

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Thomas A. Russo, Circuit Court Judge

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S.C. SUPREME COURT

ROBERT LEE WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002249

APPENDIX

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1 box. You have been selected as a juror in the trial of
2 this case.

3 Juror 52, Andrew Champion.

4 (A black male came forward.)

5 THE CLERK: What say you for the State?

6 MR. SIMPSON: Please seat this juror.

7 THE CLERK: What say you for the defendant?

8 MS. PENN: Please seat Mr. Champion.

9 THE CLERK: Mr. Champion, you can go ahead and take
10 a seat in the jury box. You have been selected as a
11 juror in the trial of this case.

12 THE CLERK: Juror 128, Elizabeth Heywood.

13 (A white female came forward.)

14 THE CLERK: What say you for the State?

15 MR. SIMPSON: Please seat this juror.

16 THE CLERK: What say you for the defendant?

17 MS. PENN: Please seat Ms. Heywood.

18 THE CLERK: You can go ahead and take a seat in the
19 jury box. You've been selected as a juror in the trial
20 of this case.

21 Juror number 217, Andrew Patterson.

22 (A white male came forward.)

23 THE CLERK: What say you for the State?

24 MR. SIMPSON: Please seat this juror.

25 THE CLERK: What say you for the defendant?

1 MS. PENN: Please excuse Mr. Patterson.

2 THE CLERK: Mr. Patterson, you've been excused as a

3 juror in this case. You may return to your seat.

4 Juror 220, Cynthia Pinckney.

5 (A black female came forward.)

6 THE CLERK: What say you for the State?

7 MR. SIMPSON: Please excuse this juror.

8 THE CLERK: Ma'am, you've been excused from the

9 trial of this case. You may return to your seat.

10 Juror number 22, Thomas Bingham.

11 (A white male came forward.)

12 THE CLERK: What say you for the State?

13 MR. SIMPSON: Please present this juror.

14 THE CLERK: What say you for the defendant?

15 MS. PENN: Please seat Mr. Bingham.

16 THE CLERK: Mr. Bingham, you've been picked as a

17 juror in this case. You may take a seat in the jury box.

18 Juror number 198, John Moffitt.

19 (A white male came forward.)

20 THE CLERK: What say you for the State?

21 MR. SIMPSON: Please seat this juror.

22 THE CLERK: What say you for the defendant?

23 MS. PENN: Please seat Mr. Moffitt.

24 THE CLERK: Mr. Moffitt, you have been selected as

25 a juror in this case. You may take a seat in the jury

1 box.

2 Juror number 218, Elizabeth Paul.

3 (A white female came forward.)

4 THE CLERK: What say you for the State?

5 MR. SIMPSON: Please seat this juror.

6 THE CLERK: What say you for the defendant?

7 MS. PENN: Please excuse Ms. Paul.

8 THE CLERK: You have been excused from the trial of

9 this case. You may return to your seat.

10 Juror number 85, Brian Ethredge.

11 (A white male came forward.)

12 THE CLERK: What say you for the State?

13 MR. SIMPSON: Please seat this juror.

14 THE CLERK: What say you for the defendant?

15 MS. PENN: Please seat Mr. Ethredge.

16 THE CLERK: Mr. Ethredge, you've been chosen as a

17 juror in this case. You may take a seat in the jury box.

18 Juror number 12, James Banicar.

19 (A white male came forward.)

20 THE CLERK: What say you for the State?

21 MR. SIMPSON: Please seat this juror.

22 THE CLERK: What say you for the defendant?

23 MS. PENN: Please seat Mr. Banicar.

24 THE CLERK: Mr. Banicar, you have been chosen as a

25 juror in this case. You may take a seat in the jury box.

1 Juror number 67, Daniel Dickey.

2 (A white male came forward.)

3 THE CLERK: What say you for the State?

4 MR. SIMPSON: Please excuse this juror.

5 THE CLERK: Mr. Dickey, you have been excused as a
6 juror in this case. Please return to your seat.

7 Juror number 143, Charles Jaymes.

8 (A white male came forward.)

9 THE CLERK: What say for the State?

10 MR. SIMPSON: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MS. PENN: Please excuse Mr. Jaymes.

13 THE CLERK: Mr. Jaymes, you have been excused from
14 the trial of this case. You may return to your seat.

15 Juror number 58 Elizabeth Coker.

16 (A white female came forward.)

17 THE CLERK: What say you for the State?

18 MR. SIMPSON: Please seat this juror.

19 THE CLERK: What say you for the defendant?

20 MS. PENN: Please seat Ms. Coker.

21 THE CLERK: Ms. Coker, you have been selected as a
22 juror in the trial of this case. Please take a seat in
23 the jury box.

24 Juror number 168, Ivenia Little.

25 (A black female came forward.)

1 THE CLERK: What say you for the State?

2 MR. SIMPSON: Please seat this juror.

3 THE CLERK: What say you for the defendant?

4 MS. PENN: Please seat Ms. Little.

5 THE CLERK: Ms. Little, you've been selected as a
6 juror in the trial of this case. Please take a seat in
7 the jury box.

8 Juror number 51, Brooke Cato.

9 (A white female came forward.)

10 THE CLERK: What say you for the State?

11 MR. SIMPSON: Please excuse this juror.

12 THE CLERK: Ms. Cato, you've been excused from the
13 trial of this case. You may return to your seat.

14 Juror number 170, Ann Loomis.

15 (A white female came forward.)

16 THE CLERK: What say you for the State?

17 MR. SIMPSON: Please seat Ms. Loomis.

18 THE CLERK: What say you for the defendant?

19 MS. PENN: Please seat Ms. Loomis.

20 THE CLERK: Ms. Loomis, you've been selected as a
21 juror in this case. You may take a seat in the jury box.

22 Juror 164, Kyra Langdon.

23 (A black female came forward.)

24 THE CLERK: What say you for the State?

25 MR. SIMPSON: Please excuse this juror.

1 THE CLERK: Ms. Langdon, you have been excused as a
2 juror in the trial of this case. You may return to your
3 seat.

4 THE CLERK: Juror 184, Anne McKibbin.

5 (A white female came forward.)

6 THE CLERK: What say you for the State?

7 MR. SIMPSON: Please seat this juror.

8 THE CLERK: What say you for the defendant?

9 MS. PENN: Please excuse Ms. McKibbin.

10 THE CLERK: Ms. McKibbin, you have been excused
11 from the trial of this case. You may return to your
12 seat.

13 Juror number 14, Nicholas Bates.

14 (A white male came forward.)

15 THE CLERK: What say you for the State?

16 MR. SIMPSON: Please seat this juror.

17 THE CLERK: What say you for the defendant?

18 MS. PENN: Please seat Mr. Bates.

19 THE CLERK: Mr. Bates, you have been selected as a
20 juror in the trial of this case. Please take a seat in
21 the jury box.

22 We are now going to proceed to our first alternate.
23 We will be picking two. The State, of course, has one,
24 defendant's have two. The State goes first.

25 Juror number 194, Elizabeth Milota.

1 (A white female came forward.)

2 THE CLERK: What say you for the State?

3 MR. SIMPSON: Please seat this juror.

4 THE CLERK: What say you for the defendant?

5 MS. PENN: Please seat Ms. Milota.

6 THE CLERK: Ms. Milota, you have been chosen as our

7 first alternate. Please take a seat in the jury box.

8 Juror number 141, Ray Jackson.

9 (A black male came forward.)

10 THE CLERK: What say you for the State?

11 MR. SIMPSON: Please excuse this juror.

12 THE CLERK: You have been excused as a juror in

13 this case. You may return to your seat.

14 Juror number 50, Baker Carter.

15 (A white male came forward.)

16 THE CLERK: Any challenge from the State?

17 MR. SIMPSON: No. None from the State.

18 THE CLERK: What say you for the defendant?

19 MS. PENN: Please seat Mr. Carter.

20 THE CLERK: Mr. Carter, you have been selected as

21 our second alternate. Please take a seat in the jury

22 box.

23 The jury has been selected, Your Honor.

24 THE COURT: Any motions or matters pertaining to

25 the jury as selected, from the State?

1 MR. SIMPSON: No, Your Honor.

2 THE COURT: From the defendant?

3 MS. PENN: No, Your Honor.

4 THE COURT: Ladies and gentlemen, you have been
5 selected as the jury to try this case.

6 If you will please escort the jury to their
7 deliberation room.

8 We will receive you back in the courtroom in just a
9 few moments.

10 (WHEREUPON, the jury leaves the courtroom at
11 approximately 12:08 p.m.)

12 THE COURT: Outside the presence of the jury, any
13 motions or matters pertaining to the jury as selected,
14 from the State?

15 MR. SIMPSON: No, Your Honor.

16 THE COURT: From the defendant?

17 MS. PENN: No, Your Honor.

18 THE COURT: Ladies and gentlemen, you were not
19 selected as the jury to try this case but as I indicated
20 to you we have four judges picking this week, so I am
21 going to send you up to courtroom 4B, courtroom 4B.

22 And will you be escorting them?

23 All right. So there is your leader. 4B. I may
24 not see you the remainder of the week. Thank you again
25 for your service to Charleston County and to our justice

1 system. Have a wonderful day.

2 (WHEREUPON, the jury panel was excused.)

3 THE COURT: All right. Mr. Simpson, what do you
4 want to do with the jury? Do you want to let them go to
5 lunch or are you ready?

6 MR. SIMPSON: I'm ready to proceed with openings
7 but I wouldn't have any objections to going ahead and
8 going to lunch.

9 MS. PENN: We would like to do openings then go to
10 lunch, if that's okay with the Court.

11 THE COURT: That's perfect with me. Thank you.
12 Thank you. I love it when you're ready to go.

13 Are you ready, Mr. Wright?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Mr. Wright, just so you know, I am
16 probably more likely than not going to place you in
17 custody throughout the progress of this trial, just
18 that's just my policy and practice. All right? So when
19 we take breaks I'm going to put you in custody. All
20 right? And I'll make a decision and hear Ms. Penn on the
21 record, but I'm going to have you stay with us during
22 breaks. Okay?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. Are you ready to swear the
25 jury, Paige?

1 THE CLERK: Yes, ma'am.

2 MS. PROCTOR: I was sort of thinking pretrial
3 motions.

4 THE COURT: Any there any pretrial motion? Just a
5 rule of sequestration was all I thought was pending.

6 MS. PENN: Yes, Your Honor.

7 THE COURT: I granted --

8 MR. SIMPSON: Correct. I just ask that it apply to
9 both parties, obviously.

10 MS. PENN: We have no objection to that.

11 THE COURT: Thank you.

12 Mr. Moffitt has been selected as the foreperson.
13 Mr. Moffitt.

14 (WHEREUPON, Court's Exhibit Number 1, a Note from
15 the Jury, was marked and made a part of the record.)

16 THE COURT: Counsel, I do not know. I don't recall
17 who is present in the courtroom. Any witnesses?

18 MS. PENN: No, Your Honor. No witnesses are in the
19 courtroom.

20 MR. SIMPSON: None from the State. They will be
21 here at two.

22 THE COURT: Please rise for the jury.

23 (WHEREUPON, the jury enters the courtroom at
24 approximately 12:20 p.m.)

25 THE BAILIFF: The jury is present, Your Honor.

1 THE COURT: Thank you. Please be seated.

2 Do we have them all? All right. Now they are all
3 here.

4 Thank you, ladies and gentlemen, I'm now going to
5 administer an oath to you to try this case.

6 Madam Clerk.

7 THE CLERK: Please stand.

8 (WHEREUPON, the jury was given their oath.)

9 THE COURT: Was there any member of the panel who
10 could not take the oath? If so, please stand.

11 Thank you. All 14 jurors have taken the oath.

12 Ladies and gentlemen, I just want to give you a few
13 housekeeping matters I'm going to address. You have been
14 given notepads which means you may take notes throughout
15 the progress of this trial. Please remember, some of us
16 were much better note takers in school than others.

17 Those notes are for your own use. One juror's notes are
18 no more correct or accurate than another juror's notes.

19 You will be allowed to take those notes with you
20 during your deliberations. During breaks and over the
21 evening hours we will lock those notepads up and no one
22 will have access to those notepads, and then we'll
23 distribute those back after our break.

24 Ladies and gentlemen, you may have noticed when you
25 came in this time the parties involved and the members of

1 the audience were standing. This is out of respect for
2 your new position as judges of the facts. So please come
3 in, take your seats because they will remain standing
4 until all 14 of you are seated.

5 Ladies and gentlemen, I wanted to take the
6 opportunity to kind of explain the procedure that we will
7 be following so that you will be in a position to better
8 understand what is happening before you.

9 The case that we are about to try is the case of
10 the State vs. Robert Wright, defendant. Before we begin
11 this trial I wanted to tell you that this trial probably
12 will be different from what you might expect. Most
13 people don't have the opportunity to come to court as you
14 are doing now and most people get their information from
15 watching television or movies or reading books.

16 Ladies and gentlemen, while those trials are always
17 full of high drama, intense action and riveting
18 circumstances, please remember that this trial is not for
19 your entertainment. It is a fundamental part of our
20 democracy. It is a search for the truth in an effort to
21 make sure that the citizens' rights are protected.

22 Ladies and gentlemen, sometimes searching for the
23 truth is slow, deliberate and repetitive which is the
24 opposite of what you may have seen in television, read in
25 books or seen in movies.

1 Please remember, the attorneys appearing before you
2 are advocates for the parties that they represent but
3 first and foremost they are officers of this Court. They
4 are sworn to uphold the integrity and the fairness of our
5 judicial system. You should expect them to be ethical,
6 professional, competent in the representation of their
7 client's interest. You are also expected to be
8 professional, reasonable and ethical.

9 Ladies and gentlemen, thank you again for accepting
10 this most important responsibility of jury service and
11 for your contribution to our justice system here today.

12 Mr. Moffitt, you have been selected as the
13 foreperson in this case, and as such you are the jury
14 spokesperson here in court.

15 If any of you at any time have any concerns or
16 questions if you will direct them to the foreperson. He
17 will alert the bailiff, and we will handle the matter as
18 soon as we can. So if anybody needs any more frequent
19 bathroom breaks or you need to stand and stretch, or for
20 anything, let your foreperson know and he will alert the
21 court staff.

22 As such, Mr. Moffitt, that is your assigned seat.

23 And to my two alternates, those are your assigned
24 seats..

25 The rest of you may be seated wherever in the jury

1 box that you wish to be seated.

2 What I now say is intended to serve as an
3 introduction to the trial of this case. These remarks
4 are not a charge on the law. I will instruct you on the
5 law applicable to this case at the end of the trial
6 before you retire to consider your verdict. This is
7 merely an explanation of the procedures we will follow so
8 you may better understand what is happening.

9 The defendant is charged by an indictment filed in
10 this Court with the crime of murder. I will explain
11 those elements to you at a later time. The indictment is
12 simply the charge by which this case is brought into
13 court. It is not in any sense evidence of the
14 allegations it contains.

15 The defendant has pled not guilty to this
16 indictment and the State has the burden of proving each
17 of the elements of the indictment beyond a reasonable
18 doubt. It is your duty, ladies and gentlemen, to decide
19 whether the State has met its burden.

20 Your purpose as jurors is to find and determine the
21 facts. You are the sole judges of the facts in this
22 case. If at any time I make any comment regarding the
23 facts in this case you must disregard it. You are to
24 determine the facts from the testimony you hear and other
25 evidence introduced in court. It is up to you to

1 determine the inferences which you feel may be properly
2 drawn from the evidence.

3 It is important that you perform your duty of
4 determining the facts diligently and conscientiously
5 because ordinarily there is no way to correct an
6 erroneous determination of the facts by a jury.

7 On the other hand, and with equal emphasis, the
8 same law that makes you the judges of the facts makes me
9 the judge of the law. The law given by this Court is the
10 only law that you may consider. You must accept it and
11 follow it even though you may disagree with it.

12 I cannot tell you what I think the facts are and
13 you cannot disagree with me about what the law is or what
14 the law ought to be. Your job is to take the law as I
15 give it to you, apply the law to the facts as you find
16 them from the testimony of the witnesses as well as the
17 exhibits that may be introduced into evidence. After
18 doing that you will render your verdict, a true and just
19 verdict under the solemn oath that you just took.

20 Until I tell you to begin your deliberations you
21 must not discuss this case with anyone. That includes
22 your fellow jurors, your friends, your family members or
23 anyone else. And, ladies and gentlemen, that includes
24 face-to-face discussions but it also includes any
25 texting, e-mailing, blogging, anything of that nature.

1 You may not post anything on Facebook or any other
2 social internet media site concerning this case. Simply
3 put, you may not have any discussion with anyone
4 concerning this case in any fashion.

5 Ladies and gentlemen, you must decide this case
6 based solely on the evidence presented here in the
7 courtroom. That means that during the trial you must not
8 conduct any independent research about the facts in this
9 case or the evidence presented in this case or about the
10 people or the organizations involved in any way in this
11 case. Do not try to find out any information from any
12 source outside of this courtroom.

13 You must not look at any dictionaries or reference
14 materials, search the internet, websites or blogs or use
15 any other electronic tools to help you find information
16 about his case. During the breaks you may use certain
17 devices such as cell phone or iPads or something of that
18 nature, but again, you must comply with all of the
19 Court's instructions.

20 Ladies and gentlemen, you may not read, watch,
21 listen to any news accounts regarding this case should
22 there be any, and that includes anything that is in any
23 newspapers, internet, radio or television. Again, you
24 cannot consider anything that you may have read or heard
25 about this case outside of the courtroom. If you become

1 aware of another juror's violations you must inform the
2 Court immediately.

3 It is important that you keep an open mind and not
4 decide any issue in this case until all of the evidence
5 has been presented, the parties have made their closing
6 arguments and I have instructed you on the law applicable
7 to this case. It is your solemn responsibility to
8 determine the guilt or innocence of the defendant and
9 your verdict must be based solely upon the evidence as it
10 is presented to you in court.

11 In just a moment the solicitor will make what is
12 called an opening statement in which the solicitor will
13 explain to you the facts of this case or at least what he
14 or she thinks the facts are. The attorney for the
15 defendant may also make an opening statement although the
16 law does not require the defendant to do so.

17 Please remember, what the attorneys tell you in
18 their opening statements is not to be considered
19 evidence. It is only their contention as to what the
20 evidence will show you. The evidence in this case will
21 be presented to you by the testimony of sworn witnesses
22 from the witness stand as well as any exhibits that may
23 be introduced into the record in this case.

24 From time to time during this trial you may hear
25 one of the attorneys state an objection or ask to

1 approach, or I might find it necessary to excuse you from
2 the courtroom for a short while. If I have the attorneys
3 approach the bench, please do not try overhear us or read
4 our lips. If I excuse you from the courtroom do not
5 think we are trying to hide anything. The reason for
6 this is sometimes it is necessary for me to make a
7 comment regarding the facts in order to issue a ruling on
8 the law, and as I indicated to you the law does not allow
9 me to have an opinion about the facts in this case, so I
10 will excuse you for a short while so that in no way
11 anything I say or do will influence you regarding the
12 facts in this case.

13 In determining what the true facts are in this case
14 you must decide whether or not the testimony of the
15 witness is believable. It is my responsibility to rule
16 as a matter of law whether certain testimony is
17 admissible at all. But once it is admitted whether or
18 not you believe it is solely for you to determine.

19 In deciding whether to believe a witness you have
20 the right to consider the interest of a witness, the bias
21 of a witness, the prejudice of a witness, the opportunity
22 for that witness to have seen and heard the things about
23 which the witness testifies, as well as the way the
24 witness acts on the witness stand.

25 You have a right to consider anything in the record

1 that will help you evaluate the testimony of that
2 witness. That means, ladies and gentlemen, it's your
3 duty to pay close attention. Please do not let your
4 thoughts wander or close your eyes and take a short nap
5 during the testimony.

6 Please pay attention so at the end of all the
7 testimony, after you have heard closing arguments on
8 behalf of counsel and I have instructed you on the law
9 applicable to this case you will be in a position to
10 determine what the true facts are, apply the law as I
11 give it to you and render a verdict based upon those
12 things.

13 Ladies and gentlemen, we will hear closing
14 arguments on behalf of counsel and then we will break for
15 lunch.

16 Mr. Simpson, are you giving the opening?

17 MR. SIMPSON: I am, Your Honor.

18 THE COURT: Please give your strict attention to
19 Mr. Simpson.

20 MR. SIMPSON: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. SIMPSON: Ladies and gentlemen, good afternoon.
23 I'd like to start out how we all typically start by
24 thanking you in advance for your time and for your
25 attention this week.

1 I realize as you came down on Monday you perhaps
2 were maybe hoping that you wouldn't be in the position
3 that you are in right now. I know you have busy lives
4 and other things to attend to, but, you know, maybe it's
5 bad luck, maybe it's good luck. Here you find yourself.

6 If this makes you feel any better, having spoken
7 with a lot of juries after their service is complete, of
8 course, I believe you'll find once everything is said and
9 done that this is a meaningful experience for you.
10 Realizing that and carrying out this duty for your
11 community, whatever your verdict is, will be something
12 positive that's going to stay with you for a while. So I
13 thank you in advance for your time and attention this
14 week and appreciate you being here.

15 I talk about your duty; what is that? Judge
16 Harrington has already talked about it. Essentially, as
17 you heard, it's twofold. The first thing for you to
18 determine is what you believe the facts of this case are.
19 And let me tell you, that is my burden and my burden
20 alone. As the representative of the State of South
21 Carolina it is up to me to prove to you what the facts
22 are.

23 The second part of your duty is to apply the law of
24 the State of South Carolina to those facts that the State
25 has proven to you beyond a reasonable doubt. I point

1 that out again for one reason. It's because most opening
2 statements, as I'm giving to you now, focus on that first
3 duty. They just simply lay out the story that you are
4 going to hear. It's that side's version of the facts.

5 But I'm going to do things a little differently
6 today and first focus on the law. And I'm going to do
7 that for a reason. And let me say before we even begin
8 the reason I am doing that is what you are about to
9 undertake is not a mystery. The facts of this case are
10 not a Dateline NBC episode where you trace the evidence
11 to a certain person. It's not a who-done-it.

12 The facts in this case are about as straightforward
13 as they come, and our presentation -- and here's some
14 good news for you, our presentation of those facts is
15 going to be straightforward.

16 You heard from the Judge some things about
17 repetitiveness and slow and deliberateness. Certainly,
18 that's going to play a part. This is going to be,
19 relatively speaking to a murder trial, a fairly short
20 straightforward presentation of the facts because the
21 facts are so straightforward.

22 Ladies and gentlemen, I can tell you right now in a
23 short paragraph every relative fact that you are going to
24 take with you into that jury room. Once you clear the
25 smoke and clear the argument away the facts of this case

1 are this straightforward.

2 On June 10th, 2010 around sunset the man seated
3 here, Robert Wright, saw a person that he was angry at.
4 He saw a person he had ill will, hostility towards
5 walking down the street. Now, the fact that this person
6 at the time was walking three young boys to the store to
7 get snacks didn't really matter to Mr. Wright. At least
8 not enough to trump this ill will, this hostility.

9 Robert Wright got in his car, drove about a block
10 and a half to chase him down. Got out of his car, went
11 directly to him, grabbed him from behind, body slammed
12 him to the pavement, punched him repeatedly. Then as
13 another human being laid defenseless on the pavement
14 stomped him, stomped him.

