him?

7 A A few times around the area.

8 Q Did you know his phone number?

9 A I don't have it.

10 Q Do you know anything else about him? Where he stays,
11 who he stays with, anything like that?

12 A (Witness shakes head.)

13 MR. NIELSON: No further questions, Your Honor.

14 THE COURT: You have to say yes or no.

15 THE WITNESS: Oh, no, sir.

16 MR. EPTING: No further questions from the State, Your
17 Honor.

18 THE COURT: Take him back in the holding cell.

19 MR. EPTING: Your Honor, the State would argue that
20 based upon the testimony that was given as to the lineup,
21 the Defendant --

22 THE COURT: Let's go back first. Tell me what
23 statement -- we had a Jackson V. Denno hearing. What
24 statement is the State proposing to offer from Mr.
25 Hightower?

1 MR. EPTING: Your Honor, we would consider offering the
2 statement that he made on the scene to the effect of "Why is
3 it illegal for me to get my money back?" Or something to
4 that effect. We believe that the statement that was taken
5 at roadside was very likely taken in violation of Miranda --

6 THE COURT: There's no question about that. I mean,
7 that's -- that's why I asked what statement. Because there
8 was no Miranda, he was detained, he was questioned.

9 MR. EPTING: Yes, sir. We would ask the Court to make
10 a finding whether the statement was voluntarily given as
11 opposed to involuntarily given for impeachment purposes
12 should the Defendant testify during the course of this
13 trial. We would concede that was taken in violation of
14 Miranda and, likely, should not come in the trial itself.
15 The statement to Grady Gonzales, on the other hand, was not
16 responsive to custodial interrogation. But we do concede it
17 was given a short time after the statement was given on the
18 roadside to the officer.

19 THE COURT: Well, as far as impeachment purposes, I'll
20 have to take that into consideration.

21 Mr. Nielson?

22 MR. NIELSON: I would argue that it all violates
23 Miranda. And there was no testimony by Detective Gonzales
24 that Miranda was ever given.

25 THE COURT: I agree. I'm not going to allow any of the

1 statements -- I don't know if he was ever given Miranda.
2 The statements that I've heard so far, I sustain the
3 objection to, subject to the possibility that they may be as
4 to impeachment value and I'll visit that when we get to it.

5 MR. NIELSON: I understand that, Your Honor.

6 THE COURT: So then we go to Neil vs. Biggers. I
7 wanted to get that out of the way first.

8 MR. EPTING: We completely understand, Your Honor.

9 As far as Neil v. Biggers, we do believe that was a
10 suggestive lineup by its very nature given that it was a
11 one-photograph picture. It was a mugshot. It was the
12 mugshot, I think, related to this case. However, we believe
13 that under relevant case law of State V. Wyatt -- and, Your
14 Honor, that is 421 S.C. 306. I believe that is the most
15 current vigorous case law.

16 And has been discussion of the case law leading up to
17 that. While suggestive, a lineup can still pass muster if
18 it necessary at the scene. We would argue that that was
19 necessary. It was shown close in time. It was when the
20 witness' memory was still fresh, before the Defendant had
21 time to change his appearance and it would expedite the
22 release of an innocent person should he look at that picture
23 and say that is not, in fact, the person.

24 And even if Your Honor found that it was both
25 unnecessary and suggestive, we believe that any

1 suggestiveness is cured by the victim's prior knowledge and
2 familiarity with the Defendant. He gave very consistent
3 physical descriptions of the Defendant. And to the officer's
4 credit, I believe it would have been very difficult to put
5 together a six-pack given the Defendant's very unique
6 physical appearance.

7 THE COURT: Of course, I -- I mean, of course. I don't
8 think -- I mean, that's sort of what Gonzales said, he said
9 the unique situation, it would have taken me hours to find
10 somebody -- to find other people in the database with an
11 injury to the eye. So I agree, it would have been very,
12 very hard.

13 MR. NIELSON: Your Honor, as I said in chambers when we
14 were discussing the matter before, I'm not sure we had made
15 -- we were not planning on making a Biggers motion or any
16 kind of motion to exclude the identification. I think that
17 Mr. McCullough clearly stated that he knew Mr. Hightower.
18 He knew him by a specific name. The detective testified
19 that it would have taken him hours, maybe days to find five
20 other similarly-looking people to create a lineup. And I
21 don't think the police are required to go to that level of
22 scrutiny to find it.

23 So I agree and understand and have no objection to the
24 identification coming in so long as -- and I think this has
25 also been discussed. I do object to the picture being

1 published to the jury. I know it's a Court's Exhibit now,
2 but as long as the picture is not published to the jury,--

3 THE COURT: The picture is not going to be published.
4 There's not any indication of that.

5 MR. EPTING: Your Honor, I believe that would be in
6 violation of our rules of evidence. We would not seek to
7 enter that picture.

8 MR. NIELSON: So as long as we're straight on that,
9 then I have no objection to this, Your Honor.

10 THE COURT: Well, in addition to not having any
11 objection, I make a finding that the in-court identification
12 by Mr. McCullough of Mr. Hightower is reliable. He had many
13 opportunity to observe Mr. Hightower. He was in a situation
14 of aggravation, so to speak, mayhem, or whatever you want to
15 call it, such that his attention was accentuated. That his
16 description to the officers -- and again, this is -- some of
17 this is somewhat unique, dreadlocks, an injured eye, tall.
18 That his description was very accurate. And that Mr.
19 McCullough testified that he, in fact, knew Mr. Hightower,
20 somewhat casually, but, at least, knew him and knew him by
21 the nickname Angel.

22 So I find that the identification, even though the use
23 of the photograph would fall in the category of
24 suggestiveness, the in-court identification by Mr.
25 McCullough is reliable.

1 MR. EPTING: Thank you, Your Honor.

2 THE COURT: Is that it (for this afternoon?

3 MR. EPTING: Your Honor, that's it for this afternoon.

4 We have what I would call cleanup motions regarding
5 discovery and things we need to put on the record. If we
6 could have the jury come in at 10:00, I think we could very
7 easily handle those in 30 minutes, or earlier, if Your Honor
8 desires.

9 THE COURT: Well, why don't we plan on being here
10 around 9:30 and have the jury report at 10:00.

11 MR. EPTING: That suits, Your Honor.

12 MR. NIELSON: Thank you, Your Honor.

13 (WHEREUPON, the proceedings were adjourned for the day
14 to be reconvened on Tuesday, April 24, 2018.)

15 TUESDAY, APRIL 24, 2018

16 THE COURT: Does the State have anything before I turn
17 to the motions in limine from the Defendant?

18 MR. EPTING: Your Honor, we just wanted to repeat that
19 --ask that counsel be precluded from arguing jury
20 nullification. I know in chambers Your Honor indicated that
21 you would like to hear the arguments and the objections
22 prior to making a ruling on that, and we respect that.

23 THE COURT: All right.

24 MR. NIELSON: I don't know that I plan on a jury
25 nullification argument, Your Honor.

1 THE COURT: Okay.

2 MR. EPTING: We're ready to respond to the Defense's
3 motions in limine.

4 THE COURT: Okay. A motion first has to do requesting
5 whether or not the State has complied with discovery?

6 MR. EPTING: We have, Your Honor. And we have also
7 filed reciprocal of discovery. It's my understanding from
8 speaking with counsel that they have complied with
9 reciprocal discovery as well. We provided Defense counsel
10 with copies of any and all exhibits we wish to introduce at
11 trial, as well as a copy of their client's rap sheet and,
12 also, summarized copies of the rap sheets of potential
13 witnesses that are not law enforcement or, otherwise, people
14 we would not expect to have a rap sheet.

15 The Defense, from my understanding, is making a motion
16 for us to produce the actual NCICs. We made them available
17 for their review. It's our understanding per NCIC policies,
18 we are prohibited from giving the actual NCIC packet to the
19 Defense under their regulations.

20 THE COURT: Okay. But you've extended to them the
21 right for them to review them?

22 MR. EPTING: I have, Your Honor.

23 MR. NIELSON: I have reviewed them. I've also received
24 a copy from the Solicitor as to what they believe is on
25 those sheets. I do believe that it is something that we do

1 not have the ability to have. It is something that on
2 appeal, potentially, and for those kind of reasons, I think
3 that he needs to go file them, we would be the granted
4 access to the actual NCICs themselves to put in our file. I
5 understand NCIC has their policy, but I also understand that
6 Your Honor can overrule that and can order those to be
7 turned over to the Defense. We would ask for that to be
8 done.

9 THE COURT: If you have the information from the
10 Solicitor's Office as officers of the court, why do you need
11 to see the actual NCIC? This is analogous to the CI issues
12 that we run into as to whether or not you can go behind the
13 CI. I visited that and I know that. But this is analogous
14 to that in my opinion.

15 MR. NIELSON: Okay.

16 THE COURT: I can have the NCIC for appellate reasons
17 produced, sealed as a Court's Exhibit, but I'm not going to
18 require it.

19 MR. NIELSON: Okay.

20 THE COURT: I've never read the compact or whatever the
21 NCIC regulations are, but I can't put the Solicitor's Office
22 or law enforcement in jeopardy of being able in the future
23 to somehow access it by something I do. I don't know that I
24 would, but I don't know enough about it to make an
25 intelligent decision other than what I've already made,

1 which may not be an intelligent decision. But if you've got
2 the information and an officer of the court has indicated
3 that's what on there and I make it a sealed exhibit, that's
4 as far as I'm going to go.

5 MR. NIELSON: Thank you, Your Honor.

6 MR. EPTING: Your Honor, we'll have those printed and
7 presented to the Court to be sealed sometime on a break.

8 In addition to allowing them to review the NCICs and
9 certifying that we have complied with Rule 5 and Brady, I
10 also opened my file to Mr. Nielson sometime in the last
11 couple of weeks and allowed him to see every document that
12 was in my file as well as all digital discovery we have in
13 our files as well.

14 MR. NIELSON: I agree, Your Honor, that that did
15 happen.

16 THE COURT: The record of Mr. Hightower as far as
17 impeachment is motion number two.

18 MR. EPTING: We believe that he has a conviction, it is
19 actually a bank robbery conviction that he served a
20 substantial amount of time out of state. I believe that
21 under Rule 609, it would fall within the 10-year period
22 based upon the amount of time that he served. I believe
23 also under that same Rule, we would be limited to asking him
24 if he's been convicted of a crime that carries over a year.

25 MR. NIELSON: I agree, but I believe that that is the

1 only one that fits within the rules, Your Honor.

2 THE COURT: Okay. We're clear on that.

3 Sequestration order, I'll grant that reciprocally.

4 MR. NIELSON: Okay. I will tell the Court that we do
5 not intend to call any witness other than potentially my
6 client. So just for the Court's information.

7 THE COURT: All right. Now, the motion to exclude the
8 dash cam video of law enforcement as hearsay. I thought we
9 talked about that some yesterday.

10 MR. EPTING: I believe we did, Your Honor. The State
11 would intend to introduce a body cam of the first officer
12 who responded on the scene. He spoke with two of our
13 witnesses that I intend to call as well as another witness,
14 Maurice Taylor and, basically, got an account of what
15 happened that day. You can see the victim. You can see his
16 state of mind. You, actually, can see his injuries. And
17 also, the state of the room because, at one point, the
18 officer comes in and looks around the room.

19 In a twist, the officer is Buddy Brown, I don't know if
20 Your Honor's aware of his involvement in a shooting several
21 months back. Initially, we were hopeful that he would come
22 in and testify and introduce that as his own body cam.
23 However, he indicated to myself and Dan Porter late last
24 night that he had spoken to his worker's comp attorney and
25 he would lose his benefits if he came in and did so. We

1 would intend to introduce that through the witnesses who
2 spoke. We did redact out all of Buddy Brown's statements,
3 which I think that takes care of hearsay concern on his
4 part.

5 And the witnesses who we spoke to have reviewed a copy
6 of that and have said that is a fair and accurate depiction
7 of the conversations they had with the officer that night.
8 We do not believe there's a hearsay concern because any of
9 the people who are speaking anything of substance on that
10 tape are going to be present and ready for cross-examination
11 by the Defense as to the statements they made that day and
12 any other statements and any other matters that are proper
13 and subject to cross-examination. We think that takes any
14 danger of potential hearsay out of the mix because they're
15 on the stand. They're available to testify. They're
16 available for cross-examination.

17 THE COURT: What do you have to say about that?

18 MR. NIELSON: Your Honor, I have issues with -- at
19 least, three different -- at least, three different issues
20 with this coming in at this point. Number one, I believe
21 it's hearsay and there's no exception to get it in. I
22 believe it's an out-of-court statement that's being used for
23 the truth of what they say my client did. I think that
24 squarely puts it in as hearsay.

25 Number two, without Officer Brown, he being the one who

1 took it, it was his body cam, he was the one who preserved
2 it, whether we've redacted out what he said or not, it's not
3 just a confrontation issue, it's also an issue of we don't
4 -- there's no chain. The chain is broken. It's clearly
5 broken when the officer whose body cam it was is not here to
6 testify. I do not believe that that falls within any
7 exception of a -- a worker's comp issue falls within any
8 exception of an availability issue according to our rules.
9 If it does, the Solicitor can gladly point that out.

10 And number three, the Solicitor said it himself, the
11 other two witnesses are both available. They can both
12 testify. They can say how they were feeling that day. They
13 can say how they were hurt. There were pictures that were
14 taken that can be shown to the jury. This is cumulative,
15 it's -- it's nothing but cumulative. It's nothing but
16 bolstering. And once you already have those witnesses
17 available and other means by which they're going to have to
18 tell their story before this becomes non-hearsay from their
19 perspective. Because until they actually testify on the
20 stand, then it's hearsay and it violates the confrontation
21 clause in that way as well.

22 So I have multiple different reasons, other than just
23 hearsay, why I do not believe this video needs to come in in
24 this case.

25 THE COURT: Let's start at the beginning, how are you

1 going to get it in?

2 MR. EPTING: I would intend to ask initially Maurice
3 Taylor, who is the main person that is speaking to the
4 officer on scene, if he has reviewed a copy and if that is a
5 fair and accurate depiction of his conversations with the
6 officer that spoke to him on the scene. I believe that
7 takes care of any chain concern because this is non-fungible
8 evidence. He has reviewed the conversation. He remember
9 the conversation and he will say that is an accurate
10 recitation of what we said. We believe it is extremely
11 probative because this is his conversation with officers
12 minutes after this crime has occurred. You see the fear.
13 You see all the necessary elements that we will have to
14 prove later on in this case.

15 THE COURT: Well, you're right, it's not in the nature
16 of what we always understand to be fungible, like a ton of
17 soybeans, and non-fungible. It's somewhere in between
18 because the video can be altered, redacted, photo shopped.
19 So it's kind of not really fungible, but it falls somewhere
20 on the line between fungible and non-fungible. I think it
21 has to come in from somebody who reviewed it and said -- the
22 officer who reviewed it and said this is -- I reviewed it.
23 I mean, that's what we do traditionally. I know you've got
24 a little wrinkle here that you can't get around, but that
25 doesn't make it admissible. So I think unless you get the

1 chain complete, I'm not going to allow it in.

2 MR. EPTING: We would intend to ask both of the people
3 who we spoke to, they did review it and they both did say
4 that is a fair and accurate depiction of my conversation,
5 which we would argue completes --

6 THE COURT: Well, after they testify, it might be
7 different, but usually in -- and I guess maybe I'm thinking
8 of how cases usually go. Usually, the officers testify
9 first and you put those sort of things in and you use your
10 lay witnesses. But if they testify, then we might have a
11 different issue.

12 MR. EPTING: Okay. Just so we're clear, Your Honor, if
13 we structure this so that the second witness who spoke to
14 officers that day was on the stand available for
15 cross-examination in that moment and then introduced that
16 tape, would that satisfy the Court's concerns?

17 THE COURT: If the witness testifies and is subject to
18 cross-examination, the right to confrontation is there, and
19 if they have reviewed this tape or any tape or video and
20 indicate that that is an accurate reflection of what they
21 said and did at that time, I think the portion as to that
22 witness would be admissible.

23 MR. EPTING: Very good, Your Honor.

24 THE COURT: Because that's not hearsay -- technically,
25 it's kind of hearsay, but it's not hearsay because the

1 declarant is subject to cross-examination.

2 MR. EPTING: Thank you, Your Honor. And we will comply
3 with the Court's directions on that.

4 THE COURT: Well, that's good.

5 MR. EPTING: Your Honor, as to -- of course, we will
6 comply.

7 As to the last motion, Your Honor. We've fought this
8 fight before. I believe that State V. Beatty and the ruling
9 of State V. Beatty is limited to judicial comments on
10 speaking the truth and finding the truth of the matter
11 asserted. I don't think that necessarily is incumbent upon
12 the State not to make that language. But to make the Court
13 comfortable, of course, we will not use the terms verdict
14 that speaks the truth or implore the jury --

15 THE COURT: Yeah, I would stay away from that. I rule
16 that -- in spite of the word verdict meaning to speak the
17 truth, that we can't tell the jury that they are supposed to
18 return a verdict that speaks the truth just baffles me, but
19 the court has said that's where we can't go, so I'm going to
20 rule that asking the jury to seek the truth is prohibited by
21 Beatty whether it comes from me or from the State. Now, I
22 don't know whether it applies to the Defendant, you know,
23 whether the Defendant can argue that the jury should seek
24 the truth. I don't know the answer to that.

25 MR. NIELSON: Thank you, Your Honor. The last motion

1 that I do not have on here, but was brought to my attention
2 after I wrote these motions in limine. We went before the
3 Honorable Judge Hall three weeks ago and I believe the date
4 was -- I don't have the exact date with me, Your Honor, but
5 we went before Judge Hall about three weeks after it came to
6 our attention that my client suffers from schizophrenia
7 throughout his lifetime and made a motion for a mental
8 health evaluation by the Department of Mental Health. That
9 was turned down. We're just renewing that motion as a part
10 of the trial so that it can go with the case.

11 THE COURT: Well, do you have anything that's different
12 from when Judge Hall ruled?

13 MR. NIELSON: We do not.

14 THE COURT: Okay. Well, then, I find Judge Hall's
15 ruling is the law of the case and there being no reason for
16 the Court to revisit it since there's nothing additional or
17 new or supplemental being offered.

18 MR. NIELSON: Thank you, Your Honor.

19 THE COURT: So to sum up, Judge Hall's order stands and
20 there will be no order forthcoming for any additional mental
21 evaluation.

22 MR. NIELSON: Thank you, Your Honor.

23 MR. EPTING: Now, I believe one other court term prior
24 to that in a motion to have Mr. Nielson fired from the case,
25 which was also rejected by Judge Hall, the Defense put on

1 record that they were rejecting any and all offers that we
2 have made in this case, including the last offer with a cap
3 of 20 years.

4 MR. NIELSON: That is correct, Your Honor.

5 THE COURT: All right. The State voir dire and I've
6 got the witness list. Do you have any additional voir dire?

7 MR. EPTING: We don't, Your Honor. We just ask that
8 you make reciprocal requests according to each -- if
9 necessary, according to the request by the Defense if
10 they've been represented by the Solicitor's Office, we ask
11 that Your Honor ask if they've been represented by the
12 public defender.

13 THE COURT: Yes.

14 MR. EPTING: I do not see any objectionable questions
15 in voir dire to the jury --

16 THE COURT: You mean from the Defendant?

17 MR. EPTING: Yes, Your Honor.

18 THE COURT: Number one, I usually always cover, two and
19 three, cover. I don't know if I cover -- standard
20 questions, I don't know if I -- I know I don't say it
21 exactly like as set forth on the request, but I think I
22 cover just about all of these, including number seven,
23 violent crime.

24 All right.

25 MR. NIELSON: Thank you, Your Honor.

1 MR. EPTING: Thank you, Your Honor.

2 THE COURT: Anything else?

3 MR. EPTING: Nothing from the State, Your Honor.

4 MR. NIELSON: Nothing from the Defense, Your Honor.

5 THE COURT: We'll be at ease pending the jury. Let me
6 know when Mr. McCullough is available and we can go forward.

7 MR. EPTING: Yes, Your Honor.

8 (Short break.)

9 THE COURT: Thank you. Good morning.

10 Jurors, you may take your seats. Members of the jury
11 panel, you met Judge Sprouse yesterday. I'm John Hayes.
12 I'm from Rock Hill. I'm known as an active/retired judge,
13 that means while I have retired, I still hold terms of court
14 when assigned by the Chief Justice. And I'm assigned this
15 week to York, my home circuit, to hold General Sessions
16 Criminal Court. So that's what I'm doing and that's who I
17 am.

18 The case we're trying now is the case of the State vs.
19 Antoine Hightower.

20 Mr. Hightower, will you please stand and let the jury
21 see you, please?

22 Mr. Hightower is represented by Mr. Devon Nielson and
23 Mark McKinnon of Harry Dest Public Defender's Office.

24 You may be seated.

25 He is charged with three counts in two indictments --

1 whoops, four counts in three indictments, burglary in the
2 first degree, assault and battery of a high and aggravated
3 nature, possession of a weapon during the commission of a
4 violent crime, and kidnapping. All these are alleged to
5 have occurred on August 23rd, 2017, at a location called the
6 Hillside Inn, which is on Anderson Road in Rock Hill near
7 Strikers Bowling Alley.

8 To these charges, Mr. Hightower has entered pleas of
9 not guilty. His pleas of not guilty place the burden on the
10 State to prove his guilt beyond a reasonable doubt before he
11 could be convicted by whoever ends up sitting as jurors in
12 this case.

13 Similar to what Judge Sprouse did yesterday downstairs,
14 I am going to now ask you some questions. I don't know
15 exactly how Judge Sprouse did it, but what I want you to do
16 to these questions I'm going to ask now is if you need to
17 respond to me, please stand where you are and I'll have a
18 dialogue with you from where I am without you having to come
19 up. So if you need to address any of these matters, just
20 stand and I'll probably have some followup questions for
21 you.

22 First, are any of you related -- and I'm sorry, I did
23 not introduce. For the Solicitor's Office, we have Mr. Dan
24 Porter and Mr. Chris Epting. They're with Mr. Brackett's
25 office, our Solicitor.

1 First, are any of you related by blood or marriage or
2 are you close personal friend or acquaintance of Mr. Antoine
3 Hightower, who's the Defendant who you just met? If so,
4 please stand.

5 (There was no response.)

6 THE COURT: No one stands.

7 Have any of you at any time been represented -- you or
8 a member of your family been represented by our Public
9 Defender's Office, Harry Dest's Office, or have any of you
10 been involved with our Solicitor's Office, that is been a
11 witness in a case prosecuted by our Solicitor, worked with
12 the victim's witness assistance or been a victim to a matter
13 prosecuted by our Solicitor? If so, please stand.

14 (There was no response.)

15 THE COURT: No one stands.

16 Were any of you members of the Grand Jury which passed
17 on these indictments at an earlier time? If so, please
18 stand.

19 (There was no response.)

20 THE COURT: No one stands.

21 Have any of you heard anything about this case? Know
22 anything about it from any source whatsoever or have any of
23 you formed or expressed any opinion about any matter or
24 issue which would be involved in this case? If so, please
25 stand.

1 (There was no response.)

2 THE COURT: No one stands.

3 Have any of you or a member of your immediate family
4 been a victim of what you consider to be a violent crime?
5 Now, if you need to stand on this, I'm not going to ask you
6 to go into particulars because that's private, but I do need
7 to know if you or a member of your immediate family have
8 been the victim of what you consider to be a violent crime?

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

10 POTENTIAL JUROR: Juror No. 203, Alta Wallace.

11 THE COURT: In spite of the fact that you have this in
12 your background, would you still be able to be fair and
13 impartial in the trial of this case?

14 POTENTIAL JUROR: Excuse me?

15 THE COURT: Would you be -- you've stood saying that
16 you or a member of your family has been a victim of what you
17 consider to be a violent crime. In spite of that, would you
18 be able to be fair and impartial to Mr. Hightower and the
19 State in this trial or would that affect you to the extent
20 you could not be fair?

21 POTENTIAL JUROR: I could be fair.

22 THE COURT: Okay. You can have a seat. Thank you.

23 Yes, ma'am, I'm going to ask you the same thing.

24 First, your name and number?

25 POTENTIAL JUROR: Brenda Belk, 16.

1 THE COURT: You're standing for the same reason. Could
2 you, in spite of that, be fair and impartial to both Mr.
3 Hightower and the State in this case?

4 POTENTIAL JUROR: I'm not sure.

5 THE COURT: Well, if you can't, you can't. So we'll
6 excuse you from serving. You will not be subject to being
7 drawn on this jury. I appreciate your candor.

8 POTENTIAL JUROR: Thank you.

9 THE COURT: Yes, sir.

10 POTENTIAL JUROR: Thank you, Judge. Rita
11 Moore-Johnson. My number is 168.

12 THE COURT: In spite of having this in your past, would
13 you be able to be fair to both Mr. Hightower and the State
14 in the trial of this case?

15 POTENTIAL JUROR: Yes.

16 THE COURT: Thank you. You can be seated.

17 Are any of you or a member of your immediate family
18 members of or contributors to organizations, such as
19 Mother's Against Drunk Drivers, Students Against Drunk
20 Drivers, CAVE, that's Citizens Against Violence, Sheriff's
21 Association, Trooper's Association or Fraternal Order of
22 Police? If so, please stand.

23 (There was no response.)

24 THE COURT: No one stands.

25 Are any of you or a member of your immediate family

1 involved in law enforcement at any level or involved in the
2 prosecution of criminal cases at any level? And by that, I
3 mean, anything from the military police to a judge advocate
4 general to a district attorney or air marshall, any kind of
5 law enforcement or any kind of prosecutorial authority? If
6 so, please stand.

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

8 POTENTIAL JUROR: Anne Daniels, No. 54. My husband was
9 former National Guard and he serves in military police.

10 THE COURT: In spite of that, would you still be able
11 to be fair and impartial?

12 POTENTIAL JUROR: Yes.

13 THE COURT: Thank you.

14 Yes, sir, your name and number?

15 POTENTIAL JUROR: Zachary Howze, 112.

16 THE COURT: What relationship do you have to law
17 enforcement or prosecution?

18 POTENTIAL JUROR: My wife is an attorney and she's a
19 magistrate judge for the City of York.

20 THE COURT: City of what?

21 POTENTIAL JUROR: City of York.

22 THE COURT: Oh, okay. Yes, of course. Would that
23 affect your ability or would you still be able to be fair
24 and impartial?

25 POTENTIAL JUROR: I could be fair.

1 THE COURT: You could be fair?

2 POTENTIAL JUROR: Yes, sir.

3 THE COURT: Okay. Thank you.

4 The following are possible witnesses in this case. I
5 do not know that all will testify, but even if they don't
6 testify, their names may come up. So if you know any of
7 these individuals, particularly if you have a close personal
8 relationship with them, but if you know any of these
9 individuals, please stand. Sergeant Buddy Brown of the York
10 County Sheriff's Office; Detective Grady Gonzales with the
11 York County Sheriff's Office; from the Rock Hill Police
12 Department, Officer Best and Sergeant Anthony Ellis; from
13 the 16th Circuit Solicitor's Office, Investigator Martha
14 Parrish; from the forensic service unit, Investigator Paul
15 Neely. Individuals not associated with law enforcement,
16 Tynesha Mekala Flowers and Jennifer Vahle Propst, Maurice
17 Douglas Taylor. Any of you know any of those individuals?

18 (There was no response.)

19 THE COURT: Now, I did not tell you who the alleged
20 victim is in this case. It is Mr. Tymel Dajwan McCullough.

21 Mr. McCullough, would you please stand?

22 (Mr. McCullough stands.)

23 THE COURT: This is Mr. McCullough.

24 You can be seated.

25 (Mr. McCullough is seated.)

1 THE COURT: Are any of you related by blood or marriage
2 to Mr. McCullough or do any of you know Mr. McCullough?

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

4 POTENTIAL JUROR: 151, Arnitra McClanahan.

5 THE COURT: In spite of knowing Mr. McCullough, would
6 you still be able to be fair and impartial in this trial?

7 POTENTIAL JUROR: Yes, sir.

8 THE COURT: Thank you.

9 Yes, sir, your name and number?

10 POTENTIAL JUROR: Jonathan Lineberger, No. 143. I knew
11 him in high school.

12 THE COURT: In spite of that, would you still be able
13 to be fair and impartial in this trial?

14 POTENTIAL JUROR: Yes, sir.

15 THE COURT: Sorry, I'm having a little trouble hearing.

16 THE COURT REPORTER: I didn't hear him.

17 THE COURT: Stand up and say it again.

18 THE COURT REPORTER: I just didn't get his response.

19 THE COURT: What did you say?

20 POTENTIAL JUROR: I can be fair and impartial.

21 THE COURT: Okay. That's what I thought. You can be
22 seated. The court reporter just didn't get it.

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

24 POTENTIAL JUROR: Jody Hope, 109. I was employed by
25 Moss Justice for 20 years and I believe I dealt with Mr.

1 McCullough at that time.

2 THE COURT: Would that affect your ability to be fair
3 and impartial?

4 POTENTIAL JUROR: No, sir.

5 THE COURT: All right. You can be seated. Thank you.
6 Anyone else?

7 (There was no response.)

8 THE COURT: Any further voir dire from the State?

9 MR. EPTING: Nothing from the State, Your Honor.

10 THE COURT: Anything from the Defense?

11 MR. NIELSON: No, Your Honor.

12 THE COURT: Do any of you have any reason whatsoever
13 why you believe you could not or should not serve as a fair
14 and impartial juror in the trial of this particular case?
15 If so, please stand.

16 (There was no response.)

17 THE COURT: No one stands.

18 Now, the way we draw juries in this case --

19 First, let me ask the attorneys, 10 and 10 strikes?

20 MR. EPTING: I believe it is 10 and five, Your Honor.

21 THE COURT: All right. 10 and five, that's right.

22 The State has the right to excuse up to five
23 individuals. The Defense can excuse up to 10. The way we
24 draw the jury is as follows: If you hear your name called,
25 please just stand where you are. You don't have to say

1 anything now. Face, first, the table where Mr. Epting and
2 Mr. Porter are seated and one of them will say either
3 "present the juror" or "excuse the juror". If you hear the
4 words "excuse the juror", simply take your seat. Don't
5 leave, just take your seat. If you hear the words "present
6 the juror", turn and face the table where Mr. Hightower and
7 his counsel are seated. Either Mr. McKinnon or Mr. Nielson
8 will say "excuse the juror", again, that means you are to
9 take your seat, or will say "swear the juror". If you hear
10 the words "swear the juror", please come forward and the
11 bailiff will tell you where to sit in the jury box.

12 We're going to draw two alternates. As to what we call
13 alternates, that would be a 13th -- 12 jurors and then a
14 13th and 14th alternate juror. As to that alternate, the
15 State has one strike each and the Defense two. So once we
16 seat all 12, we will seat the two alternates.

17 Now, if you hear your name called, like I said, please
18 stand where you are. Once you see it happen once or twice,
19 you'll have a good feeling for how it progresses.

20 Madam Clerk.

21 JURY SELECTION

22 THE CLERK: No. 147, Charles Mackiewicz.

23 (Juror No. 147, a white male, stood.)

24 THE CLERK: What say you for the State?

25 MR. PORTER: Please present this juror.

1 THE CLERK: Defense?

2 MR. MCKINNON: Please seat this juror.

3 THE CLERK: Please come forward and have a seat in the
4 jury box.

5 No. 121, Douglas Johnson.

6 (Juror No. 121, a white male, stood.)

7 THE CLERK: What say you for the State?

8 MR. PORTER: Please present this juror.

9 THE CLERK: Defense?

10 MR. MCKINNON: Please seat this juror.

11 THE CLERK: Please come forward and have a seat in the
12 jury box.

13 No. 175, Nancy Parrish.

14 (Juror No. 175, a white female, stood.)

15 THE CLERK: What say you for the State?

16 MR. PORTER: Please seat this juror.

17 THE CLERK: Defense?

18 MR. MCKINNON: Please excuse this juror.

19 THE CLERK: You've been excused from this case.

20 Juror No. 26, Barbara Brice.

21 (Juror No. 26, a black female, stood.)

22 THE CLERK: What say you for the State?

23 MR. PORTER: Please present this juror.

24 THE CLERK: Defense?

25 MR. MCKINNON: Please seat this juror.

1 THE CLERK: Please come forward and have a seat in the
2 jury box.

3 Juror No. 194, Ronnie Rose.

4 (Juror No. 194, a white male, stood.)

5 THE CLERK: What say you for the State?

6 MR. PORTER: Please present this juror.

7 THE CLERK: Defense?

8 MR. MCKINNON: Please seat this juror.

9 THE CLERK: Please come forward and have a seat in the
10 jury box.

11 No. 162, Chance Millwood.

12 (Juror No. 162, a white male, stood.)

13 THE CLERK: What say you for the State?

14 MR. PORTER: Please present this juror.

15 THE CLERK: Defense?

16 MR. MCKINNON: Please excuse this juror.

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

18 Juror No. 192, Shelly Rodriguez.

19 (Juror No. 192, a black female, stood.)

20 THE CLERK: What say you for the State?

21 MR. PORTER: Please present this juror.

22 THE CLERK: Defense?

23 MR. MCKINNON: Please excuse this juror.

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

25 Juror No. 205, Janiece Sims.

1 (Juror No. 205, a black female, stood.)

2 THE CLERK: What say you for the State?

3 MR. PORTER: Please present this juror.

4 THE CLERK: Defense?

5 MR. MCKINNON: Please excuse this juror.

6 THE CLERK: You've been excused from this case.

7 Juror No. 248, Jessica Woods.

8 (Juror No. 248, a white female, stood.)

9 THE CLERK: What say you for the State?

10 MR. PORTER: Please present this juror.

11 THE CLERK: Defense?

12 MR. MCKINNON: Please excuse this juror.

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

14 Juror No. 128, Kimberly Keefe.

15 (Juror No. 128, a white female, stood.)

16 THE CLERK: What say you for the State?

17 MR. PORTER: Please present this juror.

18 THE CLERK: Defense?

19 MR. MCKINNON: Please seat this juror.

20 THE CLERK: Please come forward and have a seat in the
21 jury box.

22 Juror No. 109, Jody Hope.

23 (Juror No. 109, a white female, stood.)

24 THE CLERK: What say you for the State?

25 MR. PORTER: Please excuse this juror.

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

2 Juror No. 5, Heather Anderson.

3 (Juror No. 5, a white female, stood.)

4 THE CLERK: What say you for the State?

5 MR. PORTER: Please present this juror.

6 THE CLERK: Defense?

7 MR. MCKINNON: Please seat this juror.

8 THE CLERK: Please come forward and have a seat in the
9 jury box.

10 Juror No. 70, J. S. Edmunds.

11 (Juror No. 70, a white male, stood.)

12 THE CLERK: What say you for the State?

13 MR. PORTER: Please present this juror.

14 THE CLERK: Defense?

15 MR. MCKINNON: Please seat this juror.

16 THE CLERK: Please come forward and have a seat in the
17 jury box.

18 Juror No. 168, Rita Moore-Johnson.

19 (Juror No. 168, a black female, stood.)

20 THE CLERK: What say you for the State?

21 MR. PORTER: Please present this juror.

22 THE CLERK: Defense?

23 MR. MCKINNON: Please excuse this juror.

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

25 Juror No. 65, John Douglas.

1 (Juror No. 65, a black male, stood.)

2 THE CLERK: What say you for the State?

3 MR. PORTER: Please excuse this juror.

4 THE CLERK: You've been excused from this case.

5 Juror No. 68, Zachary Dunlap.

6 (Juror No. 68, a white male, stood.)

7 THE CLERK: What say you for the State?

8 MR. PORTER: Please present this juror.

9 THE CLERK: Defense?

10 MR. MCKINNON: Please seat this juror.

11 THE CLERK: Please come forward and have a seat in the
12 jury box.

13 Juror No. 203, Alta Wallace.

14 (Juror No. 203, a white female, stood.)

15 THE CLERK: What say you for the State?

16 MR. PORTER: Please present this juror.

17 THE CLERK: Defense?

18 MR. MCKINNON: Please excuse this juror.

19 THE CLERK: You've been excused from this case.

20 Juror No. 84, Stephanie Foreman.

21 (Juror No. 84, a black female, stood.)

22 THE CLERK: What say you for the State?

23 MR. PORTER: Please present this juror.

24 THE CLERK: Defense?

25 MR. MCKINNON: Please seat this juror.

1 THE CLERK: Please come forward and have a seat in the
2 jury box.

3 Juror No. 196, Brenda Rutland.

4 (Juror No. 196, a white female, stood.)

5 THE CLERK: What say you for the State?

6 MR. PORTER: Please present this juror.

7 THE CLERK: Defense?

8 MR. MCKINNON: Please excuse this juror.

9 THE CLERK: You've been excused from this case.

10 Juror No. 114, Rita Hulland.

11 (Juror No. 114, a white female, stood.)

12 THE CLERK: What say you for the State?

13 MR. PORTER: Please present this juror.

14 THE CLERK: Defense?

15 MR. MCKINNON: Please seat this juror.

16 THE CLERK: Please come forward and have a seat in the
17 jury box.

18 Juror No. 151, Arnitra McClanahan.

19 (Juror No. 151, a black female, stood.)

20 THE CLERK: What say you for the State?

21 MR. PORTER: Please present this juror.

22 THE CLERK: Defense?

23 MR. MCKINNON: Please excuse this juror.

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

25 Juror No. 172, Rosa Myers.

1 (Juror No. 172, a biracial female, stood.)

2 THE CLERK: What say you for the State?

3 MR. PORTER: Please present this juror.

4 THE CLERK: Defense?

5 MR. MCKINNON: Please excuse this juror.

6 THE CLERK: You've been excused from this case.

7 Juror No. 222, Valerie Thomas.

8 (Juror No. 222, a black female, stood.)

9 THE CLERK: What say you for the State?

10 MR. PORTER: Please present this juror.

11 THE CLERK: Defense?

12 MR. MCKINNON: Please seat this juror.

13 THE CLERK: Please come forward and have a seat in the
14 jury box.

15 Juror No. 6, Jim Austin.

16 (Juror No. 6, a white male, stood.)

17 THE CLERK: What say you for the State?

18 MR. PORTER: Please present this juror.

19 THE CLERK: Defense?

20 MR. MCKINNON: Please seat this juror.

21 THE CLERK: Please come forward and have a seat in the
22 jury box.

23 THE COURT: All right. Alternates now, one strike for
24 the State and two for the Defense.

25 THE CLERK: Juror No. 249, Nelson Wright.

1 (Juror No. 249, a white male, stood.):

2 THE CLERK: What say you for the State?

3 MR. PORTER: Please present this juror.

4 THE CLERK: Defense?

5 MR. MCKINNON: Please excuse this juror.

6 THE CLERK: You've been excused from this case.

7 Juror No. 252, Erinn McCrary.

8 (Juror No. 252, a white female, stood.)

9 THE CLERK: What say you for the State?

10 MR. PORTER: Please present this juror.

11 THE CLERK: Defense?

12 MR. MCKINNON: Please seat this juror.

13 THE CLERK: Please come forward and have a seat in the
14 jury box.

15 Juror No. 112, Zack Howze.

16 (Juror No. 112, a black male, stood.)

17 THE CLERK: What say you for the State?

18 MR. PORTER: Please present this juror.

19 THE CLERK: Defense?

20 MR. MCKINNON: Please seat this juror.

21 THE CLERK: Please come forward and have a seat in the
22 jury box.

23 THE COURT: Anything from the State involving the
24 striking of the panel?

25 MR. PORTER: Nothing from the State, Your Honor.

1 THE COURT: Anything from the Defense involving the
2 striking of the panel?

3 MR. MCKINNON: No, Your Honor.

4 THE COURT: Those of you who were not chosen, I'm going
5 to allow you to leave. Call back tonight after 7:00 and
6 follow whatever the instructions are on the call-in message.
7 It could be to report at a certain time, it could be to call
8 back at a certain time. It's very important that you follow
9 those instructions. I'm going to ask you to leave quietly
10 because I'm going to start talking to this jury. You can go
11 at this time. Call in and leave quietly.

12 (WHEREUPON, the jury venire was excused.)

13 THE COURT: Those of you who were chosen, feel free to
14 stand. The Clerk will administer the oath.

15 THE CLERK: Please raise your right hand. Please
16 respond by saying "I will".

17 (WHEREUPON, the jury was sworn.)

18 ALL: I will.

19 THE COURT: You can be seated.

20 Mr. Austin, I'm going to ask you to be the Foreman of
21 this jury. I'm not going to ask you to move at this time,
22 but you will sit in the first seat on the front row.

23 The two alternates will always sit in those seats.

24 There are no other assigned seating, so as you file in,
25 the bailiffs will show you how to get in.

1 I'm going to chat with you for just a minute or two and
2 then turn the case over to the attorneys. They have the
3 right on behalf of the State and behalf of Mr. Hightower to
4 make before you what we call opening statements. These
5 statements are sort of blueprints of the trial, a preview of
6 what they expect the case will show. They're not arguing
7 their case, that is, they're not trying to convince you of
8 anything at this point. That will come at a later time when
9 they have the opportunity to make closing arguments or
10 closing statements. Right now, they're just giving you an
11 outline or a blueprint of the trial.

12 You are the sole judge of the facts in this case. As
13 to the four charges against Mr. Hightower, he has entered
14 pleas of not guilty as to each. The State must prove his
15 guilt and prove every element required to prove his guilt of
16 each of these charges before you could convict him on any or
17 all of them. Again, he is presumed innocent of the charges
18 against him. He need not prove his innocence. The State
19 has to prove his guilt before you could convict him beyond a
20 reasonable doubt.

21 I have three primary jobs to fulfill. One is, I'm the
22 logistics person. I make sure we break at the right time
23 for lunch or we take breaks. I make sure that you can see
24 and hear those things that are important for you to see and
25 hear. The mechanical part of the trial.

1 I rule on questions of evidence. If there's some
2 dispute between the parties as to whether certain evidence
3 should be allowed in the record for your consideration, I
4 rule on it. Once I have ruled on a question of evidence, it
5 is binding on you, it is binding on the attorneys and it is
6 binding on the witness.

7 My third job is that I'm the sole judge of the law in
8 this case. You must take, accept and apply the law as I
9 charge it. Even if you think the law should be different or
10 even if you think the law is different, you have to apply
11 the law as I charge it under your oath.

12 You're not to infer from anything I say or do at any
13 time during this trial as indicating an opinion of mine on
14 the facts. I'm not allowed to formulate or express to you
15 any opinion on the facts. It is solely your job to
16 determine the facts and apply the law to the facts.

17 You will be hearing witnesses. You can believe one
18 witness as opposed to several, several witnesses as opposed
19 to one. You may believe all, part or none of a witness'
20 testimony. Use your common sense, your sense of logic and
21 your sense of reason as you analyze the evidence.

22 You must judge the credibility and believability of the
23 witnesses who testify. You use those things in your
24 day-to-day life that you find as indicating believability in
25 an individual. And you can use certain evaluators, I call

1 them, how a witness acts on the stand, their demeanor. Were
2 they hesitant or straightforward in answering the questions?
3 Did they have the opportunity to actually see or hear what
4 they testified they saw or heard? You can examine whether a
5 witness has any reason to help or hurt one side or the
6 other, that is, any bias or prejudice. All these things you
7 consider, apply the law to the facts and you'll be able to
8 return a verdict.

9 Do not discuss the case among yourselves or try to make
10 up your own mind until we reached the point where I instruct
11 you to join to deliberate and return a unanimous verdict.
12 Prior to that time, you're not equipped with the tools you
13 need to make a fair and reasonable decision. So don't try
14 to make up your mind or discuss the case until we've reached
15 that point.

16 Do not let anyone discuss this case with you outside
17 the courtroom. If anyone approaches you and tries to
18 discuss this case with you, tell them you cannot and report
19 that back to me, hopefully, identifying any individual that
20 has tried to talk to you about the case.

21 Do not let yourself be exposed to any news coverage, if
22 there is any. I do not know that there would be. If your
23 eye or ear catches anything that could remotely deal with
24 this trial, don't let yourself be exposed to it. Don't do
25 any independent research. Don't go to the scene where this

1 allegedly happened. Don't go online to Google or anything
2 about the law, about the court, about me, about the
3 individuals. Don't access any electronic devices -- don't
4 use any electronic devices to inquire as to anything dealing
5 with this case or people involved in it. That would be
6 improper. Don't even go on Facebook or one of these other
7 social networks and share that you're serving as a juror.
8 That sounds innocent enough, but if you do that, someone may
9 reply, I don't know the proper lingo, but respond to
10 whatever you put out there with something that might not be
11 healthy for your serving as a juror.

12 You don't need to take notes. Please listen carefully.
13 We take breaks about every hour and a half. If you need a
14 break at any time, just simply raise your right hand and no
15 questions asked, we'll take a break. Everybody's comfort
16 level is different. You can't pay attention if you're not
17 comfortable. So if you need a break, please raise your hand
18 and let me know and we'll take a break.

19 And I extend that to counsel and Mr. Hightower.

20 We want to move the case along, but we're not in that
21 big of a hurry that we won't take a break if we need a
22 break.

23 Now, Counsel.

24 OPENING STATEMENT BY MR. PORTER

25 MR. EPTING: Thank you, Your Honor. May it please the

1 Court?

2 THE COURT: Yes, sir.

3 MR. PORTER: Good morning, ladies and gentlemen.

4 Today, we're going to hear about the events that occurred on
5 August the 23rd of 2017. Now, those events occurred at the
6 Hillside Inn on Anderson Road. The State will present
7 evidence to that extent. The State will present evidence
8 that Maurice Taylor and Tymel McCullough, the victim in this
9 case, were there in a room intending to stay the night.

10 In the morning hours of the 23rd, there was a knock on
11 the door. Antoine Hightower had showed up. Tymel
12 McCullough talks to him a little bit, goes back into the
13 room, tells him you can't come in. Antoine Hightower
14 loiters around outside, tries the door a couple times,
15 knocks on the door.

16 And then begins the actions for which we're here.
17 You'll see Mr. Hightower kicking the door of Tymel
18 McCullough's room. The State will present evidence Mr.
19 Hightower, the Defendant, broke that door in and began
20 assaulting Tymel McCullough. Said, Where's Gold at? You'll
21 see Týmél's teeth. His nickname is Gold. Týmél knew
22 Antoine as Angel, but he also knew him another way, physical
23 description that he gave law enforcement officers. You see
24 his eye. You'll see on the videos his physical appearance.

25 You'll hear from Maurice Taylor about what he saw,

1 about how he was hiding from this man, this big man who just
2 coming busting up in the room. How he tried to arm himself
3 with a closet rod trying to defend himself in any way
4 possible.

5 You'll hear about how the Defendant was armed with what
6 appeared to be a firearm. You'll also hear that that turned
7 out to be a pellet gun. We'll talk about that later.

8 You'll see and you'll hear from Tymel as he ran out of
9 that room trying to run for his life. And you'll hear how
10 Mr. Hightower chased him down, caught up to him and attacked
11 him. Picked him up, carried him. Mr. McCullough was able
12 to escape again and return back to the room trying to get to
13 safety. You'll even see how he shut the door trying to keep
14 Mr. Hightower away from him. You'll see Mr. Hightower barge
15 his way back in, this time with a brick in his left hand.
16 And with that brick, you will see and you will hear evidence
17 about what he did to Tymel McCullough.

18 You will see the pictures of Tymel's injuries. You
19 will hear where he went after he received these injuries.
20 You will hear Maurice Taylor talk about how Antoine
21 Hightower beat Tymel McCullough to a significant extent.
22 You'll see the blood. You'll see the blood on the brick.

23 You'll also hear testimony that Mr. Hightower took
24 something out of that room and ran off. How he was taken
25 into custody by Rock Hill Police Department a few minutes

1 later.

2 Now, because of all the Defendant's actions, the State
3 has charged him for what we anticipate we will present here
4 in trial. The State has charged him with four crimes. The
5 Judge will go into all that, but I just want to give you a
6 little preview of what they are.

7 Burglary first degree. The unlaw entry into a dwelling
8 without permission with the intent to commit a crime there.
9 These next couple crimes will be important there. It also
10 has to happen during the nighttime hours, when he has caused
11 injury to an occupant of the home, or when he was armed with
12 what was or appeared to be a deadly weapon. That's why the
13 BB gun comes into this. And what it appeared to be to the
14 witnesses.

15 He was also charged with kidnapping. Now, that's
16 unlawfully seize, confine, abduct a person without the
17 permission of the law. You'll hear about how Tymel
18 McCullough was carried by the Defendant and you'll see the
19 size.

20 He was also charged with assault and battery of a high
21 and aggravated nature. That requires the State to prove
22 that the Defendant unlawfully injured another person in a
23 manner in which it could have caused death or great bodily
24 injury.

25 And you heard the Judge say it, and I'd ask you to

1 remember, common sense is why you're here. You'll hear the
2 facts. I'd ask you to consider all of that when you're
3 deliberating.

4 The fourth crime is possession of a pistol during the
5 commission -- of a deadly weapon during the commission of a
6 violent crime. Assault and battery of a high and aggravated
7 nature is a violent crime. The State will introduce
8 evidence that will show he possessed a BB gun, but what the
9 witnesses believed to be a firearm at the time. That's
10 important. We'll go into that more in closing.

11 Now, ladies and gentlemen, you're going to hear from
12 witnesses, people that experienced, people that lived
13 through these things. But you're also going to be witnesses
14 to what happened that night. The reason you're going to be
15 witnesses is that Hillside Inn has video surveillance. Had
16 video surveillance immediately outside that door that
17 captured the Defendant's action on camera. And you will see
18 how he entered the door, the manner in which Mr. McCullough
19 acted in flight and Mr. Hightower acted. You will also see
20 the body camera from one of the officers that responded on
21 the scene.

22 So at the close of the case, Mr. Epting will address
23 you a little bit more about what is developed. But what I
24 want you to look for in this case right now, the video tells
25 all. Thank you.

OPENING STATEMENT BY MR. NIELSON

MR. NIELSON: Thank you, Your Honor.

Ladies and gentlemen of the jury, I don't dispute many of the things that Mr. Porter just told you. You are going to see some video. You're going to hear about a fight. You're going to hear about door kicking. You're going to be able to see it. All that's true. Every bit of that's true.

I stand before you and ask you to go a little bit deeper than just simply looking at a video and saying yeah, that's what happened. I stand before you asking you to ask a few other questions. Why? How? What else happened? What else was going on? This is not so simple as just let's play a video on video surveillance and see what happened.

You're going to be presented a story today. And you're going to have to decide what in that story is fact, what the facts mean. Not simply just looking them and seeing them, you get to interpret them. That's your job. That's your duty as a juror, is to interpret the facts and decide whether or not the State has proven beyond a reasonable doubt that Mr. Hightower has committed the crimes he's charged with or, perhaps, other crimes that the Judge will, perhaps, instruct you on later.

I submit to you that this is not so simple as Tymel said go away and then the other guy kicked in the door for no reason. You're going to hear about that. You're going

1 to hear from Tymel. And I ask you to ask that question as
2 you go throughout this case. Ask the why. Because that
3 can't be ignored in all of this. There might be defenses.
4 There might be reasons. There might be justifications. And
5 the Judge is going to instruct you on all the law that there
6 is, but as we go throughout this, I'm asking you to do what
7 you have sworn to do, listen to all the evidence, question
8 the evidence. And when I come back before you again at the
9 end of this case, I have no doubt that there will be some
10 doubt in your minds as to the evidence that has been
11 presented to you.

12 Now, Mr. Hightower is presumed not guilty right now.
13 You haven't seen any evidence. You haven't heard any
14 evidence. Every single one of you should be thinking right
15 now I find him not guilty. Every single one of you has to
16 individually have your mind changed from where you sit right
17 now in order for that presumption to change. I ask you to
18 consider that as you individually move through and
19 individually hear the evidence that's going to be presented
20 and ask yourself has that case been proven. Thank you.

21 THE COURT: Members of the jury panel, we'll take about
22 a 10-minute refresher break before we get into the first
23 witness. So I'm going to let you go to the jury room at
24 this time. Follow the bailiff.

25 (WHEREUPON, the jury exits the courtroom at 11:18 a.m.)

1 THE COURT: We'll be down until around 11:30.

2 MR. EPTING: Thank you, Your Honor.

3 (Short break.)

4 (WHEREUPON, State's Exhibit Nos. 1 through 5 were
5 marked for identification.)

6 (WHEREUPON, Court's Exhibit No. 3 was marked for
7 identification.)

8 THE COURT: Just for the record, while we were on the
9 break, one of the jurors asked if we could put some milk in
10 the fridge. We've made that note if anyone wants to look at
11 it a Court's Exhibit. We've taken care of it. We've
12 refrigerated the milk.

13 BAILIFF:

14 (Pause.)

15 THE COURT: I've got another note that says, Is there a
16 smoking break for the jurors?

17 I'm not going to give a smoking break at this time.

18 Would you check on the status of what is going on with
19 Mr. McCullough?

20 (WHEREUPON, Court's Exhibit No. 4 was marked for
21 identification.)

22 THE COURT: I received another note from the jury, Is
23 there a smoking break for the jurors?

24 I'll answer that, Yes, but we're not going to take a
25 smoke break at this time. Because I hope we're going to be

1 cranking back up in just a minute. But I'll tell them when
2 they come back in, we'll take a smoke break this afternoon.

3 DEPUTY: Judge, apparently, his blood sugar is very
4 low, so they allowed him to eat something and the retest it.
5 I apologize for that.

6 (Pause.)

7 THE COURT: Is the State ready to proceed?

8 MR. EPTING: Yes, Your Honor.

9 THE COURT: Defense?

10 MR. NIELSON: Yes, Your Honor.

11 THE COURT: Bring in the jury.

12 (WHEREUPON, the jury enters the courtroom at 12:04
13 p.m.)

14 THE COURT: Members of the jury panel, that break was
15 longer than I anticipated, but something came up I had to
16 deal with. It wasn't anybody's fault, just something came
17 up.

18 The next break will be lunch, but any other breaks, we
19 will make it so the smokers can smoke.

20 Call your first witness.

21 MR. EPTING: The State call Sergeant Grady Gonzales.

22 GRADY GONZALES,

23 after being duly sworn, testified as follows:

24 THE WITNESS: I do.

25 THE CLERK: Thank you.

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DIRECT EXAMINATION

BY MR. EPTING:

Q Morning, Sergeant.

A Morning, sir.

Q Would you please state your name and rank for the jury?

A My name is Grady Gonzales. I'm a sergeant here at the York County Sheriff's Office.

Q And what are your duties as an employee of the sheriff's office?

A Currently, I've just been transferred to the training division as the training sergeant. Prior to that, I was assigned to the criminal investigations division as a detective.

Q Were you a detective on August 23rd, 2017?

A I was, sir. I was the on-call detective for that night.

Q And do you recall the events of that night?

A I do, sir.

Q And do you recall coming in contact with the Defendant that night?

A I do.

Q Would you please describe the events that led up to your response?

A It was the early morning hours of that evening, that early morning. I was requested to the scene by the shift

1 supervisor on patrol for Rock Hill. I responded to the
2 Hillside Inn in Rock Hill. It's within the jurisdiction of
3 the County of York.

4 Upon my initial arrival, I was met by the sergeant on
5 duty who requested me to the scene. He began telling me
6 what had transpired, what they knew so far. Upon arrival, I
7 began canvassing the scene, trying to gather what I could,
8 see what was going on just to make sure I had -- kind of
9 checking the boxes, if you will.

10 At that time, I continued on, looked through the scene,
11 getting procedural things done. At that time, we were met
12 by the hotel operators and owners, at which time, I was able
13 to view a videotape.

14 Q So did you obtain a copy of that videotape?

15 A Forensics did, sir. Investigator Neely.

16 Q Did you review the videotape that night?

17 A That night on scene, yes, sir.

18 Q Have you reviewed a copy of that videotape since that
19 night?

20 A Yes, sir.

21 Q Sergeant Gonzales, could you tell the jury what is on
22 that disc?

23 A This is the video surveillance from the hotel, the
24 Hillside Inn, of the night of the incident.

25 Q Have you reviewed that disc?

1 A I'm sure I have, yes, sir.

2 Q And is it a true and accurate copy of the recording as
3 you viewed it that night?

4 A Yes, sir.

5 Q Thank you. Now, did you come into contact with Tymel
6 McCullough that night?

7 A I did, sir. After the scene, I went to the hospital to
8 visit Mr. McCullough.

9 Q Did you see him on scene?

10 A I did not, sir. He had already been transported by
11 ambulance as a result of his injuries that were sustained
12 during the altercation.

13 Q Did you call any other -- we'll talk about Tymel in a
14 second. Did you call any other assets of the sheriff's
15 office to the scene?

16 A I utilized what patrol staff I had just to contain the
17 scene so we could get forensics there. Investigator Neely
18 was requested to the scene because she was the on-call
19 forensics.

20 Q So you mentioned about going to the hospital. Would
21 you please describe that process?

22 A Yes, sir. When I concluded my portion at the hotel --
23 or the incident location, I then, along with Investigator
24 Neely, drove over to Piedmont Medical Center where the
25 victim was receiving treatment for his injuries. I then

1 conducted an interview with him at that time in the ER.

2 Q If I showed you pictures of his injuries, would you
3 recognize those?

4 A I would, sir.

5 Q Sergeant, could you tell the jury what the contents of
6 those photographs are?

7 A These are photographs of Mr. McCullough, the victim.
8 These are injuries that he sustained during the altercation
9 with the Defendant.

10 Q Who took those photos?

11 A I believe Investigator Neely did, sir.

12 Q Were you present when those photos were taken?

13 A I was.

14 Q Are they a true and accurate reflection of the injuries
15 as they appeared that night?

16 A They are, sir.

17 MR. EPTING: Your Honor, at this point, I would move
18 these exhibits into evidence. They are marked as State's
19 4A, 4B, 4C and 4D.