15 This individual who was stomped, Christopher
16 Jenkins, age 46, beloved son, brother and uncle died
17 within 24 hours of those injuries that he sustained.
18 And, ladies and gentlemen, in that brief paragraph I have
19 given you every relative fact that you will take with you
20 to the jury room.

21 Because those facts are so straightforward let me
22 instead focus on what I tell you right now from the
23 get-go is going to be the most challenging part of your
24 job this week, and that is applying the law of South
25 Carolina to those facts.

1 Why are we all here? I submit to you that we are
2 all here because the application of these facts -- of
3 this law to these facts might be emotionally tough on
4 you. It might feel harsh, but we are here because of one
5 simple concept recognized in the law.

6 The defendant is charged with murder. Now, I'm
7 sure you bring with you an understanding, I think, of
8 what that means, what murder means, but let me ask you,
9 suggest to you that the actual legal definition that you
10 are going to be asked to apply is perhaps a little
11 broader, perhaps a little different of what the ideas you
12 had coming in.

13 Murder is defined simply -- although it's the most
14 serious criminal offense in South Carolina, it's defined
15 really quite shortly. Murder is the killing of any
16 person with malice aforethought either express or
17 implied. We break that down into two requirements, two
18 boxes that I have to convince you apply to this case, and
19 if you check those boxes then the proper verdict will be
20 guilty.

21 The first part of that definition, the killing of
22 another person, and that's simply when the defendant's
23 violent actions are the proximate cause of another's
24 death. That phrase proximate cause is going to be
25 important in this trial. I'm going to focus on that in a

1 lot more detail in my closing argument but it suffices
2 for now to say the proximate cause just means it is a
3 cause, a direct cause of the death. It doesn't have to
4 be the only cause, it doesn't have to be the sole cause
5 but there is a direct but-for link of the violent actions
6 to the death of another human being.

7 The second thing I have to prove based on that
8 definition this week --

9 MS. PENN: Your Honor, I have a matter of law.

10 THE COURT: All right. You all may approach.

11 (The following sidebar was reported.)

12 THE COURT: Be very careful. That was not a
13 correct statement.

14 MS. PENN: This is an opening statement. From my
15 law school, if I remember, opening statements being just
16 a statement of the facts, no argument of law. That's for
17 closing.

18 THE COURT: Phrase it as to what they need to be
19 looking for but you can argue, but don't get too deep.

20 MR. SIMPSON: Okay. Thank you.

21 MS. PENN: Thank you.

22 (The sidebar was concluded.)

23 MR. SIMPSON: Thank you, Your Honor.

24 Ladies and gentlemen, over the course of this week
25 I have to show that the defendant did these acts with

1 malice aforethought. Malice is also defined as ill will,
2 hostility, the wrongful intent to injure another person.
3 It is the intentional doing of a wrongful act without
4 just cause and with the intent to inflict injury.

5 Here we come to what will be this week the central
6 legal principle that we will be asking you to apply to
7 this case, and that is the crime of murder certainly
8 applies when someone intends to go kill someone but it
9 also applies in other situations as long as you find that
10 malice is present; the intent to injure, the intent to
11 seriously hurt someone.

12 And what we are going to prove to you this week is
13 that Robert Wright set out intending to cause serious
14 injury, intending to hurt someone. And when you go out
15 and do an act that intends to hurt someone you don't
16 under the law get to come in today and say, Oops. Sure I
17 meant to hurt this person badly but I didn't know that it
18 would lead to death.

19 That is not the correct statement of the law. That
20 does not relieve you of your criminal responsibility.

21 That is the case. That is the whole case; will you
22 hold Mr. Wright responsible under the law as it stands in
23 South Carolina? I will tell you now from the
24 beginning -- let me do a service to defense counsel. I
25 don't know that we are going to prove to you that

1 Mr. Wright decided to kill another human being, but I
2 don't have to.

3 The burden of proof is mine but please over the
4 course of this week keep in mind what that burden is.
5 The burden is malice, not the intent to kill. And that
6 concept is what this entire trial will boil down to.

7 Having introduced you the law in this case let me
8 give you a little more details, a little more facts about
9 what the story in this case is going to be.

10 Christopher Jenkins, age 46, a son, a brother, an
11 uncle and a close-knit Jenkins family was involved with a
12 woman named Betty Scott, romantically involved, Betty
13 Scott, the mother of Robert Wright. You may hear during
14 this trial Betty referred to as Ms. Winky, her nickname.
15 That's the defendant's mother.

16 They had a romantic relationship for sometime and
17 at some point during late 2009, early 2010 Betty Scott
18 decided to cut it off with Christopher Jenkins, to end
19 their romantic relationship. Christopher Jenkins had
20 deep feelings for Ms. Winky, deep romantic feelings for
21 the defendant's mother.

22 And so, yes, you will hear some evidence of the
23 fact that he was rather persistent in his attempts to
24 reconcile this and went about attempting to reconcile
25 this maybe in ways that none of us admittedly are crazy

1 about; text message, phone calls, you may hear about some
2 prior difficulties between them at a party. But the fact
3 of the matter is the defendant's mother wanted this
4 relationship to stop.

5 Christopher Jenkins, having deep feelings for his
6 mother, wanted the relationship to continue and it
7 escalated to a point where the defendant was sick of it.
8 He wasn't going to take someone disrespecting his mother
9 and not listening to his mother's wishes to cut off the
10 relationship.

11 And so as this hostility built, chance would have
12 it, a chance unfortunate encounter that gave this
13 defendant -- that sent this defendant and this victim on
14 a collision course, because on the evening of June 10th,
15 two things are going on.

16 The defendant visits his mom and hears about more
17 of his conduct. Over just two blocks, two or so blocks
18 away at the Jenkins family household the three --
19 Christopher Jenkins' two nephews, who you'll hear from,
20 are sent out on a little errand to get some snacks.
21 Them, the two nephews, and their little friend, age 13 --
22 two of them age 13, one of them nearly 15. Because it's
23 getting dark and it's happening right around sundown,
24 near dark, Christopher Jenkins, being a dutiful uncle,
25 says, I'll walk, and decides to walk his two nephews and

1 their little friend a few blocks to the Knight's Grocery
2 Store.

3 You're going to see the map, and it will be
4 presented to you, going from the Jenkins' house to the
5 Knight's grocery, and in the most direct route goes right
6 by the defendant's mother's house. And so as he's there
7 learning of these difficulties between Christopher
8 Jenkins and his own mom, which actually upset him very
9 much, here comes Christopher Jenkins going to the store
10 walking right by the house with the children, and again
11 we're back to the facts as you know them.

12 How does he react to that? Gets in his car, drives
13 it down. Comes up, and you'll hear, behind the victim,
14 body slams him, punches him, stomps him. It's an attack
15 so brutal that at one point one of the children says,
16 Hey, stop it. Stop beating up my uncle. And you'll hear
17 the defendant's response to that as well.

18 The defendant leaves. Christopher Jenkins tries to
19 continue his duties as an uncle, as a loved one. You'll
20 see in the evidence he tries to continue to walk the boys
21 to the store. Sadly, he can't make it. They say he has
22 to sit down on a little stool in a yard of some friends
23 of his. Hey, go on. Go to the store.

24 He rests. He eventually gets up and makes it back
25 home. He wants to lie down. He feels bad. He's been

1 assaulted and beat severely. He lays down in the bed.

2 He wakes up the next morning. You'll hear about some

3 moans and how much pain he's in.

4 Finally, and here is one tragedy of this, you'll

5 hear that he knew if he went to the hospital or called

6 the police what would happen? Mr. Wright would get

7 arrested. And if Mr. Wright got arrested he could never

8 get back with Ms. Winky, this person that he loved. He

9 knew if that happened it was over. So sadly, there was

10 some delay in seeking medical attention.

11 The next afternoon when things began to progress

12 and get really bad the family did contact EMS. EMS came.

13 They did everything they could but Christopher Jenkins

14 died at the hospital.

15 You may hear some theories about self defense and

16 causation, about how the beating didn't really cause the

17 death, but I submit to you that that position -- and I'm

18 not being brash or cocky when say this, but I'm just

19 saying those positions do not, will not comport with the

20 evidence in this trial.

21 You'll hear from the M.D. the stomping of

22 Christopher Jenkins broke every -- or 10 ribs on the

23 victim's chest cavity that caused the death, that ripped

24 apart the inside -- the flesh on the inside of the ribs.

25 What was going on over those 12 hours is he was slowing

1 internally bleeding to death, and what happened is he
2 essentially drowned on his own blood.

3 Ladies and gentlemen, the central issue in this
4 case, is that exactly what Mr. Wright had in mind when he
5 violently beat Christopher Jenkins? I don't know. And
6 at the close of this trial you won't either. But did
7 Mr. Wright set out to do violence? Did Mr. Wright set
8 out to hurt someone? If the answer to that question is
9 yes and the person died as a cause of those injuries then
10 the correct verdict is guilty of murder. Thank you.

11 THE COUR: Ms. Penn?

12 MS. PENN: Thank you, Your Honor.

13 Robert just wanted to talk but Chris, Chris was
14 ready for a fight, and that's what happened. It was a
15 quick fight. It was a fair fight. It was between two
16 grown men.

17 Let's go back to the time in June 10, 2010, almost
18 four years ago. It's eight o'clock at night and Robert
19 has just finished softball practice. So he's getting
20 ready to go. He switches out his cleats for some shower
21 shoes, the slides. He gets to his car. He puts his bag
22 in the car and he's got to make space because his car
23 isn't empty. He came straight from work, from his work
24 as a sheet metal worker. So in addition to the bat he's
25 got to make sure he's got room for his hammers, his

1 drills, his box cutters.

2 And it's beautiful out. It's a summer day. So on
3 his way home he decides to swing by his mom's house.
4 Everybody knows his mom as Ms. Winky. And the baseball
5 field is here. His mom's house is right across the
6 street, right across the street.

7 And it's the kind of house where it's set up --
8 there will be like a chunk of three apartments, a little
9 gap, then another set of apartments. Then it sets like
10 this. So the parking is served -- the parking is served
11 like a community parking lot for the apartments. So he
12 parks his car in there.

13 And you can already see everybody outside at this
14 time. His family is on the porch, the neighbors are on
15 the porch. Everybody is just relaxing, chatting, having
16 a good time. All of a sudden he hears his sister say,
17 There goes Chris peeping again. And sure enough,
18 everybody turns to look and they see him. They see Chris
19 peeping around the corner where one of the cracks is in
20 the apartments, looking for Winky.

21 Now, to explain why this is concerning for
22 everybody, Chris lives about maybe one or two blocks
23 back. He lives at [REDACTED] with his family.
24 And he and Winky, Robert's mother, used to date. They
25 went out for years. They went together for years.

1 And at some point they broke up, and his actions
2 when they broke up are not the actions of somebody love
3 sick or somebody romantic. No. That's a little too
4 pretty. He stalked her, he harassed her, he called her
5 foul names in front of all the neighbors, and they saw
6 each other all the time because, my God, they live two
7 blocks apart.

8 And even though this is happening it took Robert a
9 while to figure out what was going on. But one day,
10 probably once prior at Ms. Winky's birthday party all the
11 way in West Ashley, Chris shows up at the party. He's
12 drunk, he's belligerent and even worse he tries to take a
13 swing at Robert's mom. Luckily, it's a party so there
14 are a lot of people there. They hustle him out. And
15 Robert doesn't know what's going on. He's the one who
16 drives Chris home, and he says, Hey, man. I'm not going
17 to judge you, but mom says quit.

18 And then a little while later, about one month
19 before this night in June, Robert kind of knows what's
20 going on. He's heard a little bit now, and he goes and
21 tries to find Chris, tries to talk to him. Chris is
22 belligerent, he's angry, and the two men get into a
23 fight. It's quick fight.

24 At the end of the fight Chris goes home, back to
25 his mother's house on Harris Street, and is looking for a

1 bat. He tells his mom he's looking for a bat to get
2 Robert with.

3 So even though all this is going on it's not like
4 the two men are mortal enemies. There was no vendetta
5 between the families. They are neighbors, so they kind
6 of have to stay, you know, reasonable. But on this
7 night, June 10, 2010, when Robert's family says, Robert,
8 go talk to him, he does. He tries to.

9 They had been friends before this when Robert's
10 mom, Winky, and Chris were dating. They used to hang out
11 together, they used to drink together in the same
12 neighborhood, and they were friends. So he thinks it's
13 all right.

14 He's on his way home anyway. By now it's probably
15 about 8:30, 9 o'clock. His girlfriend has just called
16 and said, Come on home. Your food is getting cold, and
17 the game is on.

18 It's the NBA finals, LA Lakers versus the Celtics.
19 So he gets in his car, turns on his headlights, and he
20 starts driving towards his house. As he's driving he
21 sees Chris. So he pulls over his car, rolls down the
22 window and says, Chris. Hey, Chris.

23 He leaves his car running. He just wants to talk,
24 so it's supposed to be quick. He hops out of his car,
25 and when he hops out of his car he sees Chris come at him

1 like this (indicated) with his hands up like he's ready
2 to fight. And Robert says, Hey, man. I came to talk to
3 you and you put your hands up at me?

4 So the two men get into a fight. They lock at the
5 shoulders. Robert manages to sweep Chris's legs out from
6 under him. The two men go to the ground and Robert is
7 lucky enough to land on top. This is a quick fight, some
8 punches are thrown and both men are trying to get up,
9 trying to push away from each other.

10 At some point Robert has gotten up. Chris's arms
11 are around his waist. He frees himself and starts
12 walking back towards his car, and that's when the fight
13 is over. He's walking back towards his car and he sees
14 Chris get up and start walking in the other direction.
15 Robert gets in his car and goes home.

16 It's sad for everyone that Chris, when he gets up,
17 when he gets up his nephews, teenagers, and their friend
18 who is with them, they leave. It's a fight. It's a
19 quick fight. That's what they saw, two grown men going
20 at it. And he gets up by himself and starts to walk, so
21 they figure he must be okay. They go on to the store.
22 They leave him and they buy a bag of chips. By the time
23 they get back to their house Chris is already there.

24 Now, when Chris is at his own house his family is
25 fussing at him. He's got a cut on his lip, cut on his

1 eye. They are like, Who did this to you? What happened?

2 And he won't say. He doesn't want to say because
3 he doesn't want to tell his mom I was peeping at Winky's
4 house and got into a fight with her son, Robert.

5 So they beg him to go to the hospital and he
6 doesn't go, and no one calls. He doesn't go that night,
7 nobody calls that night, nobody calls that morning, and
8 it's not until the next afternoon that he goes to the
9 hospital, and then dies. When he does it's a surprise.
10 It's a shock. It's a shock to his mother, to his family.

11 And when Robert is charged with murder it's a shock
12 to him, too, because when two grown men get into a quick
13 fight, get into a fair fight that is not murder. At the
14 end of this trial we ask that that be your verdict, not
15 guilty. Thank you.

16 THE COURT: All right. Ladies and gentlemen, we
17 are going to take our lunch break at this time. Please
18 remember all of my admonitions. Do not begin your
19 deliberations, do not discuss this case amongst
20 yourselves or with anyone. Do not do any independent
21 research.

22 Ladies and gentlemen, please take your notepads and
23 all your personal belongings. The bailiffs will collect
24 them. Please be back in your jury room and ready to
25 begin at 2:15.

1 Please rise for the jury.

2 (WHEREUPON, the jury leaves the courtroom at
3 approximately 12:54 p.m.)

4 THE COURT: Thank you. Be seated.

5 Is there anything before we take our break?

6 MR. SIMPSON: Nothing from the State, Your Honor.

7 MS. PENN: Nothing from the defense, Your Honor,
8 except for the issue of Mr. Wright being allowed to stay
9 out on bond during the breaks.

10 THE COURT: What's the State's position?

11 MR. SIMPSON: We would leave it up to Your Honor's
12 discretion. I would say he had an issue of showing up on
13 time already, and I know it's usually your practice to
14 revoke bond. I think that's probably the more prudent
15 course, to revoke bond for the benefit of the trial. We
16 are only talking about a two-day trial.

17 THE COURT: Mr. Wright, I'm going to let you go for
18 lunch against my -- typically, against my policy.

19 I let him out every time the last time, didn't I?

20 THE DEFENDANT: Yes, ma'am.

21 MS. PENN: You did, Your Honor.

22 THE COURT: And you showed up every time. We've
23 already picked your jury. We are going with or without
24 you.

25 THE DEFENDANT: I'm not going anywhere, Your Honor.

1 THE COURT: All right. You be back at two o'clock.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Thank you.

4 MS. PENN: Thank you, Your Honor.

5 MR. SIMPSON: Your Honor, we could briefly -- I
6 think we've reached a consent on some items of evidence,
7 if I could just put that on the record.

8 THE COURT: I'm sorry?

9 MR. SIMPSON: I believe we've reached a consent as
10 it applies to some items. If I could put that on the
11 record.

12 THE COURT: Thank you.

13 MR. SIMPSON: State's 1 through 44. I believe at
14 this point the State seeks to move State's 1 through 44
15 into evidence.

16 THE COURT: Is there any objection?

17 MS. PENN: There is no objection, Your Honor.

18 THE COURT: All right. State's 1 through 44 into
19 evidence without objection.

20 (WHEREUPON, State's Exhibit Numbers 1 through 44
21 were admitted into evidence.)

22 MR. SIMPSON: Also, Your Honor, State's 47 through
23 52.

24 MS. PENN: No objection, Your Honor.

25 THE COURT: State's 47 through 52 into evidence

1 without objection.

2 (WHEREUPON, State's Exhibit Numbers 47 through 52
3 were admitted into evidence.)

4 MR. SIMPSON: For your own record keeping, Your
5 Honor, State's 45 and 46 were pictures that were objected
6 to at the first trial. You ruled them inadmissible. I'm
7 not even going seek to admit them.

8 THE COURT: Thank you.

9 MR. SIMPSON: There will be that gap in the
10 numbers.

11 THE COURT: Thank you.

12 MS. PROCTOR: And, Your Honor, I just wanted to ask
13 briefly how I should do this because I don't want to do
14 it wrong, because this was four years ago there was also
15 a previous trial. There might be some impeachment
16 because I'm sure people can't remember that long. I've
17 never had to do this from a transcript. Would you rather
18 I say you testified in a previous hearing?

19 THE COURT: Prior hearing.

20 MS. PROCTOR: Or don't say, You testified in a
21 trial? I just don't know whether I say previous hearing
22 or trial.

23 THE COURT: I think it's better to say a previous
24 hearing.

25 MS. PROCTOR: I just wanted to double check because

1 it's the first time I've done a mistrial.

2 THE COURT: You testified under oath previously, a
3 previous hearing.

4 Any objections, Mr. Simpson, handling it that way?

5 MR. SIMPSON: None at all, Your Honor. That's our
6 understanding.

7 THE COURT: Thank you.

8 All right. Please be back -- if anything comes up
9 just let me know.

10 Two o'clock. Be back at two to start pleas. I
11 could do a few pleas.

12 MR. SIMPSON: Okay.

13 (WHEREUPON, a lunch break was taken.)

14 THE COURT: Is your first witness here,
15 Mr. Simpson?

16 MR. SIMPSON: Yes, Your Honor.

17 THE COURT: Are all the jurors all here?

18 THE BAILIFF: Yes, ma'am.

19 THE COURT: And they have their notebooks and
20 everything ready to go?

21 All right. The jury is ready. Is there anything
22 before I bring them in, Ms. Baldwin?

23 MR. SIMPSON: No, Your Honor.

24 THE COURT: Ms. Penn?

25 MS. PENN: No, Your Honor.

1 THE COURT: All right. Let's bring in the jury.

2 (WHEREUPON, the jury enters the courtroom at
3 approximately 2:12 p.m.)

4 THE BAILIFF: The jury is present, Your Honor.

5 THE COURT: Thank you. Please be seated.

6 Did all the members of the jury comply with the
7 Court's instructions? If you complied with the Court's
8 instructions, please raise your right hand.

9 Please let the record reflect that all 14 jurors
10 complied with the Court's instructions over the lunch
11 break.

12 Please call your first witness.

13 MR. SIMPSON: Thank you, Your Honor. The State
14 calls **Robert J.**

15 **Robert J.**, after having been duly
16 sworn, testified as follows:

17 THE CLERK: State your name into the microphone and
18 spell your last for the record.

19 THE WITNESS: **Robert J.**

20 DIRECT EXAMINATION

21 BY MR. SIMPSON:

22 Q. Robert, good afternoon.

23 A. Good afternoon.

24 Q. I'd like to start -- tell the jury how old you are
25 today.

- 1 A. Seventeen.
- 2 Q. Seventeen. And you know why we are here, correct?
- 3 A. Yes, sir.
- 4 Q. How old were you at the time of this incident?
- 5 A. Thirteen.
- 6 Q. Thirteen. I'm going to embarrass you for a little
- 7 bit, but have you known me for a while because of this
- 8 incident?
- 9 A. Yes, sir.
- 10 Q. You've grown quite a bit, correct?
- 11 A. Yes, sir.
- 12 Q. Were you -- if you had to guess, and I know this is
- 13 tough for a young man, but how much you've grown since
- 14 2010 when this incident took place?
- 15 A. Can you ask the question again?
- 16 Q. Do you have any idea how much you've grown since
- 17 this incident took place?
- 18 A. No, sir.
- 19 Q. Where do you live currently, Robert?
- 20 A. [REDACTED].
- 21 Q. And is that where you lived back in June of 2010?
- 22 A. Yes, sir.
- 23 Q. And who do you live with there?
- 24 A. My grandparents.
- 25 Q. And I'm sorry. Did you say [REDACTED]?

- 1 A. Yes, sir.
- 2 Q. And sorry to get sidetracked. You said that's your
3 grandparent's home?
- 4 A. Yes, sir.
- 5 Q. And who all lives there today?
- 6 A. Me, my sister, brother, and my two grandparents,
7 and my uncle.
- 8 Q. And this is -- you said your sister?
- 9 A. Yes, sir.
- 10 Q. How old is your sister?
- 11 A. Twenty-one
- 12 Q. And your brother?
- 13 A. Eighteen.
- 14 Q. And what is your brother's name?
- 15 A. Jocqui.
- 16 Q. Do you all ever call him Jay?
- 17 A. Yes, sir.
- 18 Q. Who all lived at that address at [REDACTED]
19 back in June of 2010?
- 20 A. Same people.
- 21 Q. Okay. I know this might be a little difficult to
22 talk about but did your Uncle Christopher, live there?
- 23 A. Yes, sir.
- 24 Q. And he no longer lives there, correct?
- 25 A. No, sir.

- 1 Q. Are you a little bit nervous to be here today?
- 2 A. Yes, sir.
- 3 Q. I imagine this isn't the most fun thing to do for a
- 4 boy your age on an afternoon, correct?
- 5 A. Yes, sir.
- 6 Q. Because you are a little nervous I'd like to jump
- 7 right into why we are here today. You've already
- 8 testified that you understand why that is.
- 9 A. Yes, sir.
- 10 Q. I'd like you to start -- I'd like you to explain to
- 11 the jury what occurred on June 10th, and go ahead and
- 12 start with earlier that afternoon. Where were you on
- 13 June 10, 2010?
- 14 A. I was in the house playing a game of football.
- 15 Q. You were playing football at [REDACTED]?
- 16 A. Yes, sir.
- 17 Q. And who were you plying football with?
- 18 A. Maurice and Jocqui.
- 19 Q. And Jocqui we heard about. Jocqui is who?
- 20 A. My brother.
- 21 Q. And what about Maurice? Who is Maurice?
- 22 A. A close friend of mine.
- 23 Q. And how old is Maurice today, if you know?
- 24 A. I believe 17.
- 25 Q. And how old was he back in June of 2010?