20 THE COURT: Any objection?

21 MR. NIELSON: No, Your Honor.

22 THE COURT: In without objection.

23 (WHEREUPON, State's Exhibit Nos. 4A through 4D were
24 admitted into evidence.)

25 BY MR. EPTING:

1 Q Sergeant Gonzales, we were just talking about the
2 hospital. At the scene, did you notice anything -- did you
3 notice any pieces of anything on the ground while you were
4 investigating the scene?

5 A When I got on scene, I started conducting a canvas of
6 the area. You're trying to get an understanding for the
7 feel of the scene. You're trying to understand if what
8 you're seeing is a true and accurate depiction of what
9 actually happened.

10 As I started walking the scene, I found the room where
11 some of this transpired, some of the blood, a brick that was
12 recovered for evidence. Back all the way around to the
13 front of the office, there were blood signs and, obviously,
14 signs of a struggle. In the front of the office, the intake
15 office, operating area of the establishment, there was small
16 pieces of what we believed to be part of a BB gun that was
17 fractured into pieces.

18 Q Was that evidence recovered by the sheriff's office?

19 A To my knowledge, yes, sir.

20 Q When you spoke to Mr. McCullough in the hospital, could
21 you please describe his condition in the photographs?

22 A Mr. McCullough was alert, in a lot of pain. He was
23 able to give a description, a description of what happened.
24 He knew -- when I asked him about did he know who did this,
25 he said he did, that he knew him by the name Angel and that

1 was the man that had attacked him.

2 Q Did he appear coherent?

3 A He did.

4 Q He understood the questions you were asking him?

5 A He did, sir.

6 Q At any point, did you show him a photograph?

7 A I did.

8 Q And how did you obtain that photograph?

9 A I checked the system to see --

10 MR. NIELSON: Objection.

11 THE COURT: I sustain the objection.

12 MR. EPTING: My apologies, Your Honor.

13 Court's indulgence, Your Honor.

14 (Pause.)

15 BY MR. EPTING:

16 Q Sergeant Gonzales, did the victim provide any
17 identifying characteristics of the suspect at that point?

18 A He did. The Defendant -- the victim described the
19 Defendant as a very --

20 MR. NIELSON: Objection, hearsay.

21 THE COURT: I sustain the objection.

22 BY MR. EPTING:

23 Q Did the victim pick the Defendant out of a lineup --
24 out of a photo?

25 A Out of a photograph that I showed him, yes, sir.

1 MR. EPTING: Your Honor, the State has no further
2 questions.

3 THE COURT: Mr. Nielson?

4 MR. NIELSON: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. NIELSON:

7 Q Sergeant Gonzales, you were not on scene when any of
8 the actual fighting in this case happened, correct?

9 A No, sir, I was not.

10 Q The fight was long over by the time you got there?

11 A Yes, sir.

12 Q And, in fact, you testified Mr. McCullough had been
13 taken to the hospital?

14 A Yes, sir, prior to my arrival.

15 Q Before your arrival?

16 A Yes, sir.

17 Q Where was -- did you interview any witnesses in this
18 case?

19 A I did, sir.

20 Q Other than Mr. McCullough?

21 A I did, sir.

22 Q Who else did you interview?

23 A It was a woman, I believe her last name is Fail, Vail,
24 a Ms. Flowers and a gentleman by the name of Maurice -- I
25 apologize, sir, I'm drawing a blank.

1 Q But a gentleman named Maurice?

2 A I did, sir.

3 Q And all three of them gave you statements?

4 A They did, sir.

5 Q And you took written statements from all three?

6 A We did, sir.

7 Q Did you --

8 A If I may interject, sir, Ms. Flowers, I interviewed at
9 the hospital.

10 Q Okay. Okay. Did you actually do any evidence
11 collection in this case?

12 A I did not, sir.

13 Q You didn't physically pick anything up?

14 A No, sir.

15 Q You didn't physically bag anything or --

16 A No, sir, forensics were there --

17 THE COURT REPORTER: I'm sorry. You're talking at the
18 same time. I can't get a clear record.

19 THE COURT: Make sure you don't talk over each other.

20 BY MR. NIELSON:

21 Q And that was all done by Officer Neely?

22 A Yes, sir.

23 Q Okay.

24 MR. NIELSON: Beg the Court's indulgence.

25 (Pause.)

1 MR. NIELSON: No further questions from this witness,
2 Your Honor.

3 THE COURT: Redirect?

4 MR. EPTING: No, sir, Your Honor.

5 We ask this witness be excused.

6 THE COURT: You may step down. You're excused. We
7 appreciate you coming.

8 THE WITNESS: Thank you, Your Honor. It's a pleasure
9 to see you, sir. Thank you.

10 THE COURT: Call your next witness.

11 MR. EPTING: The State calls Maurice Taylor.

12 THE COURT: Sir, if you would come up here. There's a
13 Bible in front of this lady. Put your left hand on the
14 Bible and raise your right.

15 MAURICE TAYLOR,

16 after being duly sworn, testified as follows:

17 THE WITNESS: I do.

18 DIRECT EXAMINATION

19 BY MR. EPTING:

20 Q Good afternoon.

21 A Good afternoon.

22 Q Would you please state your name for the record?

23 A Maurice Douglas Taylor.

24 Q Mr. Taylor, where are you from?

25 A Originally?

1 Q Originally.

2 A Detroit, Michigan.

3 Q And where do you live now?

4 A Rock Hill, South Carolina.

5 Q How long have you lived in Rock Hill?

6 A About 10 years.

7 Q I want to ask you about some events that occurred in
8 the late morning hours of August 23rd, 2017. Do you
9 remember that?

10 A Yes.

11 Q Where were you at that time, on that date?

12 A The Hillside Motel.

13 Q And is that in York County?

14 A Yes, it is.

15 Q And what were you doing at the Hillside Motel?

16 A Some friends or associates and I were occupying a room
17 there.

18 Q And who all was with you in that room?

19 A Tymel, myself, a young lady by the name of Jennifer and
20 I can't recall the other female's name.

21 Q Do you have a description of her, what she looks like?

22 A Yes.

23 Q What's that description?

24 A African-American, maybe 140, 145 pounds.

25 Q Okay. And who rented the room?

1 A I did.

2 Q And what were your intentions as far as staying there
3 or leaving?

4 A Just, basically, staying there. I had a few beers. We
5 watched TV.

6 Q Okay. And were the other parties -- you mentioned
7 guests of yours in that room?

8 A Yes.

9 Q Were they also going to stay the night?

10 A Yes.

11 Q At any point during the course of your stay at the
12 Hillside Inn, did you encounter anyone of significance?

13 A I'm sorry?

14 Q Did you encounter the Defendant while you were at
15 Hillside Inn?

16 MR. NIELSON: Objection, leading, Your Honor.

17 THE COURT: Please rephrase your question.

18 BY MR. EPTING:

19 Q Other than the people in your room that you mentioned,
20 did you encounter anyone else of relevance in this case
21 while you were at the Hillside Inn?

22 A Yes.

23 Q Who?

24 A That would be Angel.

25 Q Angel?

1 A Yes.

2 Q Is Angel present in the courtroom?

3 A Yes.

4 Q What is Angel wearing currently?

5 A He's wearing a black shirt and glasses.

6 Q Is this how he appeared the night of the incident?

7 A No.

8 Q How, if at all, has his appearance changed?

9 A Yes. He had dreadlocks.

10 Q And did you know Angel prior to the incident this
11 night?

12 A Yes.

13 Q About how many times had you seen him?

14 A I don't know, maybe 10.

15 Q Ten times?

16 A Yes.

17 Q Did you recognize him that night?

18 A Yes.

19 Q Tell me about your interaction with Angel?

20 A On a couple occasions, I had given Angel a ride. I
21 don't know, picked up some furniture from maybe his
22 girlfriend's house. At one point, I've even sat and had
23 dinner with him at his house.

24 Q Tell me about your interactions with Angel on the night
25 of the 23rd.

1 A Angel knocked on the door, once, twice, and then on
2 that third time -- after that, he kicked the door in.

3 Q Did Angel have permission to come in your room that
4 night?

5 A No.

6 Q Was this during the hours of darkness?

7 A Yes.

8 Q How did you know Angel was coming to the door or
9 knocking or trying the door?

10 A Well, I looked out of the window at one point when he
11 knocked.

12 Q And you said he kicked in the door?

13 A Yes.

14 Q Tell me about that. What happened after he kicked in
15 the door?

16 A Well, after about the third knock, I got up from the
17 bed and walked toward the bathroom where the refrigerator
18 and microwave was.

19 Q Okay. And then what?

20 A At that point, I attempted to pull the bar off of the
21 -- the coat rack bar.

22 Q This is after Angel has broken in the door?

23 A No, this is prior to him breaking in the door.

24 Q Why were you doing that?

25 A Well, just something wasn't right about -- something

1 wasn't right about him continuing to knock on the door. At
2 one point, I told Angel that he couldn't come inside the
3 door. Because I was threatened to be kicked out of the room
4 if we had company after, I don't know, I believe it was
5 11:00 or 10:00.

6 Q Okay. So you testified he kicked in the door. What is
7 his demeanor?

8 A Well, when he kicked in the door, at that point, I was
9 in between the refrigerator and the counter right there. So
10 once I heard the door come in, I immediately looked around
11 and I saw him walking in with a gun.

12 Q And did you believe that to be a real gun?

13 A Yes.

14 Q What was going through your mind when you saw that?

15 A Is he going to shoot.

16 Q What, if anything, does Angel say as he's in the room
17 pointing the gun?

18 A He was looking for Tymel.

19 Q Do you remember his exact words?

20 A Where is Gold? Or come out, Gold.

21 Q Who did you understand Gold to be?

22 A Tymel.

23 Q Why does he call him Gold?

24 A Because he has gold in his mouth.

25 Q He has gold in his mouth?

1 A Gold teeth, yes.

2 Q Why is Tymel?

3 A At this point, I don't see Tymel.

4 Q Okay. Are the girls still in the room?

5 A Yes, and they're screaming.

6 Q They're screaming?

7 A Yes.

8 Q Where are they?

9 A They were both on each bed. One was on the bed I
10 occupied and one was on the bed Tymel occupied.

11 Q Did you fear he was going to harm you?

12 A Yes.

13 Q Did you fear he was going to harm the girls?

14 A Yes.

15 Q Does anything happen after he comes in and says where's
16 Gold, where's the guy with the gold? Does he find the guy
17 with the gold?

18 A I'm sorry?

19 Q Does he find Tymel?

20 A No, at that point, as he's coming in towards me, which
21 again, I'm by the bathroom and the refrigerator and
22 microwave, I kind of ducked back inside. At that point, I
23 hear a flurry of movement and I hear the -- I see the girls
24 -- because I could, basically, see them where I stood. I
25 see them jump up and run out. So at this point, I look out

1 again and they're running out, so I come from behind that
2 wall and I'm on my way out, too. But at this point, I'm
3 looking for the key to my vehicle.

4 Q What are you going to do?

5 A I'm going to get in my vehicle and try to get away from
6 that area.

7 Q Did you find the keys?

8 A No, I couldn't find my keys.

9 Q Could you find your phone?

10 A I couldn't find my phone either.

11 Q If you had found the phone, what would you have done?

12 A I would have called 911. But I went out of there.

13 Q You went out?

14 A Yes.

15 Q At any point, does anyone return to the room?

16 A Yes.

17 Q Tell us about that.

18 A Again, as I searched the room for my keys, I could hear
19 Tymel yelling for me and I could hear the girls still
20 screaming, or one of the girls, anyway. But I can't -- I
21 can't really locate anybody. At this point, I could hear
22 Tymel running -- or I can hear footsteps running back
23 towards the room.

24 Q What did you do when you heard that?

25 A At this time, I go back to that pole. I want to snatch

1 that pole off of there.

2 Q What are you going to do with it?

3 A I'm going to protect myself.

4 Q Has anyone come back in the room?

5 A Tymel has come back in the room and he attempts to
6 close the door.

7 Q What's Tymel's demeanor? What's he looking like?

8 A He is bloody all over. And if I'm not mistaken, he
9 doesn't have on any clothes.

10 Q What's going through your mind?

11 A Tymel is bleeding profusely. I just want out of there.

12 Q Your testimony is that he tried to close the door?

13 A Yes, he attempted to close the door.

14 Q Was he able to successfully close the door?

15 A No, he was not.

16 Q Why not?

17 A Because Angel was right behind him and he was
18 determined to get in that door and he pushed the door in.

19 Q And at that point, what happens after Angel pushes the
20 door in?

21 A At this point, I am right back where this whole thing
22 started. I could visually look out and see Angel with a
23 brick hitting Tymel across the back of his head.

24 Q Is he hitting him anywhere else other than the back of
25 his head?

1 A His head, his neck, his body, his back.

2 Q Approximately how many times do you think Tymel was hit
3 with that brick?

4 A I don't know, several times. It was just several times
5 repeatedly.

6 Q Is the Defendant saying anything as this is going on?

7 A Oh, he's saying, Where is that Gold? Where is that?

8 Q Where is that?

9 A Yes.

10 Q Is Tymel saying anything back?

11 A Basically, he said, You're not going to get it this
12 way. That's what I remember him saying.

13 Q Does the Defendant stay in the room or does he ever
14 leave?

15 A The Defendant walks over to the nightstand. He grabs
16 something off the nightstand. He grabs something out of the
17 drawer. And then he left.

18 Q And then he leaves?

19 A Yes.

20 Q Do you see him any time after that?

21 A Once the police brought him back to the parking lot.

22 Q How confident are you that it was the Defendant that
23 broke into the hotel room that night?

24 A I'm a hundred percent sure.

25 Q And have you been convicted of a crime that carries

1 over a year?

2 A Have I been convicted? I'm sorry, say that again.

3 Q Have you been convicted of a crime that carries over a
4 year?

5 A Yes.

6 Q And when the police arrived at the scene, did you speak
7 to anybody?

8 A I spoke to the police.

9 Q Okay. And do you remember what type of uniform those
10 police were wearing?

11 A Well, I spoke to one uniform officer and then I later
12 spoke to a detective.

13 Q Okay. The uniform officer, do you remember the
14 location where you spoke with him?

15 A Right at the scene.

16 MR. EPTING: Beg the Court's indulgence.

17 (Pause.)

18 MR. EPTING: Your Honor, may I approach?

19 THE COURT: Yes.

20 MR. EPTING: I'm handing this witness what has been
21 marked as State's Exhibit 3.

22 BY MR. EPTING:

23 Q Maurice, do you recognize State's Exhibit 3?

24 A Yes.

25 Q What is State's Exhibit No. 3?

1 A This is the video of -- yes, this is the video, I
2 believe, of me and the officer speaking.

3 Q Have you reviewed a copy of that video?

4 A Yes.

5 Q How do you know that's the copy you reviewed?

6 A I initialed it.

7 Q And did the officer also speak with anyone else at the
8 scene the same time as you?

9 A I recall some of the other tenants that were occupying
10 rooms there.

11 Q How about Tymel?

12 A Yes.

13 Q Was that a fair and accurate depiction of your
14 conversation with the officer?

15 A Yes.

16 Q Were you aware that night whether there were any
17 surveillance cameras in the area?

18 A Yes.

19 Q Were you aware of whether one was near your room?

20 A Yes.

21 MR. EPTING: May I approach, Your Honor?

22 THE COURT: Yes.

23 MR. EPTING: I'm handing this witness what has been
24 marked as State's Exhibit No. 1.

25 BY MR. EPTING:

1 Q What is State's Exhibit No. 1?

2 A This is the surveillance of the room which was outside
3 the room I occupied.

4 Q Have you reviewed a copy of that?

5 A Yes.

6 Q Particularly as to the camera outside of your room, is
7 that a fair and accurate depiction?

8 A Yes.

9 MR. EPTING: Your Honor, the State would seek to enter
10 State's Exhibit No. 1 into evidence at this time.

11 MR. NIELSON: No objection to the camera outside the
12 room. I don't believe -- I think there's other camera
13 angles on there that should not be in yet.

14 THE COURT: In without objection.

15 MR. EPTING: Thank you, Your Honor.

16 (WHEREUPON, State's Exhibit No. 1 was admitted into
17 evidence.)

18 MR. EPTING: Permission to publish, Your Honor, subject
19 to Defense counsel's request.

20 THE COURT: Yes.

21 MR. EPTING: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (Pause.)

24 (WHEREUPON, State's Exhibit No. 1 was played for the
25 jury.)

1 BY MR. EPTING:

2 Q Do you recognize the individual that's on the screen
3 right now? This is State's Exhibit No. 1 that's on the
4 projector.

5 A Yes.

6 Q Who is that?

7 A That would be Angel.

8 Q When does he pull the gun out?

9 A Once inside, I looked around and I saw him with the
10 gun.

11 Q And what's going on inside the room at this point?

12 A At this point -- at that point, he came inside and he
13 was asking, Where you at, Gold? Where you at, Gold?

14 Q Do you recognize the female that just ran on the bottom
15 of the screen?

16 A Yes.

17 Q Who is that?

18 A That's Jennifer. I'm trying to find my keys.

19 Q Are you hearing anything as you're standing outside?

20 A I'm hearing some screaming, yeah.

21 Q When is the last time you saw Jennifer?

22 A You mean since this night?

23 Q Yes.

24 A I took her back to Gastonia, I haven't seen her since.

25 Q Do you know who that individual is?

1 A No, I don't.

2 Q What are we looking at here?

3 A Me, again, trying to locate my keys. I don't know if
4 Angel took my keys because they were on a table or what. I
5 don't know if they were locked in my truck, I don't know.
6 That's my vehicle. That's my truck right there.

7 Q What does the person you've identified as the Defendant
8 have in his hand at this point?

9 A A brick.

10 Q Is that the same brick you testified had blood all over
11 it?

12 A Yes.

13 MR. EPTING: May I approach the witness, Your Honor.

14 THE COURT: Yes.

15 MR. EPTING: May I approach, Your Honor?

16 THE COURT: Yes.

17 MR. EPTING: I'm handing the witness what's been marked
18 as State's Exhibit No. 2.

19 BY MR. EPTING:

20 Q Maurice, if you would, look through all of those. Look
21 up when you're done and I'll ask you some questions about
22 them.

23 A (Witness complies.)

24 Q Do you recognize State's Exhibit No. 2, all those
25 pictures?

1 A Yes.

2 Q Are they a fair and accurate depiction?

3 A Yes.

4 Q What is all that, general speaking?

5 A This is the Hillside Hotel. This is also where I
6 occupied a room, 112.

7 MR. EPTING: Your Honor, at this time, the State would
8 seek to enter State's Exhibit No. 2, a collection of
9 pictures, into evidence at this time.

10 MR. NIELSON: Without objection, Your Honor.

11 THE COURT: All right. In without objection.

12 Are these A, B, C and D?

13 MR. EPTING: They are, Your Honor. And I'll say that
14 for the record.

15 Your Honor, for the record, these are State's 2A
16 through 2N.

17 THE COURT: Thank you.

18 (WHEREUPON, State's Exhibit Nos. 2A through 2N were
19 admitted into evidence.)

20 MR. EPTING: Permission to publish, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. EPTING:

23 Q What are we looking at here, Maurice? And for the
24 record, State's 2A is the person on the screen.

25 A That is the officers at the Hillside Motel.

1 Q And here?

2 A That is the back side or the parking lot in which I
3 occupied a room.

4 Q Is your room shown on this picture?

5 A Yes, my room is where the gold Suburban is, which is my
6 vehicle.

7 Q Is it backed in?

8 A Yes, it's backed in.

9 Q What are we looking at here?

10 A That was the room I occupied that evening.

11 Q Is that how it was when you got there?

12 A No, not at all.

13 Q What are we looking at here?

14 A Again, that's the doorway of the room I occupied that
15 evening.

16 Q Is that how it was --

17 THE COURT: Identify which one it is.

18 MR. EPTING: I'm sorry. I believe this is State's 2E.

19 THE WITNESS: That is the room after the door was
20 kicked in.

21 BY MR. EPTING:

22 Q What is this wooden piece here?

23 A That would be the door frame.

24 Q 2F?

25 A Again, that's the room once it was kicked in.

1 Q 2G?

2 A That is that table -- that was the table in which he
3 grabbed something off of there. I don't know what it was.

4 Q Next picture?

5 A That's the door after it's been kicked in.

6 Q Can you see from where you're sitting?

7 A Yes, I can see it.

8 Q What are we looking at here?

9 THE COURT: Which one is it?

10 THE WITNESS: That is the brick that Angel had hitting
11 Tymel with it.

12 BY MR. EPTING:

13 Q This is State 2J -- I'm sorry, State 2I. 2J?

14 A That's the same brick.

15 Q How did that brick get there?

16 A Well, that's the brick Angel had that he was hitting
17 Tymel with. You can see the blood all over it.

18 Q State 2L?

19 A Okay, that would be the area in which I was standing
20 when this was going on, when most of this stuff was going
21 on.

22 Q State 2M?

23 A Right between that area right there.

24 Q You mentioned the curtain rod?

25 A Well, that coat hanger rod, yes.

1 Q Finally, State 2N?

2 A I was right between that sink and that refrigerator.

3 Q What was Tymel's demeanor as he spoke to the police and
4 before EMS got to him?

5 A It was not in his right mind. I don't even think he
6 knew where he was at.

7 MR. EPTING: Beg the Court's indulgence.

8 (Pause.)

9 BY MR. EPTING:

10 Q And finally, can you point the person out who assaulted
11 you and broke into your hotel room that night? Is he in the
12 courtroom?

13 A Yes, that would be Mr. Hightower.

14 MR. EPTING: I would ask the record reflect that the
15 witness has pointed out the Defendant as the assailant that
16 night.

17 Mr. Taylor, that's all the questions I have for you
18 right now. Please answer any questions Defense counsel has
19 for you.

20 THE WITNESS: All right.

21 CROSS-EXAMINATION

22 BY MR. NIELSON:

23 Q Mr. Taylor?

24 A Yes.

25 Q Let's back up just a little bit, okay?

1 A Sure.

2 Q Before Angel came up and kicked in the door, how long
3 was he outside your room?

4 A I want to say anywhere from five to 10 minutes.

5 Q Okay. Did anybody from your room go out and talk to
6 him?

7 A Tymel went out, but I don't think he went out to talk
8 to him.

9 Q But he did leave the room while Angel was outside?

10 A Yes.

11 Q Do you have knowledge as to whether they talked or did
12 not talk or anything else?

13 A No. I recall Tymel was coming back in the room and
14 Angel was right behind him. I stopped Angel telling him
15 that we can't have any company in this room or they're going
16 to put us out.

17 Q So you told him that?

18 A Yeah.

19 Q And when -- and at that point, did you hear him
20 outside?

21 A Well, he came and knocked, at least, three times.

22 Q At least, three times?

23 A Yes.

24 Q Did you check the door any of those times he knocked?

25 A I looked out the window.

1 Q Did anybody check the door?

2 A Not that I recall.

3 Q Did anybody answer him to his knocking in any way?

4 A I did. The first time, I said, What's up.

5 Q Okay. Second time?

6 A I didn't say a word.

7 Q Did anybody say anything?

8 A No.

9 Q Okay. And then the third time, your testimony is
10 that's when he kicked in the door?

11 A After the third time knocking, the door came in.

12 Q And he came in the door, and you testified on direct
13 that he said, Where's Gold, right?

14 A Yes.

15 Q Or something to that effect?

16 A Yes.

17 Q And you testified that at some point during the
18 altercation between him and Gold that Gold said, You're not
19 going to get it this way, correct?

20 A Yes.

21 Q What was get what? Any idea?

22 A I don't know.

23 Q Okay. So you don't know what the beef was between him
24 and Gold?

25 A No.

1 Q But it was obvious that Gold was not going to give him
2 something?

3 A I wouldn't say it was obvious.

4 Q But you testified that Gold said, I'm not going to give
5 it to you this way?

6 A Well, he's the beating the man over the back of the
7 head.

8 Q Okay. But Gold wasn't going to give it up that way,
9 correct?

10 A Whatever that meant for Gold, I don't know.

11 Q And so the girls screamed and they ran out the door,
12 correct?

13 A Yes.

14 Q And then Tymel runs out the door after the girls?

15 A No.

16 Q What happened?

17 A From my understanding, when the door came in, Gold must
18 have been behind the door. So when Angel come in with the
19 gun -- because I was able to look out and see this. He's
20 coming my way towards the bathroom.

21 Q Okay.

22 A At this point, I fall back into the -- behind the wall
23 here and I hear a scuffle. So I'm led to believe that Gold
24 was behind the door and took off from behind the door.

25 Q Okay.

1 A And he went behind him.

2 Q And then the girls went behind him?

3 A Yes.

4 Q Did you see any of the altercation that happened in the
5 parking lot?

6 A No.

7 Q You didn't see where -- you have no knowledge as to
8 where Angel got the brick?

9 A No.

10 Q You have no knowledge as to whether Tymel was ever
11 armed with a brick?

12 A No.

13 Q You have no knowledge as to where they ran while they
14 were in the parking lot?

15 A No.

16 Q Or anything that happened out in the parking lot?

17 A No.

18 Q Other than what you could hear, right?

19 A Yes, other than --

20 Q You testified that you heard Tymel screaming?

21 A Yes.

22 Q But other than what you heard, the screaming that you
23 heard, you have no knowledge as to anything that happened
24 out in the actual parking lot?

25 A No, I have no knowledge, but when Tymel comes back into

1 the room, he's profusely bleeding.

2 Q Okay. Did you ever get the pole off the wall?

3 A No.

4 Q You were just trying to?

5 A Yes.

6 Q And you testified on direct examination you were trying
7 to get the pole off the wall before the door ever came in,
8 correct?

9 A Yes.

10 Q And when you talked to the officers that night, they
11 asked you what happened?

12 A Yes.

13 Q And at any point, did you identify any kind of pictures
14 or anything like that of Angel?

15 A They didn't show me any pictures.

16 Q Okay. But you said you knew Angel?

17 A Yes.

18 Q And you had met him, been at his house?

19 A Yes.

20 Q And knew him very well?

21 A Yes.

22 Q Could easily identify who it was?

23 A Yes.

24 Q Okay. And you testified you have been convicted of a
25 crime before, correct?

1 A Yes.

2 MR. NIELSON: Beg the Court's indulgence.

3 BY MR. NIELSON:

4 Q Now, just to be clear, you were the person who rented
5 this room, correct?

6 A Yes.

7 Q From the Hillside Hotel?

8 A Yes.

9 MR. NIELSON: No further questions, Your Honor.

10 THE COURT: Redirect?

11 MR. EPTING: Not from the State, Your Honor.

12 We'd ask that this witness be excused.

13 THE COURT: You can be excused. We appreciate your
14 time.

15 THE WITNESS: Thank you.

16 THE COURT: Members of the jury panel, we'll break for
17 lunch until 2:15. The bailiff will tell you how you can get
18 in and out while you're serving as a juror. We'll break
19 until 2:15.

20 (WHEREUPON, the jury exits the courtroom at 12:50 p.m.)

21 THE COURT: We'll be down until 2:15.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: State?

24 MR. EPTING: Pursuant to Your Honor's ruling in
25 pretrial, we do have a copy of the NCIC of Maurice Taylor

1 who testified. It was provided to the Defense to review,
2 but not to have. We have a copy of that in a manilla
3 envelope. If I understood the Court's directive, we were to
4 make this a copy for the record, but seal it.

5 THE COURT: Right.

6 MR. EPTING: Should we mark this as a Court's Exhibit?

7 THE COURT: Mark it as a Court's Exhibit.

8 (WHEREUPON, Court's Exhibit No. 5 was marked for
9 identification.)

10 THE COURT: Bring in the jury.

11 (WHEREUPON, the jury enters the courtroom at 2:18 p.m.)

12 THE COURT: Call your next witness.

13 MR. EPTING: Thank you, Your Honor. The State calls
14 Anthony Ellis.

15 ANTHONY ELLIS,

16 after being duly sworn, testified as follows:

17 THE WITNESS: I do.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. EPTING:

21 Q Could you please state your full name for the record?

22 A Anthony Ellis.

23 Q And how are you employed?

24 A I work for the City of Rock Hill.

25 Q How long have you worked for the City of Rock Hill?

1 A 15 years.

2 Q And what are your current duties?

3 A I'm a patrol sergeant.

4 Q And were you so employed on August 23rd of 2017?

5 A I was.

6 Q Did you have a chance to assist in part of an
7 investigation involving an incident at Hillside Inn?

8 A I did.

9 Q Could you tell the jury how you became involved?

10 A Me and another officer were leaving the Quick Trip on
11 South Anderson Road, headed north on Anderson Road. We got
12 a call, an emergency call, what they call tones, that there
13 was a man with a gun at the Hillside Inn. The County
14 officers were requesting assistance. We went there, code
15 three to the Hillside Inn.

16 Upon arrival, they told us that they were looking for a
17 suspect, a large black male with dreadlocks, a bad eye, no
18 shirt and gray sweatpants. Remembering that we just passed
19 this person on Anderson Road, we turned around and went
20 straight back to where he was and got out with him in front
21 of the operations center on South Anderson Road.