- 1 A. Thirteen.
- 2 Q. After you were playing football what did you do?
- 3 A. My mother asked me to go to the store.
- 4 Q. And what's your mother's name?
- 5 A. Timeka Jenkins.
- 6 Q. And what store was she referring to?
- 7 A. Knight's Grocery Store.
- 8 Q. About what time was it, if you can fashion a guess?
- 9 About what time was it when your mom asked you to go to
- 10 the Knight's Grocery Store?
- 11 A. I don't remember the time but it was, like, turning
- 12 dark.
- 13 Q. Turning dark outside?
- 14 A. Yes, sir.
- 15 Q. And this was in June?
- 16 A. Yes, sir.
- 17 Q. Okay. And who all -- did you go to the store?
- 18 A. Yes, sir.
- 19 Q. Who all left [REDACTED] and went to the
- 20 store with you?
- 21 A. Me, Maurice, Jocqui --
- 22 Q. Just slow you down for a second. So you, your
- 23 brother, Jocqui?
- 24 A. Yes, sir.
- 25 Q. Friend, Maurice?

- 1 A. Yes, sir.
- 2 Q. And you said your Uncle Chris?
- 3 A. Yes, sir.
- 4 Q. Was Uncle Chris kind of looking out for you?
- 5 A. Can you ask the question again?
- 6 Q. Why was Uncle Chris going with you?
- 7 A. I don't know.
- 8 Q. Were you close with your Uncle Chris?
- 9 A. Oh, yes, sir.
- 10 Q. To the best of your recollection, what route did
- 11 you take from [REDACTED] Where is Knight's
- 12 grocery in regard to [REDACTED]?
- 13 A. On Hanover Street.
- 14 Q. And how do you get there from Harris Street?
- 15 A. Well, walk up America Street --
- 16 THE COURT: Could you back up maybe from the
- 17 microphone just a little bit. We are having trouble
- 18 understanding you. I think you're too close to the
- 19 microphone. Can you do that for me?
- 20 A. Yes, ma'am.
- 21 THE COURT: All right. Let's try that. Thank you.
- 22 Q. Robert, how do you get from your house where you
- 23 lived in 2010 and still today to the Knight's grocery?
- 24 A. Walk from going up to America Street, cut through
- 25 Martin Park, go up Aiken Street and then turn off to

- 1 Knight's Grocery Store right there.
- 2 Q. Okay. I think you said you go down America?
- 3 A. Yes, sir.
- 4 Q. Cut through Martin Park?
- 5 A. Yes, sir.
- 6 Q. And down Aiken Street?
- 7 A. Yes, sir.
- 8 Q. What's Martin Park?
- 9 A. Apartments in the neighborhood.
- 10 Q. What kind of things do they have at the Martin
- 11 Park?
- 12 A. Basketball courts, swimming pools, and tennis right
- 13 there.
- 14 Q. Do they have a baseball field?
- 15 A. Yes, sir.
- 16 Q. And is that just a public park in the neighborhood
- 17 over by America Street?
- 18 A. Yes, sir.
- 19 Q. Robert, I'd like to get you to the difficult part
- 20 of your testimony, if you don't mind. On the night in
- 21 question when you were walking, I believe you testified
- 22 you, Maurice, Jocqui, and your Uncle Chris, could you
- 23 explain to the jury what happened. And I may stop you
- 24 from time to time and slow you down a little bit but if
- 25 you could just explain in your own words to the jury what

- 1 happened on the way to the grocery store.
- 2 A. We been walking, and then, like, the three of us
- 3 were in front of my uncle, then when I turned -- like,
- 4 turned around to see if he was still there a car -- a car
- 5 pulled up and --
- 6 Q. Let me stop you there. You said a car pulled up?
- 7 A. Yes, sir.
- 8 Q. And you said you turned around when the car pulled
- 9 up?
- 10 A. Yes, sir.
- 11 Q. Where were you on that walk when the car pulled up?
- 12 A. Like, in the middle -- like, in the middle of Aiken
- 13 Street.
- 14 Q. Did you say in the middle of Aiken Street?
- 15 A. (Nodded).
- 16 Q. Is that a yes?
- 17 A. Oh, yes, sir.
- 18 Q. I'm sorry. This nice lady here has got to write
- 19 everything down so you need answer out loud, if you don't
- 20 mind.
- 21 A. Yes, sir.
- 22 Q. So you were about, you said, in the middle of Aiken
- 23 Street?
- 24 A. Yes, sir.
- 25 Q. You mean the same as halfway down Aiken Street?

- 1 A. Yes, sir.
- 2 Q. And what happened after the car pulled up?
- 3 A. The defendant had get out --
- 4 Q. Let me stop you there, too. You said the defendant
- 5 had gotten out?
- 6 A. Yes, sir.
- 7 Q. Who do you mean when you say that?
- 8 A. The man over there (indicated). Mr. Wright.
- 9 Q. Mr. Wright?
- 10 A. Yes, sir.
- 11 Q. The gentleman at this table?
- 12 A. Yes, sir.
- 13 Q. Okay. And did you -- back in June of 2010 did you
- 14 know who Mr. Wright was?
- 15 A. I knew who he was but I didn't know him.
- 16 Q. You weren't friends?
- 17 A. No, sir.
- 18 Q. And how did you know who he was? If you could
- 19 explain that for the jury.
- 20 A. When I was younger, like, me and my uncle walking
- 21 to the store and I'd see him --
- 22 THE COURT: Mr. Simpson, I'm having a hard time
- 23 hearing him.
- 24 That is the loudest that microphone will go?
- 25 THE CLERK: Yes, ma'am.

1 THE COURT: What can we do? Can you adjust the
2 microphone a little bit for him.

3 And I'm going to need you to speak very loudly.
4 Can you to that for me?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: A little more louder than that.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Even louder.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Perfect. Thank you.

11 All right, Mr. Simpson.

12 MR. SIMPSON: Thank you, Your Honor.

13 BY MR. SIMPSON:

14 Q. And, Robert, you are kind of a soft spoken guy.

15 A. Yes, sir.

16 Q. Don't be afraid to speak loudly.

17 You said that you knew him from prior interactions
18 in the neighborhood?

19 A. Yes, sir.

20 Q. Did you know him well?

21 A. No, sir.

22 Q. Did you know who his mother was?

23 A. Yes, sir.

24 Q. And who was that?

25 A. Ms. Winky.

1 Q. Ms. Winky. So what happened once the defendant got
2 out of the car, as he pulled up behind you?

3 A. Then, like, he was walking behind my uncle, then we
4 had turned around and he just had body slammed him to the
5 ground.

6 Q. Okay. I'm going to ask you -- and again, I'm not
7 doing this to embarrass you but there's a lot to cover
8 there. You said he was walking behind him?

9 A. Yes, sir.

10 Q. And he turned around. Who turned around?

11 A. My Uncle Chris.

12 Q. Did he get all the way around?

13 A. No. He got halfway, like, to see who it was.

14 Q. And what happened when he got halfway around?

15 A. He'll get slammed to the ground.

16 Q. And I want you to do something, if you don't mind.

17 And again, I'm not trying to embarrass you but --

18 Your Honor, may I ask the witness to stand up?

19 THE COURT: You may stand up but I'm going to need
20 you to still continue to speak loudly. Thank you.

21 BY MR. SIMPSON:

22 Q. You said slammed to the ground. That's fine. I'd
23 just like you to, if you could, physically demonstrate
24 what you mean by slammed to the ground.

25 A. Like, he came walking up --

1 THE COURT: Louder.

2 A. Like, he had walked up and then picked him up and
3 slammed him to the ground.

4 Q. Okay. And you can take your seat back and
5 re-adjust that microphone, if you would.

6 After Mr. Wright slammed your uncle to the ground
7 what happened?

8 A. Can you repeat the question?

9 Q. What happened after that, after Mr. Wright slammed
10 your uncle to the ground?

11 A. Well, like, he started, like, kicking him and
12 punching him.

13 Q. Okay. You said kicking him and punching him?

14 A. Yes, sir.

15 Q. Okay. How many times did he punch him?

16 A. I can't remember, sir.

17 Q. Was it more than one?

18 A. Yes, sir.

19 Q. Was it more than two?

20 A. Yes, sir.

21 Q. More than five?

22 A. Yes, sir.

23 Q. Okay. Could you just -- can you approximate for
24 the jury how many punches were thrown?

25 A. I just know no more than 10.

- 1 Q. Okay. You say he also kicked your uncle?
- 2 A. Yes, sir.
- 3 Q. And can you approximate -- or how many times do you
- 4 think he kicked your uncle?
- 5 A. Like around the same as he punched him.
- 6 Q. At some point, Robert, while this was going on --
- 7 actually, let me backtrack a second. If you could just
- 8 use me. Tell me to come closer or move back. How far
- 9 away from your uncle were you when this was taking place?
- 10 A. Back up. Back up.
- 11 Q. Just tell me when to stop.
- 12 A. Stop right there.
- 13 Q. Okay. You were this far from your uncle while this
- 14 was taking place?
- 15 A. Yes, sir.
- 16 Q. And you recognized the person doing this to your
- 17 uncle?
- 18 A. Yes, sir.
- 19 Q. At some point while this was going on did you try
- 20 to intervene in some way?
- 21 A. I told him to stop, like.
- 22 Q. You told the defendant to stop?
- 23 A. Yes, sir.
- 24 Q. And did the defendant respond to you in any way?
- 25 A. He said come make him stop.

- 1 Q. He said come make him?
- 2 A. Yes, sir.
- 3 Q. At some point did this attack on your uncle stop?
- 4 A. Yes, sir.
- 5 Q. How did it end? What was the last thing you saw?
- 6 A. Well, like, he just stand up and walk away.
- 7 Q. Okay. When you said the defendant kicked your
- 8 uncle.
- 9 A. Yes, sir.
- 10 Q. Could I ask you to stand up again, please. Could
- 11 you demonstrate to the jury, and you may have to come
- 12 around there, what you mean by kick your uncle. How did
- 13 he kick him?
- 14 A. Like this, keep stomping him (indicated).
- 15 Q. Where was your uncle while this was going on?
- 16 A. On the ground.
- 17 Q. Was Mr. Wright on the ground?
- 18 A. No, he was standing up, like -- yeah, he was
- 19 standing up.
- 20 Q. Robert, I have an important question for you. You
- 21 said the defendant pulled up in a car and got out of the
- 22 car?
- 23 A. Yes, sir.
- 24 Q. Did you hear the defendant say anything to your
- 25 uncle before the attack started?

- 1 A. No, sir.
- 2 Q. Did you hear him say, I just want to talk?
- 3 A. No, sir.
- 4 Q. Hey, come on, let's have a beer together?
- 5 A. No, sir.
- 6 Q. Robert?
- 7 A. Yes, sir.
- 8 Q. At any time did you see your uncle throw a punch in
- 9 this interaction?
- 10 A. No, sir.
- 11 Q. At any time did you see your uncle push the
- 12 defendant during this interaction?
- 13 A. No, sir.
- 14 Q. Did you ever see your uncle raise his fists up?
- 15 A. No, sir.
- 16 Q. Did you ever see your uncle throw a kick?
- 17 A. No, sir.
- 18 Q. After the attack ceased what happened?
- 19 A. My uncle just had stand up on the side.
- 20 Q. What do you mean on the side? On the side of what?
- 21 A. On the side of his body.
- 22 Q. Was he doing that physically?
- 23 A. Yeah. He was standing up on his side then just
- 24 started walking, walking slow.
- 25 Q. He continued to walk with you?

- 1 A. Yes, sir.
- 2 Q. And you know that he was walking slow?
- 3 A. Yes, sir.
- 4 Q. And did you all carry on towards the grocery?
- 5 A. Yes, sir.
- 6 Q. Did your uncle get all the way to the grocery with
- 7 you?
- 8 A. No, sir.
- 9 Q. What happened?
- 10 A. He had to stop in this yard, like where his friends
- 11 be at.
- 12 Q. Were his friends there that night?
- 13 A. No, sir.
- 14 Q. Okay. But you recognized the yard?
- 15 A. Yes, sir.
- 16 Q. And how did you recognize the yard?
- 17 A. Because, like, I used to go see him there with his
- 18 friends all the time.
- 19 Q. But this night he was the only one?
- 20 A. Yes, sir.
- 21 Q. And what did the defendant do after the attack?
- 22 A. He just drove off.
- 23 Q. After you went to the Knight's grocery where did
- 24 you go?
- 25 A. Back home.

- 1 Q. Okay. And what happened back home?
- 2 A. Like, he was back there.
- 3 Q. Your uncle was back at the house?
- 4 A. Yes, sir.
- 5 Q. Who else was back there?
- 6 A. My mother, and grandparents, my uncle.
- 7 Q. Okay. What was your uncle like back home?
- 8 A. It was like he seemed like he been hurting.
- 9 Q. And why did you think that?
- 10 A. Like, because, like, he keep on holding his side
- 11 and I just could tell by his face that he was hurt.
- 12 Q. I'm sorry. Could you repeat that?
- 13 A. Like, he be holding his side.
- 14 Q. What did your uncle do for the rest of the evening?
- 15 A. He had went to go lay down.
- 16 Q. I'm sorry. Could you repeat that?
- 17 A. He had went to go lay down.
- 18 Q. Okay. And where did he go lay down?
- 19 A. In the bed.
- 20 Q. Where was his bed?
- 21 A. Upstairs.
- 22 Q. Okay. Did you hear from him at all for the rest of
- 23 that night?
- 24 A. I hear him, like, moaning. I could tell he in
- 25 pain.

- 1 Q. Did you see your uncle the next day?
- 2 A. Yes, sir.
- 3 Q. How did you see him?
- 4 A. Well, I went and checked on him.
- 5 Q. Did you hear anything from your uncle the next day?
- 6 A. Like, he just had said he was all right but I could
- 7 tell that he was still hurting some.
- 8 Q. And eventually at some point that next day was an
- 9 ambulance called?
- 10 A. Yes, sir.
- 11 MR. SIMPSON: May I approach the witness, Your
- 12 Honor?
- 13 THE COURT: You may.
- 14 BY MR. SIMPSON:
- 15 Q. Robert, I'm showing you what's been entered into
- 16 evidence by consent as State's 2 and 3. Could you take a
- 17 moment and just look at these pictures.
- 18 Do you recognize -- what are those pictures of?
- 19 A. The car he be driving that night.
- 20 Q. Pictures of an automobile?
- 21 A. Yes, sir.
- 22 Q. Do you recognize that?
- 23 A. Yes, sir.
- 24 Q. And you said how you recognized it. What is that?
- 25 What car is that?

- 1 A. The car he be driving that night.
- 2 Q. Robert, you said your uncle -- an ambulance was
- 3 called for your uncle?
- 4 A. Yes, sir.
- 5 Q. Did you later learn that you uncle had passed?
- 6 A. Yes, sir.
- 7 Q. Did you later talk to the police?
- 8 A. Yes, sir.
- 9 Q. Did you tell them what happened?
- 10 A. Yes, sir.
- 11 MR. SIMPSON: May I approach the court reporter,
- 12 Your Honor?
- 13 THE COURT: You may.
- 14 (WHEREUPON, State's Exhibit Number 55, a
- 15 Photographic Lineup, was marked for identification only.)
- 16 BY MR. SIMPSON:
- 17 Q. Robert, did the police show you some pictures when
- 18 you talked to them?
- 19 A. Yes, sir.
- 20 Q. Robert, I'm handing you what's been marked for ID
- 21 only as State's Exhibit 55. If you could take a minute
- 22 and look over that.
- 23 (PAUSE.)
- 24 Q. Do you recognize State's 55, Robert?
- 25 A. Yes, sir.

- 1 Q. And what is that?
- 2 A. The testimony that I give the police and then the
- 3 defendant's picture and stuff.
- 4 Q. Are there pictures of more than one person in
- 5 there?
- 6 A. Yes, sir.
- 7 Q. Were you asked to pick the person you saw assault
- 8 your uncle?
- 9 A. Yes, sir.
- 10 Q. And were you able to pick the person?
- 11 A. Yes, sir.
- 12 Q. All right. Any doubt back then as to whether or
- 13 not you had the right guy?
- 14 A. No, sir.
- 15 Q. And you previously knew or recognized Mr. Wright;
- 16 is that correct?
- 17 A. Yes, sir.
- 18 Q. Did you sign that --
- 19 A. Yes, sir.
- 20 Q. -- piece of paper?
- 21 Is that your signature?
- 22 A. Yes, sir.
- 23 MR. SIMPSON: Your Honor, at this time the State
- 24 would seek to admit 55, State's 55 into evidence?
- 25 MS. PROCTOR: Without objection.

1 THE COURT: State's 55 into evidence without
2 objection.

3 (WHEREUPON, State's Exhibit Number 55, a
4 Photographic Lineup, was admitted into evidence.)

5 MR. SIMPSON: Permission to approach the witness,
6 Your Honor?

7 THE COURT: You may.

8 BY MR. SIMPSON:

9 Q. Robert, I'm going to ask you to take a look at this
10 as well, showing you what's been admitted into evidence
11 as State's 1. You said you left your house at [REDACTED]

12 [REDACTED]

13 A. Yes, sir.

14 Q. Can you show the jury where [REDACTED] is.

15 A. Right here (indicated).

16 Q. And can you show the jury -- you mentioned Martin
17 Park?

18 A. Right here (indicated).

19 Q. Now, you said that you knew the defendant's mother
20 was Ms. Winky, correct?

21 A. Yes, sir.

22 Q. Is Ms. Winky kind of a neighbor you all's?

23 A. No, sir.

24 Q. Or does she live near you?

25 A. Yeah, in the same area.

- 1 Q. Okay. Can you show the jury where Ms. Winky lives?
- 2 A. Right here (indicated).
- 3 Q. Right there. And I believe you said the baseball
- 4 field there is Martin Park?
- 5 A. Yes, sir.
- 6 Q. Now, I believe you previously testified you were
- 7 halfway down Aiken Street?
- 8 A. Yes, sir.
- 9 Q. When the defendant got out of the car?
- 10 A. Yes, sir.
- 11 Q. And can you show the jury where that is?
- 12 A. (Indicated).
- 13 Q. And where is the Knight's grocery?
- 14 A. Right here (indicated).
- 15 Q. Okay. Robert, you said you recognized Mr. Wright
- 16 from the neighborhood?
- 17 A. Yes, sir.
- 18 Q. Any bad blood between you?
- 19 A. No, sir.
- 20 Q. Until this incident did you have any problems with
- 21 him whatsoever?
- 22 A. No, sir.
- 23 Q. Any reason for you to have made up this whole story
- 24 that we need to know about, any bad blood?
- 25 A. No, sir.

1 Q. Have you testified truthfully here today?

2 A. Yes, sir.

3 Q. Did you give substantially the same story to police
4 after this occurred.

5 A. Can you say the question again?

6 Q. Did you tell the police the same thing right after
7 this occurred when they came and talked to you?

8 A. Oh, yes, sir.

9 Q. Robert, please answer any questions that Ms. Penn
10 has for you -- Ms. Proctor.

11 THE COURT: Ms. Proctor, whenever you are ready.

12 CROSS-EXAMINATION

13 BY MS. PROCTOR:

14 Q. Mr. Jenkins, you just testified that Chris was hit
15 in the face, he was slammed to the ground, he's kicked
16 and stomped; is that correct?

17 A. Yes, sir. I mean, yes, ma'am.

18 Q. And he's laying on the ground and you, your cousin
19 -- or friends and brother just go on to the store and
20 just leave him; is that correct?

21 A. No. We were standing right there.

22 Q. Then you continued to go on to the store though,
23 correct? You left him when he went to his friend's?

24 A. Oh, yeah. Yes, ma'am.

25 Q. Now, I'm going to ask you a few questions again

- 1 about that night. Now, you said you are in your house
2 and your mom asked you to go to the store, correct?
- 3 A. Yes, ma'am.
- 4 Q. And at that time it was starting to get dark?
- 5 A. Yes, sir.
- 6 Q. And as you all were walking you are walking ahead
7 of your uncle?
- 8 A. Yes, ma'am, not that far away.
- 9 Q. But still, you are walking in front, the three of
10 you, and he's behind you?
- 11 A. Yes, ma'am.
- 12 Q. And at some point when you say you are in the
13 middle of Aiken Street you hear a car?
- 14 A. Yes, ma'am.
- 15 Q. And when you hear this car it makes you turn
16 around, correct?
- 17 A. Yes, ma'am.
- 18 Q. And does everybody else turn around or just you?
- 19 A. I think the rest of them turned around.
- 20 Q. And then did everybody turn around?
- 21 A. Not right then.
- 22 Q. And what about your Uncle Chris?
- 23 A. No, ma'am.
- 24 Q. Now, so you turn around and you see Mr. Wright get
25 out of his car?

- 1 A. Yes, ma'am.
- 2 Q. And he's not running up to you, is he?
- 3 A. No, ma'am.
- 4 Q. He's just walking up to you?
- 5 A. Yes, ma'am.
- 6 Q. And when he's walking up to you he doesn't have a
- 7 baseball bat in his hand, does he?
- 8 A. No, ma'am.
- 9 Q. He doesn't have a hammer, doesn't have any tools?
- 10 A. No, ma'am.
- 11 Q. He's just walking up, correct?
- 12 A. Yes, ma'am.
- 13 Q. And your testimony is he walks up and the first
- 14 thing he does is grab your uncle from behind and slam him
- 15 to the ground?
- 16 A. Yes, ma'am.
- 17 Q. And you say that he slams him to the ground and
- 18 while he's on the ground he punches him about 10 times?
- 19 A. Yes, ma'am.
- 20 Q. And he's punching him about 10 times or more and
- 21 then you say he's kicking him about 10 times or more?
- 22 A. Yes, ma'am.
- 23 Q. Now, the solicitor just asked you if you talked to
- 24 the police about this, I guess two days after this
- 25 happened, correct?

1 A. I can't remember. Like, I can't remember.

2 Q. Well, the same day you looked -- that you just said
3 you looked at that photo lineup you also gave the police
4 a statement, right?

5 A. Yes, ma'am.

6 Q. And they asked you about what happened?

7 A. Yes, ma'am.

8 Q. And they have you sign your statement?

9 A. Yes, ma'am.

10 Q. Is that correct?

11 A. Yes, ma'am.

12 Q. And do you recall when you talked to the police two
13 days after this that you said that Robert walked up and
14 punched him in the face? You didn't mention anything at
15 that time that he walked up and just threw him to the
16 ground.

17 A. I can't remember.

18 MS. PROCTOR: Okay. Your Honor, may I approach the
19 witness?

20 THE COURT: You may.

21 BY MS. PROCTOR:

22 Q. If I can show you this. If you will look at it,
23 and I highlighted it. I know this officer's handwriting
24 is hard to read, but just look at this statement. Is
25 this the statement that you gave to the police and you

1 signed?