22 Q And how did he appear?

23 A He was sweaty. He was dressed in gray sweatpants, no
24 shirt, dreads, pretty large individual.

25 Q Did he appear injured in any way?

1 A I saw a little bit of blood on his arm, but it didn't
2 look -- it was like it was superficial, maybe.

3 Q Did you notice any injuries to his face?

4 A I did not.

5 Q Did you take him into custody?

6 A We did.

7 Q Based on the description you were given?

8 A Yes, sir.

9 Q And what, if anything, did you do with him once you
10 took him into custody?

11 A We explained to him -- or I explained to him --

12 Q Well, let's -- did you take him from the scene?

13 A From the scene?

14 Q From the scene where you had --

15 A Oh, yeah, sure, where we picked him up, we took him
16 from there back to the Hillside Inn.

17 Q Okay. And at that point, did you transfer custody of
18 him to --

19 A We did, to the County.

20 MR. EPTING: Beg the Court's indulgence.

21 (Pause.)

22 BY MR. EPTING:

23 Q And do you see the person that you encountered on the
24 side of the road in court today?

25 A Yes, sir.

1 Q Where?

2 A It's the Defendant, Mr. Hightower.

3 Q Has he changed his appearance in any way?

4 A He's cut his hair, that's about it.

5 MR. EPTING: That's all the questions I have for the
6 Sergeant at this time.

7 MR. NIELSON: Beg the Court's indulgence.

8 (Pause.)

9 MR. NIELSON: No questions, Your Honor.

10 THE COURT: All right. You can step down and be
11 excused. We appreciate your time.

12 MR. EPTING: Thank you, Your Honor.

13 Your Honor, the State's next witness is Tymel
14 McCullough.

15 TYMEL MCCULLOUGH,

16 after being duly sworn, testified as follows:

17 THE WITNESS: I do.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. EPTING:

21 Q Would you please state your name for the record?

22 A Tymel Dajwan McCullough.

23 Q And Mr. McCullough, where are you from?

24 A Rock Hill.

25 Q How long have you lived here?

1 A All my life.

2 Q Do you have family here?

3 A I do. Mom, dad.

4 Q Okay. Do you remember -- I want to talk to you about
5 an incident that occurred on August 23rd, 2017. Do you
6 remember that night?

7 A I do.

8 Q Walk us through it. What happened that night?

9 A That evening, I occupied a room at the Hillside Inn
10 with Maurice Taylor, Tynesha Flowers, Jennifer. That night,
11 I can remember coming out of my hotel room -- the hotel room
12 that I was occupying on my phone. And I was asked for a
13 light from a white gentleman in a van.

14 Q Okay. Are we in the parking lot of that same place?

15 A In the parking lot of the Hillside.

16 Q Okay. Who asked you for a light?

17 A It was a white individual, a male individual in a van.

18 Q Okay. Was he in the driver's seat or the back seat?

19 A The driver's seat.

20 Q Was anyone else in that van with this white individual?

21 A Yes. When I approached the van, I noticed the
22 Defendant, Mr. Hightower, in the back seat.

23 Q Okay. What, if anything, did Mr. Hightower say or do
24 at that time?

25 A At the very point of the guy asking me for a light, Mr.

1 Hightower was just sitting in the back seat. And then he
2 got out and was like, Yo, what's up? He approached me face
3 to face. He was like, Yo, you going to help the man get
4 that light? But his whole demeanor was strange from the
5 start.

6 Q In what way?

7 A He just looked like he was up to something.

8 Q Had you seen Mr. Hightower prior to this night?

9 A Yes, I had.

10 Q Approximately how many times?

11 A Four to five times.

12 Q And how had you seen him?

13 A The first time I saw the individual was at Ruby
14 Tuesday's. I was picking my dad up from work.

15 Q Did you see him any times after that?

16 A I did.

17 Q Did you recognize him that night?

18 A Yes, I did.

19 Q Did he recognize you?

20 A Obviously, yes.

21 Q And you said the Defendant, but just so we're clear,
22 when you say Angel or the Defendant, who are you talking
23 about?

24 A Angel, Mr. Hightower.

25 Q Is Mr. Hightower present in the courtroom?

1 A He is.

2 Q Where is he seated?

3 A To the right in the black shirt and glasses.

4 Q Black shirt and glasses?

5 A Yes.

6 MR. EPTING: For the record, he's referring to the
7 Defendant seated at counsel table dressed as described.

8 BY MR. EPTING:

9 Q So Mr. Hightower approaches you and also ask for a
10 light?

11 A Yeah, he says, Yo, you ain't going to let me get a
12 light?

13 Q And what, if anything, do you do when he says that?

14 A I told him I did have a lighter, but I didn't have it
15 on my person.

16 Q So what did you do?

17 A I walked back to the room that I was in.

18 Q And does Mr. Hightower wait in the van?

19 A No, he follows behind me.

20 Q Does he come in the room?

21 A No, I didn't let him in the room.

22 Q What happened then?

23 A I go inside and I told Maurice, like, yo, this guy out
24 here is looking real strange. Those were my words to him.
25 He was like, Who is he? I said, it's a guy, Angel.

1 Q Did Maurice know Angel, too?

2 A Yes.

3 Q Does Angel walk away and leave? Does he stay at the
4 door? What does he do?

5 A From my understanding, he was still there. He was
6 still waiting on me to come back with the lighter that I
7 told him that I was going inside to get.

8 Q And you didn't come back out with the lighter, you
9 said?

10 A No, he started knocking at the door.

11 Q Why not come back out with the lighter?

12 A Because I didn't trust the way he was acting. It
13 didn't set well with me.

14 Q You said he kept knocking at the door?

15 A Yes, he started knocking at the door. And Maurice
16 looked out of the window and he was like, Man, this guy's
17 still out here. And he told him no, he couldn't -- he was
18 like, Yo, we can't have company, afraid we might get kicked
19 out or whatever. He was really trying to get him to get on
20 away from there.

21 Q Does Mr. Hightower come one time or more times to knock
22 on the door or try the door knob?

23 A He knocked on the door a couple more times, tried the
24 handle. And it was like he was gone for a second, but he
25 came right back. That's when we, both me and Mr. Taylor

1 looked out of the window and saw him standing there.

2 Q Is Mr. Hightower saying anything while this is going
3 on?

4 A No, he's not.

5 Q Are y'all saying anything to Mr. Hightower?

6 A No, sir, we're not.

7 Q At any point, does Mr. Hightower come in the room?

8 A Yes. After a couple of knocks, we hear a big bang at
9 the door, like someone was kicking on it.

10 Q Does the door hold?

11 A No, it didn't after that second time. After the second
12 bang, it started coming open. After a couple of kicks or
13 shoves or whatever, it came open. But by that time, I was
14 behind the door.

15 Q So you were hiding behind the door?

16 A Yes.

17 Q Who else is in the room at this point?

18 A Tynesha, Maurice and Jennifer.

19 Q How does Tynesha and Jennifer react?

20 A They're scared. They're like, What's going on? They
21 were scared.

22 Q How was Maurice reacting?

23 A At the time, I really don't even see Maurice. I'm
24 behind the door. The light goes out in the back.

25 Q Are you able to see Mr. Hightower in the room?

1 A Once the door came open, yes.

2 Q What, if anything, is he carrying?

3 A He had a handgun in his hand.

4 Q Do you remember which hand he had that handgun in?

5 A His left hand.

6 Q What was going through your mind when you saw that?

7 A Oh, shit.

8 Q No, no, no. Shoot?

9 A Oh, shoot.

10 Q Did you believe it to be a real gun?

11 A I did.

12 Q And what, if anything, does Mr. Hightower say?

13 A Where is the guy with the gold.

14 Q Who did you believe him to be referring to?

15 A Myself.

16 Q And why?

17 A Because I was the only one in there with gold teeth or
18 any type of gold.

19 Q Do you still have those gold teeth?

20 A I do.

21 Q How long does he stay in the room at this point?

22 A He's walking in with the gun and Tynesha and Jennifer,
23 they running out. He's coming in and I just shoot from
24 behind the door and run out after them.

25 Q So you run after the girls?

1 A Yes.

2 Q And you said Mr. Hightower had a gun in his hand. How
3 was he holding that gun?

4 A Straight forward.

5 Q Straight forward? And you said you were able to get
6 out and run?

7 A Yes.

8 Q Are you able to get away?

9 A Only for a short period of time. I ran around towards
10 the front of the office and that's when the Defendant caught
11 up with me.

12 Q Okay. And when he caught up with you, what, if
13 anything, happened?

14 A That's when he grabbed me, picked me up, carried me a
15 little short distance and slammed me down on the ground and
16 started beating me with the pistol.

17 Q And when you say beating you, where on your body is he
18 beating you?

19 A Towards my -- in my head area.

20 Q Is he saying anything when he's beating you with the
21 pistol?

22 A He's not -- not at that time, no, he wasn't.

23 Q And are fighting back in any way, shape or form?

24 A Eventually, I saw a brick and I picked the brick up
25 while I was down on the ground. And as I was coming up with

1 it, he grabbed my boxers and I swung the brick.

2 Q Where do you believe you hit Mr. Hightower?

3 A If I hit him at all, it was somewhere in the upper
4 area.

5 Q And that one blow is all -- was that all --

6 A That was enough to get me away from him and run back to
7 the room.

8 Q Does Mr. Hightower keep the pistol in his hand the
9 whole time that you can tell? Or can you tell?

10 A I couldn't tell. I was trying to get away. I was
11 scared.

12 Q Okay. And you said Mr. Hightower picked you up at some
13 point; is that correct?

14 A Yes.

15 Q Can you describe for the jury how that happened?

16 A He picked me up first by my boxers and carried -- they
17 ripped, but he picked me up from there.

18 Q So he tried to pick you up and carry you and your
19 boxers ripped?

20 A Right.

21 Q And you got away?

22 A I did.

23 Q Where did you go?

24 A Back to Room 112, the one I was occupying.

25 Q What, if anything, did you do to try to secure the

1 room?

2 A I tried to shut the door back, but it wouldn't close.

3 Q Do you know why it wouldn't close?

4 A Because it was broken off the hinges.

5 Q Did you see Mr. Hightower anymore that night?

6 A After we went back inside of the room?

7 Q After you get away and you run back to the room?

8 A Yes, he comes back in. He comes back into the room.

9 Q Does he still have the gun in his hand?

10 A No, I didn't see the gun. He had a brick. He hit me
11 in the back of my neck with the brick at that time. I was
12 temporarily paralyzed. I couldn't even move once he hit me
13 in my neck with that brick.

14 Q Approximately how many times would you estimate he hit
15 you with that brick?

16 A Ten, if not more.

17 Q How long does that attack take place?

18 A Seems like forever, man. I don't know. I can't say.
19 I don't know. Because I had times when I was -- I went out.
20 I was knocked out.

21 Q Did Mr. Hightower stay in the room or did he leave?

22 A When I got up, he wasn't there.

23 Q The next thing you remember is you got up and he wasn't
24 there?

25 A (Witness nods.)

1 Q Who else was still present at the scene at that time or
2 was anybody?

3 A When I --

4 Q When you got up and he was gone?

5 A I didn't see anyone.

6 Q Was Maurice there?

7 A He was -- at some point, he did show his face again. I
8 think I walked outside or something like that and I seen
9 him. But there was a lot of people walking back and forth
10 by then.

11 Q And have you been convicted of a crime that carries
12 over a year?

13 A I have.

14 Q Are you familiar with the area where this hotel is?

15 A Yes, sir.

16 MR. EPTING: Beg the Court's indulgence.

17 (Pause.)

18 MR. EPTING: May I approach, Your Honor?

19 THE COURT: Yes.

20 MR. EPTING: I'm handing to Mr. McCullough what's been
21 marked as State's Exhibit No. 5.

22 BY MR. EPTING:

23 Q Do you recognize what's been marked as State's Exhibit
24 No. 5?

25 A I do.

1 Q What is State's Exhibit No. 5?

2 A I can see Anderson Road. I see the Hillside Inn and
3 Strikers Bowling Alley.

4 Q Is that from the air?

5 A Yes.

6 Q Is it a fair and accurate depiction of it?

7 A Yes.

8 MR. EPTING: Your Honor, at this time, the State would
9 seek to admit State's Exhibit No. 5 and publish.

10 THE COURT: Any objection?

11 MR. NIELSON: Without objection, Your Honor.

12 THE COURT: In without objection.

13 (WHEREUPON, State's Exhibit No. 5 was admitted into
14 evidence.)

15 MR. EPTING: Thank you, Your Honor.

16 BY MR. EPTING:

17 Q While we're at it, at some point, did law enforcement
18 arrive?

19 A They did.

20 Q Do you recall speaking with anybody?

21 A Briefly.

22 MR. EPTING: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 MR. EPTING: I'm handing this witness what's been
25 marked as State's Exhibit No. 3.

1 BY MR. EPTING:

2 Q Do you recognize State's Exhibit No. 3?

3 A Yes, sir.

4 Q Have you reviewed a copy of State's Exhibit No. 3?

5 A I have.

6 Q How do you know that State's Exhibit No. 3 is the copy
7 that you reviewed?

8 A My initials -- I put my initials and the date on it.

9 Q Is that a fair and accurate depiction of your
10 conversation with officers that night?

11 A Yes, sir.

12 MR. EPTING: Your Honor, at this point, the State would
13 seek to enter State's Exhibit No. 3 into evidence.

14 MR. NIELSON: At this point, Your Honor, I believe we
15 need to take up a matter of law.

16 THE COURT: Let the jury go to the jury room just for a
17 few minutes to take up a matter of law.

18 (WHEREUPON, the jury exits the courtroom.)

19 THE COURT: Yes, sir.

20 MR. NIELSON: Your Honor, at this point, we would renew
21 our objection to State's Exhibit No. 3. This is the body
22 camera that we talked about in pretrial. I considered just
23 coming to the bench and asking whether we needed to excuse
24 the jury, but I wanted to make sure they did not hear any
25 part of this.

1 I still believe there's -- they have testified --
2 Maurice has testified to what he heard and saw that night.
3 We've now heard Tymel talk about what he heard and saw that
4 night. That makes their parts of this conversation -- I
5 agree that it will take it out of the hearing realm of
6 things.

7 I think most of the rest of the audio on there has been
8 redacted, but I still believe, and the Solicitor can correct
9 me if I'm wrong, but there are some parts of other people's
10 voices who are still on there who have not testified.
11 Specifically, Officer Brown. And it's him just asking
12 questions, but it is still out-of-court statements. And I
13 believe those still would be considered hearsay.

14 Also, what part of this video is not hearsay, I believe
15 is nothing more than cumulative evidence that the jury has
16 already seen and heard. They've heard it described by
17 Maurice. They've heard it described by Tymel. And they see
18 the injuries that Tymel has. If the State needs to show his
19 demeanor, I would have no problem with them showing the
20 beginning of the video which shows his -- him in some state
21 of shock, I do agree with that, but I believe that should be
22 done completely muted where they can demeanor and nothing
23 else.

24 THE COURT: Okay.

25 MR. EPTING: We have taken pains to cut out almost

1 statement by Buddy Brown in the video. In this version of
2 the video, we cut out his questions, too, unless one slipped
3 in there or two. Where he says um or okay or something like
4 that may be left in, but any substantive statements, we have
5 redacted out. And it should be the statements of Tymel
6 McCullough and Maurice Taylor, both of them -- Maurice
7 Taylor was subject to cross-examination earlier today and
8 Tymel, who will be subject to cross-examination directly
9 following my direct.

10 We do believe they're probative value to the statements
11 that were made. These statements were made very briefly
12 after this incident occurred. You see the emotion in their
13 voice. You see Tymel's physical demeanor, which I think is
14 critical in proving an element of ABHAN. We also think it's
15 a res gestae case to show the immediate aftermath of this
16 assault, how the hotel room looked and all of those things.

17 MR. NIELSON: And we've seen much of that in the 15
18 some odd pictures that were shown of the hotel room. We
19 believe the jury has the image of all that. I don't know
20 that that adds anything to the Solicitor's case that they
21 don't already in another way, Your Honor.

22 THE COURT: Well, I'm going to allow it in. I think it
23 does constitute res gestae, although I'm not sure that's the
24 appropriate rule to get it in. But I think it adds -- while
25 it is somewhat cumulative, it adds another dimension to the

1 presentation by the State because it is fresh and it shows
2 the demeanor of the witnesses -- well, the victim, and Mr.
3 Douglas close to the time the incident occurred. So I think
4 it has some probative value that outweighs any prejudicial
5 value and raise that as an issue. But I think it is
6 probative. While it is somewhat cumulative, I find that
7 it's not such that that alone would taint it such that it
8 would not be admissible. So I'm going to allow it in.

9 MR. NIELSON: Thank you, Your Honor.

10 MR. EPTING: Thank you.

11 THE COURT: Bring the jury back in.

12 (WHEREUPON, the jury enters the courtroom.)

13 THE COURT: The DVD will be admitted over objection.

14 MR. EPTING: Thank you, Your Honor.

15 (WHEREUPON, State's Exhibit No. 3 was admitted into
16 evidence.)

17 MR. EPTING: At this time, the State would seek to
18 publish the aerial, which I believe is State's Exhibit No.
19 5.

20 BY MR. EPTING:

21 Q Tymel, are you able to see from your vantage point?

22 A Yes, sir.

23 Q On the screen, is that a fair and accurate copy of
24 State's Exhibit No. 5?

25 A It is.

1 MR. EPTING: May I approach the witness, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. EPTING:

4 Q I'm going to hand you a laser pointer. Tymel, can you
5 show this jury which side of the hotel your hotel room is
6 on?

7 A I don't know how to use this.

8 Q Okay. That red dot in the middle?

9 A Okay.

10 Q Just hold it.

11 A And your question was?

12 Q Which side of the hotel was your hotel room?

13 A This side.

14 Q When you said you ran out of the room the first time,
15 after Mr. Hightower came in with the gun and you hid behind
16 the door and ran, which direction did you run?

17 A Towards the bowling alley side, which is this way.

18 Q And where did the Defendant catch up to you?

19 A Here.

20 Q Right there. Do you know where the front office is?

21 A Right here.

22 Q And otherwise, you ran back to the room in the same --

23 A In the same direction I acme.

24 MR. EPTING: Beg the Court's indulgence.

25 (Pause.)

1 MR. EPTING: Permission to publish State's Exhibit No.
2 3.

3 THE COURT: Yes, sir.

4 BY MR. EPTING:

5 Q Tymel, if at some point you need to make statement, if
6 you would hold up your hand and let me know so I can pause
7 this. It's got audio on it and we can't have us talking
8 over this playing. All right?

9 A Yes, sir.

10 MR. EPTING: For the record, we are publishing State's
11 Exhibit No. 3.

12 (WHEREUPON, State Exhibit No. 3 was played for the
13 jury.)

14 BY MR. EPTING:

15 Q Tymel, when you said the white guy who are you
16 referring to?

17 A The driver of the van.

18 Q Did the driver of the van ever get out and come
19 anywhere?

20 A No, he didn't.

21 (WHEREUPON, State's Exhibit No. 3 was continued.)

22 BY MR. EPTING:

23 Q Tymel, when you say that's mine, what were you talking
24 about?

25 A The clothing that the officer had.

1 Q The clothing?

2 A The clothing that the officer had.

3 (WHEREUPON, State's Exhibit No. 3 was continued.)

4 MR. EPTING: May I approach the witness, Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. EPTING:

7 Q Tymel, I'm going to show you what's been marked as
8 State's Exhibit No. 1. Would you look at that, please?

9 Tymel, do you recognize State's Exhibit No. 1?

10 A I do.

11 Q What is State's Exhibit No. 1?

12 A That's surveillance from the Hillside cameras.

13 Q Have you reviewed a copy of that surveillance?

14 A I have.

15 Q And how do you know that's a copy that you reviewed?

16 A My initials are on the top.

17 Q Was it a fair and accurate depiction of what happened
18 to you?

19 A It was.

20 MR. EPTING: Permission to publish, Your Honor?

21 THE COURT: Yes.

22 MR. EPTING: Beg the Court's indulgence.

23 (Pause.)

24 MR. EPTING: For the record, what is being displayed on
25 the screen is camera angle one, it's State's Exhibit No. 1.

1 (WHEREUPON, State's Exhibit No. 1 was played for the
2 jury.)

3 BY MR. EPTING:

4 Q Tymel, do you recognize what we're looking at here?

5 A It appears to be the Hillside Inn parking lot.

6 (WHEREUPON, State's Exhibit No. 1 was continued.)

7 BY MR. EPTING:

8 Q Tymel, did all of the angles have audio, or just this
9 one?

10 A Just that one.

11 (WHEREUPON, State's Exhibit No. 1 was continued.)

12 BY MR. EPTING:

13 Q Tymel, who has just come on the screen?

14 A Myself.

15 (WHEREUPON, State's Exhibit No. 1 was continued.)

16 BY MR. EPTING:

17 Q Who else has just come on the screen?

18 A The Defendant, Mr. Hightower.

19 Q Is there a size discrepancy between y'all?

20 A Yes, he's bigger than I am.

21 (WHEREUPON, State's Exhibit No. 1 was continued.)

22 THE WITNESS: That's where he's beating me and
23 assaulting me.

24 BY MR. EPTING:

25 Q Say it again.

1 A That's where he was beating and assaulting me. And he
2 slammed me.

3 Q What, if anything, was he hitting you with at the time?

4 A He was hitting me with the pistol every time.

5 Q And did you say he picked you up at some point?

6 A Yeah.

7 Q And is that when your underwear ripped?

8 A No, it didn't rip then. It ripped when I was trying to
9 get up --

10 Q You heard somebody yelling at the end of that, didn't
11 you?

12 A That was me.

13 (WHEREUPON, State's Exhibit No. 1 was continued.)

14 MR. EPTING: Beg the Court's indulgence.

15 (Pause.)

16 MR. EPTING: This is, for the record, camera angle six
17 of State's Exhibit No. 1.

18 (WHEREUPON, State's Exhibit No. 1 was continued.)

19 BY MR. EPTING:

20 Q Do you recognize what we're looking at here, Tymel?

21 A Yes.

22 Q What is that?

23 A Me and Mr. Hightower.

24 Q What, if anything, is Mr. Hightower saying to you at
25 this point?

1 A He's telling me stop, I'm going to shoot you. Stop
2 running or I'll shoot you.

3 Q Did you see if he was armed or anything at that point?

4 A I knew he was when we first started running around that
5 corner there, but I wasn't really looking back.

6 (WHEREUPON, State's Exhibit No. 1 was continued, but
7 has no audio.)

8 THE WITNESS: What's going on there that you can't see
9 is that I'm at the front door.

10 BY MR. EPTING:

11 Q So those figures at the top of the screen, who is that?

12 A I didn't hear your question.

13 Q Do you see movement at the top of the screen?

14 A Yes, that's both of us, but I'm on the ground. You see
15 where he just slammed me. He's hitting me with the pistol
16 after that. That's when I get up.

17 Q What's going on here?

18 A I had been hitting him with the brick, at least, tried
19 to and got away and he's chasing me back towards the room.

20 MR. EPTING: Beg the Court's indulgence.

21 (Pause.)

22 BY MR. EPTING:

23 Q Now, as a result of the attacks when all this occurred,
24 did you sustain injuries?

25 A Yes, I did, trauma to the head. My skull was bashed

1 in. I had to receive eight stitches to the head. Behind my
2 ear, I had to get 13 stitches behind my ear from, I think,
3 the pistol injury. My shoulder, I still have the scars from
4 the nails being dug into my skin. My mental -- I'm mentally
5 messed up now with paranoia. I'm being treated with
6 medication. I don't want to have say what, but I'm being
7 treated with medications.

8 Q As a result of him hitting you with a brick in the back
9 of your head?

10 A Yes, and my neck. I had to have a cast for a period of
11 time. My back, I have back spasms from the brick -- being
12 hit in the neck with that brick. It's messed my back up.

13 Q Do you have any scars?

14 A I do.

15 Q Do you have any issues with mobility?

16 A At times. I get dizzy getting up.

17 MR. EPTING: Your Honor, permission to publish what's
18 already in evidence as State's Exhibit No. 4?

19 THE COURT: All right.

20 BY MR. EPTING:

21 Q First up is 4A. Tymel, what are we looking at here?

22 A The crown of my head.

23 Q And what treatment did you have to have for that?

24 A Eight staples.

25 Q Next picture is 4B. Tell me what we're looking at

1 here.

2 A That's still the crown of my head. That's behind my
3 ear.

4 Q 4C, we're looking at 4C. Do you have any scars from
5 any of this?

6 A I do, behind my ear. That's where I had the 13
7 stitches.

8 Q What are we looking at here?

9 A A wound to my right arm.

10 MR. EPTING: Beg the Court's indulgence.

11 (Pause.)

12 MR. EPTING: Tymel, that's all the questions I have for
13 you at this time. Please answer any questions Defense
14 counsel may have for you.

15 CROSS-EXAMINATION

16 BY MR. NIELSON:

17 Q Mr. McCullough?

18 A Yes, sir.

19 Q I just want to go over a few things and make sure we're
20 clear, okay?

21 A Yes, sir.

22 Q So on August 23rd, 2017, you were staying at the
23 Hillside Inn, correct?

24 A I was.

25 Q And you were staying in Room 112?

1 A I was.

2 Q And there were three other people in the room with you,
3 correct?

4 A Correct.

5 Q Who rented that room?

6 A Maurice.

7 Q Was it in his name?

8 A Yes, sir.

9 Q And at some point -- at what time of the morning was it
10 that you walked out of your room?

11 A I can't recall.

12 Q Was it early, late, closer to morning time, do you
13 remember anything?

14 A Yeah, it was late. It was late.

15 Q After midnight, after 2:00?

16 A I would say around 12:00ish, 1:00, maybe, I don't know.

17 Q Middle of the night?

18 A Middle of the night.

19 Q Is that a fair description?

20 A Yes, sir.

21 Q And you came out of your room, correct?

22 A I did.

23 Q What brought you out of your room?

24 A I was talking on my phone.

25 Q Who were you talking on your phone to?

1 A With another female.

2 Q And so you came out of your room and that's when you
3 encountered the white guy?

4 A I did.

5 Q And he was sitting in a van?

6 A Yes, sir.

7 Q Mr. Hightower was sitting in the back seat?

8 A He was.

9 Q And at some point, he got out of the back seat?

10 A He did.

11 Q Asking for a light?

12 A Yes. He repeated the same thing that the guy
13 originally asked me, the white guy that was driving.

14 Q And that's all he asked you for?

15 A At that point, yes.

16 Q And you didn't give him a light?

17 A Not then. I never got a chance to give him a light. I
18 went to the room to get the light.

19 Q And you didn't give him anything else?

20 A No.

21 Q And when -- and then at some point, you milled outside
22 the room and talked to Mr. Hightower for a couple minutes,
23 correct?

24 A Did I stay out there talking to him?

25 Q Yes, sir.

1 A No. He asked me for the light and that's when I
2 proceeded to my room.

3 Q And you walked inside your room?

4 A Yes, sir.

5 Q And you told him you were going to go get him a light?

6 A Right.

7 Q Did you shut the door?

8 A I did.

9 Q And then how long after you shut the door did he knock
10 the first time?

11 A Maybe about two minutes, maybe.

12 Q Two minutes, maybe. And did you answer the door?

13 A No, I didn't.

14 Q Did anyone answer the door?

15 A Maurice.

16 Q Did he open the door?

17 A He told him through the door.

18 Q What did he tell him?

19 A No company.

20 Q Okay. And then the door got knocked on again?

21 A It did.

22 Q Did you answer the door the second time?

23 A I didn't.

24 Q Did anybody answer the door the second time?

25 A No, sir.

1 Q It eventually got knocked on, at least, a third time,
2 correct?

3 A That's right.

4 Q Where were you at that point?

5 A I was sitting on the bed.

6 Q Okay. And did you check the door?

7 A I checked the window.

8 Q You checked the window. And then what happened after
9 that, you started hearing banging on the door?

10 A Right, and I jumped behind it.

11 Q Okay. The door comes in?

12 A Yes, sir.

13 Q Mr. Angel comes walking in the door?

14 A He comes in.

15 Q And you're behind the door at this point?

16 A Yeah, and he comes in with the pistol in his hand.

17 Q Is the door between you and him?

18 A Meaning?

19 Q You said you were behind the door, correct?

20 A Like say when he comes in, I'm behind the door when
21 he's coming in.

22 Q Okay. And he says, Where's Gold?

23 A He says, Where is the guy with the gold.

24 Q Okay. And is Gold your nickname?

25 A No.

1 Q Nobody knows you by --

2 A I've been called Gold, but that's not my name. My name
3 is Tymel.

4 Q But people have called you Gold before?

5 A Yes, people call me a lot of things.

6 Q Including Maurice has called you Gold before?

7 A Yes.

8 Q And you testified you had seen Mr. Hightower before?

9 A I have.

10 Q He worked with your dad?

11 A Yes.

12 Q And had you ever hung out with him?

13 A No, no hanging out. I've been around in the area he's
14 been in at the same time, but us actually hanging together,
15 no.

16 Q So you've never had any real interaction with him?

17 A Meaning?

18 Q Meaning, hung out, went to a ballgame together --

19 A No.

20 Q Okay. But you said you had seen him four to five times
21 prior to this day?

22 A Right.

23 Q So eventually, the girls run out of the room first,
24 correct?

25 A That's correct.

1 Q And then you followed them?

2 A Uh-huh.

3 Q But then you all ran in different directions?

4 A That's right.

5 Q And Angel followed you?

6 A That's correct.

7 Q And he eventually caught up to you?

8 A He did.

9 Q There was an altercation that took place in front of
10 the office?

11 A That's right.

12 Q And then you got away?

13 A That's right.

14 Q You ran back towards your room?

15 A Correct.

16 Q Where you picked up a brick?

17 A Before I made it back to the room.

18 Q Okay. Before you made it back to the room, you picked
19 up a brick?

20 A Correct.

21 Q And you saw the video, at some point, you hit Mr.
22 Hightower hard enough that he fell down?

23 A No. I'm the only one that fell down.

24 Q Okay.

25 A If he fell, he fell in a slip or something like that.

1 You see how big that guy is?

2 Q You did hit him, correct?

3 A Yes, I hit him back. I was being assaulted. You would
4 have hit him back.

5 Q Well, it wouldn't matter whether I would hit him, Mr.
6 McCullough. You hit him, correct?

7 A I might have hit him, yes, sir.

8 Q Okay. But you hit him, correct?

9 A I did.

10 Q Thank you. And then you ran back towards your room
11 again, correct?

12 A Correct.

13 Q And he ran after you?

14 A That's what we saw on the tape.

15 Q Once he got back in the room, was that the first time
16 he hit you with the brick or did he hit you with the brick
17 before that?

18 A No, he didn't hit me before that. He hit me when we
19 got in the room.

20 Q Once you got back in the room?

21 A I was stating earlier that he hit me with the pistol
22 when we was outside.

23 Q Okay. And let me make sure I've got this correct, you
24 said he hit you approximately 10 times?

25 A If not more, sir.

1 Q If not more. But you say also you were knocked out?

2 A Yes, sir, at some point, I did fade away.

3 Q And you said you have been convicted of a crime that
4 carried more than a year?

5 A I have.

6 MR. NIELSON: Beg the Court's indulgence.

7 (Pause.)

8 MR. NIELSON: No further questions.

9 THE COURT: Redirect?

10 MR. EPTING: No, Your Honor.

11 THE COURT: You can step down and have a seat.

12 Call your next witness.

13 MR. EPTING: Your Honor, may we approach?

14 THE COURT: Yes.

15 (Bench conference.)

16 THE COURT: Members of the jury panel, the next witness
17 is in some type of training and will be through in just a
18 little while to come here. So we're going to break until
19 around 4:00. I know that's a long break, but we didn't
20 realize we were going to go so quickly. If anybody wants to
21 smoke at this time, this would be the opportunity to do it.
22 So we'll send for you as quickly as we can.

23 (WHEREUPON, the jury exits the courtroom at 3:15 p.m.)

24 THE COURT: Is this going to be your last witness?

25 MR. EPTING: This is going to be our last witness.

1 THE COURT: Well, why don't you take a short break and
2 come on back and we can start talking about the charge.

3 MR. EPTING: Yes, Your Honor.

4 MR. NIELSON: Yes, sir.

5 (WHEREUPON, a short break was taken.)

6 (WHEREUPON, State's Exhibit No. 6 through 10 were
7 marked for identification.)

8 THE COURT: Bring in the jury.

9 MR. NIELSON: Can we stop them for a second?

10 THE COURT: We can try.

11 MR. NIELSON: What we talked about in the back, Your
12 Honor, I just thought we should put it on the record. I
13 believe that the next witness is going to be testifying to a
14 bunch of evidence that was collected on the scene. And me
15 and the Solicitor jointly went out to the sheriff's office
16 and we viewed this evidence already in anticipation of
17 today's trial. The Solicitor signed that it was retaped and
18 initialed it. And I just wanted it on the record that
19 that's why that was done for this case moving forward.

20 THE COURT: So that's the reason the box that contained
21 these items was opened in the presence of Defendant's
22 counsel and Defendant's counsel inspected the same?

23 MR. NIELSON: Yes, Your Honor. And we will not object
24 to any chain issue with regards to that, obviously, as we
25 were there when it was opened.

1 THE COURT: Thank you.

2 MR. EPTING: Thank you, Your Honor.

3 (WHEREUPON, the jury enters the courtroom at 4:39 p.m.)

4 THE COURT: Call your next witness.

5 MR. EPTING: Thank you, Your Honor. The State calls
6 Investigator Paula Neely.

7 PAULA NEELY,

8 after being duly sworn, testified as follows:

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. EPTING:

13 Q Good afternoon. Would you please state for the jury
14 your name and occupation?

15 A My name is Paula Neely and I am a forensic
16 investigator. I'm employed with Fort Mill Police
17 Department.

18 Q How long have you been with Fort Mill Police
19 Department?

20 A Since February of 2004.

21 Q Is that the extent of your law enforcement career?

22 A No, sir. I began my law enforcement career in 2002
23 here at York County Sheriff's Office and then I went to Fort
24 Mill in 2004.

25 Q And what are your current duties as an investigator?

1 A I am a forensic investigator. I'm assigned to task of
2 crime scene investigation, latent print analyzing, digital
3 forensics. Anything evidence related to crime scene, that's
4 my job.

5 Q Do you have any specific training with respect to crime
6 scene investigation?

7 A Yes, I have over 1,000 in advanced training as it
8 pertains to crime scene investigation.

9 Q Have you ever been qualified as an expert before in the
10 specifics of criminal investigation?

11 A No, I haven't.

12 Q In crime scene investigation?

13 A No, I have not.

14 Q Okay.

15 MR. EPTING: Your Honor, we would move to qualify
16 Investigator Neely as an expert in the field of crime scene
17 investigation.

18 THE COURT: Do you have any voir dire?

19 MR. NIELSON: Beg the Court's indulgence?

20 (Pause.)

21 MR. NIELSON: Your Honor, could we approach?

22 (Bench conference.)

23 THE COURT: Go ahead.

24 VOIR DIRE

25 BY MR. NIELSON:

1 Q I'm sorry, what was your title?

2 A Sergeant.

3 Q Sergeant, okay, I did get it right. Sergeant Neely,
4 you stated on direct examination that you had 1,000 hours of
5 training in crime scene analysis?

6 A I have over 1,000 hours in advanced training as it
7 pertains to crime scene investigation. There's several
8 different aspects of that.

9 Q Okay. Can we talk specifically about the aspect of
10 fingerprinting?

11 A Sure.

12 Q What is your background and training in fingerprinting?

13 A I was assigned to the York County Multi-Jurisdictional
14 Forensic Service Unit. And part of our job is analyzing
15 latent prints. We process crime scenes for latent prints.
16 We evaluate, we analyze, we compare, we validate. I'm also
17 an AFIS operator, so I run those prints on AFIS. Over the
18 seven years, there's thousands of prints that I've examined.

19 Q Have you ever been qualified as an expert in
20 fingerprinting?

21 A No.

22 Q Have you ever testified in court about fingerprinting?

23 A No.

24 Q And how many hours specifically would you say you've
25 received in advanced training on fingerprint analysis?

1 A I have my training list if you'd like to look at it.
2 So I have latent print techniques, lift wrist and other skin
3 impressions, that's 15, 30. I have an additional
4 fingerprint recognition at the Criminal Justice Academy as
5 well as intermediate crime scene investigations, which
6 included latent prints. I had an additional 40 hours at
7 Sirchie. So I think I'm right around a hundred hours.

8 MR. NIELSON: No further questions.

9 THE COURT: Any objection to her being qualified?

10 MR. NIELSON: Yes, Your Honor. I don't think she quite
11 meets the criteria. She's never been qualified as an expert
12 before. A hundred hours I'm not sure is enough of training.
13 Some of that sounds like it was training along with other
14 things. I'm not sure all that was just fingerprinting. We
15 haven't been given the curriculum vitae on what these
16 trainings were, on what they entailed. I don't know if we
17 have enough information to agree to qualify her as an
18 expert.

19 THE COURT: I think she is qualified. There's always
20 got to be a first time. This will be her first time. I
21 find she is qualified.

22 When I charge on you on the law, I will talk to you
23 about what an expert witness is and why they're different
24 from a regular witness. But I am qualifying her as an
25 expert in the field of fingerprint analysis. You will -- as

1 the trier of facts, you will get determine whether you think
2 she's qualified to give the opinions she gives and you can
3 also look at when you deliberate the reasons she gives to
4 you now for the opinions she reached. I will then reiterate
5 that when I charge you the law.

6 MR. EPTING: Thank you, Your Honor.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. EPTING:

9 Q Investigator Neely, were you called to respond to the
10 Hillside Inn in Rock Hill on August 23rd, 2017?

11 A Yes, sir, I was.

12 Q Could you please describe what you did at that scene?

13 A I initially met with the detectives on the scene and
14 the officers. I was brought to the scene and observed
15 several different locations around the Hillside Inn.
16 Initially, I was advised that there was surveillance video,
17 so prior to anything else taking place, I photographed the
18 scene as it was and then I observed the surveillance video
19 so that I could focus my investigation in the areas of
20 interest.

21 Q You mentioned the surveillance video. Were you able to
22 obtain a copy of that?

23 A Yes, sir, I was.

24 Q And did you provide that to our office?

25 A Yes, sir, I did.

1 Q You got a copy of it that night?

2 A I did.

3 Q Did you review it on the camera system that was in
4 place at the Hillside Inn?

5 A Yes, sir, I did.

6 Q Does the copy they provided you appear to be
7 substantially similar to what you viewed on that camera?

8 A Yes, sir, it was.

9 Q Now, you mentioned you took some photos of the scene.

10 MR. EPTING: Your Honor, may I approach the witness?

11 THE COURT: Yes.

12 BY MR. EPTING:

13 Q Investigator Neely, I'm showing you what's been marked
14 as State's 6A through 6J. Would you please review those and
15 just look up when you're done.

16 A (Witness complies.)

17 Q Do you recognize what's contained in State's 6A through
18 J?

19 A Yes, sir, I do.

20 Q How do you recognize them?

21 A These are photographs that I took.

22 Q You took them. When did you take them?

23 A When I was at the scene at the Hillside Inn that day,
24 that morning.

25 Q Are they true and accurate depictions of what you

1 observed while you were on scene at the Hillside Inn that
2 day?

3 A Yes, they are.

4 MR. EPTING: Your Honor, at this point, we would move
5 these into evidence.

6 THE COURT: Any objection?

7 MR. NIELSON: Without objection, Your Honor.

8 THE COURT: In without objection.

9 (WHEREUPON, State's Exhibit Nos. 6A through 6J were
10 admitted into evidence.)

11 MR. EPTING: Your Honor, may we publish these for the
12 jury?

13 THE COURT: Yes.

14 MR. EPTING: Thank you, Your Honor.

15 BY MR. EPTING:

16 Q Investigator Neely, can you see the screen from where
17 you're sitting?

18 A Yes, sir.

19 Q I'm showing you what's been marked as State's 6A. Can
20 you please describe for the jury what that depicts?

21 A This is the cement that is just outside the front
22 entrance to the Hillside Inn by the office door. And
23 there's some red stains on the cement to the left of that
24 mat.

25 Q Did you recognize what that red stain may have been?

1 A It appeared to be blood.

2 Q And I'm showing you what's been marked as State's 6B.
3 Would you please tell the jury what that is?

4 A That is a close-up of the blood spatter on the cement.

5 Q State's 6G, would you please describe that for the
6 jury?

7 A That is fragments of the -- what was reported to be a
8 gun on that same mat just outside of the front entrance to
9 the Hillside Inn.

10 Q After you took a picture, did you do anything at all
11 with the fragments of that gun?

12 A I collected them.

13 Q This is State's 6C. Would you please tell the jury
14 what that is?

15 A That is a close-up photograph of those same items on
16 that doormat just outside the front entrance to the Hillside
17 Inn.

18 Q And this is State's 6H. Would you please tell the jury
19 what that is?

20 A That is also another piece of that reported gun, which
21 is on the asphalt of the parking area outside the Hillside
22 Inn.

23 Q I'm going to show you what has been marked as State's
24 6D. Would you please tell the jury what that is a picture
25 of?

1 A That's on the side of the Hillside Inn. There's a
2 brick that's been removed from the landscaping area.

3 Q Okay. Investigator Neely, you mentioned that you
4 collected a piece of the firearm?

5 A Yes, sir.

6 Q Or the BB gun?

7 A Yes, sir.

8 MR. EPTING: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. EPTING:

11 Q I'm handing you what has been marked as State's 8 and
12 State's 9. Could you please tell the jury what is contained
13 in those bags?

14 A It would be gun fragments on both of these.

15 Q Is that your handwriting on the outside of that bag?

16 A It is.

17 Q And is that the bag that you would have used to collect
18 the pieces of evidence?

19 A It is.

20 MR. EPTING: Your Honor, at this point, we would move
21 to enter these gun fragments into evidence.

22 MR. NIELSON: Without objection.

23 THE COURT: In without objection.

24 (WHEREUPON, State's Exhibit Nos. 8 and 9 were admitted
25 into evidence.)

1 BY MR. EPTING:

2 Q Investigator Neely, did you collect anything else from
3 the scene?

4 A Yes, sir, there were clothing fragments.

5 Q Okay. Could you please tell the jury what is located
6 in this bag. It's been marked as State's 10.

7 A This would be torn boxers waistband.

8 Q Is that the bag that you used to collect that item?

9 A It is.

10 MR. EPTING: Your Honor, we move this in as State's
11 Exhibit No. 10.

12 MR. NIELSON: Without objection.

13 THE COURT: In without objection.

14 (WHEREUPON, State's Exhibit No. 10 was admitted into
15 evidence.)

16 BY MR. EPTING:

17 Q Now, were there any other items that you collected?

18 A I believe there was bedding or additional pieces of
19 that boxer.

20 Q Did you collect a brick?

21 A I did collect a brick.

22 Q And could you tell the jury what's located in State's
23 Exhibit No. 7?

24 A This would be brick with red stains.

25 Q And again, that's your handwriting noting what's

1 located in that bag?

2 A It is.

3 MR. EPTING: Your Honor, we would move State's Exhibit
4 No. 7 in evidence.

5 MR. NIELSON: Without objection.

6 THE COURT: In without objection.

7 (WHEREUPON, State's Exhibit No. 7 was admitted into
8 evidence.)

9 BY MR. EPTING:

10 Q Could you please remove that from the bag?

11 A (Witness complies.)

12 Q Investigator Neely, did you attempt to obtain any
13 fingerprints or any boot prints while you were on scene?

14 A Yes, sir, I did.

15 Q What were the results of that investigation?

16 A When I processed the door to Room 112, I used magnetic
17 powder, which is commonly used to enhance footwear
18 impressions that have been deposited outside doors.
19 Usually, the rubber leaves behind some sort of impression
20 and I can bring that impression forward with the magnetic
21 powder. I processed it with the magnetic powder and it was
22 only partial. So it wasn't enough to identify and
23 completely match to a known standard had I been provided one
24 to compare.

25 And then, also, with the vehicle that I processed,

1 there was a smudged handprint on the rear of the vehicle.
2 And there was insufficient ridge detail to compare to make a
3 positive identification to that latent print.

4 MR. EPTING: Your Honor, the State has no further
5 questions at this point.

6 CROSS-EXAMINATION

7 BY MR. NIELSON:

8 Q Sergeant Neely, did you, as part of your investigation,
9 collect anything off of the brick to test what the red stain
10 was?

11 A No, sir. That would not have been for me to do.

12 Q To the best of your knowledge, that was never done?

13 A I am not aware.

14 Q Okay. And the pieces of the gun that you collected and
15 found that day, it put back together, it could make a BB
16 gun?

17 A I am not sure.

18 MR. NIELSON: No further questions.

19 THE COURT: Any redirect?

20 MR. EPTING: No, sir, Your Honor. We asked this
21 witness be excused.

22 THE COURT: You may step down and be excused.

23 THE WITNESS: Thank you, Your Honor.

24 MR. EPTING: Your Honor, at this time, the State rest.

25 THE COURT: Members of the jury panel, the State is

1 resting. That means it has entered its evidence. It's time
2 to stop for the day anyway, but this is a point where we
3 would have to take a break and take up certain matters
4 outside of your presence.

5 So we will stay and get all that out of the way and ask
6 you to be back at 10:00, report back at 10:00 and we'll
7 start as promptly at 10:00 as we can. Hopefully, we can
8 start right at 10:00 because we're going to stay this
9 afternoon and work and get it out of the way. So we'll see
10 you at 10:00 in the morning.

11 You're not in a position yet to make up your mind.
12 You're not in a position to discuss the case among
13 yourselves or allow anyone to discuss the case with you.
14 Keep in mind what I told you about electronic -- do not use
15 any electronic devices to obtain information that relates in
16 any way to this trial. So have a pleasant evening.

17 (WHEREUPON, the jury exits the courtroom at 4:58 p.m.)

18 THE COURT: Defense?

19 MR. NIELSON: Your Honor, at this time, we would make a
20 motion for a directed verdict. To my knowledge, and I may
21 have missed it or be mistaken, I do not believe that
22 jurisdiction was ever established in this case.

23 THE COURT: In York County?

24 MR. NIELSON: I do not believe that was testified to.

25 THE COURT: That question was asked. I always listen

1 for that. That's one of the things I tune my ear to.

2 MR. NIELSON: I must have missed it.

3 THE COURT: One of the officers -- it might have been
4 -- anyway, there was testimony it was in York County.

5 MR. NIELSON: Okay. That was my first reason.

6 My second reason is taking the evidence in the light
7 most favorable to the nonmoving party, we would move for a
8 directed verdict motion and ask there be a directed verdict
9 for the defense.

10 THE COURT: I find there is sufficient evidence and
11 substantial circumstantial evidence from which the jury
12 could, I'm not saying they will, conclude that the State has
13 carried its burden of proof by proving Mr. Hightower
14 committed one or more of these offenses beyond a reasonable
15 doubt.

16 Mr. Hightower, can you hear me?

17 THE DEFENDANT: Yes, sir, I can.

18 THE COURT: All right. We've reached a point in the
19 trial where you have a right to present a defense if you
20 wish. You can call witnesses on your behalf to testify.
21 You don't have to. You can testify if you wish or you can
22 remain silent. You have an absolute right to remain silent.
23 I will tell the jury if you exercise your right to remain
24 silent that you have done that, that you have a
25 Constitutional right to remain silent and you have exercised

1 that right. And I will tell them that they cannot use that
2 against you in any way whatsoever. That they cannot factor
3 that into their own deliberations and they cannot discuss
4 it. That you are presumed innocent, you need not prove your
5 innocence, but the State must prove you guilty beyond a
6 reasonable doubt.

7 As to your right to testify, you have an absolute right
8 to testify. If you do, the State can ask you about that one
9 offense that was talked about yesterday, or maybe this
10 morning, where you had a 10-year sentence. I can't remember
11 for what now, but it falls in a time period which they can
12 ask you whether or not you have been convicted of a crime
13 that carries in excess of one year. That question can be
14 asked of you solely for what we call impeachment purposes,
15 that is to make a jury less likely to believe you because
16 you have a criminal record.

17 I will tell the jury if you testify and that comes out
18 that they can only use that offense in determining whether
19 to believe you or not. That they cannot use that as any
20 evidence that you committed any of these offenses.

21 So the bottom line is you are presumed innocent, the
22 State has to prove your guilt beyond a reasonable doubt.
23 You may testify if you wish or you can exercise your right
24 to remain silent.

25 Do you have any question about any of that?

1 THE DEFENDANT: No, sir.

2 THE COURT: Well, it's your decision. You, of course,
3 can get whatever advice you wish from your attorney or
4 whoever you have confidence in, but it's ultimately your
5 decision to testify or remain silent. Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Anything else before we adjourn
9 for the day?

10 MR. EPTING: Nothing from the State, and we will work
11 on those jury charges we discussed tonight.

12 MR. NIELSON: No, Your Honor.

13 THE COURT: All right. We will see you about 9:15 so
14 we can take a look at the charges and the verdict form.

15 Have a pleasant evening.

16 (WHEREUPON, Court was adjourned for the day to be
17 reconvened on Wednesday, April 25th, 2018.)
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19
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25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
partial Transcript of Record of the proceedings had and the
evidence introduced in the trial of the captioned case,
relative to appeal, in Court of General Sessions for York
County, South Carolina, on the 23 through 25th of April,
2018.

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

July 7, 2018

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

State of South Carolina.,) In the General Sessions
) Court of York
)
)
)
) Case No. 2017-GS-46-04927
 County of York.) 2017-GS-46-04928
) 2017-GS-46-04932
) 2017-GS-46-04932 (A)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Antoine Lakida Hightower.,)
)
 Defendant.)
)

April, 25, 2018
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., judge, and a jury.

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

Mr. Christopher Wayne Epting
 Mr. Daniel Keith Porter
 Sixteenth Circuit Solicitor's Office
 1675-1A York Highway
 York, South Carolina 29745
 christopher.epting@yorkcountygov.com
 (803) 628-3020
 dkporter17@gmail.com
 (803) 818-6626
 Attorneys for the Plaintiff

Mr. Devon Russell Nielson
 Mr. Mark Townsend McKinnon
 York County Public Defender's Office
 1675-1E York Highway
 PO Box 691
 York, South Carolina 29745-7427
 devon.nielson@yorkcountygov.com
 (803) 656-5046
 mark.mckinnon@yorkcountygov.com
 (803) 628-3031
 Attorney for the Defendant

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
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I N D E XE X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
St.1	DVD		
St.2	Photos (A thru N)		
St.3	DVD		
St.4	Photos (A thru D)		
St.5	Aerial		
St.6	Photos (A thru J)		
St.7	Brick		
St.8	Gun fragments		
St.9	Gun fragments		
St.10	Torn boxers		
Ct.1	Photo Lineup		
Ct.2	DVD - Sgt. Ellis's body cam		
Ct.3	Jury note		
Ct.4	Jury note		
Ct.5	NCIC Records		
Ct.6	Jury note @ 12:50 p.m.	P.64	
Ct.7	2 jury notes @ 01:20 p.m.	P.64	

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

1 (COURT BACK IN SESSION IN THE MATTER OF THE STATE
2 VERSUS ANTOINE LAKIDA HIGHTOWER WEDNESDAY, APRIL, 25,
3 2018, AT 10:07 A.M.)

4 SOLICITOR EPTING: Your Honor, may it please the
5 Court?

6 THE COURT: Yes, sir.

7 SOLICITOR EPTING: Your Honor, very briefly, based
8 upon some of the issues that were raised during the course
9 of the trial yesterday I wanted to make a quick motion. I
10 do believe it will be a quick motion and not take up too
11 much time.

12 I believe that the Defense may intend to discuss non-
13 charged offenses.

14 MR. NIELSON: Your Honor, can we get my client out
15 here if we're gonna start talking motions.

16 SOLICITOR EPTING: I'm sorry. Sorry about that.

17 THE COURT: Okay.

18 (DEFENDANT ANTOINE HIGHTOWER, BLACK MALE, REENTERS
19 COURTROOM at 10:10 P.M.)

20 SOLICITOR EPTING: Your Honor, I apologize about that.
21 I should have checked the Defendant's presence first.

22 We believe the Defense may argue non-charged charges
23 to the jury during the course of their closing argument.
24 We believe that is a contradiction to existing case law. I
25 would like to pass one short case up to the Court very

1 quickly, *State v. Condrey* 349 S.C. 184.

2 We believe the relevant instruction discussion of law
3 is on the last page under Roman Numerals III. In that
4 case, your Honor, the Defendant was charged with grand
5 larceny. The Defense counsel attempted to discuss
6 receiving stolen goods in closing argument. The Court
7 prohibited from him doing so saying that it would create a
8 false impression to the jury, and we believe that law would
9 apply to Defense counsel arguing any other non-charged
10 charges to the jury in this case.

11 THE COURT: All right. Yes, sir.

12 MR. NIELSON: I agree that this case is slightly
13 different than the Solicitor in this case. I think this is
14 saying that excluding me from being able to create a quasi
15 -- a quasi lesser included saying he should have been
16 charged in this.

17 I do not believe that that precludes me from being
18 able to talk about things such as the victim said that this
19 was an armed robbery and things of that nature. I do agree
20 that I can't say he should have been charged with this
21 instead of this charge as a way of trying to create a quasi
22 lesser included. I believe that that's what this says.

23 But I do not believe that it limits me from mentioning
24 other charges that were talked about during the
25 investigation, or were testified to, and on video that the

1 Solicitor put into evidence in this case.

2 THE COURT: Well, what's the relevancy of non-charged
3 charges?

4 MR. NIELSON: The victims state of mind as to what
5 happened to him. He told --

6 THE COURT: He can't charge anybody.

7 MR. NIELSON: I understand that. But to say that I
8 can't -- I can't say that the victim said this was an armed
9 robbery then it should have been excluded from the video
10 that was shown to the jury already.

11 THE COURT: Well there wasn't any objection to that.

12 But what he thought ought to be charged, I mean, or he
13 could have been charged with attempted murder, but it's not
14 relevant, so you can go ahead and put on the record what
15 you intend to charge -- what you intend to argue but I'm
16 not gonna allow it.

17 MR. NIELSON: Okay.

18 THE COURT: You want to go ahead and put on the record
19 what you were going to argue or have you already done that?

20 MR. NIELSON: What's that?

21 THE COURT: Have you sufficiently covered the record
22 with what you --

23 MR. NIELSON: I -- Sorry, sorry, your Honor.

24 THE COURT: Well for appellate purposes what --

25 MR. NIELSON: I believe that it's within the relevance

1 of this case that Mr. McCullough stated that he was being
2 robbed. He stated this was just a random armed robbery as
3 part of his statement. I don't believe that it goes to
4 whether or not this is an armed robbery. I believe that it
5 goes to him hiding up what was really going on and goes to
6 his mental state and whether or not he was telling the
7 police the truth and things like that. It goes to his
8 truthfulness.

9 It has nothing to do with whether it was armed
10 robbery, but it shows that he does not want to talk about
11 what was really going on that day and was trying to deflect
12 it all into another situation.

13 That's the context that I would like to bring it up
14 in, not in a context that Mr. Hightower should have ever
15 been charged with it, but in the context that it was in the
16 mental -- that it was in the mental state of Mr. McCullough
17 and that Mr. McCullough brought this up as a deflecting
18 agent from what was really going on in that hotel room and
19 around that hotel room that day.

20 That is different than creating a quasi lesser
21 included that Mr. Hightower should have been charged with.

22 THE COURT: All right. Well, Mr. McCullough wasn't
23 ask whether he thought this was an armed robbery, not when
24 he was on the stand that I recall.

25 MR. NIELSON: I'm sorry.

1 THE COURT: You didn't ask Mr. McCullough -- and it
2 might a been objected to and I don't know how I would have
3 ruled -- but he wasn't ask on the stand, if I recall,
4 whether he thought it --- whether this was an armed robbery
5 or not.

6 MR. NIELSON: He said it on the video that was
7 presented.

8 THE COURT: I'm talking about the testimony under
9 oath.

10 MR. NIELSON: Well the video was also evidence, your
11 Honor.

12 THE COURT: I understand.

13 MR. NIELSON: And so it's the same. It's presented to
14 the jury as evidence the same as what comes from the
15 witness stand.

16 THE COURT: Well I'm not gonna allow you to argue
17 that.

18 MR. NIELSON: Thank you.

19 SOLICITOR EPTING: In discussion with the defense they
20 mentioned that they wish the Court to also charge A and B
21 second. Just in case your Honor is conceding to that, I
22 believe we have prepared a copy to add to the other jury
23 charges.

24 MR. NIELSON: Your Honor, I do believe in this case
25 that based on the definition of moderate bodily injury it's

1 physical injury that comes from loss of consciousness or
2 injury of moderate disfigurement. Things like staples,
3 things like - like having staples put in, stitches put in.

4 I believe that all falls within the terms of moderate
5 bodily injury, and I believe the jury should have the
6 opportunity to consider whether this -- whether the
7 injuries were moderate bodily injury, and not great bodily
8 injury, should they decide that this is not a robbery,
9 kidnaping, and all those kind of things especially.

10 THE COURT: All right. So we'd have to charge the
11 verdict form to add in addition to assault and battery in
12 the first degree, assault and battery in the second degree?

13 MR. NIELSEN: Yes, your Honor. As I thought about
14 this over night and was preparing for closing I came to the
15 conclusion I would like to ask for that...

16 SOLICITOR EPTING: And we have no objection to that
17 addition, your Honor.

18 THE COURT: All right. And you got me a charge on it?

19 SOLICITOR EPTING: Your Honor, we are allowing defense
20 -- We only made one copy and we're allowing Defense counsel
21 to review that right now.