2 A. Yes, ma'am.

3 Q. Okay. Let me just let you read that and read that
4 a second. Tell me if you can't read his handwriting.

5 A. I can't read it.

6 Q. When he asked you --

7 If I may read this for him, Your Honor.

8 Where it says, Robert punched Chris in the face.

9 He then slammed him on the ground, and the police asked
10 you how many times, correct?

11 A. Uh-huh.

12 Q. And you stated, I do not know.

13 A. I don't know.

14 Q. And this was right after this happened, correct?

15 A. Yes, ma'am.

16 Q. And he did ask you if it was more than one and all
17 your answer was was yes, correct?

18 A. Yes, ma'am.

19 Q. So right after this happened when the police asked
20 you you never said to the police, Well, he hit him 10
21 times. He body slammed him 10 times.

22 You never told them that then, did you?

23 A. No, ma'am.

24 Q. Now, you say that while this was going on you told
25 him to stop?

- 1 A. Yes, ma'am.
- 2 Q. And did your cousin -- I'm sorry, your brother or
3 your friend, did they ever tell him to stop or anything?
- 4 A. No, ma'am.
- 5 Q. And did anybody go and try to pull him off of
6 Chris?
- 7 A. No, ma'am.
- 8 Q. Now, while all this was going on was Robert or
9 Chris saying anything?
- 10 A. No, ma'am.
- 11 Q. Nobody said anything?
- 12 A. No, ma'am.
- 13 Q. And while this fight was going on, while he was
14 punching and kicking did anybody run back to the house to
15 get some help?
- 16 A. No, ma'am.
- 17 Q. Did anybody run up the street to go to the store to
18 get any help?
- 19 A. No, ma'am.
- 20 Q. And this fight really didn't last long, did it?
- 21 A. No, ma'am.
- 22 Q. It was pretty fast?
- 23 A. Not that fast but...
- 24 Q. Pardon?
- 25 A. It was not that fast but not long.

- 1 Q. Well, could somebody have run to get some help?
- 2 A. Yes, ma'am.
- 3 Q. And when this is over, Robert, he didn't run back
- 4 to his car and get in it and drive off. He walked back,
- 5 correct?
- 6 A. Yes, ma'am.
- 7 Q. And at that point Chris gets up?
- 8 A. Yes, ma'am.
- 9 Q. And you continue to just go to the store?
- 10 A. Like, he walk up to turn around and walk to the
- 11 store --
- 12 Q. I'm sorry?
- 13 A. Like, he went back there, and then when he get up
- 14 we wait until he get close to us then we just keep
- 15 walking to the store.
- 16 Q. So you kept going to the store. At that point
- 17 nobody says, Let's go on back home, or let's call the
- 18 police, or let's call EMS?
- 19 A. No, ma'am.
- 20 Q. And so you are walking and he decides to go to a
- 21 friend's house and sit down, correct?
- 22 A. Yes, ma'am.
- 23 Q. And is that on Cooper Street?
- 24 A. Yes, ma'am.
- 25 Q. So it's really not that far from Knight's grocery

- 1 where he was going to sit?
- 2 A. No, ma'am.
- 3 Q. And so you all decide -- you go on in and you go to
- 4 the grocery store --
- 5 A. Yes, ma'am.
- 6 Q. -- to get what you are going to get?
- 7 And before you went, as you were walking, kept on
- 8 walking to the store, your uncle told you, didn't he, he
- 9 said, Don't tell Paul about this fight, correct?
- 10 A. No, ma'am.
- 11 Q. You don't remember? You don't remember him telling
- 12 you not to tell your uncle about this?
- 13 A. No, ma'am.
- 14 Q. Now, once you get into the store and your uncle is
- 15 sitting in the house about -- it's not too far away.
- 16 When you are into the store do you ever tell anybody in
- 17 the store, to the cashier, You might need to call the
- 18 police?
- 19 A. No, ma'am.
- 20 Q. Did you ever say when you are in the store, You
- 21 might need to call EMS?
- 22 A. No, ma'am.
- 23 Q. So when you say you left the store, when you got
- 24 back home was he -- was Chris already there?
- 25 A. Yes, ma'am.

1 Q. Did you go back the exact same way you came? Did
2 you take the same route back as you did going?

3 A. We had stopped to the yard but then we had taken
4 the same route.

5 Q. You stopped at what yard?

6 A. To see if he was still been in there.

7 Q. And he wasn't there?

8 A. No, ma'am.

9 Q. Well, and I think they showed you on the map
10 there's that long stretch. Did you ever see him walking
11 ahead of you?

12 A. No, ma'am.

13 Q. So he was already home. How long did you all stay
14 in that store? If he already made it home before you
15 did, how long were you in the store?

16 A. Not that long.

17 Q. But when you got out of the store he was already
18 home? You didn't see him up ahead walking?

19 A. He probably get up when we been in the store.

20 Q. I agree with that but that's a little bit of a far
21 walk and you were saying he already had beat you home.
22 So I'm saying you all must have stayed in the store for a
23 while. You didn't see him walking in front of you?

24 A. No, ma'am.

25 Q. So when you all went in the store and left him out

1 there, at that time you didn't think he was hurt that
2 serious, did you?

3 A. Yeah, we did think he was hurt.

4 Q. But you left him. It's dark and you left him and
5 nobody helped walk him home.

6 A. No, ma'am.

7 Q. So he's on the back porch when you get there,
8 correct?

9 A. Yes, ma'am.

10 Q. And when you got home you told your mom?

11 A. Yes, ma'am.

12 Q. And at that time do you know if anybody called the
13 police?

14 A. No, ma'am.

15 Q. And nobody called EMS at that time?

16 A. No, ma'am.

17 Q. And he was sitting out on the back porch?

18 A. Yes, ma'am.

19 Q. Now, later that night you went over to Ms. Winky's
20 house with your grandmother, correct?

21 A. I can't remember.

22 Q. You don't remember going over there with your
23 grandmother?

24 A. I can't remember.

25 MS. PROCTOR: Court's indulgence.

1 THE COURT: Take your time.

2 (PAUSE.)

3 BY MS. PROCTOR:

4 Q. You just said that he -- that Chris, you don't
5 remember him telling you not to tell Uncle Paul. Do you
6 remember when you got back to the house that Ms. Mary,
7 his mother, kept asking him who did this to him and he
8 wouldn't tell, correct? Do you remember that?

9 A. Yes, ma'am.

10 MS. PROCTOR: Court's indulgence.

11 (PAUSE.)

12 MS. PROCTOR: We have no further questions.

13 THE COURT: All right.

14 MR. SIMPSON: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SIMPSON:

17 Q. Robert, how old are you, again, today?

18 A. Seventeen.

19 Q. And how old, again, were you in June of --

20 MS. PROCTOR: Objection, Your Honor. This has been
21 asked and answered.

22 A. Thirteen.

23 THE COURT: Sustained. Move on, Mr. Simpson.

24 BY MR. SIMPSON:

25 Q. As you get older do you get more mature, Robert?

- 1 A. Yes, sir.
- 2 MS. PROCTOR: Objection, Your Honor.
- 3 THE COURT: Overruled.
- 4 BY MR. SIMPSON:
- 5 Q. Do you handle things a little differently as the
- 6 young man you are today than you did as a boy when you
- 7 were 13?
- 8 A. Yes, sir.
- 9 Q. Ms. Proctor showed you your previous statement.
- 10 MR. SIMPSON: May I approach the witness, Your
- 11 Honor?
- 12 THE COURT: You may.
- 13 Q. And as Ms. Proctor said, it is kind of difficult to
- 14 read. Was this written by you?
- 15 A. No, sir.
- 16 Q. Who was this written by?
- 17 A. An officer.
- 18 Q. An officer. And she said you were asked how many
- 19 times was he punched and kicked, and your answer was, I
- 20 do not know. Correct?
- 21 A. Yes, sir.
- 22 Q. And then more than one?
- 23 A. Yes, sir.
- 24 Q. And your answer was yes, correct?
- 25 A. Yes.

- 1 Q. Did the officer then ask you to take a guess?
- 2 A. No, sir.
- 3 Q. Didn't I ask you to take a guess here?
- 4 A. Yes, sir.
- 5 Q. And you said 10?
- 6 A. Yes, sir.
- 7 Q. Did you say that was exactly how many times?
- 8 A. No, sir.
- 9 Q. So who made you take a guess? I did, right?
- 10 A. Yes, sir.
- 11 Q. As you look back on that night today is that a best
- 12 guess?
- 13 A. Yes, sir.
- 14 Q. Were you trying to be dishonest when you answered
- 15 that way in your direct question?
- 16 A. No, sir.
- 17 MR. SIMPSON: May I approach the witness again,
- 18 Your Honor?
- 19 THE COURT: You may.
- 20 BY MR. SIMPSON:
- 21 Q. Ms. Proctor said you went on to the store after
- 22 your uncle sat in the yard, correct?
- 23 A. Yes, sir.
- 24 Q. I don't believe I asked you where was the yard that
- 25 your uncle sat down in.

- 1 A. No, sir.
- 2 Q. Can you show the jury where the yard --
- 3 A. Right here (indicated).
- 4 Q. And where is the Knight's grocery again?
- 5 A. Right here (indicated).
- 6 Q. Did your uncle try to continue walking to the
- 7 Knight's grocery?
- 8 A. No, sir.
- 9 Q. And you indicated -- again, where was the yard he
- 10 stopped?
- 11 A. Right here (indicated).
- 12 Q. Right here. Do I have it right?
- 13 A. Yes, sir.
- 14 Q. So when he went and sat down in the yard to rest
- 15 did he appear to you like he was in pain?
- 16 A. Yes, sir.
- 17 Q. Did he appear to you that he needed to rest?
- 18 A. Yes, sir.
- 19 Q. And as far as the distance you had to go to
- 20 Knight's grocery, were you close?
- 21 A. Yes, sir.
- 22 Q. Was it right there?
- 23 A. Yes, sir.
- 24 Q. And as a 13-year-old boy had your mom asked you to
- 25 get some stuff at the Knight's grocery that night?

1 A. Yes, sir.

2 MR. SIMPSON: Nothing further.

3 THE COURT: Ms. Proctor?

4 MS. PROCTOR: No, Your Honor.

5 THE COURT: You may step down. Thank you.

6 Call your next witness.

7 MS. BALDWIN: The State calls **Jocqui J.** .

8 **Jocqui J.** , after having been duly

9 sworn, testified as follows:

10 THE CLERK: State your name for the record for me

11 and spell your last for the record.

12 THE WITNESS: **Jocqui J.** ,

13 **Jocqui J.** .

14 THE COURT: Would you please spell your first name.

15 THE WITNESS: Jocqui, J-o-c-q-u-i.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION

18 BY MS. BALDWIN:

19 Q. Jocqui, how old are you?

20 A. I'm 18 now.

21 Q. Where do you go to school?

22 A. Burke High School.

23 Q. Back in June of 2010, how old were you?

24 A. I was 14.

25 Q. Where were you living in 2010?

- 1 A. [REDACTED].
- 2 Q. Is that downtown?
- 3 A. Yes, ma'am.
- 4 Q. Who were you living with?
- 5 A. With my grandma.
- 6 Q. Anybody else?
- 7 A. No, ma'am.
- 8 Q. Were your brothers staying there?
- 9 A. Yes, ma'am.
- 10 Q. How about any uncles?
- 11 A. No, ma'am. Oh, yeah. My Uncle Chris, yes.
- 12 Q. Your Uncle Chris stayed there, too?
- 13 A. Yeah.
- 14 Q. Do you know why we are here today?
- 15 A. Yes, ma'am.
- 16 Q. About an incident that occurred in June 2010?
- 17 A. Yes, ma'am.
- 18 Q. Tell me about that. Tell the jury about that.
- 19 A. Yeah. One night we -- it was me, my brother, and
- 20 my friend, Maurice.
- 21 Q. What about them?
- 22 A. We had went to a Knight's Grocery Store.
- 23 Q. About what time was it?
- 24 A. It was dark.
- 25 Q. Dark outside?

- 1 A. Yes.
- 2 Q. Why were you all going to Knight's?
- 3 A. To go get something to drink.
- 4 Q. And your Uncle Chris came with you?
- 5 A. Yes. He tagged along.
- 6 Q. Okay. What happened while you all were walking to
- 7 Knight's?
- 8 A. When we were walking to Knight's we saw Robert hop
- 9 out the car.
- 10 Q. Robert?
- 11 A. Yeah.
- 12 Q. Do you see Robert in here today?
- 13 A. Yes.
- 14 Q. Where is he?
- 15 A. Right there (indicated).
- 16 Q. At the table?
- 17 A. Yes.
- 18 Q. You said he hopped out of the car?
- 19 A. Yes, ma'am.
- 20 Q. Did you see him hop out of the car?
- 21 A. Yes, ma'am.
- 22 Q. What happened next?
- 23 A. Then he started attacking Chris.
- 24 Q. When you say he started attacking Chris, what do
- 25 you mean?

1 A. Slammed him to the ground, stomping on him,
2 punching him.

3 Q. And with the Court's permission, can you stand up
4 real quick.

5 When you say slammed him to the ground, what do you
6 mean?

7 A. Just slammed him to the ground (indicated).

8 Q. Picked him up?

9 A. Yes.

10 Q. And what did he do after he slammed him to the
11 ground?

12 A. Started stomping on him.

13 Q. Did he say anything?

14 A. No. Just keep on punching him.

15 Q. You can have a seat.

16 He just kept on punching him, you said?

17 A. Yes, ma'am.

18 Q. He didn't say anything to him prior to him slamming
19 him to the ground?

20 A. No.

21 Q. Okay. Where did he stomp him?

22 A. In his face and his stomach.

23 Q. Besides stomping him did he do anything else?

24 A. Punch him, too.

25 Q. Where was he punching him?

- 1 A. In his face.
- 2 Q. About how far away from Mr. Wright and Chris were
- 3 you all? Father than me to you?
- 4 A. Yeah -- no.
- 5 Q. Closer?
- 6 A. No, farther.
- 7 Q. Farther. How much farther? This much farther?
- 8 A. Yes.
- 9 Q. Okay. Do you know how many times he -- Robert hit
- 10 Chris?
- 11 A. No, ma'am.
- 12 Q. More than once?
- 13 A. Yes.
- 14 Q. More than two times?
- 15 A. Yes, ma'am.
- 16 Q. How about kicking him?
- 17 A. Yes, more than two times.
- 18 Q. A lot of times?
- 19 A. Yes, ma'am.
- 20 Q. Okay. Did Robert say anything to any -- to you or
- 21 Robert, your brother, or Maurice?
- 22 A. He said something to Robert.
- 23 Q. What did he say?
- 24 A. He threatened him. I can't really remember what he
- 25 said, but I know it was a threat.

- 1 Q. While this was happening was Chris fighting back at
2 all?
- 3 A. No, ma'am, he wasn't.
- 4 Q. What was he doing?
- 5 A. He was just laying there on the ground.
- 6 Q. What happened next? Did Robert stop hitting Chris
7 at some point?
- 8 A. Oh, what happened next. My brother told him to
9 stop, and he threatened him.
- 10 Q. What did he do after he threatened your brother?
- 11 A. He going back into his car.
- 12 Q. Where did he go?
- 13 A. I really don't remember.
- 14 Q. He left though?
- 15 A. Yes, ma'am.
- 16 Q. Did you know Robert?
- 17 A. No. No, ma'am.
- 18 Q. Mr. Wright.
- 19 A. Not like that. I just know of him.
- 20 Q. You know of him?
- 21 A. Yes, ma'am.
- 22 Q. How did you know of him?
- 23 A. Because we used to have a relationship with his
24 son.
- 25 THE COURT: I'm going to need you to speak up. I'm

- 1 having a hard time hearing you. Thank you.
- 2 A. Yes, ma'am. We had a relationship with his son.
- 3 We used to play around on the basketball court?
- 4 Q. You used to play with his son --
- 5 A. Yeah.
- 6 Q. -- on the basketball court?
- 7 A. Yeah.
- 8 Q. Did Chris know Robert's mother, Ms. Winky?
- 9 A. Yes, ma'am.
- 10 Q. Do you know if they dated or not?
- 11 A. Yes, they dated.
- 12 Q. They dated. Okay.
- 13 So what happened after Mr. Wright got in his car
- 14 and left; what did you all do?
- 15 A. We continued to go back to the Knight's corner
- 16 store.
- 17 Q. Did Chris make it all the way there with you?
- 18 A. No, ma'am.
- 19 Q. What happened?
- 20 A. He going into a yard and just sit down.
- 21 Q. Was he saying anything?
- 22 A. No, ma'am.
- 23 Q. How did he look to you? Did he look perfectly
- 24 fine?
- 25 A. No. He looked banged up.

- 1 Q. What do you mean by that?
- 2 A. Like, hurting. I could tell, like, he was hurting.
- 3 Q. How could you tell that he was hurt?
- 4 A. Because his face.
- 5 Q. What was wrong with his face?
- 6 A. He was bleeding.
- 7 Q. Anything else?
- 8 A. No, ma'am.
- 9 Q. What did you all do after you went to Knight's?
- 10 A. We went back home.
- 11 Q. Okay. And was Chris there when you got home?
- 12 A. No, ma'am.
- 13 Q. Did you see him at all that evening?
- 14 A. Yeah.
- 15 Q. How was he when you saw him that evening?
- 16 A. He was still banged up.
- 17 Q. Did he look like he was feeling well?
- 18 A. No.
- 19 Q. I'm going to show you State's 1, this little map
- 20 here. Why don't you show me where is [REDACTED]
- 21 where you were living.
- 22 A. It was right here (indicated).
- 23 Q. Okay. And trace for me the route that you all took
- 24 towards Knight's?
- 25 A. Went down on Harris Street.

1 Q. Ok. You got to speak up real loud so everybody can
2 hear you.

3 A. We went down Harris Street, going down America and
4 cutting through -- cut through right here (indicated).

5 Q. And what is that baseball field there?

6 A. Martin Park.

7 Q. Okay.

8 A. Right there, the basketball field, went down Aiken
9 where the incident happened where Robert hop out the car.

10 Q. Where did Robert hop out of the car?

11 A. Right here (indicated).

12 Q. Okay. And where were you all?

13 A. Like, right here (indicated).

14 Q. And did you all go to Robert or did Robert come to
15 you?

16 A. Robert came to us.

17 Q. Okay. And then keep showing me the route that you
18 all took.

19 A. This way (indicated) and made a right down here to
20 the Knight's store.

21 Q. Where did Chris stop?

22 A. Right here. In this yard right here (indicated).

23 Q. All right. And once again, when you witnessed
24 Robert stomping Chris and kicking Chris and punching
25 Chris did Chris ever take a swing at him?

1 A. No, ma'am.

2 Q. Prior to Robert picking him up and slamming Chris
3 down did Chris say anything to him?

4 A. No.

5 Q. Did Chris raise his fists to him?

6 A. No, ma'am.

7 MS. BALDWIN: Beg the Court's indulgence.

8 (PAUSE.)

9 Q. Jocqui, I don't have any more questions for you.
10 Answer any questions Ms. Penn has.

11 THE COURT: Ms. Penn, your witness.

12 MS. PENN: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. PENN:

15 Q. Jocqui, after the fight Chris got up on his own,
16 right?

17 A. Can you repeat that again?

18 Q. Sure. After the fight Chris got up on his own,
19 right?

20 A. Yes, ma'am.

21 Q. Nobody had to help him up?

22 A. No, ma'am.

23 Q. He sat up by himself?

24 A. Yes, ma'am.

25 Q. And after he stood up he walked by himself, right?

- 1 A. Yes, ma'am.
- 2 Q. And he walked and he stopped off at his friends's
3 yard?
- 4 A. Yes, ma'am.
- 5 Q. And nobody was there in the yard but he just
6 stopped there?
- 7 A. Yes.
- 8 Q. And after that you guys went on to the store?
- 9 A. Yes, ma'am.
- 10 Q. Did Chris have a cell phone with him?
- 11 A. No. He didn't have one.
- 12 Q. Is there a phone at the store?
- 13 A. No, ma'am.
- 14 Q. There's no phone at the grocery store?
- 15 A. No, ma'am.
- 16 Q. Knight's Grocery Store doesn't have any sort of
17 phone there?
- 18 A. No, ma'am.
- 19 Q. What did you all buy at the store?
- 20 A. Just going to get some sodas.
- 21 Q. Some sodas. All right. And after you guys -- how
22 long were you all in the store for?
- 23 A. I can't even recall.
- 24 Q. Do you think it was like five minutes?
- 25 A. Yeah. Should have been five minutes.

- 1 Q. What kind of drinks did you all have?
- 2 A. I can't really remember.
- 3 Q. It was a long time ago, right?
- 4 A. Yes, ma'am.
- 5 Q. And after you left the store how did you get home?
- 6 A. We walked.
- 7 Q. What streets did you take to get home?
- 8 A. The same one we came.
- 9 Q. Did you go back by the yard?
- 10 A. No, ma'am.
- 11 Q. You didn't check to see if your uncle was still in
- 12 the yard?
- 13 A. No, ma'am.
- 14 Q. You just went home?
- 15 A. Yes, ma'am.
- 16 Q. And I think earlier you said that when you got home
- 17 your uncle wasn't there; is that correct?
- 18 A. Yes. He wasn't there.
- 19 Q. Do you remember testifying at a prior hearing about
- 20 this case?
- 21 A. Can you repeat that again?
- 22 Q. Sure. Do you remember testifying like you are now
- 23 at a hearing before this case about this case, so not
- 24 today but before?
- 25 A. Yes.

1 Q. Do you remember that? Do you remember a judge?

2 A. Yes, ma'am.

3 Q. Do you remember a court reporter?

4 A. Yes, ma'am.

5 Q. Okay. I'm showing you the official transcript of
6 that hearing, okay?

7 A. Yes, ma'am.

8 Q. In there you are asked, And where was your uncle
9 when you got back to the house.

10 Right?

11 A. Yes.

12 Q. And there you said, He was on the back porch, like,
13 the back porch of our house on Harris Street.

14 Is that right?

15 A. Yes, ma'am.

16 Q. Is that what you said during that hearing?

17 A. Yes.

18 Q. Okay. And that night when you waked to the store
19 it was dark out, right?

20 A. Yes, ma'am.

21 Q. And it was hard to see?

22 A. Yes, ma'am.

23 MS. PENN: Thank you. Nothing further, Your Honor.

24 THE COURT: Ms. Baldwin?

25 REDIRECT EXAMINATION

1 BY MS. BALDWIN:

2 Q. Jocqui, when you saw the incident between
3 Mr. Wright and your uncle did your uncle raise his fists
4 at all?

5 A. No, ma'am.

6 MS. PENN: Objection, Your Honor. Asked and
7 answered.

8 THE COURT: Overruled.

9 BY MS. BALDWIN:

10 Q. Any kicks by your uncle?

11 A. No, ma'am.

12 Q. It was just all you saw was Mr. Wright kicking and
13 punching?

14 A. Yes, ma'am.

15 Q. No one else?

16 A. Uh-uh.

17 MS. BALDWIN: I have no further questions.

18 THE COURT: Ms. Penn?

19 MS. PENN: No, Your Honor. Thank you.

20 THE COURT: You may step down. Thank you.

21 This is an appropriate time to take a break. Do
22 you all wish to take a break now? You want a break?

23 (There was no response.)

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

25 MR. SIMPSON: Thank you, Your Honor. May I

1 approach briefly as to scheduling.

2 THE COURT: You may.

3 (WHEREUPON, a bench conference was had.)

4 THE COURT: Call your next witness.

5 MR. SIMPSON: Thank you, Your Honor. The State

6 calls **Maurice D.**

7 **Maurice D.**, after having been duly
8 sworn, testified as follows:

9 THE CLERK: Speak into the microphone and state
10 your name and spell your last name for the record.

11 THE COURT: I need you to state your name for the
12 record and spell your last name.

13 THE WITNESS: **Maurice D.**

14 THE COURT: Mr. Simpson.

15 MR. SIMPSON: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. SIMPSON:

18 Q. Maurice, good afternoon.

19 A. Good afternoon.

20 Q. Maurice, how old are you today?

21 A. Seventeen.

22 Q. Seventeen. And you know the incident that brings
23 us all here today, correct?

24 A. Yes, sir.

25 Q. How old were you when that incident occurred?

- 1 A. Like 15, 14.
- 2 Q. This happened back in June of 2010; is that
- 3 correct?
- 4 A. Yes, sir.
- 5 Q. You think you were 15 at that time?
- 6 A. Yes, sir.
- 7 Q. On that date, June 10, 2010, what were you doing
- 8 that afternoon?
- 9 A. Walking to the store with Robby, Jay, and Chris.
- 10 Q. Okay. What brought you over to their house that
- 11 day?
- 12 A. The incident that happened between Chris and --
- 13 Q. I'm sorry. I greatly appreciate you getting right
- 14 to the point but I mean what brought you to their house
- 15 to begin with? Were they your friends?
- 16 A. Oh. Yes, sir.
- 17 Q. And what were you all doing that afternoon prior to
- 18 this happening?
- 19 A. Walking to the store.
- 20 Q. And what time was it, do you think, if you could
- 21 hazard a guess that you all left Harris Street to go to
- 22 the store?
- 23 A. Like around dusk, night.
- 24 Q. Around dusk you said?
- 25 A. Right.

- 1 Q. Around sunset?
- 2 A. Uh-huh.
- 3 Q. Is it a long way to the Knight's grocery from
- 4 Harris Street?
- 5 A. Not that long.
- 6 Q. Not that long. Okay. And I suppose now we'll get
- 7 right to the point. What occurred -- if you could
- 8 explain to the jury what do you recall occurred between
- 9 Robby and Jay's house and the Knight's grocery?
- 10 A. It was me, Robby, Jay, and Chris walking.
- 11 Q. Let me stop you for a second. You say Robby.
- 12 What's Robby's full name, do you know?
- 13 A. Robert J.
- 14 Q. Okay. And Jay?
- 15 A. **Jocqui J.**
- 16 Q. And who is Chris to Robby and Jay?
- 17 A. Their uncle.
- 18 Q. And go on. What happened?
- 19 A. So it was the same people walking to the store, so
- 20 just walking to the store and by the street Chris was
- 21 walking ahead of us, that's when -- I don't know his
- 22 name, him over there.
- 23 Q. You say that's when him over there; you mean the
- 24 man sitting at the table here?
- 25 A. Uh-huh.

- 1 Q. And what did he do?
- 2 A. Hop out the car and start hitting Chris.
- 3 Q. Okay. And did you see their Uncle Chris take a
- 4 swing at him?
- 5 A. No.
- 6 Q. Did you see their Uncle Chris come at him with his
- 7 fists up?
- 8 A. No.
- 9 Q. Did you see their Uncle Chris try to push him at
- 10 all?
- 11 A. No.
- 12 Q. Okay. Who was the aggressor of those two?
- 13 A. Him.
- 14 Q. And what happened?
- 15 A. That's when he clipped Chris to the ground and
- 16 started hitting him.
- 17 Q. Okay. Let me stop you. You said he clipped Chris
- 18 to the ground. Could you kind of stand up and show the
- 19 jury what you mean by clipped him to the ground?
- 20 A. Like this (indicated) and clipped.
- 21 Q. Okay. Thank you.
- 22 And what did Mr. Wright do once Chris was on the
- 23 ground?
- 24 A. Started hitting him.
- 25 Q. Okay. Hitting him with his fists?

- 1 A. Yes, sir and stomping him.
- 2 Q. And embarrass you again and ask you to stand up.
- 3 You said stomping him. Could you show the jury what you
- 4 mean by stomping him.
- 5 A. (Indicated).
- 6 Q. Okay. When Robert Wright was stomping their Uncle
- 7 Chris where was Chris at that point?
- 8 A. He was in front of us.
- 9 THE COURT: Could you speak more loud, please.
- 10 A. He was in front of us.
- 11 THE COURT: Thank you.
- 12 Q. You said -- you showed us this motion, right?
- 13 A. Yeah.
- 14 Q. Where was Chris --
- 15 A. On the ground.
- 16 Q. He was on the ground?
- 17 A. On the ground.
- 18 Q. At some point did somebody with you try to stop
- 19 this --
- 20 A. Robby.
- 21 Q. -- assault from happening?
- 22 A. Robby Jenkins say something --
- 23 Q. I'm sorry. Slow down a little bit. You started a
- 24 little fast there. Who was it that tried to stop this
- 25 from happening?

- 1 A. His nephew, Robby.
- 2 Q. Robby. That's also **Robert J.** ?
- 3 A. Yes, sir.
- 4 Q. And what did Robby do to try to stop him?
- 5 A. Robby said, Get off of him.
- 6 He said, Shut your retarded ass up and come do
- 7 something about it.
- 8 Q. Okay. And if you could say that. I know it's not
- 9 great language but it's okay. Do you remember the exact
- 10 words that he said?
- 11 A. Yes, sir.
- 12 Q. And what was that?
- 13 A. Shut your retarded ass up.
- 14 Q. Is that shut your retarded ass up?
- 15 A. Yes, sir.
- 16 Q. And is there a second part to that?
- 17 A. Why don't you come over here and do something.
- 18 Q. Why don't you come over here and do something? Did
- 19 I hear that correctly?
- 20 A. Yes, sir.
- 21 Q. Did you know Robert Wright before this happened,
- 22 the man sitting there?
- 23 A. No.
- 24 Q. You didn't? Any problems with him prior to this
- 25 occurring?

1 A. No.

2 Q. Any reason that you could think of, motive that you
3 would have to want to get back at this person for
4 anything whatsoever?

5 A. No, sir.

6 Q. Are you testifying honestly here today about what
7 you observed that night?

8 A. Yes, sir.

9 Q. Did you get a good look at the person who was
10 attacking Christopher that night?

11 A. Yes, sir.

12 Q. Do you remember -- later, did the police come talk
13 to you about what happened?

14 A. The next day.

15 Q. The next day?

16 A. Yes, sir.

17 Q. Did you willingly talk to the police about what
18 happened?

19 A. Yes, sir.

20 MR. SIMPSON: Your Honor, may I approach the court
21 reporter?

22 THE COURT: You may.

23 (WHEREUPON, State's Exhibit Number 56, a Document,
24 was marked for identification only.)

25 BY MR. SIMPSON:

- 1 Q. Maurice, I'm handing you what's been marked for ID
2 only as State's 56. Can you take a minute and look at
3 that, two pages.
- 4 (PAUSE.)
- 5 Q. Do you recognize that?
- 6 A. Yes, sir.
- 7 Q. And could you describe that to the jury, what
8 you've just reviewed. You don't have to read it. Just
9 in your own words, what is that that I just showed you?
- 10 A. When the police had came and talked to me that day,
11 the next day after this, Describe and tell me what
12 happened between Chris and him that night.
- 13 Q. Did they show you some pictures as well?
- 14 A. Yes, sir.
- 15 Q. Was it a picture of one person or a picture of
16 several people?
- 17 A. Picture of several.
- 18 Q. Did they ask you to pick out the person?
- 19 A. Yes, sir.
- 20 Q. And were you able to do that?
- 21 A. Yes, sir.
- 22 Q. Were you confident in that decision?
- 23 A. Yes, sir.
- 24 Q. Are you confident today?
- 25 A. Yes, sir.

1 Q. After this assault -- at some point did the beating
2 stop?

3 A. After he had said his words, after Robby said, Get
4 off my uncle.

5 Q. Okay. After they exchanged those words the assault
6 stopped?

7 A. Yes.

8 Q. And what happened next?

9 A. That's when Chris had get up and walked and then he
10 turned into a yard, and me, Jocqui, and Robby end up
11 continuing to walk to the store.

12 Q. Okay. And were you all already pretty close to the
13 store when you all came up on the yard?

14 A. Yeah.

15 Q. Did it appear to you that Chris was in pain after
16 this happened?

17 A. I could tell by his walking.

18 Q. Okay. Was he walking slower than he had before?

19 A. Yes, sir.

20 Q. Did he stop because he couldn't keep going on?

21 MS. PENN: Objection, Your Honor.

22 THE COURT: Basis?

23 MS. PENN: Calls for speculation.

24 MR. SIMPSON: I'll withdraw it.

25 THE COURT: Thank you. Sustained.

- 1 BY MR. SIMPSON:
- 2 Q. Did you go back to [REDACTED] -- I'm sorry.
- 3 Maurice, did you live at [REDACTED]?
- 4 A. Yes, sir.
- 5 Q. Did you live with Robby and Jocqui?
- 6 A. I lived next door.
- 7 Q. Oh, next door. So you were neighbors with them?
- 8 A. Yeah.
- 9 Q. Did you go back to their house after going to the
- 10 store that night?
- 11 A. Yes, sir.
- 12 Q. Did you see Chris back at the house?
- 13 A. No.
- 14 Q. You didn't see him?
- 15 A. Uh-uh.
- 16 Q. Maurice, you said that Robert came up on their
- 17 Uncle Chris?
- 18 A. Yes, sir.
- 19 Q. Did you hear any words like, We need talk, or any
- 20 words exchanged between Chris and Robert?
- 21 A. He just was cursing him up.
- 22 Q. You said you heard some cursing?
- 23 A. Yeah.
- 24 Q. Did you hear the gentleman sitting right there ever
- 25 say, Can we sit down and talk?

1 A. No.

2 Q. Okay, and again, did you ever see Robby and Jay's
3 Uncle Chris throw a punch?

4 A. No.

5 Q. Did you ever see Robert and Jay's Uncle Chris do a
6 push?

7 A. No.

8 Q. Or a kick?

9 A. No.

10 Q. Where was Robby and Jay's Uncle Chris for most of
11 this assault?

12 A. He was in that same yard.

13 Q. During the assault where was Uncle Chris for most
14 of the time?

15 A. Oh. He was -- repeat that.

16 Q. During most of the time this gentleman was
17 assaulting their Uncle Chris where was Uncle Chris? Was
18 he standing up?

19 A. Uh-uh. Laying down on the ground.

20 Q. Maurice, thank you. Please answer any questions
21 Ms. Penn has for you.

22 THE COURT: Ms. Penn, your witness.

23 MS. PENN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. PENN:

- 1 Q. Maurice, when Robert hopped out of the car he left
2 the door open, right?
- 3 A. Yes.
- 4 Q. And the car was still running?
- 5 A. Yeah.
- 6 Q. And when Chris was walking with you he had a cell
7 phone, right?
- 8 A. Yes.
- 9 Q. He did. And after Chris and Robert got into a
10 fight Chris didn't look that hurt, did he?
- 11 A. Can you --
- 12 Q. Chris didn't look that hurt after the fight, did
13 he?
- 14 A. I can't hear you.
- 15 Q. After the fight Chris, he did not look that hurt,
16 right?
- 17 A. I can't understand what you are saying.
- 18 Q. Did Chris look hurt?
- 19 A. Yes.
- 20 Q. He did? That's your testimony today?
- 21 A. No.
- 22 Q. I'm not trying to trick you. Did Chris look hurt
23 or not after the fight?
- 24 A. He did look hurt.
- 25 Q. He did look hurt. That's your testimony today?

1 A. Yes.

2 Q. Okay. Do you remember testifying in a hearing
3 before today about this case?

4 A. Yes.

5 Q. Do you remember the judge?

6 A. Yes.

7 Q. Do you remember a court reporter?

8 A. Yes.

9 Q. Jury, lawyers, right? Okay.

10 Now, do you remember Mr. Simpson asking you a
11 question? The question -- I'm showing you a transcript
12 of that hearing. Okay? And do you remember Mr. Simpson
13 asking you the question, Did he appear to you to be hurt?

14 Do you remember that?

15 A. Yes.

16 Q. Okay. And on that day you said, No.

17 Is that right?

18 A. Uh-huh.

19 Q. Is that a yes?

20 A. Yes.

21 Q. Okay. So today you are saying he looked hurt but
22 on that day you are saying he did not look hurt; is that
23 right?

24 A. Yes, sir. Yes, ma'am.

25 Q. Okay. Now, because he didn't look that bad you all

- 1 kept going to the store, correct?
- 2 A. Yes, ma'am.
- 3 Q. Because if he had looked bad you would have
- 4 stopped, right?
- 5 A. We did say something to him and he just keep
- 6 walking.
- 7 Q. Well, that wasn't my question, but I know I speak
- 8 real fast. I'm from the north. But if he had looked
- 9 hurt you would have stopped and not gone to the store,
- 10 correct?
- 11 A. Yes, ma'am.
- 12 Q. Okay. But he didn't, right?
- 13 A. Uh-huh.
- 14 Q. So that's why you all kept going to the store?
- 15 A. Uh-huh.
- 16 Q. Okay. And when you were walking to the store did
- 17 Chris get out his cell phone and call anybody for help?
- 18 A. No.
- 19 Q. Did any of you guys call anybody for help?
- 20 A. No.
- 21 Q. You didn't walk back to your house and get one of
- 22 your uncles to come help Chris?
- 23 A. No. We end up telling his momma what happened
- 24 between him and --
- 25 Q. You did. And he didn't want to tell his mom, did

1 he?

2 A. I don't know.

3 Q. Let me ask it this way. Did Chris tell his mom

4 what happened?

5 A. No.

6 Q. He didn't. You guys did?

7 A. Yeah.

8 Q. Right. Okay. And you are still friends with

9 Robert J. and Jocqui J. correct?

10 A. Yes, ma'am.

11 Q. Did you still live close to them?

12 A. No, ma'am.

13 Q. No. Okay. At this time were you good friends with

14 them?

15 A. Yes, ma'am.

16 Q. Do you wish you would have called somebody that

17 night?

18 A. I just -- no.

19 Q. Okay.

20 MS. PENN: Court's indulgence.

21 (PAUSE.)

22 BY MS. PENN:

23 Q. Did Robert say after this fight happened that he

24 was going to tell Uncle Paul?

25 A. Yes.

1 Q. And what did Chris -- what was Chris's response to
2 that?

3 MR. SIMPSON: Objection, Your Honor. Hearsay.

4 THE COURT: Rephrase your question so that it
5 doesn't elicit hearsay.

6 MS. PENN: Yes, Your Honor.

7 BY MS. PENN:

8 Q. Did Chris want to tell Uncle Paul?

9 A. No.

10 MS. PENN: Thank you. I have no further questions.

11 THE COURT: Redirect?

12 MR. SIMPSON: No further questions.

13 THE COURT: You may step down. Thank you.

14 Call your next witness.

15 MS. BALDWIN: Your Honor, the State calls Timeka
16 Jenkins.

17 TIMEKA JENKINS, after having been duly
18 sworn, testified as follows:

19 THE CLERK: You're going to state your name into
20 the microphone and spell your last for the record.

21 THE WITNESS: Timeka Jenkins, J-e-n-k-i-n-s.

22 DIRECT EXAMINATION

23 BY MS. BALDWIN:

24 Q. Timeka, how old are you?

25 A. Forty.

- 1 Q. And where are you from originally?
- 2 A. Downtown Charleston.
- 3 Q. Have you lived here all your life?
- 4 A. Yes.
- 5 Q. Do you work?
- 6 A. No. I'm unemployed right now.
- 7 Q. Okay. Have any kids?
- 8 A. Five.
- 9 Q. Okay. What are their names?
- 10 A. Markiea, Jocqui, Robert, Bryant, and Tabreah
- 11 (phonetic).
- 12 Q. And where were you living back in June of 2010?
- 13 A. I was living on Leslie Street.
- 14 Q. Where were Jocqui and Robert?
- 15 A. At my mom's house on Harris Street.
- 16 Q. What's that address?
- 17 A. [REDACTED].
- 18 Q. What is your relationship to the victim,
- 19 Christopher Jenkins?
- 20 A. That's my oldest brother.
- 21 Q. And how many brothers do you have?
- 22 A. Five.
- 23 Q. I'm going to bring you to June 10th of 2010. Did
- 24 you see your brother, Chris, that day?
- 25 A. Yes.

- 1 Q. When did you see him?
- 2 A. I saw him all day --
- 3 Q. Where did you see him?
- 4 A. -- off and on. At my mom's house walking back and
- 5 forth.
- 6 Q. Did you know Betty Scott?
- 7 A. Yes.
- 8 Q. Who is Betty Scott?
- 9 A. It was his girlfriend.
- 10 Q. Okay. What was her relation to Robert Wright?
- 11 A. That's his mother.
- 12 Q. Does Ms. Scott go by any other name?
- 13 A. Ms. Winky.
- 14 Q. Were Chris and Ms. Winky together at the time?
- 15 A. It was off and on. I couldn't tell you if it was
- 16 on or off.
- 17 Q. I'm going to bring you to the evening of June 10,
- 18 2010. Were you over at your mom's house then?
- 19 A. Yes. I was there all day.
- 20 Q. Was your brother there then?
- 21 A. He was walking in and out, yes.
- 22 Q. Did your brother go someplace with Robby and
- 23 Jocqui?
- 24 A. Yes. They went to Knight's Grocery Store.
- 25 Q. Okay. What was your brother like?

- 1 A. Talkative and very jokey, liked to crack jokes.
- 2 Q. So you went with -- the two boys went with Chris to
- 3 Knight's Grocery Store?
- 4 A. Yes.
- 5 Q. Okay. Do you know what time that was?
- 6 A. Close to nine or after nine.
- 7 Q. How light was it outside?
- 8 A. It was dusk. It was summertime, yeah.
- 9 Q. Not completely dark outside yet?
- 10 A. No.
- 11 Q. And this was the summertime --
- 12 A. Yes.
- 13 Q. -- that it happened?
- 14 When Chris left with your boys to go to the store
- 15 about how long were they gone?
- 16 A. Ten, 15 minutes.
- 17 Q. When did you see your boys again?
- 18 A. About 10 or 15 minutes later they came back from
- 19 the store.
- 20 Q. And was it just your boys? Was there another boy
- 21 with them?
- 22 A. Yes.
- 23 Q. Who was that?
- 24 A. Maurice. **Maurice D.**
- 25 Q. Did they say anything to you when they got there --

- 1 A. Yes.
- 2 Q. -- when they got back?
- 3 A. Robby came and told me that Robert beat up Chris.
- 4 Q. That Robert beat up Chris?
- 5 A. Yes.
- 6 Q. What was their attitude, what was their demeanor?
- 7 What was Robby's demeanor?
- 8 A. Robby was upset.
- 9 Q. What do you mean by he was upset?
- 10 A. He was just -- he had total -- his attitude.
- 11 Q. Was he angry?
- 12 A. Yes. He was angry.
- 13 Q. Did he appear frightened to you?
- 14 A. A little.
- 15 Q. As a result of what Robby told you what did you do?
- 16 A. I went looking for my brother.
- 17 Q. And did you find him?
- 18 A. When I went up to my mom's front door he came
- 19 through the back door, so we met back up in the house.
- 20 Q. And so when you saw Chris what did he look like?
- 21 A. He was bruised. He had cherries on his face,
- 22 little scrapes.
- 23 Q. How was he walking?
- 24 A. He was slouched over holding his side.
- 25 Q. Do you remember which side he was holding?

- 1 A. I really don't, no. I don't remember.
- 2 Q. What was going through your head when you saw him?
- 3 A. I was upset.
- 4 Q. Did Chris say anything to you?
- 5 A. No. He was talking to my mom at the time.
- 6 Q. Could you hear what they were talking about?
- 7 A. She was asking him what happened.
- 8 MS. PENN: Objection, Your Honor.
- 9 THE COURT: What's the basis?
- 10 MS. PENN: Hearsay.
- 11 THE COURT: Sustained. Rephrase your question.
- 12 BY MS. BALDWIN:
- 13 Q. You heard Chris --
- 14 A. Yeah.
- 15 Q. -- and your mom talking?
- 16 A. I just heard them talking.
- 17 Q. Okay. But you didn't talk to them?
- 18 A. No.
- 19 Q. To Chris at all?
- 20 Did you stay at the house that evening?
- 21 A. Yes, because my mom was very upset and she had
- 22 heart problems.
- 23 Q. Why was she so upset?
- 24 A. Because Chris never got in anything.
- 25 Q. Chris never go into anything?

- 1 A. No.
- 2 Q. So she was upset about Chris?
- 3 A. Yes.
- 4 Q. So you were around Chris the rest of that evening?
- 5 A. Yes.
- 6 Q. What did he do?
- 7 A. He went upstairs to my brother's room and laid
8 down.
- 9 Q. Did he ask for anything that evening?
- 10 A. He asked for something to drink and pain medicine.
- 11 Q. He asked for pain medicine?
- 12 A. Yes.
- 13 Q. Did you sit upstairs with him or where did you sit?
- 14 A. Me and my mom stayed downstairs.
- 15 Q. Was anybody trying to tell Chris to go to the
16 hospital?
- 17 A. My mom was trying to make him go.
- 18 Q. Okay. But he didn't want to go?
- 19 A. No. He said he was all right.
- 20 Q. When Chris was in bed did you hear anything ever
21 coming from the bedroom?
- 22 A. He was moaning.
- 23 Q. When you say he was moaning --
- 24 A. Moaning.
- 25 Q. -- was he saying words at all?

- 1 A. No, just mumbling stuff every time he move.
- 2 Q. Did you see Chris the next day?
- 3 A. Yes, when I went upstairs.
- 4 Q. Was he awake?
- 5 A. No. No.
- 6 Q. Was he awake most of that day?
- 7 A. He slept off and on.
- 8 Q. Could you hear noises coming from the room that
- 9 morning?
- 10 A. Earlier that morning, yes.
- 11 Q. What kind of noises?
- 12 A. The same thing, moaning.
- 13 Q. Did you see Mr. Wright at all that next day?
- 14 A. Yes, I did.
- 15 Q. Tell the jury about that.
- 16 A. Him and his mom and two of her grandchildren came
- 17 to my mom house to discuss what happened with my sons.
- 18 He wasn't concerned about what happened with my brother.
- 19 Q. When you say he wasn't concerned, what did you mean
- 20 by that? What do you mean by that? How could you tell?
- 21 A. Because --
- 22 MS. PENN: Objection, Your Honor.
- 23 THE COURT: Basis?
- 24 MS. PENN: Speculation.
- 25 THE COURT: Rephrase your question.

1 BY MS. BALDWIN:

2 Q. What do you mean by he wasn't concerned? You
3 stated that you didn't think he was.

4 A. I don't think he was concerned about Chris. He was
5 more concerned about what my boys told my mom and I, what
6 he said to them.

7 Q. What was he saying about the whole incident?

8 A. That if he had - he was tired of my brother
9 disrespecting his mom.

10 Q. What did he say about your kids being there?

11 A. He said he didn't care -- he told them mind their
12 own business. He didn't care about -- really about them.

13 Q. Did he admit that -- about the incident?

14 A. Yes.

15 Q. Did he admit to hitting Chris?

16 A. Yes.

17 Q. Did he at any point say that Chris attacked him?

18 A. No.

19 Q. Did he at any point say anything about just trying
20 to talk to Chris?

21 A. No.

22 Q. As a result of this conversation of Mr. Wright and
23 his mom and the grands coming over to the house what did
24 you all do?