22 THE COURT: While you're doing that I'm gonna take
23 this verdict form out so my secretary can be typing it.

24 (COURT LEFT THE BENCH MOMENTARILY at 10:14/RETURNED TO
25 THE BENCH AT 10:15.)

1 THE COURT: We okay on that additional charge?

2 SOLICITOR EPTING: Yes, your Honor, and I provided a
3 copy of that, your Honor.

4 THE COURT: Okay. Thank you. Is the State ready?

5 SOLICITOR EPTING: The State's ready, your Honor.

6 THE COURT: All right.

7 MR. NIELSON: The Defense is ready, your Honor.

8 THE COURT: All right. The Defense has the right to
9 final closing argument. Well, I'm getting ahead of myself.
10 I don't know why I'm so anxious and moving so fast this
11 morning, I started to show down.

12 Mr. Hightower, you -- yesterday I talked to you about
13 the right to present witnesses and your right to testify or
14 remain silent. Have you made a determination as to how you
15 wish to proceed regarding testifying or not testifying?

16 MR. HIGHTOWER: Yes, sir, I have.

17 THE COURT: What is that decision?

18 MR. HIGHTOWER: I don't want to testify.

19 THE COURT: You're not gonna testify? You indicate
20 that that's a yes?

21 Let me back up. We got to make a record of this.

22 Have you decided that you're not gonna testify?

23 MR. HIGHTOWER: I've decided I'm not gonna testify.

24 THE COURT: Okay. Thank you, that's clear.

25 Does the Defense have any witnesses?

1 MR. NIELSON: I do not intend to call any witnesses,
2 your Honor. I believe I do have to rest once the jury comes
3 in.

4 THE COURT: All right. You want to make any
5 post trial or post evidentiary motions because there has
6 been no new evidence presented when you made the motions
7 yesterday to today.

8 MR. NIELSON: Yes. We will renew all motions we made
9 specifically a directed verdict, mental health evaluation
10 motions, what we just talked about, what we just covered
11 specifically in about closing arguments and what we are and
12 are not allowed to argue, and any other motions, or
13 objections, during this trial, but I don't believe there
14 were any objections that were overruled by the Defense.

15 THE COURT: All right. Again, I find that there is
16 sufficient evidence from which a jury could make a
17 determination from direct or substantial circumstantial
18 evidence. I'm not saying if they will but they could
19 return a verdict in favor of the State finding Mr.
20 Hightower guilty so I deny those motions.

21 MR. NIELSON: Thank you, your Honor.

22 THE COURT: I'll let you rest in the front of the jury
23 and tell them that's what you're doing and then move right
24 into closing arguments and the Defense has the last
25 argument.

1 MR. NIELSON: Yes, your Honor.

2 THE COURT: All right. Bring in the jury.

3 (JURY REENTERS COURTROOM AT 10:18 P.M.)

4 THE COURT: I'm sure by now you think I missed that
5 class in kindergarten when they taught you how to tell time
6 but I really didn't. We have certain matters we have to
7 take up outside your presence. If you remembered yesterday
8 the State had rested, the Defense can present a defense if
9 it wishes.

10 Mr. Nielson.

11 MR. NIELSON: At this time the Defense rest.

12 THE COURT: Now the Defense has rested so all the
13 evidence is in the record. We've reached the point where
14 the attorneys will make their closing arguments.

15 They made opening statements yesterday when they
16 outlined what they thought was going to occur during the
17 trial. Today when they make their closing arguments they
18 will be telling you why they believe the evidence, applying
19 the law as I will charge you later, should reach -- why you
20 should reach a certain verdict. So this is different from
21 yesterday, this is what are called closing arguments.

22 And once that's concluded, depending on how long it
23 takes, we may take a short break before I charge you the
24 law, but we've reached the point where you hear the
25 attorneys arguments, and my charge on the law, and then

CLOSING ARGUMENTS: BY SOLICITOR EPTING

-13-

1 we'll have the case in your hands.

2 SOLICITOR EPTING: Thank you, your Honor. May it
3 please the Court?

4 THE COURT: Yes, sir.

5 SOLICITOR EPTING: Opposing Counsel. Madam Clerk, can
6 we dim the lights please?

7 CLOSING ARGUMENTS BY SOLICITOR EPTING:

8 SOLICITOR EPTING: Good morning, ladies and gentlemen.

9 This is the last time you're gonna have to hear us
10 talk for a while and I'm sure that makes all of y'all very
11 sad. This has been a short case but a very important case.
12 Important to the Defendant; important to the State. As the
13 judge has instructed you at the beginning of this case it
14 is the State's obligation to prove all those charges that
15 he read to you at the beginning of the case beyond a
16 reasonable doubt.

17 We'll get into those charges in a minute and what
18 elements we will have to prove in order for you to find the
19 Defendant guilty, but before we do that let's talk about
20 reasonable doubt. You'll be charged on that by the judge.
21 Because lawyers are lawyers we got to have several
22 different definitions of the same phrase. What does beyond
23 a reasonable doubt mean?

24 Well, one of those definitions is hesitate to act.
25 The judge may charge you that if you, after reviewing the

1 evidence if you hesitate to act, if you're just not sure
2 that the Defendant's guilty of any or all of those charges,
3 then it's your duty as jurors to find him not guilty.

4 But what does that mean? An older attorney in our
5 office used to say there are chairs back in the jury room
6 for a reason. We expect y'all, because y'all heard a lot
7 of stuff yesterday, we expect y'all to review this
8 evidence. The physical evidence, the evidence you heard
9 from the stand, the digital evidence, before you come to
10 your conclusion. You're supposed to hesitate. If you're
11 doing your job you're supposed to hesitate and look at what
12 we presented, discuss it, and then come to your conclusion.
13 So don't think that because you pause to talk about what
14 you heard over the course of yesterday and today that you
15 have hesitated and therefore must find the Defendant not
16 guilty.

17 Another definition is proof that leaves you firmly
18 convinced. After hearing the evidence, after seeing the
19 videos, after hearing the witnesses and examining the
20 physical evidence, are you firmly convinced that the
21 Defendant committed these crimes. Because if you are, then
22 according to the oath that you took at the beginning of
23 this case, it's your obligation to find him guilty.

24 Let's talk about what beyond a reasonable doubt is
25 not. Beyond a reasonable doubt is not proof beyond any

CLOSING ARGUMENTS: BY SOLICITOR EPTING

-15-

1 doubt. We don't have to disprove all the elements. There
2 are very few things in life you know beyond any doubt and
3 that's not our burden. In order to find the Defendant
4 guilty you must be firmly convinced that he is guilty.
5 That is proof beyond a reasonable doubt. If you are, that
6 means that we have met our burden.

7 Your roles as jurors has often been described as
8 umpires in the judicial system. The first base umpire, the
9 guy comes in and it's a close call in baseball, he's out or
10 he's safe. That's all the umpire is concerned with, out or
11 safe. He's not thinking how this is gonna affect this
12 guy's stats; how it's gonna affect the end of the game, any
13 of that stuff, out or safe. That's what y'all are doing,
14 guilty or not guilty, based upon the evidence that you've
15 heard. And only the evidence that you've heard from that
16 stand and that physical evidence. Should you find him
17 guilty it goes to the next stage. The judge is the master
18 of the law, it becomes his decision on what happens then.
19 Your decision, have we met our burden, and that's it.

20 What are the charges? Burglary first, assault and
21 battery of a high and aggravated nature, and as to those
22 two charges, did he use a weapon in both of those, or what
23 appeared to be a weapon, or what was used as an ordinary
24 object as a deadly weapon. And also kidnaping.

25 Let's take those one by one because it's our burden to

CLOSING ARGUMENTS: BY SOLICITOR EPTING

-16-

1 prove it. What must we show? As to burglary first we have
2 to show that it occurred in York County because else wise
3 we would not be here in York County trying this case. The
4 Defendant did it because else wise the Defendant we have
5 the wrong man. That he entered the dwelling of another.
6 You heard testimony in this case it was a hotel room. Seems
7 a little strange, under South Carolina law any place that a
8 person occupies, intends to sleep, whether temporarily or
9 permanently is considered a dwelling just like a house that
10 somebody owns and has possession of.

11 Without permission: If he entered without the consent
12 of the occupants of the dwelling with the intent to commit
13 a crime, and that could be any crime no mater how big or
14 small as he's entering. And beyond that we have aggravated
15 circumstances that make it a first degree burglary as
16 opposed to a lesser. And with one of these things it's
17 good enough.

18 Was a weapon involved? It occurred during the night
19 and it was an occupant. Or someone not involved in the
20 crime harmed in any way shape or form. Well, we know it
21 was in York County. You heard the officers testify this is
22 the Hill Side Inn and its at the Striker's Bowling Alley.
23 Showed the area; some of y'all may be familiar. Rock Hill
24 PD responded. Rock Hill is in York County. York County
25 responded. York County is of course in York County, York

CLOSING ARGUMENTS: BY SOLICITOR EPTING-

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1 County Sheriff's Office. Multiple witness testified that
2 this address is in the county. By the defendant do we got
3 the right guy?

4 Well we heard Tymel. He says he knows this defendant.
5 He's seen him multiple times, he worked with his daddy at
6 Ruby Tuesday's, so he'd seen him and he recognized him.
7 And frankly the Defendant is a distinctive looking fellow.
8 Maurice Taylor also recognized him from the Jump. Said a
9 tall guy with dread locks, bad eye. Described him -- he
10 had seen him before. He knew him from before too.

11 Well don't take their word for it. As Mr. Porter said
12 all of y'all are gonna become witnesses in the course of
13 this case. You see the Defendant, you see the victim. He
14 lingers outside. I would submit to you there should be no
15 doubt in your mind that despite his haircut the person
16 present outside that hotel room is the person seated at
17 Defense Counsel table. We got the right guy.

18 Dwelling: Let's talk a little bit about that. South
19 Carolina law says that an occupied hotel room is a dwelling
20 because somebody is gonna lay their head there and spend
21 the night. Testimony that you heard from the folks that
22 were in the hotel room said, we were planning on spending
23 the night there. Was the room occupied? Yes it was by
24 Maurice Taylor who testified, by Tymel McCullough who
25 testified and by two females.

CLOSING ARGUMENTS: BY SOLICITOR EPTING

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1 You see that they are eating food inside there. You
2 see that the beds are made as though they are going to bed.
3 They've got food stored in a little mini frig in the
4 bathroom. They're planning on staying there. That rooms
5 occupied. And again, don't take their word for it.
6 Because as Tymel testified, after the Defendant goes in;
7 after the girls scream; after Maurice hides in the bathroom
8 looking out trying to arm himself with that curtain rod, at
9 some point the Defendant enters far enough into the hotel
10 room to where he can flee and the others flee. And if you
11 notice what they were wearing they were wearing pajamas,
12 items that one would wear to bed, lay down your head and go
13 to sleep.

14 Established: This occurred in York County at the Hill
15 Side Inn. Y'all saw it. You heard the testimony.
16 Established. The Defendant saw him on the video.
17 Established. He entered a dwelling occupied hotel room
18 based upon the testimony you've heard and based upon the
19 video you saw. They're staying there, they're spending the
20 night, they got food there and the beds are made.

21 The next element: Did he enter with anyone's
22 permission? Well you heard both Tymel and Maurice both say
23 he didn't have his permission to go in there. Tymel was
24 sketched out by him because he thought he was acting
25 suspicious so he don't want him to come in there. Maurice

CLOSING ARGUMENTS: BY SOLICITOR EPTING

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1 testified that he couldn't have visitors after a certain
2 hour so he wasn't letting him in there.

3 Did that Defendant know he was not allowed to come in
4 that room? I submit to you obviously he did because he
5 didn't. He held up his hands. He's been told you can't
6 come in here.

7 Did he intend to commit a crime? The state of science
8 is not to the place where we can read anybody's brain, or
9 we can look at your thought patterns and tell what you
10 intend to a scientific certainty. But any of y'all who are
11 parents know there are all kinds of common sense ways to do
12 that. How do we know by what someone intends -- by what
13 someone intends to do? The law says that we can infer by
14 what they actually do. We can infer by the things they
15 say. We can infer by the physical items they have in their
16 possession. We can infer by their actions. What did the
17 Defendant intend to do when he entered that hotel room?

18 Well how was entry accomplished in the first place?
19 Did he knock politely and was allowed in? No. He smashes
20 his way into the room. What does that tell you about what
21 he intends to do once he's inside that hotel room?

22 Common sense. Common sense, ladies and gentlemen. You
23 see the damage. These are photographs introduced into
24 evidence. He hit the door so hard that the door frame
25 broke such that when Tymel retreats later he can't even

1 close the door to keep the guy out. He has to intend to
2 commit a crime and that can be any crime whether charged or
3 not. It can be theft, it can be an assault, could be an
4 intent to injure property inside. The law says any
5 misdemeanor or felony. So if he intended to commit any
6 crime inside, then he's guilty of burglary.

7 What do we know that he did inside? He pulled out a
8 gun. He pointed it. He scared those girls that were
9 laying in the bed such that they screamed. He scared
10 Maurice. Do you remember what he said he thought was gonna
11 happen? He thought they weren't making it out of that
12 hotel room that night. Little did they know it was a BB
13 gun but the law doesn't require it to be a real gun. The
14 law doesn't require it to be functional gun. The law
15 requires it to be an object that a person would reasonably
16 believe to be a gun.

17 And what was collected at the scene? You got
18 pictures, you got fragments found right outside that
19 manager's office. I submit to you this is what the folks
20 in the hotel room were staring down, of course a part of a
21 completed gun. They all, both Tymel and Maurice testified
22 they believed it to be an actual real gun and in fear for
23 their lives. Ladies and gentlemen, that's assault. That's
24 a crime.

25 We know its intent by his actions, we know its intent

CLOSING ARGUMENTS: BY SOLICITOR EPTING

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1 by his possessions, that gun. And we know its intent by
2 his behavior. What did he possess during the burglary? I
3 showed you that piece, Tymel testified; if you don't trust
4 me trust your own eyes, ladies and gentlemen. What's in
5 that man's hand? I submit to you that looks very much like
6 a pistol.

7 And when he came back that's part of the same
8 burglary. When he came back what did he do? What did he
9 say? When he was chasing with the gun he said stop or I'm
10 gonna kill you. When he comes back what does he do? What
11 does he have in his possession?

12 Does he knock politely and enter this time? He does
13 not. He forces that broken door open with that brick in
14 his hand, the same brick that's in evidence I submit.

15 The first time he saw the pieces of the gun. We'll
16 come back to this but do y'all remember where they said
17 those pieces were found when Paula Neely got up and
18 testified? Right outside that manager's office.

19 Do you remember where Tymel said he was beaten with
20 that gun? Right outside that manager's office where the
21 blood splatter is. So if our identities, the defendant,
22 you saw him, he unlawfully entered twice; part of the same
23 burglary. You saw him.

24 A dwelling: You heard their testimony. You saw the
25 folks intending to stay there were intending to stay the

1 night. With the intent to commit based upon his actions
2 and the things he said and the things he brought into the
3 room with him. In York County. The testimony and you saw
4 it. That is burglary. That's burglary in a nut shell.

5 Let's go beyond that. What makes a burg first as
6 opposed to a burg second or third? Night time hours is one
7 way. Y'all saw the video. Obviously nighttime on the
8 video. The testimony abound about how late it was and
9 while that changed somewhat according to who you ask
10 everybody said it was nighttime.

11 Armed with what appears to be a knife, pistol, or
12 explosive. Well, no knife, no explosive, but again, they
13 testified they believed it was a gun. You saw it with your
14 own eyes. Or any deadly weapon. Look in the Defendant's
15 left hand.

16 Here is another shot. What's he got in his left hand?
17 A brick. What did he do with that brick? Hit Tymel above
18 his head and his back to the point, did he cause injury to
19 someone? We'll come back to that but you heard Tymel's
20 testimony and y'all saw the pictures of his injuries. He
21 sure did hurt him.

22 To make it burg first one of those things has to be
23 proven in addition to the others. Not all of 'em. Did it
24 occur in the nighttime hours in addition to the other
25 evidence? That's burg first. In addition to the other

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1 elements was he armed with what appeared to be a pistol?
2 That's burglary in the first degree. In addition to those
3 other elements did he cause injury to somebody? That is
4 burglary in the first degree. In addition to those
5 elements was he armed with a deadly weapon, a brick or a BB
6 gun? He was.

7 Ladies and gentlemen, that's burg first.

8 I don't get a chance to get up and respond unless I
9 object to something that I think is against the rules of
10 evidence. The Defense has last closing so I have to
11 anticipate, based upon the questions that have been ask
12 over the course of this trial, what I think they may argue
13 to you. The NCIS defense. He ask if the blood was tested
14 off the brick. You heard testimony from Paula Neely of the
15 forensic testing she did.

16 Ladies and gentlemen, NCIS is a TV show. People get
17 paid money to write those scripts. I will submit to you
18 they do a whole lot of things that aren't realistic or
19 practical. No the blood wasn't tested.

20 You have Tymel who's bleeding from his front and his
21 back. The testimony is he got hit with a brick. You have
22 the Defendant who has a superficial scratch, according to
23 the officers who picked him up, on his arm. Whose blood is
24 that? Common sense.

25 Bad police work. You may hear about the things they

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1 didn't do; how long they stayed out there, witnesses who
2 didn't come in here and testify. You heard Maurice state
3 the last he saw of Jennifer, is the girl that he had at the
4 hotel room that night, he dropped her off somewhere in
5 Gastonia. No idea where she is. This was just a street
6 fight. This was mutual combat. He ask Tymel, and didn't
7 you get a brick and you hit my client and knocked him down?
8 This is a street fight, ladies and gentlemen, I submit to
9 you that's what he'll say. This is not assault and battery
10 of a high and aggravated nature. This is blown out of
11 proportion.

12 You heard the video, y'all saw the video. And I will
13 submit to you that based upon the fight between them
14 outside that manager's office this was no street fight. I
15 submit to you this was a fight by Tymel McCullough for his
16 life. And we're publishing State's 1.

17 (STATE'S EXHIBIT ONE PUBLISHED TO THE JURY AT 10:37
18 A.M.)

19 SOLICITOR EPTING: Ordinary street fight, malay,
20 mutual combat. I think not. The testimony was that's
21 Tymel's voice. Tymel said he was screaming. Maurice said
22 he heard Tymel screaming. He was screaming for his life,
23 for help, help that didn't come. So if the Defendant, who
24 is substantially bigger than Tymel, is beating him with a
25 pistol, what in the world is wrong with Tymel with picking

CLOSING ARGUMENTS: BY SOLICITOR EPTING

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1 up a brick to try to get away? Not a street fight, ladies
2 and gentlemen, not a mutual combat fight. A fight for his
3 life.

4 And they argue that we can't prove beyond a reasonable
5 doubt that -- what the Defendant intended to do when he
6 came in, but again I appeal to your common sense. What did
7 he say, what did he do, what did he have in his hands?
8 Where were the things that we can see? We can't read his
9 mind because you know we're not psychics and science isn't
10 there but common sense. You walked in with it, you'll walk
11 out with it.

12 Going back to burg first. We know the Defendant
13 entered a dwelling with intent to commit a crime without
14 permission in York County and anyone of the following: It
15 occurred at night. You saw it. He displayed what appeared
16 to be a pistol. You saw it. He physically harmed someone
17 in the course of the crime. You saw the beating, you saw
18 the pictures of the injuries; that he was armed with a
19 deadly weapon. Y'all saw the brick. That's burg first.

20 Kidnaping: Some of y'all probably heard kidnaping at
21 the course of this -- at the beginning of this case and you
22 think -- you're thinking child's abducted, ransom notes,
23 somebody's in the trunk of a car. Kidnaping in South
24 Carolina is a lot more general than that. It covers a lot
25 more things than a kid gets taken away and there's a ransom

1 note. The judge will instruct you that it is unlawful to
2 seize, abduct, or carry away any person without authority.
3 In and of itself it's kidnaping. It doesn't have to be for
4 gain, it doesn't have to be for profit, for ransom. It can
5 be done for any reason whatsoever.

6 What's it mean to seize somebody? To forcibly take
7 hold of them. What does it mean to carry away someone?
8 Well it sounds just like what it is. You carry away
9 somebody by force. Did the Defendant kidnap Tymel
10 McCullough the night of August 23rd?

11 He seized him and then he carried him away. You saw
12 that with your own eyes. As Mr. Porter said you all were
13 all witnesses to that.

14 Assault and battery of a high and aggravated nature,
15 also know as ABHAN, requires two things. One an injury and
16 then one of three additional things. Any one of three
17 additional things. Was the victim permanently disfigured?
18 Was -- Did he loose mobility or impairment of a bodily
19 member for a protracted period of time? And frankly could
20 the assault have killed him?

21 These are tracked together from different angles of
22 the same assault. You notice the time stamps. They track
23 each other pretty closely. Tymel said when we're looking
24 at this he's getting beat by that gun about his head and
25 his body. Up until if it weren't for that break and he

CLOSING ARGUMENTS: BY SOLICITOR EPTING

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1 said that's happening right outside the manager's office.
2 You see the Defendant pick up Tymel at 6:11, and over here
3 the struggle continues because his underwear rips. His
4 ripped underwear is in evidence. The beating continues.

5 Again, still we are aware of where that manager's
6 office is. Tymel testified at one point as he's being
7 beaten he grabs a brick. He tries to hit his assailant.
8 Maybe he gets a lick in or two. And then he gets away and
9 he tries to run back in the hotel room.

10 You heard testimony about what was found in the room.
11 That wasn't in the room when they first started. That was
12 in the room, according to Maurice and both Tymel, only
13 after the Defendant left it. Only after the Defendant
14 picked up that brick and hit him multiple multiple times
15 with it.

16 This brick which is in evidence. Which has a red
17 substance on it which the forensic's testified was
18 consistent with blood. She's been to a lot of crime scenes
19 and seen a lot of blood. When y'all are back there hold
20 this. We'll give you gloves here, you got to get your
21 hands gross. Hold it up. Feel the weight of it and
22 realize that the testimony is that the Defendant, who again
23 is substantially larger than Tymel McCullough, struck Tymel
24 McCullough again and again and again with this brick.

25 The law says ordinary objects can be deadly weapons.

1 And y'all saw the body cam and y'all saw his demeanor how
2 he was reacting after being hit again and again with that
3 brick. Was he injured? Kind of hard to see from here. He
4 said his skull was cracked, that he had to get his head
5 stapled. That he has scars from the injury behind his ear
6 and y'all saw some wounds that he had to his arm.

7 Loss and impairment or loss and impairment of a bodily
8 member. He talked about his back. He talked about how he
9 has trouble with his back now. Probably will for the rest
10 of his life. He talked about his scars. Permanent
11 disfigurement. I would submit to you that in and of itself
12 means he is disfigured for the rest of his life because
13 he's gonna have that scar on his neck and that scar on his
14 head for the rest of his life. He could have killed him
15 with that brick. Common sense.

16 We can march doctors after doctors after doctors in
17 here and waste their time and yours but I submit to you
18 getting hit multiple times with a brick that weighs this
19 weight could kill anybody. Common sense.

20 During the course of the burglary, or the ABHAN, did
21 the Defendant use a weapon? Did he use something that
22 appeared to be a firearm or another deadly weapon? From
23 the burglary what was the testimony? I know we're gong
24 back on ourselves but as I said this is an important case.
25 During the burglary what was the testimony? He pointed

CLOSING ARGUMENTS: BY SOLICITOR EPTING

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1 what they believed to be a pistol. That's enough. During
2 the course of the ABHAN, of the assault and battery of a
3 high and aggravated nature, what did he use initially?
4 Initially he used what appeared to be a firearm until that
5 firearm broke into pieces because he hit him so much. And
6 then later back in the hotel room he used a brick.

7 You saw with your own eyes all the elements of
8 burglary first. You saw with your own eyes his use of a
9 weapon during a violent crime as he runs through that back
10 way beyond just as he's chasing Tymel from the hotel room.
11 That's enough for burglary first and use of a weapon during
12 a violent crime. Burg first is a violent crime.

13 Assault and battery of a high and aggravated nature:

14 You saw the injuries, you heard testimony about what
15 was found, how it was accomplished. Could have killed him.
16 That's enough for ABHAN. Did he use what appeared to be a
17 deadly weapon, a pistol, during the course of that crime?
18 Yes he did. That pistol that broke into pieces, the pieces
19 of which are in evidence. He also used a brick. During
20 the kidnaping, you heard the testimony about this and you
21 saw it with your own eyes, he carries him away by force.

22 Your job is to weigh the evidence. Your job is to
23 consider only the evidence that has come from that stand
24 and in physical evidence form or in digital evidence form.
25 That is what's before you to make your decision.

CLOSING ARGUMENT: BY SOLICITOR EPTING
BY MR. NIELSON

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1 At the end of the day you're supposed to hesitate and
2 you're supposed to weigh it. But at the end of the day the
3 Defendant has a right to have this trial no matter how
4 strong the case may be. At the end of the day the vast
5 majority of the elements that we have to prove to prove our
6 case, not beyond all doubt, but beyond a reasonable doubt,
7 you saw with your own eyes.

8 At the end of the day, ladies and gentlemen, there is
9 only one verdict that fits the evidence that you saw and
10 that you heard at the end of the case, and that is guilty
11 of burglary first and use of a weapon during a violent
12 crime. And that is guilty of assault and battery of a high
13 and aggravated nature, and use of a weapon during that
14 violent crime. Guilty of kidnaping Tymel McCullough.
15 Guilty of all charges, ladies and gentlemen.

16 I eagerly await your verdict.

17 THE COURT: Mr. Nielson.

18 MR. NIELSON: Thank you, your Honor.

19 CLOSING ARGUMENTS BY MR. NIELSON:

20 MR. NIELSON: Good morning, ladies and gentlemen.

21 Me and the Solicitor can agree on one thing, that you
22 need to use your common sense as you look at the facts in
23 this case. I agree with that. You need to infer based on
24 what you see, what you've heard, what makes sense and what
25 doesn't make sense.

CLOSING ARGUMENT: BY MR. NIELSON

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1 Now part of your job is to go beyond just looking at a
2 video and outline and saying that must be what happened
3 because it's on the video and because it's on the outline.
4 Part of your job is to ask the why. And I want to go
5 through a few things this morning, to talk about each
6 individual person's testimony, and I just want to go
7 through some things that don't make sense because there's
8 a lot about this case that just doesn't make sense.

9 First of all, not in any order, in the order that
10 those witnesses' testified. Sergeant Gonzales. He wasn't
11 there when all of this happened. He didn't see any
12 assaults, he didn't see any doors being broken any
13 different than what you saw because all he saw was what was
14 on the video. But the one thing he did testify to is, is
15 when he talks to Tymel Tymel knew Angel by his name. Knew
16 him by a nickname. He wasn't just a big scary guy with
17 dreds. He was Angel who I know by name. He worked with my
18 dad.

19 Now, on the video, on the body cam video that the
20 State showed you, he minimized how well he knew him. You
21 saw that. But he knew him, knew him well enough to know
22 him by a nickname. And Angel knew Tymel well enough to
23 know him by a nickname, knew it was Cole. Multiple people
24 testified to that. Tymel tried to say no that's not my
25 nickname but when ask did Maurice call you that, he said

CLOSING ARGUMENT: BY MR. NIELSON

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1 yeah, even Maurice called me that. So, he knew he was Cole
2 the name that Angel knew him as.

3 The second person who testified in this case was
4 Maurice Taylor. He said it was his room. He said I rented
5 this room and I had these guest who stayed here with me.
6 But we're at 4 o'clock in the morning and he has three
7 guest in his hotel room that he made sure to tell the cops
8 that night and to tell you all that this was his hotel room
9 that he cannot have guest in. And yet he had four guest in
10 his or three guest in his hotel room that were staying
11 there with him. But that was the reason he couldn't let
12 Mr. Underwood set one foot in his room. That doesn't make
13 sense.

14 He said he yelled through the window and Tymel said he
15 opened the door. Small things, the things that are
16 inconsistent. He said that -- he said that he knew Angel
17 very well and ate dinner at his house. Right? Said he had
18 seen him maybe ten times. Yet, when the door crashes open
19 Maurice testified that Tymel said where's Gold. He wasn't
20 there trying to attack four people. He wasn't there trying
21 to commit any crime. He was there to confront Gold. That
22 was the purpose of him coming in that room. We know that
23 because Maurice told us that.

24 The Solicitor can talk all day long about crimes that
25 happen once he came into that room. But if he did not have

CLOSING ARGUMENT: BY MR. NIELSON

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1 the intent to commit a crime when he entered the room this
2 isn't burglary. The judge is going to tell you that if the
3 intent to commit a crime forms once they are already in the
4 house, regardless of the degree of entry into the house,
5 then this is not burglary at all. And he can say injuries
6 happen during the burglary, he used a gun, and he used a
7 brick; they can talk all day long about all of that stuff,
8 but if he -- if he did not have intent to commit the crime
9 when he entered the house it is not burglary of any degree.