25 A. I was -- I stayed really trying to let him hurry up

- 1 . and get them out of the house before my other brother
2 came because there would have been another altercation.
- 3 Q. Was Chris around during this conversation?
- 4 A. He was upstairs.
- 5 Q. Did he come down at any point?
- 6 A. No.
- 7 Q. Do you know if he heard any of the conversation?
- 8 A. No.
- 9 Q. Did Chris ever go to the hospital?
- 10 A. Yes. Later on, a couple hours later.
- 11 Q. About what time would that be?
- 12 A. Three, between 3:00 and 4:00.
- 13 Q. In the afternoon?
- 14 A. Yes.
- 15 Q. Why did Chris end up going to the hospital?
- 16 A. Because when my other brother came home he went
17 upstairs to say he was having a seizure and he had two
18 back-to-back, and we dialed EMS.
- 19 Q. Who called for an ambulance?
- 20 A. I did.
- 21 Q. How did Chris get into the ambulance?
- 22 A. He walked down the stairs.
- 23 Q. On his own?
- 24 A. Yes.
- 25 Q. How did he appear when he came down the stairs?

1 A. He was 'shaking. He didn't appear to be himself.

2 Q. How did he not appear to be himself?

3 A. He just had a faraway look, to me, in his eye like
4 he was just trying to make it down the step.

5 Q. Was that the last time you saw your brother?

6 A. Yes.

7 MS. BALDWIN: Beg the Court's indulgence?

8 THE COURT: Take your time.

9 BY MS. BALDWIN:

10 Q. Timeka, to the extent you remember, what exactly
11 did Mr. Wright say when he was over at your house the day
12 after the assault?

13 A. When he came over he said he wanted to -- I'm
14 really not sure the correct words what he said, but he
15 was not remorseful. He was saying that he was tired of
16 Chris disrespecting his mother and he would have did it
17 again if he had to.

18 Q. I have no further question for you.

19 THE COURT: Ms. Penn?

20 MS. PENN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. PENN:

23 Q. Hi, Ms. Jenkins.

24 A. Hi.

25 Q. You said that when the boys went to the store it

- 1 was about nine to ten o'clock?
- 2 A. Uh-huh.
- 3 Q. And it was dark, right?
- 4 A. It was dusk, yes.
- 5 Q. Nine to ten o'clock at night, right?
- 6 A. Uh-huh.
- 7 Q. And they were only gone for 15 minutes?
- 8 A. Yes.
- 9 Q. And that day before -- I didn't get this. Did you
- 10 live in the house too or just Chris and you were
- 11 visiting?
- 12 A. I was visiting my mom.
- 13 Q. You were visiting your mom?
- 14 A. Uh-huh.
- 15 Q. You were in the house earlier that day?
- 16 A. What day you speaking of, the 10th?
- 17 Q. Yes. On the 10th you were at your mom's house?
- 18 A. Yes, I was.
- 19 Q. And Chris was there, too?
- 20 A. Uh-huh.
- 21 Q. But he didn't stay in the house the entire time,
- 22 right?
- 23 A. No.
- 24 Q. He was kind of in and out, back and forth?
- 25 A. Uh-huh.

- 1 Q. Okay. And you have other family member -- other
2 brothers that lived in the house, too, correct?
- 3 A. I had one brother that lives in the house.
- 4 Q. One other brother that lived in the house?
- 5 A. Uh-huh.
- 6 Q. And that next day when Robert and Winky came over
7 you said that -- or you wanted Robert to leave you
8 because you were afraid that he would get into a fight
9 with your other brother?
- 10 A. Yes.
- 11 Q. Is that right?
- 12 A. Uh-huh.
- 13 Q. So your brother wasn't afraid of Robert, was he?
- 14 A. My brother?
- 15 Q. Yes, ma'am.
- 16 A. Which one are you speaking of?
- 17 Q. The one who you were referring to get Robert out of
18 the house before he came home. Not Chris, the other one.
- 19 A. The other one?
- 20 Q. Yes.
- 21 A. I talked about all of them was coming over to see
22 what happened.
- 23 Q. Okay. And you wanted Robert gone so there wouldn't
24 be another fight, right?
- 25 A. Yes.

- 1 Q. And you knew about Chris's relationship with Winky,
2 right?
- 3 A. Yes.
- 4 Q. And that they broke up?
- 5 A. Yes.
- 6 Q. And he had been harassing her?
- 7 A. Both ways, yes.
- 8 Q. And he had been stalking her?
- 9 A. No. I don't know nothing about no stalking.
- 10 Q. And he didn't take things from her porch and steal
11 them?
- 12 A. I don't know nothing about that.
- 13 Q. You never saw him call her names in the middle of
14 street?
- 15 A. No.
- 16 Q. Okay. And you testified earlier that when one of
17 your brothers got home and went upstairs to Chris's room
18 he said Chris was having -- had two seizures; is that
19 right?
- 20 A. Yeah, he had one back-to-back. Yes.
- 21 Q. And Chris had had seizures before, correct?
- 22 A. Yes.
- 23 Q. And he had a problem with alcohol?
- 24 A. Yes.
- 25 Q. And you all had to call EMS before for him, right?

- 1 A. Yes.
- 2 Q. And when he got home he looked banged up, right?
- 3 A. Uh-huh.
- 4 Q. His face was bruised?
- 5 THE COURT: Is that a yes?
- 6 A. Yes.
- 7 Q. But nobody called the hospital that night?
- 8 A. No.
- 9 Q. And nobody called the next morning, right?
- 10 A. No.
- 11 Q. And not until the afternoon, correct?
- 12 A. Uh-huh.
- 13 MS. PENN: Court's indulgence.
- 14 (PAUSE.)
- 15 MS. PENN: I have further questions. Thank you.
- 16 THE COURT: Redirect?
- 17 REDIRECT EXAMINATION
- 18 BY MS. BALDWIN:
- 19 Q. Timeka, did you see Chris drinking at all that
- 20 evening?
- 21 A. No.
- 22 Q. How about the next morning?
- 23 A. No.
- 24 Q. No alcohol at all?
- 25 A. No. He was on alcohol withdrawal.

1 Q. He was -- I'm sorry?

2 A. Alcohol withdrawal.

3 Q. Okay. And you said that he and Mr. Wright's mother
4 went both ways in terms of harassing?

5 A. Yes.

6 Q. So it wasn't just Chris going after her. It was
7 her going after him as well?

8 A. Uh-huh.

9 Q. When you saw him coming down the stairs that
10 morning and he was trembling, was that similar to when
11 you all had called the police before --

12 A. No.

13 Q. -- or different?

14 A. It was totally different.

15 Q. It wasn't like that alcohol shake?

16 A. No.

17 MS. BALDWIN: Beg the Court's indulgence.

18 I have no further questions.

19 THE COURT: Recross?

20 MS. PENN: Yes, Your Honor.

21 RECROSS-EXAMINATION

22 BY MS. PENN:

23 Q. Ms. Jenkins, you called EMS?

24 A. Yes.

25 Q. And when you called EMS you didn't tell them that

- 1 Chris had gotten into a fight, correct?
- 2 A. No. I don't believe so.
- 3 Q. You just told them that he was having seizures?
- 4 A. Yes.
- 5 Q. And that he had a history of seizures?
- 6 A. I don't recall that.
- 7 Q. It's been a long time, right?
- 8 A. Yes.
- 9 Q. Thank you, ma'am.
- 10 MS. PENN: No further questions.
- 11 THE COURT: All right. Thank you.
- 12 How many more witnesses do you have available?
- 13 MR. SIMPSON: We have one available and one on the
- 14 way.
- 15 THE COURT: This is an appropriate time for us to
- 16 take a break. You may leave your notepads in your chair.
- 17 Do not begin your deliberations, do not discuss this case
- 18 amongst yourselves.
- 19 Please rise for the jury. We'll take about 15
- 20 minutes. Please rise for the jury.
- 21 (WHEREUPON, the jury leaves the courtroom at
- 22 approximately 3:44 p.m.)
- 23 THE COURT: Thank you. Be seated.
- 24 You may step down, ma'am.
- 25 (WHEREUPON, a brief recess was taken.)

1 THE COURT: How many witnesses will you have left?
2 MR. SIMPSON: Two today, Your Honor.
3 THE COURT: Where is your next witness?
4 MR. SIMPSON: Present.
5 THE COURT: Where?
6 MR. SIMPSON: Ms. Jenkins, Mary Jenkins.
7 THE COURT: All right. Thank you.
8 THE BAILIFF: You ready, Your Honor?
9 THE COURT: I am ready.
10 Please rise for the jury.
11 (WHEREUPON, the jury enters the courtroom at
12 approximately 4:14 p.m.)
13 THE BAILIFF: The jury is all present, Your Honor.
14 THE COURT: Thank you. Be seated.
15 Call your next witness.
16 MR. SIMPSON: Thank you, Your Honor. The State
17 calls Mary Jenkins.
18 MARY JENKINS, after having been duly sworn,
19 testified as follows:
20 THE CLERK: You are going to state your name into
21 the microphone and just spell your last, please.
22 THE WITNESS: My name is Mary Jenkins. Jenkins is
23 J-e-n-k-i-n-s.
24 THE COURT: Mr. Simpson.
25 MR. SIMPSON: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. SIMPSON:

3 Q. Mrs. Jenkins, what's your relationship to the
4 deceased, Christopher Jenkins?

5 A. Christopher Jenkins is my son, my oldest boy.

6 Q. And we all understand how hard it is to be here
7 today and I'm going to try to keep this --

8 A. It's very hard.

9 Q. -- as brief as I can.

10 Ms. Jenkins, how many children do you have?

11 A. I have six kids altogether, five boys and one girl.

12 Q. Okay. And Christopher was your oldest?

13 A. Yes, he was the oldest.

14 Q. Where do you live currently?

15 A. Currently I live at [REDACTED], Downtown
16 Charleston.

17 Q. And who lives with you there today?

18 A. Today, me and my son, and some of my grands.

19 Q. Okay. And is this -- the son is Chris's brother?

20 A. Yes.

21 Q. And who lived with you back in June of 2010 at [REDACTED]
22 [REDACTED]?

23 A. My son and my grand.

24 Q. And when you say your grand, who is that?

25 A. [REDACTED] Jocqui J. and [REDACTED] Robert J. .

1 Q. Okay. I guess I'd like to start there, Mary, if I
2 could. You obviously love your grandkids very much?

3 A. Yes.

4 Q. Do you play a very active role in their lives?

5 A. Yes.

6 Q. And, in fact, they lived with you, correct?

7 A. Yes.

8 Q. We met Robert and Jocqui. Obviously, we being all
9 of us today. Can you tell the jury -- I'm thinking a way
10 to say this. Robert and Jocqui today are two young man;
11 would that be correct?

12 A. Yes, sir.

13 Q. In June of 2010 -- can you explain a little bit
14 about the differences between Robert and Jocqui today and
15 Robert and Jocqui in June of 2010?

16 A. Well, they are older and they are taller. They
17 wasn't that tall during that time, 2010.

18 Q. And were they -- so you said they were shorter back
19 in 2010?

20 A. Yes.

21 Q. What about body mass?

22 A. Body mass, they were small, and they were a little
23 immature at the time.

24 Q. And in 2010 is it fair to say, you know, as opposed
25 to the strapping young men we saw on the stand they were

1 pretty small kids at that time; is that correct?

2 A. Yes, sir.

3 Q. And did your grands back at 13 and 14, did they act
4 13 and 14?

5 A. Yes, average kids.

6 Q. Now, of course, Ms. Jenkins, you understand why we
7 are here today. And again, to be brief, I'd like to take
8 you back to that day, June 10th of 2010. Do you remember
9 that day, Ms. Jenkins?

10 A. Yes, sir. It was a hard day for me.

11 Q. Can you explain to the jury from your point of view
12 that day, what occurred. Who all was spending time in
13 the house that day?

14 A. Off and on my grands, and Chris came back and
15 forth. My daughter, she was there. There was a full
16 house at one time back and forth, in and out.

17 Q. And your daughter -- you say your daughter. Who is
18 that?

19 A. Yes, sir.

20 Q. Is that Timeka?

21 A. Yes, sir.

22 Q. So Christopher, your grands, Robert and Jocqui, and
23 your daughter were all in and out of the house?

24 A. Yes, sir.

25 Q. Do you know **Maurice D.**?

- 1 A. Yes, sir. That was my neighbor's son.
- 2 Q. Okay. Did he spend a lot of time? Did you see him
- 3 a lot back in 2010?
- 4 A. Yes.
- 5 Q. Fair to say he also was much shorter and much
- 6 smaller back in 2010?
- 7 A. Definitely.
- 8 Q. He's probably bulked up the most, hasn't he?
- 9 A. Yes, sir.
- 10 Q. On June 10th of 2010 do you remember the grands
- 11 going off to the Knight's grocery?
- 12 A. Yes, sir.
- 13 Q. And why did they leave? What were they going to
- 14 get there?
- 15 A. Their mother sent them to the store for something
- 16 but I don't remember what she sent them to get from the
- 17 store.
- 18 Q. Okay. And who went with them?
- 19 A. Out of the house, just them two but they met
- 20 **Maurice D.** outside and Chris on the outside, too.
- 21 Q. Okay. Did you go to the store with them?
- 22 A. No.
- 23 Q. So from your point of view when did you learn of
- 24 what had occurred on this trip?
- 25 A. Well, later on my grandson, Robert, came in the
-)

1 house and he told me he -- said that Chris just got beat
2 up.

3 Q. And did he say it like that, beat up?

4 A. Yes.

5 Q. Did you ever learn anything of Chris throwing a
6 punch?

7 A. No.

8 Q. Or Chris trying to fight someone?

9 A. No, I don't.

10 Q. What was Robert's demeanor when he told you that
11 Chris got beat up?

12 A. I continued to asking him by who, and he tell me
13 Robert. And I asked him, Who Robert? And then he told
14 me it was Winky's son, Robert.

15 Q. Do you know Ms. Winky?

16 A. Yes, I do.

17 Q. Have you known her a long time?

18 A. Yes.

19 Q. Is this whole situation, as painful as it already
20 is, is it more painful because of that relationship?

21 A. Yes, it was.

22 Q. At some time after learning what happened did you
23 see your oldest son, Christopher?

24 A. After my grandson told me that my daughter went
25 outside to look for him, and in a couple seconds he came

1 through the back door.

2 Q. And how did Christopher look?

3 A. He looked all bruised up. He had dirt on his head
4 and his face. And I started questioning him what
5 happened to him, and he never told me what happened. The
6 kids told me what happened but he never told me what
7 happened.

8 Q. Okay. This is probably the hardest part and the
9 hardest question to ask you but could you please explain
10 to the jury how the evening unfolded with Christopher
11 that night. What did Christopher do and what did you do?

12 A. Well, I don't ask him no questions because I seen
13 the bruise. I asked him if he wanted to go to the
14 doctor, and he keep telling me, I'm all right. I'm all
15 right. I'm all right.

16 He usually call me Mary, and he kept saying, Momma,
17 I'm all right. I'm all right.

18 I say, Are you sure you all right?

19 And he say, Yeah, I'm all right.

20 I asked him, Do you want to go to the doctor?

21 He said, No, I'm not going to the doctor.

22 Q. Did he look all right to you?

23 A. Yes.

24 Q. You said he usually calls you Mary but he was
25 calling you momma?

- 1 A. Yeah.
- 2 Q. And what did Chris do that night?
- 3 A. After that he was sitting in the chair in my living
4 room, then he got up to go up the step. I thought he
5 went to the bathroom but he didn't went to the bathroom.
6 He went in the back bedroom.
- 7 Q. Okay. Did you sleep that night?
- 8 A. No.
- 9 Q. What did you do that night?
- 10 A. I keep going back upstairs and check on him, check
11 on him. I could see that he wasn't feeling well, and he
12 just keeping -- he was keeping everything from me. He
13 said, I'm all right. I'm all right.
- 14 I said, No, Chris, you not all right. You need to
15 go and get some help.
- 16 Q. He said he was fine. Did you ever suspect
17 otherwise, that he might be in bad shape?
- 18 A. I know otherwise that he wasn't feeling well.
- 19 Q. Okay. And did you ever go to sleep that night?
- 20 A. Huh?
- 21 Q. Did you ever go to sleep that night?
- 22 A. No, I couldn't sleep. I really couldn't sleep.
- 23 Q. The next day did you see Christopher?
- 24 A. Yeah, off and on the next day. I keep going
25 upstairs. I keep hearing him going back and forth to the

1 bathroom then he go back and lay down but he never came
2 downstairs.

3 Q. So Christopher never got up and got dressed and
4 showered --

5 A. No. He never got up. He just stayed upstairs.

6 Q. You heard him a couple times make it to the
7 bathroom?

8 A. Yes.

9 Q. Then go back to the bed?

10 A. Yes.

11 Q. Now, the following day did Mr. Wright, seated at
12 the table, ever pay you a visit at your house at [REDACTED]

13 [REDACTED]?

14 A. Yes, he did.

15 Q. And is this before or after the ambulance came for
16 Chris?

17 A. This was before.

18 Q. And I want to ask you, who was with Robert when he
19 came over?

20 A. His mother and his niece.

21 Q. And his mother is Ms. Winky?

22 A. Yes, sir.

23 Q. And I'm going to ask you, and I know this is
24 difficult. You can't testify to what anybody else said
25 but what is the gist of what you remembered Robert saying

1 on this visit to your house?

2 A. The way he came in the house, I invite all of them
3 in the house. I told him to come in, and when he came in
4 the house --

5 Q. And I'm sorry to interrupt you but let me stop you
6 there. You have a long relationship with Ms. Winky?

7 A. Yes.

8 Q. And you allowed them to come in the house?

9 A. Yes. I allowed them to come in.

10 Q. Okay. You wanted to hear what they had to say?

11 A. Yes.

12 Q. Continue. And once they entered the house what do
13 you remember Robert saying?

14 A. I can't remember all of the stuff that he said but
15 I know he told me -- he said he tired of Chris
16 disrespecting his mother.

17 MS. PROCTOR: Objection, Your Honor. Hearsay.

18 THE COURT: Sustained as to hearsay.

19 You cannot testify as to what someone told you.

20 Rephrase your question so you don't elicit that
21 type of testimony.

22 MR. SIMPSON: Your Honor, may I approach?

23 THE COURT: I'm sorry?

24 MR. SIMPSON: May I approach on this matter?

25 THE COURT: Yes.

1 (The following sidebar was reported.)

2 MR. SIMPSON: Your Honor, I believe the statements
3 from the defendant qualify under admission by a party
4 opponent exception to hearsay as long as they come
5 straight from Robert not from anybody else, and that's
6 what I --

7 THE COURT: I'm not quite clear as to who's been
8 saying what so that's why I said just rephrase it.

9 MR. SIMPSON: Oh, right. Tighten it up. Okay.

10 THE COURT: The way you asked it. Just rephrase
11 it.

12 MR. SIMPSON: Okay.

13 THE COURT: Thank you.

14 MR. SIMPSON: Thank you.

15 (The sidebar was concluded.)

16 BY MR. SIMPSON:

17 Q. Ms. Jenkins, I think perhaps I wasn't clear enough
18 with you. What do you recall being said that day by
19 Robert? Remember, we're talking Robert only, the day --

20 A. He said that he was tired of my son disrespecting
21 his mother.

22 Q. From your point of view, as you understood it, was
23 this some attempt to come over and apologize to you?

24 A. No --

25 MS. PROCTOR: Objection, Your Honor, calls for

- 1 speculation.
- 2 THE COURT: Sustained.
- 3 MR. SIMPSON: I'll move on.
- 4 BY MR. SIMPSON:
- 5 Q. Did they also interact with Timeka, your daughter,
- 6 that day?
- 7 A. Yes.
- 8 Q. Was it a long visit or a short visit?
- 9 A. Short.
- 10 Q. Do you recall anything about Timeka trying to get
- 11 them to move on?
- 12 A. No. I really wasn't -- I didn't want them to go
- 13 on. I just wanted to hear everything that he had said.
- 14 Q. Where were your other sons that day; do you recall?
- 15 A. At work.
- 16 Q. Were they going to be home any time soon?
- 17 A. Yes. One of them was.
- 18 Q. At some point that afternoon was EMS called?
- 19 A. Yes.
- 20 Q. Do you remember about what time that was?
- 21 A. It was after -- something to three.
- 22 Q. And they responded?
- 23 A. Yes.
- 24 Q. And was Chris taken away?
- 25 A. Yes.

1 MR. SIMPSON: Court's indulgence.

2 THE COURT: Take your time.

3 BY MR. SIMPSON:

4 Q. Ms. Jenkins, on this visit from the defendant and
5 his mother do you ever recall the defendant stating to
6 you, I'm sorry, I apologize?

7 A. No, sir.

8 Q. Please answer any questions that Ms. Proctor has of
9 you. Thank you.

10 THE COURT: Ms. Proctor?

11 MS. PROCTOR: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. PROCTOR:

14 Q. Ms. Jenkins, you said that your son had been dating
15 Winky for a while, correct?

16 A. Yes, ma'am.

17 Q. And, now, there were never any problems between his
18 mother and you, right?

19 A. No.

20 Q. And there hadn't been any problems between the
21 families?

22 A. No.

23 Q. It was just between your son and Winky?

24 A. Yes, ma'am.

25 Q. And you knew that they had been dating for a couple

- 1 years?
- 2 A. Yes, ma'am.
- 3 Q. And they had -- and you knew about the problems
- 4 they had?
- 5 A. I didn't know about the problems they had.
- 6 Q. You didn't know they were having any problems?
- 7 A. No.
- 8 Q. And you never knew about him cursing her or them
- 9 breaking up during this time?
- 10 A. No, sir. No, ma'am. I'm sorry. No, ma'am.
- 11 Q. Now, you knew though that there had been some
- 12 problems between Robert and your son before, correct?
- 13 A. I didn't know they had any problem before.
- 14 Q. Are you aware -- and you are aware of the fight
- 15 that they had probably about a month before when your son
- 16 came in looking for a baseball bat?
- 17 A. No. I didn't know nothing about a fight. I heard
- 18 about that later on.
- 19 Q. Okay. You heard about it later on --
- 20 A. Yes.
- 21 Q. -- but you hadn't when you met with Mr. Simpson.
- 22 You told -- the prosecutor, that's Mr. Simpson, do you
- 23 recall talking to him in his office saying that you were
- 24 aware of a fight that they had had about a month before?
- 25 A. Unless I just misstated. I didn't know nothing

1 about the fight until later on.

2 Q. Right, right, right. You knew about it later on?

3 A. Right.

4 Q. But one time your son came in the house and he said
5 he was upset with Robert and so he was looking for a
6 baseball bat --

7 A. Yes.

8 Q. -- to go fight Robert, correct?

9 A. I didn't know he was going to fight but it's just
10 like somebody told me that later on, about the fight.

11 Q. Okay. So you did know about it later on?

12 A. Oh, yes, ma'am.

13 Q. Now, talking about this night, you said that when
14 your son came home -- did he get home before your grands;
15 do you remember?

16 A. No. My grandson came in first.

17 Q. Your grandsons were home first and then he came
18 home?

19 A. Yes.

20 Q. And when he came in he didn't look that bad to you
21 though, did he?

22 A. He had some bruises on him, yes.

23 Q. He had some bruises but he didn't have very much
24 blood, did he?

25 A. No. He didn't have much blood.

- 1 Q. And as a matter of fact, you said he just had,
2 like, a little bit of blood on his face?
- 3 A. Yes.
- 4 Q. And at that time when he came in you didn't think
5 he was going to die, did you?
- 6 A. No.
- 7 Q. And so that's why you didn't call EMS?
- 8 A. Yes, ma'am.
- 9 Q. Because you had called EMS before about Robert,
10 correct -- I mean, about Chris, correct?
- 11 A. Ma'am?
- 12 Q. You had called EMS before when he would have
13 seizures?
- 14 A. Yes.
- 15 Q. And he sometimes is, I think -- strike that
16 question. He had seizures when he would be going through
17 his alcohol withdrawal, correct?
- 18 A. Yes. The only time I remember my son had a seizure
19 in my presence was one time.
- 20 Q. Okay. And but EMS was called?
- 21 A. Yes.
- 22 Q. Now, the night this happened, when your grandson
23 came home, you and your grandson, Robert, went over to
24 Ms. Winky's house, correct?
- 25 A. Yes.

1 Q. And Robert wasn't there?

2 A. No.

3 Q. And but you were upset and told Winky that you were
4 upset because he had disrespected your grands?

5 A. I went over there to talk to her because I didn't
6 know the serious [sic] of the fight. I went over there
7 to talk to her and find out why he jump at my grandson,
8 yes.

9 Q. So you were -- at that point, you were more worried
10 about him jumping on your grandsons, correct?

11 A. Yes. Yes.

12 Q. And so Robert wasn't home when you went over there
13 that night but the next night -- the next day, excuse me,
14 Robert and Winky, and I think his sister came over to
15 your house --

16 A. His niece. His niece.

17 Q. His niece. Excuse me. His niece came to your
18 house, correct?

19 A. Yes, ma'am.

20 Q. And at that time they told you that they were going
21 to get a restraining order out?

22 A. Ms. Winky said that, yes.

23 Q. That she wanted to get a restraining order out --

24 A. Yes.

25 Q. -- on Chris, correct?

- 1 A. Yes, ma'am.
- 2 Q. And it was later in the day that I think it was one
3 of your other sons called EMS?
- 4 A. Yes. After he came home from work he went upstairs
5 and saw Chris was having a seizure.
- 6 Q. He was having another seizure?
- 7 A. Yes.
- 8 Q. And that's when EMS was called?
- 9 A. Yes, ma'am.
- 10 MS. PROCTOR: Okay. Court's indulgence.
- 11 THE COURT: Take your time.
- 12 (PAUSE.)
- 13 BY MS. PROCTOR:
- 14 Q. Let me just ask to clear this up. When you went
15 over to Winky's the night of the incident you were
16 looking for Robert and he wasn't there, correct?
- 17 A. No. I wasn't looking for Robert.
- 18 Q. What were you going over to Ms. Winky --
- 19 A. I wanted to talk to her like a mother.
- 20 Q. Okay. And but Robert wasn't there, right?
- 21 A. As far as I know, no, he wasn't there.
- 22 Q. Okay. But he came over and spoke to you the next
23 day?
- 24 A. Next day, yes.
- 25 Q. Thank you.

1 MS. PROCTOR: I no further questions.

2 MR. SIMPSON: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. SIMPSON:

5 Q. Ms. Jenkins, defense counsel brought up a prior
6 incident between Robert and Christopher. Can you explain
7 to the jury what you know about the prior incident.

8 A. Prior to what?

9 Q. I'm sorry. The prior fight between Christopher and
10 Robert Wright.

11 A. During the 2000 -- June the 10th?

12 Q. The one that Ms. Proctor asked you about.

13 A. Oh. I don't know nothing about that one, during
14 that time. Like I said, I found out later. Someone else
15 tell me about the fight.

16 Q. You don't know anything about Christopher looking
17 for a baseball bat?

18 A. No.

19 Q. After Mr. Wright had gotten the best of him?

20 MS. PROCTOR: Objection, Your Honor.

21 THE COURT: Basis?

22 MS. PROCTOR: That was not in any of the testimony.

23 I think the solicitor --

24 THE COURT: Sustained. Sustained. Thank you.

25 BY MR. SIMPSON:

1 Q. Ms. Jenkins, there's been some discussions about
2 seizures, plural. Did I understand your testimony
3 correctly that on one prior occasion when Christopher was
4 attempting to detox from alcohol there was a seizure; is
5 that correct?

6 A. Yes, sir.

7 Q. On one time?

8 A. Yes, sir.

9 Q. Any other times that you recall or just the one
10 incident?

11 A. Just the one time that I know of.

12 Q. And you guys called EMS?

13 A. Yes.

14 Q. And he was going through detoxing from alcohol; is
15 that correct?

16 A. Yes, sir.

17 Q. Ms. Proctor also asked you about the incidents of
18 you going over to Mrs. Winky's house --

19 A. Yes, sir.

20 Q. -- do you remember that? And could you explain a
21 little bit to the jury what you meant by just wanting to
22 talk to her mom to mom.

23 A. Just going over there as a mother to find out
24 what's going on, what happened, because I wasn't out
25 there.

1 Q. Get a sense a mother to a mother --

2 A. Yes.

3 Q. -- of what the situation was?

4 A. Yes.

5 MR. SIMPSON: I have no further questions, Your
6 Honor.

7 Q. Thank you, Ms. Jenkins.

8 MS. PROCTOR: We have no further questions, Your
9 Honor.

10 THE COURT: You may step down. Thank you.
11 Call your next witness.

12 MR. SIMPSON: The State calls Detective Barry
13 Goldstein.

14 BARRY GOLDSTEIN, after having been duly
15 sworn, testified as follows:

16 THE CLERK: State your full name for the record and
17 spell your last for the record.

18 THE WITNESS: My name is Barry Goldstein. Last
19 name is G-o-l-d-s-t-e-i-n.

20 DIRECT EXAMINATION

21 BY MR. SIMPSON:

22 Q. Detective Goldstein, thank you for being here. We
23 didn't anticipate you until tomorrow morning.

24 A. Yes, sir.

25 Q. Who is your current employer?

- 1 A. I'm with the Charleston County Sheriff's
2 Department.
- 3 Q. And in what capacity?
- 4 A. I'm a detective in the criminal investigation
5 division.
- 6 Q. Okay. And who was your employer in 2010?
- 7 A. Charleston City Police Department.
- 8 Q. Okay. When did you leave CPD to go to the county?
- 9 A. August 2012.
- 10 Q. Okay. And you have quite a long career in law
11 enforcement, correct?
- 12 A. Yes, I do.
- 13 Q. And could you just recount the highlights of that
14 for the jury?
- 15 A. I've been a police officer for 36 years. I worked
16 uniform division as a patrolman for three years, and
17 street supervisor for seven years, and I worked violent
18 crimes, which is serious crimes, for 26 years.
- 19 Q. And so the longest share of that was violent crimes
20 with CPD?
- 21 A. Yes, it is.
- 22 Q. And when I say CPD --
- 23 A. Charleston Police Department, yes, sir.
- 24 Q. And you know why you are here today, correct?
- 25 A. Yes.

1 Q. How did you become involved in this case?

2 A. June 12, 2010 I was off duty. I was called by my
3 supervisor, Sergeant Michael Niblock, to respond down to
4 Harris Street in reference to a follow up of a death.

5 Q. Okay. And did you meet with anybody at that
6 location?

7 A. I did. I met with the deputy coroner and also met
8 with the victim's mother.

9 Q. Okay. Is that Mary Jenkins?

10 A. Yes.

11 Q. Okay. What was your purpose of meeting with the
12 deputy coroner?

13 A. The deputy coroner, their responsibility is cause
14 of death, so the deputy coroner relayed information to me
15 and she classified this death as a homicide.

16 Q. Okay. And did you vis-a-vis the deputy coroner
17 draw from any other agencies medical conclusions in that
18 effect?

19 A. That would have been her responsibility. My
20 responsibility would be gathering witnesses and
21 information from people that would have been out at the
22 time of the crime.

23 Q. Okay. Would the coroner have access to the autopsy
24 report?

25 A. Yes, they would.

1 Q. You said your responsibility was interviewing
2 witnesses. Do you recall which witnesses you've
3 interviewed?

4 A. There were two young men. They were teenagers. I
5 think one's name was Deveaux, and I can check my notes
6 for the second one --

7 Q. Okay.

8 A. -- if you like. It would be **Robert J.**, which
9 would be the second one.

10 Q. Okay. Were these young man cooperative with you?

11 A. Yes, they were.

12 Q. I know this is somewhat suggestive but were these
13 big strapping, big guys at that time?

14 A. No. At the time that I interviewed them the
15 documentation reflects they were 13 years of age.

16 Q. And you met with them in person?

17 A. Yes, I did.

18 Q. Were they cooperative with you?

19 A. Yes, they were.

20 Q. Were they forthcoming with the details of what had
21 happened a couple of days prior to?

22 A. Yes. They were at the pool, the neighborhood pool,
23 Martin pool. I waited for them. It was approximately
24 12:30 in the afternoon, one o'clock in the afternoon.

25 They came home and I was able to speak with them and also

1 do the best I could to document a written statement from
2 them.

3 Q. Okay. After speaking with **Maurice D.** and
4 **Robert J.** where did you go?

5 A. They took me to an area around Lee and Aiken
6 Street, which is within the City of Charleston.

7 Q. Is that close there to Martin Park?

8 A. It would have been within two to three blocks.

9 Q. Okay. Did you -- you had already gotten the story,
10 their stories of what occurred that night?

11 A. Yes. I asked them if they would take me or come
12 with me voluntarily. I checked with their parents. They
13 said it was fine. I had them go in my police car and we
14 drove to the area where they directed me to go from the
15 apartment of where the deceased had resided.

16 Q. Okay. Did you observe anything at that location
17 that you found relevant to this case?

18 A. Yes.

19 Q. And what was that?

20 A. It would have been -- it appeared to be blood
21 spatter, blood drops on the sidewalk area.

22 Q. And was the blood drops that you observed, was that
23 consistent with the area relayed to you that this assault
24 had occurred?

25 A. That's what these two young men had told me, yes.

1 Q. Now, when a detective observes crime scene evidence
2 of some relevance what's the procedure at that point?

3 A. At this point it would be my responsibility to
4 block off the area so no traffic, pedestrian traffic can
5 come by and then I notify the forensics, the crime scene
6 unit to come down there and then they do their own
7 documentation.

8 Q. Okay. So you've spoken with the coroner about
9 cause of death at this point; is that correct?

10 A. Yes.

11 Q. You've gone to the location suspected to be where
12 this crime occurred?

13 A. Yes.

14 Q. And blocked it off at this point; is that correct?

15 A. Yes.

16 Q. And whose duty is it to process that scene or do a
17 more thorough examination for anything of evidentiary
18 value?

19 A. That would be the crime scene officer that I
20 summoned.

21 Q. And do you recall who you talked to specifically?

22 A. Randy Unterbrink.

23 Q. Randy Unterbrink. Following of your speaking to
24 witnesses and your observations at this point did you
25 make the decision to issue an arrest warrant for

1 Mr. Wright?

2 A. Yes.

3 Q. What was Mr. Wright's reaction when he learned of
4 this warrant?

5 A. He came to the police department voluntarily.

6 Q. And did you personally see and speak to him when he
7 did that?

8 A. Yes. It would have been -- what I believe would
9 have been the same day but later in the day,
10 approximately 6:00 p.m. to 7:00 p.m.

11 Q. And later in the day you mean June 12th?

12 A. Yes.

13 Q. When you spoke with Mr. Wright on June 12th did you
14 observe any injuries to his face?

15 A. No.

16 Q. Did you notice any injuries to his hands?

17 A. No.

18 Q. What would you have done had you noted any injuries
19 on Mr. Wright?

20 A. It's my responsibility to make some type of
21 documentation, which would have been photographs. I
22 would have documented in my police report my observations
23 and then I would have had -- in this case, would have
24 been Officer Unterbrink come to the police station and
25 take pictures for the court.

- 1 Q. Did any of that happen?
- 2 A. No.
- 3 Q. And why was that?
- 4 A. I didn't see any marks.
- 5 Q. Okay. As a law enforcement officer with your
- 6 experience, and understanding at this point the
- 7 allegations, would you have looked on the face for any
- 8 sort of marks?
- 9 A. Oh, yes. Absolutely. It's a part of the case.
- 10 Q. Okay. And again, did you observe any whatsoever?
- 11 A. No, sir.
- 12 Q. Did you speak with Randall Unterbrink, crime scene
- 13 technician, after he processed the scene in April?
- 14 A. I would have, yes.
- 15 Q. Is it your understanding that some blood samples
- 16 were taken?
- 17 A. Yes.
- 18 Q. And as the detective how would you respond to blood
- 19 samples being taken from the scene?
- 20 A. Once blood samples are taken from the scene it's
- 21 the detective's responsibility to get a search warrant
- 22 for -- it's called buccal swabs, and a buccal swab is a
- 23 Q-tip. It's a long Q-tip, cotton end. And I went and
- 24 got a search warrant where I would meet with the
- 25 defendant and take this buccal swab and swab the inside

1 of he or she's mouth.

2 There's a certain way of packaging it, putting it
3 in a little cardboard box into an envelope and then I
4 would put it in the chain of custody evidence, and later
5 during the investigation the crime scene unit will
6 transport it to SLED, South Carolina Law Enforcement
7 Division, where they examine the buccal swab compared to
8 -- if it's blood on the sidewalk they compare it to that
9 to see if it matches.

10 Q. Did you obtain that search warrant?

11 A. I did.

12 Q. Did you follow through with that buccal swab?

13 A. Yes, I did.

14 MR. SIMPSON: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 BY MR. SIMPSON:

18 Q. I'm handing you what's been marked and entered into
19 evidence as State's 52. Do you recognize the exhibit you
20 are holding there?

21 A. Yes. This is my handwriting. This is where I
22 printed my name, the type of offense. This is the case
23 number that we are referring to, and then the computer
24 gives me an item number assigned to this case. All of
25 the above here that I'm showing you is my handwriting.

1 Q. Is that the buccal swab you took from the
2 defendant, Robert Wright?

3 A. To the best of my knowledge it would be because
4 this is the box that I was just telling you about and
5 it's got my handwriting with his documentation, his date
6 of birth, so I'm verifying that this is it.

7 Q. And you stated the purpose of that -- you know from
8 Randall Unterbrink there's some blood on the scene?

9 A. Yes.

10 Q. You then wasn't to obtain a DNA sample from the
11 defendant to compare?

12 A. Yes.

13 Q. And obviously what you know about this scenario
14 would there be someone else that you would be interested
15 in having a DNA sample from?

16 A. It would be the deceased.

17 Q. And as the lead detective I know you didn't do that
18 in this case but did you see that that was done as well,
19 make sure a sample was taken from the deceased as well?

20 A. Yes. The crime scene unit in this case, Randy
21 Unterbrink, would have -- there's always a sample taken
22 at the time of autopsy and documentation made just in
23 case it is a criminal event. So he would take --
24 whichever lab tech goes to Columbia, to the South
25 Carolina Law Enforcement Division, they will take my

1 buccal swab and then they'll take whatever is issued to
2 them by the medical examiner from the victim and it's
3 compared by the lab at SLED.

4 Q. And stated simply, the purpose of that, is it to
5 figure out whose blood that is on the street?

6 A. Yes.

7 Q. You also performed some follow up after all this,
8 correct?

9 A. Yes.

10 Q. And could you describe to the jury what that follow
11 up was?

12 A. I was looking for an automobile and I was able to
13 track back that the defendant possessed a Chevrolet type
14 automobile and found out that it was down at the
15 Renaissance hotel, which was located on Wentworth Street
16 between Meeting and King.

17 I made an appointment with a woman by the name of
18 Terry Bolger. The car is also registered to her. She
19 was an employee at the Renaissance. I made an
20 appointment to meet with her ten o'clock in the morning
21 at that location to look at the vehicle. This was
22 supposed to be a vehicle that these two young men,
23 Deveaux and the other person, described.

24 When I got to the hotel she was working. She just
25 refused to come down and meet with me in the lobby after

1 she and I had made an appointment. So I found out from
2 the management of the Renaissance where the employees'
3 cars are parked and myself and Sergeant Niblock then went
4 to the parking garage, which is directly across from the
5 Renaissance on Wentworth Street, and we walked the levels
6 until we found the vehicle that we believed belonged to
7 her.

8 Q. And did you locate that vehicle?

9 A. Yes.

10 Q. And what did you do from there?

11 A. Well, I matched up the VIN number on it because the
12 vehicle was backed up against the concrete wall where you
13 couldn't read the license number, but I was able to get
14 the VIN number off the dashboard looking in through the
15 windshield and I was able to document that this is the
16 same vehicle that we were looking for through the records
17 of the Department of Motor Vehicle. So I went ahead and
18 photographed the vehicle.

19 Q. And those records reflect that -- who did those
20 records reflect this vehicle was registered to?

21 A. To Terry Bolger and the defendant.

22 Q. And to Robert Wright?

23 A. Yes.

24 MR. SIMPSON: May I approach the witness, Your
25 Honor?

1 THE COURT: You may.

2 BY MR. SIMPSON:

3 Q. Detective Goldstein, I'll hand you what's been
4 marked State's Exhibit 2, 3, 4, marked and entered into
5 evidence.

6 A. One picture is of the VIN number and the other two
7 pictures are -- one is a side view of the vehicle and the
8 other would be a front view of the vehicle, and that's
9 the vehicle that I was just telling you about in the
10 parking garage.

11 Q. And what did you do with these pictures once you
12 took them?

13 A. I would have shown them to the witnesses.

14 Q. Okay. Did they testify that was consistent with
15 the vehicle they observed that night?

16 A. Looked like it.

17 MR. SIMPSON: Court's indulgence.

18 THE COURT: Take your time.

19 BY MR. SIMPSON:

20 Q. Detective Goldstein, please answer any questions
21 the defense has for you. Thank you for your time.

22 THE COURT: Ms. Proctor?

23 CROSS-EXAMINATION

24 BY MS. PROCTOR:

25 Q. Detective Goldstein, you became involved in this

1 case because the coroner's office had called the police
2 department and that's how you got involved?

3 A. Yes, ma'am.

4 Q. And the police department was never contacted by
5 anybody in Chris Jenkins' family before that, had they?

6 A. No, ma'am.

7 Q. And so your knowledge during those two days, nobody
8 had contacted the police, correct?

9 A. That's correct.

10 Q. Now, when you received this information you went to
11 Mr. Jenkins' home?

12 A. Yes, ma'am.

13 Q. And you spoke to his mother and to some of -- his
14 two nephews and a friend?

15 A. Yes.

16 Q. And while speaking with them you learned that there
17 had been a fight two days before?

18 A. Yes.

19 Q. And you talked to them and they said that there had
20 been a fight the night before and that Mr. Jenkins had
21 walked on to his house, went to his house?

22 A. Yes, ma'am.

23 Q. And when speaking with them you also found out that
24 nobody had called the police or an ambulance, never had
25 come to the house, correct?

1 A. That's correct, no ambulance.

2 Q. And you said that you interviewed the three boys
3 that night, that were with Chris?

4 A. Yes.

5 Q. And they had told you what had happened the two
6 nights before?

7 A. Yes.

8 Q. And when you interviewed, I think it was Jocqui J.
9 [REDACTED], didn't he tell you that he wouldn't be able
10 to --

11 MR. SIMPSON: Objection, hearsay.

12 MS. PROCTOR: This was already asked by the
13 solicitor in his direct.

14 THE COURT: Rephrase your question.

15 BY MS. PROCTOR:

16 Q. You spoke with the three boys, correct?

17 A. Yes, ma'am.

18 Q. And you have written statements from Robert J.
19 and from Marquel (phonetic) Deveaux?

20 A. Yes, ma'am.

21 Q. And you did not take a written statement from
22 Jocqui J., correct?

23 A. That's correct.

24 Q. And what is the reason that you did not take a
25 statement from him?

- 1 A. I don't recall. I was reading through my notes
2 prior to today and I don't have that information for the
3 Court, ma'am.
- 4 Q. Okay. If I showed you -- may I approach?
- 5 A. That will be fine.
- 6 Q. This is the --
- 7 A. My report.
- 8 Q. Yes. Does that recollect your --
- 9 A. Okay. Yes, ma'am. That's my report.
- 10 Q. And does that state why you did not take a
11 statement from him?
- 12 A. Yes, it does.
- 13 Q. And what is that reason?
- 14 A. It says that I did not show him any lineups due to
15 the fact he was not wearing his glasses at the time.
- 16 Q. And he said that because he wasn't wearing his
17 glasses he wouldn't be able to identify anybody, correct?
- 18 A. That is correct, ma'am.
- 19 Q. And also when you said that you showed the boys the
20 pictures of the car, correct?
- 21 A. Yes.
- 22 Q. And when you showed pictures of the car to Robert J.
23 [REDACTED] he also told you he wouldn't be able to identify
24 the car because the car lights were in his eyes and he
25 couldn't see, correct?

1 A. That's correct.

2 Q. Now, and later that day **Robert J.** came into
3 the police department, correct?

4 A. Yes, he did.

5 Q. Now, the State just asked you if you took pictures
6 of his hands, correct?

7 A. Correct.

8 Q. And you stated that you didn't because you didn't
9 see anything?

10 A. That's correct.

11 Q. Now, do you remember testifying in a previous
12 hearing about this case?

13 A. It probably would have been the preliminary
14 hearing.

15 Q. But another hearing in this case back in June you
16 testified.

17 A. Okay.

18 Q. When you testified you came in this courtroom, you
19 took an oath and you sat on that witness stand and you
20 gave testimony about what happened, correct?

21 A. Yes.

22 Q. And do you recall when asked if -- that someone
23 asked you if there was anywhere in the report that you
24 photographed Mr. Wright's hands, correct? Let me just --

25 May I approach the witness?

1 THE COURT: You may.

2 BY MS. PROCTOR:

3 Q. If you will look at line nine and read that
4 question.

5 A. Line nine. Now, I don't see anywhere in the
6 report. Correct me if I'm wrong. You never photographed
7 Mr. Wright's hands, did you?

8 Q. And what was the answer?

9 A. No, sir.

10 Q. And what is the next question?

11 A. Never checked them for cuts or anything like that,
12 did you?

13 The answer would be, No, sir.

14 Q. Okay. So when you testified in June you said that
15 you never looked at his hands to see if there were any
16 cuts or scratches but today you are saying that you did
17 and it's in your report?

18 A. If there was obvious cuts or bruising that's
19 obvious to the naked eye I would make documentation. As
20 for any finer points, I did not take pictures of his
21 hands, as a routine.

22 Q. Correct, but you did say you never checked them for
23 cuts?

24 A. Yes, ma'am. That's what I testified to.

25 Q. And you had learned through your investigation also

1 that there had been some kicking and stomping, correct?

2 A. What's that, ma'am?

3 Q. That there had been some kicking and stomping?

4 A. Yes.

5 Q. And did you ever check his feet, Mr. Jenkins' feet
6 to see if he had any --

7 A. No, I did not.

8 Q. -- bruises or anything like that on his feet?

9 A. No.

10 Q. Did you ever take his shoes off to see if he had a
11 broken toe or anything like that on his feet?

12 A. No, ma'am.

13 MS. PROCTOR: I have no further questions.

14 MR. SIMPSON: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SIMPSON:

17 Q. Detective Goldstein, Ms. Proctor asked you about
18 photo lineups and you said -- your testimony was Jocqui J.

19 [REDACTED] you did not present a photo lineup to because he
20 didn't have his glasses on; is that correct?