10 He yells for Gold. Where's Gold? He essentially
11 ignored the other three people. He didn't assault them,
12 didn't rob them, didn't touch them, didn't do anything to
13 them. He ignored them because he's looking to confront
14 Gold.

15 Now back up in your mind, you saw on the video the
16 Solicitor played during their closing argument. Gold and
17 Angel were walking around outside five minutes before all
18 this happened. If he just simply wanted to beat up Gold;
19 if he'd simply wanted to assault him, beat him up, kill
20 him, whatever the State wants to say, he had plenty of
21 opportunity to do that before Gold ever walked back in that
22 hotel room. If that's the purpose, if he's there to
23 assault him, then why doesn't he do it when he has the
24 opportunity? Why go through the -- letting him walk back
25 into his hotel room in the first place?

1 Ladies and gentlemen, there was no intent to commit a
2 crime. Nothing shown when he enters that room shows that
3 he intended to commit a crime. The Solicitor talks about
4 all the other elements, kind of glazed right on through
5 that, and said he meets it just because these crimes were
6 committed. I submit to you that's not enough to show
7 Angel's intent especially when you have Maurice testifying
8 saying the first thing that happened when he came through
9 that room was asking where's Gold, combined with the fact
10 Gold had been outside the front door with him moments
11 earlier.

12 When ask how many times he was hit Maurice said,
13 several. Tymel's answer was ten or maybe more. You can
14 decide what several means. Maurice was the person who was
15 watching. Tymel told you he was blacked out at one point.
16 Tymel sure -- I'm not sure how he can answer that question.
17 And eventually Angel gets up and walks out the door.

18 The one other thing I find interesting about Maurice's
19 testimony is he tells the police officers there's security
20 cameras all over the place. We don't know what was going
21 on in that room. But why would you know where the security
22 cameras are? Think about that. Use your life experience,
23 use your -- use what happened to infer what was going on.

24 Then there's Sergeant Ellis. Sergeant Ellis is the
25 Rock Hill police officer who took Mr. Hightower into

CLOSING ARGUMENT: BY MR. NIELSON

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1 custody. The only thing I think he added to this case was
2 to say that Tymel or that Tymel had in fact given injuries
3 regardless of the seriousness of them to Angel. Angel
4 didn't come out of this unscathed. And it's very -- And we
5 don't know the level of his injuries. Never saw pictures
6 of 'em, never saw documentation of 'em.

7 SOLICITOR EPTING: Your Honor, I'm gonna object to
8 that argument. May we approach?

9 THE COURT: Yes, sir.

10 (BENCH CONFERENCE HELD OFF THE RECORD OUT OF THE
11 HEARING OF THE JURY AT 10:56 A.M.)

12 THE COURT: Objection over ruled.

13 MR. NIELSON: You never saw any proof of the injuries
14 that Angel had. We don't know. But the one thing that
15 Sergeant Ellis did give to us is that Angel was in fact
16 injured in this case.

17 Then we come to Tymel. This is the story that Tymel
18 wants you to believe and accept as being reasonable. That
19 he came outside saw somebody and said yeah, I'll give you a
20 light; walks back into his house and without letting Angel
21 come with him, and that all of this occurred because he
22 would not give Angel a light despite the fact they know
23 each other. Despite the fact that you saw them milling
24 around outside the hotel room before he walked back in. He
25 wants you to believe this is all about a light.

CLOSING ARGUMENT: BY MR. NIELSON

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1 I submit to you I don't know what it's about, ladies
2 and gentlemen, but that doesn't make sense. It doesn't
3 pass the common sense barrier. He mills around outside
4 with Angel and yet continually once the police show up and
5 says I don't really know him like that, I don't really know
6 him that well. He told us he doesn't really know him that
7 well despite knowing his nickname is Angel. But he doesn't
8 really know him that well. Something doesn't make sense in
9 that, ladies and gentlemen.

10 Angel knows that his nickname is Gold. How do we know
11 he's Gold? Because Maurice called him Gold. We know he's
12 Gold because as he testified he has gold in his teeth.
13 Once again, when he enters the hotel room Tymel says that
14 he would ask where's the Gold? You heard other testimony
15 that he was asking where's Gold. Once again, Tymel's --
16 everything is turned just a certain amount of degree. I
17 don't know why, but it just doesn't make sense.

18 Then once Gold runs a fight starts. You saw the
19 fight. The Solicitor has made a big deal out of the fact
20 that Mr. Hightower is substantially larger than Mr.
21 McCullough. I would submit to you that during a fight
22 people get picked up, people get pushed, people get
23 punched, people get hit with objects. Both of them hit
24 each other, both of them hit each other with bricks. Yes,
25 when you have one person who is substantially larger than

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1 the other and both of them hit each other and both of them
2 hit each other with bricks one of them is probably gonna
3 win the fight. That's likely to happen. That passes the
4 common sense makes sense test. And it would make sense
5 that the person who is larger, bigger, and out weighs him
6 by a hundred pounds is probably gonna win the fight.

7 But that does not mean that that was the intent when
8 this whole thing started.

9 Now, ladies and gentlemen, you're gonna be charged by
10 the judge on multiple different levels of assault and
11 battery. There is assault and battery of a high and
12 aggravated nature which the State has already explained to
13 you. There is also assault and battery in the first degree
14 and assault and battery in the second degree. I would
15 submit to you that yes Mr. McCullough was injured. I would
16 submit to you that if you feel like he was assaulted there
17 are multiple different levels of assault that you can
18 decide what this is. And I would submit to you that this
19 is what really happened here is an assault and battery in
20 the second degree.

21 Mr. McCullough received injury that he'll heal from.
22 He had to have staples put in his head, he had to be
23 stitched up and I -- and there's not a good way of saying
24 that. He had to receive doctor's care. And he probably
25 was -- And he was hurt worst that Mr. Hightower was.

1 There's no probably about that. But all of those injuries
2 are injuries that will heal.

3 And you're gonna hear the judge tell you that if an
4 assault happens and its moderate bodily injury, which is
5 essentially injury that requires treatment but will heal
6 without causing permanent disfigurement, then that's
7 assault and battery in the second degree. It's not ABHAN.
8 It's not assault and battery in the first degree. It's
9 assault and battery in the second degree.

10 Now, reasonable doubt. Ladies and gentlemen, I would
11 put to you that reasonable doubt like the Solicitor said is
12 hesitation to act. If you look at this case and you're
13 hesitant to believe that the State has proved beyond a
14 reasonable doubt that there was some intent when he entered
15 -- when Mr. Hightower entered that room, then you cannot
16 find him guilty of burglary.

17 As I told you yesterday morning he is presumed
18 innocent until you find him guilty. That goes with him to
19 this moment, it goes with him as you go into your jury room
20 to deliberate, and it goes with him until you come back
21 with a guilty verdict. He still has that presumption.

22 And if you are hesitating in your mind to believe that
23 there was some intent to harm him when he was looking for
24 one person, ignored all the others in the room, had every
25 opportunity to assault, batter, beat, do whatever they want

CLOSING ARGUMENT: BY MR. NIELSON

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1 he wanted to do to that person moments before he broke in
2 that door, then I would submit to you that that's not
3 burglary and there is no burglary. And he carries the
4 presumption of innocence on that.

5 The State makes this big deal about him being carried
6 away during the fight. In a fight you're gonna get, you're
7 gonna have people pushed. You might have somebody picked
8 up and body slammed, you might have a lot of different
9 things happen in a fight. That's not kidnaping, that's a
10 fight and that's what happened here.

11 Ultimately I want you to think about it this way,
12 ladies and gentlemen. Yesterday you heard a lot of
13 testimony about a gun. Kept saying a gun and how real this
14 gun looked and how scary the gun was. You heard me ask the
15 forensic technician what would happen if you put all the
16 pieces of the gun back together and she said I don't know.
17 But I would submit to you that what would happen is you
18 would have a BB gun. A gun, but a BB gun, one that is not
19 likely to cause a whole, a whole lot of harm, but one that
20 could cause a little bit of harm if it was shot in the
21 right place and at a distance and everything else it could
22 cause a little bit of harm.

23 That's much like this case. When you take the pieces
24 of this case as they've been laid out before you and you
25 put 'em back together what you have is a fight. Now you

CLOSING ARGUMENT: BY MR. NIELSON

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1 may decide that one person is more culpable -- is culpable
2 in that fight and that he's guilty of assaulting the other
3 person. But that's all this is, it's a fight, it's an
4 assault. I would ask you to render a verdict of assault
5 and battery in the second degree and not guilty on all the
6 other pieces of this case that just don't make sense.

7 Thank you.

8 THE COURT: Members of the jury panel, we'll take a
9 refresher break before I charge you on the law. Don't yet
10 start discussing the case, we haven't reached that point,
11 and don't try to make up your own mind until you hear me
12 charge the law, so we'll take a short break.

13 (JURY EXITS COURTROOM AT 11:04 A.M.)

14 THE COURT: We'll take a short break. There was some
15 mention yesterday about mutual combat. I don't even know
16 if I have a charge on that but there was no charge handed
17 up.

18 MR. NIELSON: I had mentioned I was thinking about
19 asking you for it and I've decided not to, your Honor.

20 THE COURT: Okay. I just wanted to make sure.

21 All right, we'll take a short break.

22 MR. NIELSON: Thank you, your Honor.

23 (COURT IN RECESS AT 11:05 A.M.)

24 (COURT BACK IN SESSION AT 11:17 A.M.)

25 (JOSHUA DUFFY PLEA WITH ATTORNEY CHRIS WELLBORN.)

CHARGE TO THE JURY:

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1 THE COURT: We'll be at ease until Mr. McCullough is
2 back and then we'll get Mr. Hightower in.

3 (COURT IN RECESS AT 11:25 A.M.)

4 (COURT BACK IN SESSION AT 11:41 A.M.)

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

6 The State ready?

7 SOLICITOR EPTING: State'S ready, your Honor.

8 THE COURT: Defense ready?

9 MR. NIELSON: Yes, your Honor. Mr. McKinnon might be
10 working. He's standby counsel on the next trial your Honor
11 is hearing for the pro'se guy, so he might be working on
12 that.

13 THE COURT: That's fine. All right, let's bring in
14 the jury.

15 (JURY REENTERS COURTROOM AT 11:42 A.M.)

16 CHARGE TO THE JURY:

17 THE COURT: Members of the jury panel, I am not going
18 to charge you the law that you are apply to the facts as
19 you determine them.

20 As you know Mr. Hightower is charged with kidnaping,
21 assault and batter of a high and aggravated nature,
22 possession of a weapon during the commission of a violent
23 crime, and burglary in the first degree, all allegedly
24 occurred on August 23rd, 2017.

25 Now the fact that he is charged is not any evidence.

CHARGE TO THE JURY:

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1 That's just the way our system works. If someone -- If law
2 enforcement believes someone has violated our laws, they
3 charge that person but that is not the end of and is no
4 proof that that person actually committed them. That is
5 just the way our system works. Someone is arrested then
6 brought to trial and its up to a jury to determine whether
7 or not, beyond a reasonable doubt, that person actually
8 committed the offense from which the State has charged him
9 or her.

10 The fact that there are several charges is of no
11 importance. That is, the fact that there is more than one
12 charge does not give this case any greater weight or the
13 State's case any greater weight. It's simply that the
14 State has determined that Mr. Hightower should be charged
15 with these separate charges. But the fact that there are
16 multiple charges does not give them any more weight.

17 You are to examine each charge on it's merits. That
18 is with one exception and I will tell you about that in a
19 moment. You are to look at each charge and determine
20 whether or not as to each charge the State has proven Mr.
21 Hightower's guilt beyond a reasonable doubt.

22 The exception is as to the charge of possession of a
23 weapon during the commission of a violent crime. Burglary
24 first and assault and battery of a high and aggravated
25 nature are -- have been determined by our legislature to be

CHARGE TO THE JURY:

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1 violent crimes. If you do not find Mr. Hightower guilty of
2 one of those offenses, then you automatically would find
3 him not guilty of possession of a weapon during the
4 commission of a violent crime because you would have
5 determined beyond a reasonable doubt that he did not commit
6 either of those violent crimes. So that's the only
7 exception that applies as to your examining each
8 indictment, each charge, on it's own merits.

9 Now, as to the charges Mr. Hightower has entered pleas
10 of not guilty to each and everyone of them. This places on
11 the State the burden of proving his guilt beyond a
12 reasonable doubt. Anyone charged with any offense in our
13 system is presumed innocent of that charge until such time
14 as the State is able to convince a jury of that person's
15 guilt beyond a reasonable doubt. The presumption of
16 innocence is a substantial right, it's not a mere legal
17 theory or a mere legal phrase. It is a substantial right.
18 It attached to Mr. Hightower at the time he was arrested,
19 it has remained with him as his case is processed through
20 our court system, and remains with him at this time.

21 In fact the presumption of innocence remains with him
22 as you deliberate. The presumption of innocence in his
23 favor is removed if and when, and only, if and when, you as
24 the trier's of fact unanimously determine that the State
25 has proven his guilt beyond a reasonable doubt as to a

CHARGE TO THE JURY:

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1 particular charge.

2 Now the State is not required to prove someone's
3 guilty beyond all or beyond every doubt but beyond a
4 reasonable doubt. Our law has defined a reasonable doubt
5 as the kind of doubt that would cause a reasonable person
6 to hesitate to act. Proof beyond a reasonable doubt is
7 proof that leaves you firmly convinced of someone's guilt.

8 There are very few things in our world that we can
9 know with absolute certainty and our law does not require
10 absolute certainty. If based on your consideration of the
11 evidence you are firmly convinced that Mr. Hightower is
12 guilty of one or more of these offences you would find him
13 guilty. If you, on the other hand, think there is a real
14 possibility that he is not guilty, you must give him the
15 benefit of that doubt and find him not guilty.

16 In cases such as this there are usually two types of
17 evidence presented. Direct and circumstantial evidence.
18 Direct evidence is the testimony of one who claims to have
19 actual knowledge of a fact such as an eyewitness. Direct
20 evidence is evidence which immediately establishes the fact
21 sought to be proven.

22 Circumstantial evidence is proof of a chain of facts
23 and circumstances which indicate the existence of a fact.
24 Circumstantial evidence is evidence which immediately
25 establishes collateral facts from which the main fact may

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1 be inferred. Circumstantial evidence is based on inference
2 and not on personal knowledge or personal observation.

3 Our law makes absolutely no distinction between the
4 weight or value to be given either to circumstantial or
5 direct evidence. Nor is a greater degree of certainty
6 required of circumstantial evidence than of direct
7 evidence. What you should do is weigh all of the evidence
8 in the case. After weighing all of the evidence if you are
9 not convinced of Mr. Hightower's guilt you would find --
10 beyond a reasonable doubt you would find him not guilty.

11 To the extent the State relies on circumstantial
12 evidence all of the circumstances must be consistent with
13 each other and when taken together point conclusively to
14 the guilt of the Defendant, here Mr. Hightower, beyond a
15 reasonable doubt. If the circumstances merely portray the
16 Defendant's, Mr. Hightower's, behavior as suspicious, the
17 State has failed in it's proof.

18 Now I am the sole judge of the law. I told you
19 earlier you must take, accept, and apply the law as I
20 charge it and this is true even if you think the law should
21 be different or even if you think I charge the law in
22 error. Your oath requires you take, accept, and apply the
23 law as I charge it.

24 You are not to infer from anything I have said or
25 done, or anything I now say or do as being indicative of an

CHARGE TO THE JURY:

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1 opinion of mine on the facts. Our law does not allow a
2 trial judge to formulae or express to a jury any opinion on
3 the facts. It is solely your job as the trial jury in this
4 case to examine the evidence, to give it the effect you
5 believe it should have, and return a verdict that speaks
6 the truth.

7 As judges of the facts you can believe one witness as
8 opposed to several, several witnesses as opposed to one,
9 you may believe all, part, or none of a witnesses
10 testimony. Use your common sense, your sense of logic, use
11 your sense of reason as you analyze the evidence. As
12 judges of the facts you must determine the believability of
13 the witnesses who have testified. In accessing
14 believability use those things that you find in your day to
15 day life as being indicators of believability. And you can
16 use certain evaluators including whether a witness has a
17 criminal record or not.

18 You can also consider their demeanor on the stand,
19 whether they're hesitant or straightforward. You can
20 consider the opportunity the witness had to know those
21 things to which the witness testified. You can consider
22 whether a witness has any bias or prejudice; any reason to
23 help or hurt one side or the other. All these things you
24 consider, return a verdict that you reach, if you do,
25 beyond a reasonable doubt.

CHARGE TO THE JURY:

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1 Now in this case we've had testimony of someone
2 qualified as an expert. Generally individuals can only
3 testify as to something they observed with one of their
4 five senses. It's usually an eye witness or someone who
5 observed something but it could be taste, touch, or smell.
6 However where an individual has certain training, expertise
7 and knowledge in a certain area, that witness can take
8 facts and from those facts render an opinion. The opinions
9 of experts -- The opinions of experts are allowed into
10 evidence to assist you but they are not binding on you.
11 You look at a expert witnesses' testimony with the same
12 lens as you look at all the other witnesses.

13 In addition even though I found that the forensic
14 witness was qualified, you determine, as I told you then,
15 whether or not you believe she was qualified to reach the
16 opinions she testified to. And you also can look at the
17 reasons she gave for reaching the opinions she reached.

18 Again, expert's testimony is allowed into evidence to
19 assist the jury, it is not binding on you. You can accept
20 it or reject it in whole or in part.

21 Mr. Hightower has exercised his constitutional right
22 to remain silent. The fact that he exercised that right
23 cannot be used against him in any way whatsoever. He has
24 an absolute right to remain silent and he has exercised
25 that right. Again, you cannot use that against him in any

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1 way whatsoever. You cannot discuss that in the jury room.
2 You can't factor it into your own deliberations in
3 determining what verdict to reach in this case.

4 Mr. Hightower, as I told you several times, is
5 presumed under our law innocent of these charges and the
6 State must prove his guilt beyond a reasonable doubt before
7 you could find him guilty of any of these offenses.

8 During the presentation of this case you may have
9 noticed that some portions of an audio were removed from
10 the videos shown. This is due to the rules of our court
11 and rules of evidence. Do not speculate as to what may or
12 may not be contained in those redacted portions, and you
13 are not to hold those portions for or against any party.

14 Now the first substantive charge I'm going to go over
15 with you is assault and battery of a high and aggravated
16 nature. It was mentioned I believe by one of the attorneys
17 in their closing arguments that there are lesser included
18 offenses. By that that means that there are offenses which
19 are not set forth in the indictment that could, they don't
20 have to be, considered by the jury, and I'll tell you how
21 that works.

22 Imagine with me a set of stairs. On the top stairs is
23 the charge of assault and battery of a high and aggravated
24 nature. That's the highest offense. You step down one, the
25 next step would be assault and battery first degree. If

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1 you step down another step it would be assault and battery
2 second degree. So just keep in mind this sort of a stair
3 step process as I go through and define those three types of
4 assault and battery.

5 An assault occurs when one offers or attempts to
6 commit violent injury to another with the present ability
7 to complete the attempted assault. An assault is the
8 intentional creation of reasonably -- reasonable fear of
9 injury to another. I always used this example. If you are
10 close enough for me to hit you and I rare back my fist like
11 I'm going to strike you and you -- and I put you in fear,
12 then I have committed an assault.

13 A battery is a completion of assault. That is an
14 unlawful touching of one person by another in a rude
15 arrogant or resentful manner without legal justification
16 however slight that touching may be. To follow through
17 with my example, if I rare back like I'm going to strike
18 you and then I come forward and I do hit you this is the
19 assault and when I actually make contact I have committed a
20 battery.

21 Assault and battery of a high and aggravated nature,
22 that's the charge that's set forth in the indictment is
23 that stop stair that I talked about, is defined as follows.
24 A person commits the offense of battery -- assault and
25 battery of a high and aggravated nature if the person

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1 unlawfully injures another and either A: Great bodily
2 injury to another results, or B: the act is accomplished
3 by means likely to produce death or great bodily injury.

4 Great bodily injury means bodily injury which causes a
5 substantial risk of death, or which causes serious
6 permanent disfigurement, or protracted loss or impairment
7 of the function of a bodily member or organ. That's the
8 charge and that's that top step.

9 The next step down that you may consider if you find
10 the State has not proven Mr. Hightower guilty of assault
11 and battery of a high and aggravated nature, you can if you
12 determine it's appropriate, consider whether the State has
13 carried it's burden beyond a reasonable doubt as to assault
14 and battery in the first degree. That offense, assault and
15 battery of a first degree is defined as when a person
16 commits the offense of assault and battery in the first
17 degree if the person unlawfully offers, or attempts, to
18 injure another person with the present ability to do so,
19 and the act either A: is accomplished by means likely to
20 produce death or great bodily injury, or, occurred during
21 the commission of a robbery, burglary, kidnaping, or theft.

22 Great bodily injury means bodily injury which causes
23 a substantial risk of death, or which causes serious
24 permanent disfigurement, or protracted loss or impairment
25 of the functions of a bodily member or organ.

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1 Now the next step down, high and aggravated first,
2 second degree, the person commits the offense of assault
3 and battery in the second degree if the person unlawfully
4 injures another person, or offers or attempts to injure
5 another person with the present ability to do so, and
6 moderate bodily injury to another person results, or
7 moderate bodily injury another person could have resulted.

8 Moderate bodily injury means physical injury requiring
9 treatment to an organ system of the body other than the
10 skin, muscles, and connective tissues of the body, except
11 when there's penetration of the skin, muscle, and
12 connective tissues that require a surgical repair of a
13 complex nature, or when treatment of the injuries require
14 the use of a regional or general anesthetic.

15 Now that's high and aggravated first and second degree
16 assault and battery.

17 Moving now to first degree burglary. Here Mr.
18 Hightower is charged with first degree burglary. Here the
19 State must prove beyond a reasonable doubt that he entered
20 a dwelling without consent. A dwelling is defined by our
21 legislature in our law as to burglary as follows:

22 A dwelling is any building or portion of a building in
23 which a person ordinarily sleeps. A building constructed
24 as a dwelling that has never been occupied cannot be
25 considered a dwelling for purposes of the burglary. But a

1 building is a dwelling even if the residence are
2 temporarily absent from the building.

3 In order to prove that the Defendant entered the
4 dwelling the State does not have to show that his entire
5 body entered the dwelling. The smallest entry is
6 sufficient. It may be any part of one's body such as a
7 hand or a foot or even an instrument such as a hook or
8 other instrument. In addition the State does not have to
9 prove that force was used to gain entry.

10 Next as to this charge the State must prove beyond a
11 reasonable doubt that the Defendant intended to commit a
12 crime, either a felony or a misdemeanor, at the time of the
13 entry. The mere entry into a dwelling without consent is
14 not burglary. If the intent to commit a crime is formed
15 after the entry it is not burglary. On the other hand if
16 the Defendant intended to commit a crime at the time of the
17 entry, it is burglary even if the intent was abandoned
18 after the entry. It does not matter that the intended
19 crime was not completed.

20 Intent may be shown by acts and conducts of the
21 Defendant and other circumstances from which you may
22 naturally and reasonably infer intent.

23 Finally as to burglary first, the State must prove
24 beyond a reasonable doubt one of the following:

25 Either when entering while in the dwelling or in

CHARGE TO THE JURY:

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1 fleeing the Defendant was armed with a deadly weapon.

2 A deadly weapon is any article, instrument, or
3 substance which is likely to cause death or great bodily
4 harm. Whether an instrument is being used as a deadly
5 weapon depends on the facts and circumstances of each case.

6 Examples of deadly weapons include a pistol. A gun
7 may be a deadly weapon even if it is not operative.

8 Ordinary objects may become deadly weapons when the facts
9 show that they have been used to inflict serious bodily
10 harm or injury. Whether a BB gun is a deadly weapon is a
11 factual question for you to decide. That was the first
12 circumstance. The State must prove one of these
13 circumstances but not all.

14 The second circumstance is that while entering the
15 dwelling or when fleeing the Defendant caused physical
16 injury to someone not participating in the crime.

17 The third is when entering, or while in the dwelling,
18 or when fleeing, the Defendant used or threatened to use a
19 dangerous object.

20 The fourth is when entering while -- while entering,
21 or while in the dwelling, or while fleeing, the Defendant
22 displayed what was or appeared to be a pistol.

23 The fifth is that the Defendant entered or remained in
24 the dwelling in the nighttime. Nighttime is the period
25 before sunset and sunrise during which there is not enough

CHARGE TO THE JURY:

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1 daylight to recognize a person's face except by artificial
2 light or moonlight.

3 Mr. Hightower is also charged with possession of a
4 weapon during the commission of or attempt to commit a
5 violent crime. The State here must prove beyond a
6 reasonable doubt that Mr. Hightower was in possession of a
7 firearm or visibly displayed what appeared to be a firearm
8 during the commission of a violent crime.

9 The term firearm would include a pistol or any weapon
10 which will or is designed to be readily converted to expel
11 a projectile. In order to find the Defendant guilty of
12 possession of a weapon during the commission of a violent
13 crime, you must find that he committed a violent crime or
14 attempted to commit a violent crime. As I told you earlier
15 burglary first degree and assault and battery of a high and
16 aggravated nature are violent crimes. The State must also
17 prove beyond a reasonable doubt that the weapon further
18 advanced or helped in the commission of the crime.

19 The last charge I'm gonna go over is kidnaping. Here
20 the State must prove beyond a reasonable doubt that the
21 Defendant knowingly and unlawfully seized, abducted, or
22 carried away another person without the authority of law.
23 To do a thing unlawfully is to do it willfully against the
24 law. Knowingly means to do something with knowledge, to do
25 something consciously, something done knowingly is not

CHARGE TO THE JURY:

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1 something done accidentally. Seize means to take hold of
2 suddenly or forcibly. Abduct means to carry off secretly
3 or by force for any illegal purpose.

4 Carry away means to remove. The State does not have
5 to prove that Mr. Hightower did all of these things,
6 instead if you find beyond a reasonable doubt that he
7 committed any of those things I've just mentioned, you may
8 find him guilty of kidnaping.

9 Something done without authority of law is something
10 which the law does not sanction, permit, allow, condone or
11 provide justification for. Kidnaping does not have to be
12 for any personal or monetary gain or for any illegal
13 purpose but may be for any reason whatsoever.

14 I'm gonna go over the verdict forms in a moment with
15 you, Mr. Foreman, and members of the jury. At this time
16 I'm gonna tell you though your verdict must be unanimous.
17 That is all twelve jurors must agree. Once all twelve
18 jurors have agreed, the foreman will write on the verdict
19 forms -- not write, but will check as I will go over in
20 just a moment on the verdict form the unanimous jury
21 verdict.

22 Your verdicts cannot be based on passion, prejudice,
23 sympathy, public opinion, or matters outside the record.

24 If while you are deliberating you have questions, Mr.

25 Foreman, write them down and give them to the bailiff. The

CHARGE TO THE JURY:

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1 bailiff will give them to me; I will confer with counsel
2 and respond to the note. It may be that I can write an
3 answer to the question on the note. If I do I'll send it
4 back in and if I do that keep the note and turn it in with
5 the evidence because it has to be part of the record.

6 We can have testimony replayed for you.

7 Does the State have something to --

8 SOLICITOR EPTING: We have a jury laptop that will
9 play one of the disc, your Honor.

10 THE COURT: All right. You will have the DVD's in the
11 jury room to view and consider. There is a DVD player I
12 guess it is. Anyway there is something else showing on it.
13 But you can come back and have us replay any testimony if
14 you wish. If you have any questions about the charge,
15 please let me know and I'll bring you back in and I can
16 recharge you any part of all of my charge on the law.

17 I do not have a written charge to send in to you, but
18 I'd be pleased to recharge anything that you wish.

19 When the jury goes out this time Ms. McCray, Mr.
20 Howze, if you'll remain in since you will not be needed as
21 alternates in this trial. When you go out this time do not
22 start deliberating until you hear from me. The signal to
23 start deliberating will be the bailiff telling you to do
24 that and also bring into you the exhibits. But don't start
25 deliberating until you are given that cue because I have to

CHARGE TO THE JURY:

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1 go over with the attorneys whether or not I've made an
2 error in my charge. If I have I'll have to bring you back
3 in and correct it because I told you you've got to to
4 follow it to the letter so its incumbent on me to make sure
5 that it is properly given.

6 We've got lunch coming, it should be here around 1
7 o'clock.

8 As to the verdict form on the verdict form for
9 kidnaping there are two choices. The fact that there are
10 two choices, the fact that one is ahead of the other is of
11 no knownment. That is I have to put 'em some order and I
12 always put 'em in this order, so the fact that one is on
13 top and one is bottom is not to be taken as an indication
14 that one should be favored over the other one. It is up to
15 you to determine unanimously which verdict you should
16 return.

17 The first, and there is a little line in front of
18 each, Mr. Foreman, where you put an x or check, indicating
19 the unanimous jury verdict. As kidnaping it says we find
20 the Defendant guilty of kidnaping. If that's the jury's
21 verdict an X or a check will go in front of that. Or we
22 find the Defendant not guilty.

23 Incidentally I have not said it but you will have in the
24 jury room with you the indictments. They are not evidence.
25 Do not consider them as evidence. They contain the charge

CHARGE TO THE JURY:

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1 against Mr. -- charges against Mr. Hightower. They are the
2 paperwork by way of which this case is processed through
3 our court system and they will ultimately hold the verdict
4 that you reach. So you will have the indictments with you
5 but they are not evidence.

6 As to burglary in the first degree there are two
7 choices; we find the Defendant guilty of burglary in the
8 first degree or we find the Defendant not guilty. An X or
9 check would go before whichever verdict the jury has
10 unanimously agreed upon.

11 The assault and battery of a high and aggravated
12 nature is a little different because it has that stair step
13 that I talked about. The first option would be we find the
14 defendant guilty of assault and battery of a high and
15 aggravated nature, that is the charge. If you find that
16 the State has not proven that offense beyond a reasonable
17 doubt you could consider, as I told you first degree and
18 second degree burglary, and there are lines that say we
19 find the Defendant guilty of assault and battery in the
20 first degree. We find the Defendant guilty of assault and
21 battery in the second degree.

22 And Mr. Foreman, you would put an X or a check if the
23 jury finds one of those unanimously.

24 The last of the four lines says, we find the Defendant
25 not guilty as to count one. This is the indictment that

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1 also has the weapons charge on it, and if that's the case
2 that the jury has unanimously determined that Mr. Hightower
3 is not guilty of assault and battery of a high and
4 aggravated nature, that line would have a check or X.

5 As to possession of a weapon during the commission of
6 a violent crime there are two options. We find the
7 Defendant guilty. We find the Defendant not guilty as to
8 count two. Keeping in mind that as to that charge, you
9 could not find him guilty unless you find him guilty of one
10 of the two violent crimes as I've talked about.

11 So I'm gonna let everybody but Ms. Howze and Mr. --
12 Mr. Howze and Ms. McCray go out, but don't start
13 deliberating yet.

14 (JURY EXITS COURTROOM TO DELIBERATE AT 12:09 P.M.)

15 THE COURT: I'll be with y'all in just a minute.

16 Anything from the State involving the charge?

17 SOLICITOR EPTING: No, your Honor.

18 THE COURT: Anything from the Defense?

19 MR. NIELSON: No, your Honor.

20 THE COURT: All right. Check the exhibits and the
21 verdict forms and then we'll send 'em back.

22 And I'm gonna excuse the two jurors that were
23 alternates for the rest of the week. We're gonna start
24 another short trial, but since you've sat here for two days
25 and I think we got enough to try the other case without

RECHARGE TO THE JURY:

-60-

1 imposing on you any further, so I'm gonna allow you to
2 leave. Do either one of you have to get anything out of
3 the --

4 MS. MCCRAY: I've got some stuff in there.

5 THE COURT: All right. The bailiff will help you get
6 that. And I thank you so much and you'll be mailed a
7 check. Don't plan on buying a car with the check.

8 (ALTERNATE JURORS DISMISSED AT 12:10 P.M.)

9 THE COURT: All right. We'll be at ease.

10 (COURT IN RECESS AT 12:15 P.M.)

11 (COURT BACK IN SESSION AT 12:55 P.M.)

12 (DEFENDANT REENTERS COURTROOM.)

13 THE COURT: All right, I've received a note from the
14 jury. They want a recharge on assault and battery charge.

15 Bring in the jury.

16 (JURY REENTERS COURTROOM AT 12:57 P.M.)

17 THE COURT: Mr. Foreman, members of the jury, I've
18 received your note regarding wanting the charge on the
19 assault and battery steps. Obviously you remember my
20 example because you called 'em steps, and I hope you
21 recall, I think you will, my examples of an assault being
22 the raring back and the offer to do injury to another, and
23 battery the actual touching. I'm not gonna redefine those.

24 Assault and battery of a high and aggravated nature -
25 All of these -- I didn't mention this before, these are all

RECHARGE TO THE JURY:

-61-

1 statutory offenses. They are offenses established by our
2 legislature so that is where these derive from.

3 A person commits the offense of assault and battery of
4 a high and aggravated nature, which is the charge against
5 Mr. Hightower, if the person unlawfully injures another
6 person and either great bodily injury results to another
7 person, or, the act is accomplished by means likely to
8 produce death or great bodily injury.

9 Great bodily injury means bodily injury which causes a
10 substantial risk of death, or which causes serious
11 permanent disfigurement, or protracted loss or impairment
12 of the function of a bodily member or organ.

13 Assault and battery in the first degree, first step
14 down, the person commits this offense assault and battery
15 in the first degree if the person unlawfully offers, or
16 attempts to injure another person with the present ability
17 to do so and the act either is accomplished by means likely
18 to produce death or great bodily injury, or, occurred
19 during the commission of a robbery, burglary, kidnaping or
20 theft.

21 Assault and battery in the second degree, the last
22 step in that analogy, a person commits this offense if a
23 person unlawfully injures another person, or offers, or
24 attempts to injure another person with the present ability
25 to do so, and either -- and -- not either, but, and

RECHARGE TO THE JURY:

-62-

1 moderate bodily injure to another person results.

2 Moderate bodily injury to another person or --

3 Let me start over on that. I chumbled my words.

4 A person commits the offense of assault and battery in
5 the second degree if the person unlawfully injures another
6 person, or offers, or attempts to injure another person
7 with the present ability to do so, and moderate bodily
8 injury to another person results, or moderate bodily injury
9 to another person could have resulted.

10 Moderate bodily injury means physical injury requiring
11 treatment to an organ system of the body other than the
12 skin, muscles, and connective tissue of the body except
13 when there is penetration of the skin, muscles and
14 connective tissues that require surgical repair of a
15 complex nature, or, when treatment of the injures requires
16 the use of a regional or general anesthesia.

17 So second degree requires moderate bodily injury.
18 First degree -- I'm sorry, first degree requires -- I'm
19 getting myself confused now. Let me recharge that. My
20 pages got jumbled. I apologize.

21 A person commits the offense of assault and battery of
22 a high and aggravated nature -- that's the charge -- if the
23 person unlawfully injures another person and either great
24 bodily injury to another person resulted, or, the act is
25 accomplished by means likely to produce death or great

RECHARGE TO THE JURY:

-63-

1 bodily injury.

2 Great bodily injury -- that term -- means bodily
3 injury which causes a substantial risk of death, or which
4 causes serious permanent disfigurement or protracted loss
5 or impairment of the function of a bodily member or organ.

6 Assault and battery in the first degree is committed
7 when a person offers or attempts to injure another person
8 with the present ability to do so and the act is either
9 accomplished by means likely to produce death or great
10 bodily injury, and I've just defined great bodily injury
11 for you, or occurred during the commission of a robbery,
12 burglary, kidnaping, or theft.

13 A person commits assault and battery in the second
14 degree if the person unlawfully injures another person or
15 offers or attempts to injure another person with the
16 present ability to do so and moderate bodily injury to
17 another person results or moderate bodily injury to another
18 person could have resulted.

19 Moderate bodily injury means physical injury requiring
20 treatment to an organ system of the body other than the
21 skin, muscles, and connective tissue of the body except
22 when there is penetration of the skin, muscles, and
23 connective tissues that require surgical repair of a
24 complex nature, or, when treatment of the injuries requires
25 the use of a regional or general anesthesia.

1 So those are the three steps of assault and battery --
2 of assault and battery starting with high and aggravated
3 first degree and second degree. Thank you. Let you go
4 back to the jury room.

5 (JURY EXITS COURTROOM TO CONTINUE DELIBERATING AT
6 01:04 P.M.)

7 THE COURT: Anything from the State?

8 SOLICITOR EPTING: No exceptions from the State.

9 THE COURT: Defense?

10 MR. NIELSON: No, your Honor.

11 THE COURT: All right. Hand this to Wanda and
12 everybody remain close at hand and let the gentleman go
13 back to the holding cell.

14 (WHEREUPON, COURT'S EXHIBIT NUMBER SIX, IDENTIFIED AND
15 MARKED, RECEIVED INTO EVIDENCE.)

16 (COURT BACK IN SESSION AT 01:33 P.M.)

17 THE COURT: Take your seats. We need to get Mr.
18 Hightower out.

19 (WHEREUPON, COURT'S EXHIBIT NUMBER SEVEN, IDENTIFIED
20 AND MARKED, RECEIVED INTO EVIDENCE.)

21 (DEFENDANT REENTERS COURTROOM.)

22 THE COURT: I understand we have a verdict in Mr.
23 Hightower's -- *State versus Hightower*. Everyone is present
24 so we'll bring in the jury.

25 (JURY REENTERS COURTROOM AT 01:38 P.M.)

VERDICT:~

-65-

1 THE COURT: Mr. Foreman, I understand the jury has
2 reached verdicts.

3 MR. FOREMAN: We have, your Honor.

4 THE COURT: If you'll hand the verdict forms to the
5 bailiff he will hand them up to me.

6 (VERDICTS RECEIVED UP BY THE COURT.)

7 MADAM CLERK: Indictment 2017-GS-46-4927 the State
8 versus Antoine Hightower we find the Defendant guilty of
9 burglary in the first degree, signed by the Foreperson
10 dated today's date.

11 Indictment 2017-GS-46-4928 the State versus Antoine
12 Hightower we find the Defendant guilty of kidnaping, signed
13 by the Foreperson dated today's date.

14 Indictment 2017-GS-46-4932 the State versus Antoine
15 Hightower count one, assault and battery of a high and
16 aggravated nature, we find the Defendant guilty of assault
17 and battery of a high and aggravated nature, signed by the
18 Foreperson dated today's date.

19 Indictment 2017-GS-46-32(A) the State versus Antoine
20 Hightower count two, possession of a weapon during the
21 commission of a violent crime, we find the Defendant
22 guilty, signed by the Foreperson dated today's date.

23 Ladies and gentlemen of the jury, if that be your
24 verdict so say you all by raising your right hand.

25 Let the record show all jurors affirmed this verdict.

SENTENCING:

-66-

1

2

(ALL JURORS RAISED THEIR HANDS AFFIRMING THE VERDICT.)

3

THE COURT: All right. Anything from the State before the jury is dismissed?

5

SOLICITOR EPTING: Nothing from the State, your Honor.

6

THE COURT: Anything from the Defense?

7

MR. NIELSON: No, your Honor.

8

THE COURT: Members of the jury panel, thank you for your help. We're gonna start another trial but I've got enough jurors so that I can let you go for the week. You will be mailed a check. You don't have to call back.

9

10

11

12

Mr. Austin, we're gonna have to get you to sign the indictments. One of the clerks will step out with you and show you how to do that. I appreciate your help and you're free to leave. Thank you so much.

13

14

15

16

(JURY DISMISSED AT 01:40 P.M.)

17

THE COURT: The jury has been dismissed. Anything from the State other than sentencing?

18

19

SOLICITOR EPTING: Nothing from the State.

20

THE COURT: Defense?

21

MR. NIELSON: Your Honor, at this point we would renew all of our previous objections, and all of our previous motions, and specifically mental health, the mental health issue that we ask for; the directed verdict and all other motions and that were made in this case.

22

23

24

25

SENTENCING:

-67-

1 THE COURT: Well, all motions are denied. Again, I --
2 it was a jury question, and I see no reason to upset the
3 jury's verdict and, nor do I find that any of the rulings
4 that you mentioned were erroneous and do not warrant any --
5 and therefore do not warrant any alteration of the jury's
6 verdict.

7 MR. NELSON: Thank you, your Honor.

8 THE COURT: If you'll bring Mr. Hightower around for
9 sentencing.

10 (DEFENDANT AND ATTORNEY NIELSON APPROACH THE BAR.)

11 THE COURT: First, does the victim want to say
12 anything?

13 SOLICITOR EPTING: Beg the Court's indulgence.

14 (PAUSE.)

15 SOLICITOR EPTING: Your Honor, the victim does not
16 wish to address the Court.

17 THE COURT: Is the State seeking any restitution?

18 SOLICITOR EPTING: Your Honor, I believe that the
19 victim was made whole by the state office of Victim's
20 Assistance Act but as far as his medical bills go, and we
21 have not been contacted by the hotel as far as possible
22 damages to the door. The Defendant does have a prior
23 criminal history we would like to put forth on the record.

24 THE COURT: All right.

25 SOLICITOR EPTING: Beg the Court's indulgence.

SENTENCING:

-68-

1 The victim just indicated he does have outstanding
2 medical bills.

3 THE COURT: Well I'll leave the restitution open then.

4 SOLICITOR EPTING: Thank you, your Honor.

5 THE COURT: All right, let me hear his prior record
6 and anything else the State wishes to advise me of.

7 SOLICITOR EPTING: Thank you, your Honor. The
8 Defendant does have a substantial prior history of violent
9 crimes. In 2006 according to his NCIC he has a conviction
10 for bank robbery. He appeared to have received something
11 in the area -- an indeterminate 41 month sentence for that
12 which he apparently got out on parole and violated for 24
13 months several years after that.

14 2012 NCIC indicates an assault on a female charge that
15 he was convicted and given county time.

16 2015 his NCIC indicates he was convicted of assault
17 with intent to commit serious injury and received a county
18 time sentence for that.

19 And in 2016 another assault on a female.

20 Your Honor, I don't know if this came out at trial,
21 however, in speaking with the victim and getting him ready
22 for trial he has been very emotional and I think the
23 effects of this crime and this incident and the injuries he
24 sustained will stay with him for much longer than one would
25 expect. He's still very emotional talking about it and I

SENTENCING:

-69-

1 think it appears that he will have some talking to the
2 problems stemming from this for the rest of his life.

3 THE COURT: All right. Tell me his record. Is that
4 all his record?

5 SOLICITOR EPTING: That is his record, your Honor.

6 THE COURT: How long has your client been in jail?

7 MR. NIELSON: Two hundred and fifty-six days, your
8 Honor. 246 days. I apologize, your Honor.

9 THE COURT: All right. I'll be glad now to hear from
10 you, Mr. Nielson.

11 MR. NIELSON: Your Honor, it's been my pleasure to
12 represent Mr. Hightower in this case. I will tell the
13 Court that he was raised in North Carolina and he's lived
14 in Rock Hill for some time. All of his family he has in
15 the world are here. He has a fiancé named Megan Jones and
16 a five-month-old son who is going to live here without his
17 father. He understands that that's what's gonna happen at
18 this point. I guess his son is more like nine-months old
19 now, he's a couple of months old.

20 I will tell the Court that he worked most of his life
21 in restaurants. You heard as part of the trial that he was
22 working at Ruby Tuesday at some point with Mr. McCullough's
23 dad and he has worked in restaurant jobs for most of his
24 life.

25 We're -- At this point, your Honor, we're leaving --

SENTENCING:

-70-

1 We're asking, we're begging the Court for mercy at this
2 point. I understand that its in your discretion to
3 sentence him basically for as long as you want at this
4 point, and he understands that, but burglary first degree
5 carries anywhere from 15 to life and he knows he's got to
6 do at least 15 years.

7 I would ask your Honor to consider something like 15
8 years and then put him on probation to give him a chance to
9 get out and have a chance at a future again. He is forty
10 years old. I believe anything much more than 20 years may
11 be a life sentence anyway.

12 So, we're asking your Honor to give him some hope,
13 some hope of a life at the end of all this, some hope of a
14 chance to come out of prison some day. And I do think the
15 best way to tabulate that would be something like 15 years
16 and then maybe 10 or 15 more with probation to cover, to
17 cover it to make sure he comes out and doesn't do wrong
18 again. But we're begging the Court's mercy at this point.

19 And you heard the evidence, there is more that could
20 be said if Mr. Hightower had testified, he would have
21 testified this was a drug deal gone bad; that that's why he
22 was entering the house. He felt that Mr. McCullough had
23 taken some money from him to give him some stuff that he
24 felt like he -- like he had already purchased and he
25 understands that he was in the wrong to do that.

SENTENCING:

-71-

1 He was using some substances that he shouldn't have
2 been using. He understands all that, and we're not saying
3 that's an excuse for what he did, but he does want the
4 Court to understand that that's what this is. That's what
5 this was. He never intended to harm any -- especially any
6 of the other people in the room. Him and Mr. McCullough
7 feels like they have -- did have some problems between the
8 two of them that -- and he feels very -- and he feels very
9 sorry for how badly Mr. McCullough was hurt. I know he
10 didn't want him to be hurt at the level that he was.

11 And we're asking and begging the Court's mercies at
12 this point.

13 THE COURT: What's the State's position on sentencing?

14 SOLICITOR EPTING: Your Honor, we would ask that you
15 take the severity of what could have happened into
16 consideration. Giving how many times he was hit with that
17 brick it could have ended up a whole lot worse than it did.

18 THE COURT: Mr. Hightower, anything you want to say?

19 MR. HIGHTOWER: No.

20 THE COURT: All right. On the burglary first --

21 MR. NIELSON: Oh, your Honor, I apologize. Can you
22 make sure, if your so inclined, can your Honor make sure
23 that on the kidnaping sentencing sheet to write this as a
24 non-sexual nature?

25 THE COURT: I've already written it.

1 MR. NIELSON: Thank you, your Honor.

2 THE COURT: On the burglary first -- All of these are
3 to run concurrent giving him 246 days on all of 'em.

4 Burglary first 25 years.

5 Kidnaping is 25 years.

6 And I've written on the sentencing sheet the offense
7 did not include a sexual battery or an attempted sexual
8 battery.

9 The assault and battery of a high and aggravated
10 nature 20 years. On the weapons charge 5 years, again
11 they're all to run concurrent. Credit for 246 days.

12 MR. NIELSON: Thank you, your Honor.

13 SOLICITOR EPTING: Thank you, your Honor.

14 (DEFENDANT ANTOINE HIGHTOWER EXITS COURTROOM.)

15 THE COURT: I appreciate everybody's courtesies in the
16 trial.

17 MR. NIELSON: Thank you, your Honor.

18 THE COURT: All right, Solicitor's what have we got
19 for the afternoon?

20 SOLICITOR EPTING: I will double check. I know
21 they're talking about starting another trial sometime soon
22 and I'll see what we have as far as pleas.

23 THE COURT: I will be here.

24 (COURT AT EASE AT 02:00 P.M.)

25 (END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

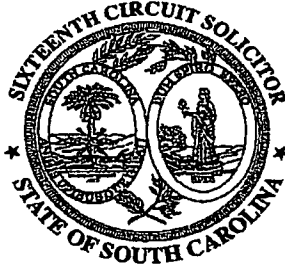
I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 25th day of April, 2018.

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

Wanda S. Nelson
Wanda S. Nelson, CVR-M
Certified Verbatim Reporter,
Circuit Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: July 3 / 2018



10/23

September 5, 2017

Devon R. Nielson
Moss Justice Center
1675-1E York Hwy
York, SC 29745

Re: State v Antoine Lakida Hightower

Dear Devon R. Nielson,

I am the Assistant Solicitor handling the above referenced case. I have received your letter/motion dated September 1 2017, in which you requested that this office provide you with information on the above referenced case pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and SCRCrimP Rule 5.

This letter is to advise you that we will supply all of the file materials that fall within the provisions of Brady and Rule 5. Please telephone me at your earliest convenience so that we may schedule an appointment for you to review and copy the file materials that fall within these provisions.

The State hereby requests reciprocal discovery under Rule 5, SCRCrimP, notice of any alibi, notice of any insanity defense or plea of guilty but mentally ill and, pursuant to State v. Cole, notice of your intention to use the defense of necessity.

Sincerely,

Christopher W. Epting

Christopher W. Epting
Assistant Solicitor

CWE/ rmp

261

WITNESSES

YCSO

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2017A4610100696

**ACTION OF GRAND JURY
TRUE BILL**

Eugenia H. Pearson

Foreperson of Grand Jury

Date: 12-7-2017

VERDICT

GUilty

For person of Petit Jury
Date: *E. Hager*

4-25-18

DOCKET NO. 2017-GS-46-04927

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

DECEMBER 7, TERM 2017

THE STATE

VS.

ANTOINE LAKIDA HIGHTOWER

INDICTMENT FOR

BURGLARY, FIRST DEGREE

SC Code: § 16-11-0311

CDR Code: 0079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

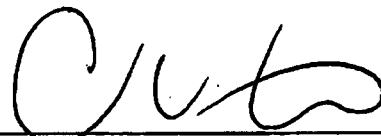
INDICTMENT

At a Court of General Sessions, convened on December 7, 2017, the Grand Jurors of York County present upon their oath:

BURGLARY, FIRST DEGREE

The defendant, Antoine Lakida Hightower, did on or about August 23, 2017, in York County, South Carolina, enter a dwelling belonging to The Hillside Inn and/or Tymel Mccullough without consent and with intent to commit a crime therein. The defendant while in the dwelling caused physical injury to a person who is not a participant in the crime and/or displayed what is or appears to be a pistol and/or used or threatened use of a dangerous instrument and/or was armed with a deadly weapon. The defendant entered or remained in the residence in the nighttime hours. All in violation of 16-11-0311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CHRISTOPHER W. EPTING
ASSISTANT SOLICITOR

263

WITNESSES

YCSO

Witnessing Officer: T.Hager

ARREST WARRANT NUMBER

2017A4610100690

**ACTION OF GRAND JURY
TRUE BILL**

Eugenia H. Rearden

Foreperson of Grand Jury

Date: *12-7-2017*

VERDICT
Guilty

[Signature]
Foreperson of Petit Jury

Date: *4-25-18*

DOCKET NO. 2017-GS-46-04928

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

DECEMBER 7, TERM 2017

**THE STATE
VS.**

ANTOINE LAKIDA HIGHTOWER

**INDICTMENT FOR
KIDNAPPING**

SC Code: § 16-03-0910
CDR Code: 0095

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

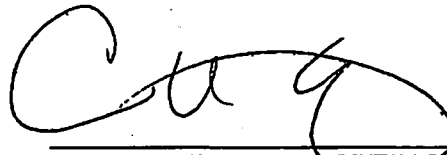
INDICTMENT

At a Court of General Sessions, convened on December 7, 2017, the Grand Jurors of York County present upon their oath:

KIDNAPPING

That Antoine Lakida Hightower did in York County, South Carolina, on or about August 23, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away Tymel Dajwan Mccullough, by any means whatsoever, without the authority of law. All in violation of 16-03-0910 *Code of Laws of South Carolina* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CHRISTOPHER W. EPTING
ASSISTANT SOLICITOR

265

WITNESSES

YCSO /

ARREST WARRANT NUMBER

COUNT ONE 2017A4610100694
COUNT TWO 2017A4610100697

ACTION OF GRAND JURY
TRUE BILL

Eugenia D. Reardon
Foreperson of Grand Jury
Date: 12-7-2017

VERDICT

Count 1: GUILTY
Count 2: GUILTY

23.6
Foreperson of Petit Jury 4-25-18

Count 1 DOCKET NO. 2017-GS-46-049322
Count 2 04932A

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

DECEMBER 7, TERM 2017

THE STATE
VS.

ANTOINE LAKIDA HIGHTOWER

INDICTMENT FOR

COUNT ONE - ASSAULT & BATTERY OF
A HIGH AND AGGRAVATED NATURE

SC Code: § 16-03-0600(B)(1)
CDR Code: 3411

COUNT TWO - POSSESSION OF A
WEAPON DURING THE COMMISSION OF
A VIOLENT CRIME

SC Code: § 16-23-0490
CDR Code: 0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on December 7, 2017, the Grand Jurors of York County present upon their oath:

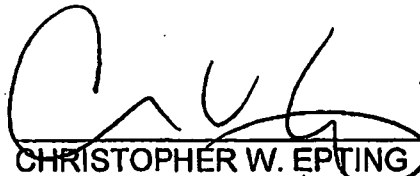
COUNT ONE - ASSAULT & BATTERY OF A HIGH AND AGGRAVATED NATURE

The defendant, Antoine Lakida Hightower, did on or about August 23, 2017, in York County, South Carolina, unlawfully injure Tymel Dajwan Mccullough and did accomplish that injury by means likely to produce death or great bodily injury or cause great bodily injury. All in violation of 16-03-0600(B)(1), *Code of Laws of South Carolina*, (1976, as amended).

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

The defendant, Antoine Lakida Hightower, did on or about August 23, 2017, in York County, South Carolina, while committing the violent crime of Burglary 1st and/or Assault and Battery of a High and Aggravated Nature, possess a brick and/or any other deadly weapon. All in violation of 16-23-0490, *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CHRISTOPHER W. EPTING
ASSISTANT SOLICITOR

COUNTY OF YORK

STATE VS.

ANTOINE LAKIDA HIGHTOWER

AKA:

Race: Black Sex: M Age: 40

DOB: SS#:

Address:

City, State, Zip:

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary, First Degree

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079.

INDICTMENT/CASE#: 2017GS4604927
 A/W: 2017A4610100696
 Date of Offense: 08/23/2017
 S.C. Code §: 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Christopher W. Epling, Assistant Solicitor 76321 SC Bar #
 Defendant

Attorney for Defendant 101444 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25-30 months or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP

_____ days/hours Public Service Employment

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso §61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: John H. HaysJudge Bar ID: 2967Sentence Date: 4-25-18Judge Code: 2049

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 125Clerk of Court/Deputy Clerk: Darwin HamiltonCourt Reporter: Wanda Nelson

SCCA/217 (07/2016)

268
COUNTY OF YORK
STATE VS.

ANTOINE LAKIDA HIGHTOWER

AKA: _____
Race: Black Sex: M Age: 40
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#: 2017GS4604928
A/W: 2017A4610100690
Date of Offense: 08/23/2017
S.C. Code §: 16-03-0910
CDR Code #: 0095

SENTENCE SHEET #20

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping
In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☒ CONVICTED OF or ☐ PLEADS

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Christopher W. Epling, Assistant Solicitor SC Bar # 76321 Defendant Attorney for Defendant 101444 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 30-25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/25/18
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 246 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 61.6 (Public Def/Prob) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/en \$ _____
3% to County (if paid in installments) \$ \$ _____
TOTAL \$ 125

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: The offense did not involve a
sexual battery or an attempted
sexual battery

☐ Appointed PD or appointed other counsel,
Proviso §61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees

Presiding Judge: David Hamilton
Judge Bar ID: 246 Judge Code: 2049
Sentence Date: 4-25-18

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (07/2016)

COUNTY OF YORK

STATE VS.

ANTOINE LAKIDA HIGHTOWER

AKA:

Race: Black

Sex: M

Age: 40

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED]

SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery Of A High And Aggravated NatureIn violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411INDICTMENT/CASE#: 2017GS4604932A/W: 2017A4610100694Date of Offense: 08/23/2017S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Christopher W. Epling, Assistant Solicitor SC Bar # 76321

Defendant

Attorney for Defendant

101444
SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/25/18☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 24th Law☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$_____ plus 20% fee: \$_____

Payment Terms: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$_____ Beginning _____

\$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso §61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: [Signature]Judge Bar ID: 3067Judge Code: 2049Sentence Date: 4-25-18

Recipient: _____

*Fine: _____ \$_____

§14-1-206 (Assessments 107.5%) \$_____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$_____

§56-5-2995 (DUI Assessment) \$12 \$_____

§56-1-286 (DUI Breath Test) \$25 \$_____

Proviso 61.6 (Public Def/Prob) \$500 \$_____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$_____

§50-21-114 (BUI Breath Test Fee) \$50 \$_____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$_____

3% to County (if paid in installments) \$ \$_____

TOTAL

\$ 125Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Wanda Nelson

SCCA/217 (07/2016)

COUNTY OF YORK

STATE VS.

ANTOINE LAKIDA HIGHTOWER

AKA:

Race: Black

Sex: M

Age: 40

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

INDICTMENT/CASE#: 2017GS4604932A

A/W: 2017A4610100697

Date of Offense: 08/23/2017

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET #7

X CONVICTED OF or

☐ PLEADS☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

76321

101444

Christopher W. Epting, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/25/18☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Recipient: *Fine: \$14-1-206 (Assessments 107.5%) \$14-1-211 (A)(1)(Conv. Surcharge) \$100 100\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$56-5-2995 (DUI Assessment) \$12 \$56-1-286 (DUI Breath Test) \$25 Proviso 61.6 (Public Def/Prob) \$500 \$14-1-212 (Law Enforce. Funding) \$25 25\$14-1-213 (Drug Court Surcharge) \$150 \$50-21-114 (BUI Breath Test Fee) \$50 \$56-5-2942(J) (Vehicle Assessment) \$40/ea 3% to County (if paid in installments) \$

TOTAL

125Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Wanda Nelson

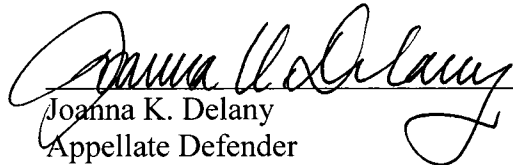
SCCA/217 (07/2016)

Presiding Judge: John H. TaylorJudge Bar ID: 2767Judge Code: 2049Sentence Date: 4-25-18

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of April, 2019.

RECEIVED
APR 26 2019
SC Court of Appeals