21 A. That's correct.

22 Q. Did you present a photo lineup to the other two
23 eyewitnesses?

24 A. I did.

25 Q. And did they pick out a person from that photo

- 1 lineup?
- 2 A. Yes.
- 3 Q. Who was that person?
- 4 A. Robert Wright.
- 5 Q. And was that the answer from both **Maurice D.**
- 6 and **Robert J.**?
- 7 A. Yes. I have the documentation in front of me.
- 8 Yes, sir.
- 9 Q. You also said in cross-examination that **Robert J.**
- 10 **[REDACTED]** expressed some hesitancy prior to seeing the
- 11 photograph that the headlights were in his face when it
- 12 came to the car?
- 13 A. Yes.
- 14 Q. However, did you eventually present the photos of
- 15 the car to him?
- 16 A. Yes.
- 17 Q. And did he indicate that that looked like the car?
- 18 A. Yeah, looked like it.
- 19 Q. Consistent with the car?
- 20 A. Yes.
- 21 Q. On direct you testified that you met Robert Wright
- 22 when he came in to turn himself in, correct?
- 23 A. Yes.
- 24 Q. So you saw him and saw his face and interacted with
- 25 him to some degree when he turned himself in, correct?

1 A. Yes.

2 Q. Did you observe any sort of injuries on his face
3 when you talked to him?

4 A. No, sir.

5 Q. If you would have observed any injuries would you
6 have photographed them?

7 A. Yes. I would have and documented them in writing
8 in my report.

9 MR. SIMPSON: Thank you. Nothing further, Your
10 Honor.

11 MS. PROCTOR: Nothing, Your Honor.

12 THE COURT: You may step down. Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Ladies and gentlemen, I try
15 to end as close to five as possible. I've done a pretty
16 good job of that today. We are going to break for the
17 evening. Please remember all of my admonitions. Do not
18 discuss this case amongst yourselves, do not discuss this
19 case with anyone. That's any form or fashion, either
20 face-to-face conversations or in electronic form.

21 Do not do any independent research, do not read,
22 watch listen to any news accounts regarding this case
23 should there be any.

24 Please be back in your jury room at 9:15 in the
25 morning, 9:15. Please take all of your belongs with you

1 and the bailiffs will collect your notepads. Have a
2 wonderful evening.

3 Please rise for the jury.

4 (WHEREUPON, the jury leaves the courtroom at
5 approximately 5:02 p.m.)

6 THE COURT: Thank you. Be seated.

7 How many witnesses do you have? Two, isn't that
8 correct?

9 MR. SIMPSON: Two.

10 THE COURT: Let me advise your client of his
11 rights.

12 Please swear the defendant.

13 ROBERT WRIGHT, after having been duly sworn,
14 testified as follows:

15 THE COURT: Mr. Wright, at this time I'm going to
16 explain to you certain of your rights. The State still
17 has two witnesses and I will have to rule on their motion
18 for directed verdict but I'm going to give you this
19 opportunity so you'll have the evening hour to discuss
20 these rights with your attorney.

21 If you do not understand anything I say, please let
22 me know, and if you need me to explain anything in more
23 detail, please let me know. Do you understand?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: We've reached the stage of the trial

1 where you may present your defense. You have the right
2 to claim the protections given to you by the Fifth
3 Amendment to the Constitution of the United States.

4 This Amendment states in part that no person shall
5 be compelled in any criminal case to be a witness against
6 himself. That means that you cannot be required to
7 testify. You do have the right to testify on your own
8 behalf, however no one could make you testify.

9 This is a personal right and no one can waive this
10 right except for you. If you decide to testify you will
11 be subject to the same rules that govern other witnesses
12 and you may be examined and cross-examined on any
13 relevant issue in this case.

14 In addition, if you have any convictions involving
15 dishonesty or false statements or for crimes punishable
16 by imprisonment for more than one year and I determine
17 that the probative value of admitting this evidence
18 outweighs its prejudicial effect to you the solicitor
19 will be able to introduce your record.

20 Does he have a prior record that you wish to
21 introduce, Mr. Simpson?

22 MR. SIMPSON: Your Honor, he has a 2006 possession
23 of cocaine. That is a drug conviction but it is over the
24 one year threshold. He also has a 2003 CDV and a pending
25 CDV second and a pending CDVHAN. I am not seeking to

1 admit any of those going forward but I Can foresee
2 situations that might open the door to those depending on
3 his testimony. I will say, we discussed this very issue
4 prior to his testimony in the last trial. We didn't push
5 the matter. It is a potential.

6 To answer your question, I believe your ruling last
7 time, if I understand the transcript, was that possession
8 of cocaine may have come in as just sort of a vague
9 reference to a prior felony. I don't know even now if I
10 would seek to admit that.

11 THE COURT: But the potential is out there for at
12 least a prior conviction and a potential, the CDV arrest,
13 depending upon how he testifies; is that correct?

14 MR. SIMPSON: Correct, Your Honor.

15 THE COURT: If you decide to testify this decision
16 on your part must be freely, voluntarily and
17 intelligently made with knowledge of the protections
18 given to you by the Fifth Amendment and the consequences
19 of your decision to testify.

20 If you decide not to testify I will instruct the
21 jury that they cannot give the fact that you did not
22 testify any consideration whatsoever and that there is to
23 be absolutely no prejudice to you because you did not
24 testify. It is left entirely up to you.

25 You may talk with your attorney either together or

1 separately, your friends, your family members or anyone
2 else but the final decision is up to you. Do you
3 understand what I've explained to you?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you have any questions about what
6 I've explained to you?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Thank you. You'll have this
9 opportunity to discuss whether or not you're going to
10 testify tomorrow with your attorneys in the evening hour.
11 Please be back here at nine o'clock, Mr. Wright.

12 You have the letter from the bonds person?

13 MS. PENN: I do, Your Honor. May I approach, Your
14 Honor?

15 THE COURT: Thank you.

16 All right. Mr. Wright, you will remain on the same
17 terms and conditions of your previous bond. You
18 understand what will happen if you do not show up
19 tomorrow?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: What will happen?

22 THE DEFENDANT: Be placed under arrest for a bench
23 warrant.

24 THE COURT: I'm sorry?

25 THE DEFENDANT: I will be placed under arrest for a

1 bench warrant.

2 THE COURT: And what else will happen?

3 THE DEFENDANT: You'll charge me in my absence.

4 THE COURT: I'm going to continue with the trial,
5 all right?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: So I need you to understand that those
8 are the consequences. So just if you decide not to show
9 up tomorrow that doesn't mean that we are going to stop
10 the trial. Some defendants think that and think that by
11 not showing up it's just going to extend the time and
12 think that's a really good option. I'm telling you that
13 is not an option and it will not be in your best interest
14 if you do not show up. There will be consequences and we
15 will continue. Do you understand?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Any questions?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: All right. Anything before we break,
20 Ms. Penn?

21 MS. PENN: No, Your Honor.

22 THE COURT: Mr. Simpson?

23 MR. SIMPSON: No, Your Honor.

24 THE COURT: All right. Please be ready to start
25 promptly at 9:15. Thank you.

1 MR. SIMPSON: Yes, Your Honor.

2 (WHEREUPON, the trial of the case was recessed for
3 the day.)

4 Tuesday, February 25, 2014

5 THE COURT: We are still waiting on some jurors but
6 I just wanted to see if there was anything we needed to
7 address before the jury comes in.

8 MR. SIMPSON: I don't believe so, Your Honor.

9 MS. PENN: Nothing from the defense, Your Honor.

10 THE COURT: Good morning, Mr. Wright.

11 THE DEFENDANT: Good morning, ma'am.

12 THE COURT: Thank you for being here.

13 THE DEFENDANT: How you doing?

14 THE COURT: Good.

15 (PAUSE.)

16 THE COURT: All right. We have all of our jurors.
17 Anything before we bring them in?

18 MR. SIMPSON: Nothing from the State, Your Honor.

19 THE COURT: And who is your next witness?

20 MR. SIMPSON: Randall Unterbrink.

21 THE COURT: Just have him sit on the front row.

22 All right. Let's bring the jury.

23 (WHEREUPON, the jury enters the courtroom at
24 approximately 9:22 a.m.)

25 THE BAILIFF: The jury is all present, Your Honor.

1 THE COURT: Thank you.

2 Please be seated.

3 Morning, Mr. Foreman, ladies and gentlemen of the
4 jury. Is that room working better for you?

5 THE FOREMAN: Yes.

6 THE COURT: All right. Mr. Foreman, ladies and
7 gentlemen of the jury, if you were able to comply with
8 the Court's instructions over the evening hour, please
9 raise your right hand.

10 All 14 jurors have complied with the Court's
11 instructions over the evening hour. Please give your
12 attention.

13 Call your next witness.

14 MR. SIMPSON: Thank you, Your Honor. The State
15 calls Randall Unterbrink, with the Charleston Police
16 Department.

17 RANDALL UNTERBRINK, after having been duly
18 sworn, testified as follows:

19 THE CLERK: State your name into the microphone and
20 spell your last for the record.

21 THE WITNESS: My name is Randall Unterbrink,
22 U-n-t-e-r-b-r-i-n-k.

23 THE COURT: Mr. Simpson?

24 MR. SIMPSON: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. SIMPSON:

2 Q. Mr. Unterbrink, who is your employer?

3 A. I work for the Charleston Police Department.

4 Q. And in what capacity?

5 A. I currently work in the crime scene unit.

6 Q. And how long have you worked for the Charleston

7 Police Department?

8 A. Twenty-three years.

9 Q. Is that the entirety of your law enforcement
10 career?

11 A. It is.

12 Q. How long have you worked for the Crime Scene Unit
13 at CPD?

14 A. Eleven years.

15 Q. What kind of personal training does one receive
16 when work for the Crime Scene Unit?

17 A. When you first come upon the unit you really do
18 in-house training. You ride with another officer or
19 crime scene tech and he or she will show you how things
20 are done, and that take place for several weeks.

21 And then after that you will then go to
22 individualized training, whether that be SLED or other
23 agencies. For example, in my case I went to Knoxville,
24 Tennessee and went to the National Forensic Academy there
25 for additional training.

- 1 Q. And how many years, again, of on-the-job experience
2 do you have with crime scene processing?
- 3 A. Eleven.
- 4 Q. We'll get to the point, Mr. Unterbrink. Do you
5 recall getting a call out to a crime scene on June 12,
6 2010?
- 7 A. I do.
- 8 Q. And to what location?
- 9 A. That would have been to the intersection of Aiken
10 Street and Lee Street.
- 11 Q. And what was the nature of this call out? What
12 were you requested to do?
- 13 A. I was asked to take photographs of that area.
- 14 Q. Were there any particular observations that you
15 made relevant to your work as a crime scene tech at that
16 location?
- 17 A. Not at first.
- 18 Q. Okay. Please explain.
- 19 A. When myself and Detective Goldstein arrived at the
20 scene my understanding at that particular time was that
21 my only task was to take photographs of that street,
22 Aiken Street. Aiken through -- Lee Street through Aiken
23 Street because we were not aware at that time that there
24 was anything other than just a document the scene.
- 25 Q. But did over the course of that documentation did

1 you observe anything relevant to your role as a crime
2 scene tech?

3 A. Yes. While we were taking those photographs
4 Detective Goldstein observed something on the road which
5 was a red droplet of some substance, and once that was
6 noticed we then began to look around and began to see
7 other red similar red droplets in that area.

8 Q. And as a crime scene tech how would you proceed
9 from that point?

10 A. The droplets at that point, once we walked the
11 whole street we wanted to see, of course, not only where
12 it began but where it ended. And so once we had an
13 understanding of where these droplets were, at the
14 beginning and its ending, we then decided to, of course,
15 photograph those droplets but also to test it to see what
16 this particular droplet might be.

17 Q. And from your initial observations what did you
18 personally suspect it might be?

19 A. Blood.

20 Q. And how do you -- on site how do you go about
21 determining that?

22 A. Since we are not an actual lab I cannot confirm
23 what that is with absolute certainty. What we do on the
24 street is really a field test and we use o-Tolidine,
25 which is a chemical, and you apply it to the red droplet

1 and if -- and we use a cotton swab to gather a sample of
2 that red substance. And through that testing if the red
3 substance turns into a bluish-green color, which is what
4 happened in this case, that's an indication that it is
5 testing positive for blood. It's not saying it is but
6 it's testing positive for blood.

7 Q. And is that the strongest indication you can get on
8 the scene --

9 A. Yes, sir.

10 Q. -- for the substance of blood?

11 A. Yes, sir, on the scene.

12 Q. Okay. You mentioned that you then took photographs
13 of the relevant evidence that you observed?

14 A. I did. I did.

15 Q. Can you explain to the jury a little bit about the
16 process you followed in taking pictures of relevance.

17 A. We use photo markers. It's a piece of plastic that
18 sits down on the ground and it has a number to it. It's
19 a sequential thing. The first marker will have a number
20 one to it, then the next one will have two, three, four,
21 five, and then we'll go on up. And so in order to make
22 the scene more visible for all of us to look at through
23 photography I will then put a marker by each droplet, and
24 do that from the beginning of where we believe the scene
25 began all the way down towards the end.

1 Q. And did you use those photo markers at this scene?

2 A. I did.

3 Q. And did you go about your duties of taking pictures
4 of the entire scene and relevant portions thereof?

5 A. I did.

6 Q. Mr. Unterbrink, I'd like to go through some
7 pictures with you.

8 A. Sure.

9 MS. SIMPSON: May I approach the witness, Your
10 Honor?

11 THE COURT: You may.

12 BY MR. SIMPSON:

13 Q. And these are quite a few. Could you just take a
14 brief minute and observe a sampling of those photographs.

15 (PAUSE.)

16 A. Yes, sir.

17 Q. And what are those photographs?

18 A. These photographs begin with the scene, as I
19 described earlier.

20 Q. Right. I'm sorry. We'll walk through the
21 photographs individually on the screen but let me ask you
22 directly, are those the photographs that you took at the
23 scene that day?

24 A. I did, yes.

25 Q. And are they a fair and accurate representation of

- 1 the scene as you observed it on June 12th?
- 2 A. It is. Yes, sir.
- 3 MR. SIMPSON: May I approach, Your Honor?
- 4 THE COURT: You may.
- 5 BY MR. SIMPSON:
- 6 Q. Mr. Unterbrink, if you'll give me a moment. You
- 7 see there's a screen here by the clerks. There's also a
- 8 screen behind you as well as a screen directly in front
- 9 of you. The screen in front of you is a touch screen and
- 10 if you wish to draw any particular attention to a
- 11 photograph you can touch that and we are able to erase
- 12 that one, if you need to.
- 13 A. All right.
- 14 Q. Officer Unterbrink, can you explain to the jury
- 15 what we are looking at here?
- 16 A. We are looking at Aiken Street, looking south.
- 17 Q. Are you fairly familiar with this area?
- 18 A. Fairly.
- 19 Q. Do you know where -- familiar with Martin Park?
- 20 A. Yes.
- 21 Q. And where is Martin Park in relationship to this
- 22 photograph?
- 23 A. Behind.
- 24 Q. Behind. So this is looking down Aiken Street from
- 25 Martin Park?

1 A. Yes, sir.

2 Q. You mentioned that you were called out to
3 photograph process the scene on Aiken Street. Is this
4 the area that you were referring to?

5 A. That's correct.

6 Q. And if you know, what is our cross street here?

7 A. Lee Street.

8 Q. And what is the first cross street that you would
9 come across?

10 A. Cooper Street.

11 MR. SIMPSON: For the record, that's State's
12 Exhibit 5, previously entered into evidence.

13 Q. I'm showing you now what's been marked and entered
14 as State's 6. What can you explain to the jury about
15 that photograph?

16 A. This would be on the street itself, not the
17 sidewalk but on the street, and it had a red color to it.
18 And so I wanted to test it for the o-Tolidine test to see
19 if it did test positive for blood. And so what I am
20 doing here is I am using a cotton swab that I described
21 and on it was a collection of that red substance. And
22 then I put the chemical on it, o-Tolidine, and it turned
23 the red into a bluish-green color.

24 Q. And so the blueish tip that we observed on your
25 cotton swab there that's -- as you previously tested,

1 indicated to you as much as you can at the scene that
2 that substance is blood?

3 A. Right. As soon as it turns that color then we need
4 to treat that substance as blood.

5 Q. And we see here a yellow marker. Is that the photo
6 marker you referred to earlier?

7 A. That's right, photo one.

8 Q. And it has a one next to it. Is that the first
9 observed?

10 A. That's right. That's the beginning.

11 Q. And you mentioned that you moved sequentially, so
12 explain that again.

13 A. With this as being number one and then noticing a
14 series of additional red droplets along the way heading
15 south I put additional markers each one, one number
16 higher than the other to mark the progression further
17 south.

18 Q. Showing you what's been marked and entered as
19 State's Exhibit 6. Can you explain to the jury this
20 photograph.

21 A. We found these red droplets on the street itself,
22 numbers one, two, and three, and then that was it that we
23 saw on the street. And then the droplets were then
24 observed on the western side of that street where number
25 four, five, and six are, and it just progressed on

1 further down south.

2 Q. And so we can see sequentially the numbers sort of
3 trailing off down the sidewalk here?

4 A. That's correct.

5 Q. Continuing with State's Exhibit 8, marked and
6 entered. Does this view continue to walk us down that
7 sidewalk?

8 A. It does.

9 Q. And as we can see, the numbers go up. That's
10 indicating more and more blood spots observed?

11 A. Absolutely.

12 Q. State's Exhibit 9?

13 A. We are approaching the halfway point and continuing
14 on.

15 Q. And the lowest number depicted here is the 22nd
16 blood spot that you located onward?

17 A. It's the 22nd one that I identified.

18 Q. Marked and entered as State's 10?

19 A. It continues on.

20 Q. Marked and entered as State's 11?

21 A. Yes, sir. It continues.

22 Q. Marked and entered as State's 12?

23 A. Yes, sir.

24 Q. Are we approaching Cooper Street at this time?

25 A. We are.

1 Q. Marked and entered as State's 13?

2 A. Yes, sir.

3 Q. Now, something happens at the number 40. Can you
4 explain that to the jury.

5 A. Number 40. Not every single droplets of this red
6 substance that I put a photo marker on because I became
7 aware very soon that I was going to run out. I only have
8 40 markers. So there are a couple of droplets that I did
9 not mark but -- because I knew I was going to run out,
10 and I did. At number 40 I was done but I still had
11 additional blood droplets to continue on to Cooper
12 Street, so what I needed to do was to start over again.
13 And so when we see number 1 show up again that is now
14 going to be number 41.

15 Q. And so when we see it go to 40 to 1, that's just
16 41?

17 A. Forth-one.

18 Q. And what were the total number of blood droplets
19 that you observed throughout the entire trail, if you
20 will, of blood?

21 A. Forty-eight.

22 Q. Forty-eight?

23 A. Yes, sir.

24 Q. Now, we have in those photos sort of a broad
25 perspective. Do you give in your photographs any other

1 perspective of each blood spot?

2 A. I'm not sure of the question.

3 Q. Let me show you State's -- marked and entered as
4 State's 14. Is that merely a close-up view of your first
5 photo marker?

6 A. Yes, sir.

7 Q. State's 15, your marker number 2, is that the same
8 as it applies to number 2?

9 A. That's correct.

10 Q. State's 16, number 3, the same?

11 A. Yes.

12 Q. And I won't bore the jury too much. Is it fair to
13 say that these photographs proceed throughout the entire
14 trail with individual photographs of each blood spot?

15 A. I photographed every single one.

16 MR. SIMPSON: Your Honor, for the record, the State
17 would just note that State's 14 through 44 have been
18 entered previously into evidence.

19 THE COURT: That is correct.

20 BY MR. SIMPSON:

21 Q. So 48 drops of blood?

22 A. That I documented, yes, sir.

23 Q. And you've been in crime scene how many years?

24 A. Eleven.

25 Q. And you noted in your observations that these

1 seemed to follow a path?

2 A. Yes, sir.

3 Q. And what path was that?

4 A. South.

5 Q. Officer Unterbrink, I'm showing you what's been

6 marked and entered as State's 1. Take a second to

7 understand State's 1.

8 A. Yes.

9 Q. Does this depict the scene that you responded to

10 that day?

11 A. It does.

12 Q. And can you indicate to the jury from this exhibit

13 the path that this trail of blood took?

14 A. It would begin approximately here, and south would

15 head this way to the street (indicated).

16 Q. Officer Unterbrink, you've at this point observed

17 and photographed what you had every reason, as certain as

18 you could be on the scene, what you believe is a blood

19 trail, correct?

20 A. Yes, sir.

21 Q. How did you proceed with that?

22 A. It was at that point that I began to collect

23 samples.

24 Q. Okay. And how did you go about collecting those

25 samples?

1 A. I wasn't going to collect every single one, so I
2 collected samples from the beginning, the middle and then
3 the end.

4 Q. And how many of these samples did you take? And
5 just for the jury's edification, when you are looking at
6 some papers there, are those your reports?

7 A. Yes. This is my report.

8 Q. And does referring to those reports reflect your
9 recollection as to how many samples you actually took?

10 A. Yes. I collected one, two, three, four, five, six,
11 seven samples.

12 Q. Okay. And as it corresponds to your photo markers
13 what were the numbers that you took?

14 A. I took a sample from photo marker number 1, 2, 9,
15 25, 37, 41, and 48.

16 Q. And to explain again, what is your purpose in just
17 taking those different numbers?

18 A. I just wanted a sample from the entire length. Not
19 a sample of all but certainly of that length. The
20 beginning, the middle and the end. That would be to me a
21 very inclusive selection.

22 Q. And the purpose in doing so, is that to --
23 essentially to the degree that you are comfortable with,
24 indicate whose blood this is in a blood trail?

25 A. That's correct.

1 MR. SIMPSON: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 BY MR. SIMPSON:

5 Q. Now, in taking these samples of blood from a scene
6 is it your understanding as a long-time crime scene
7 investigator that something is going to be done with
8 these samples later, possibly?

9 A. That's correct.

10 Q. And what is that?

11 A. It will be tested in a lab.

12 Q. Tested for what?

13 A. Blood. To see what it actually is.

14 Q. And is it also possible to do other biological
15 tests on a blood sample?

16 A. Yes.

17 MR. SIMPSON: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. SIMPSON:

20 Q. I'm handing you what's been marked and entered into
21 evidence as State's 47, 48, 49, and 50. Can you take a
22 minute to review those items.

23 (PAUSE.)

24 A. Yes, sir.

25 Q. And what are those items?

1 A. In the package is a container that contains a
2 cotton swab.

3 Q. And do you recognize with any specificity what
4 swabs those are?

5 A. Yes, sir. Those are some of the swabs that I did
6 collect on that day.

7 Q. And can you explain to the jury what -- using your
8 photo numbers what photo numbers those swabs correspond
9 to?

10 A. It does begin with number 1. It includes number 2,
11 number 9, and 37.

12 Q. And again, these numbers are somewhat arbitrary but
13 they are selected to be indicative of the entire trail?

14 A. That's correct.

15 Q. Do you have any personal knowledge of what was
16 later done with those swabs?

17 A. No, sir.

18 Q. But again, those are from the photographs, a swab
19 from photograph 1, 2, 9, and 37?

20 A. Yes, sir.

21 MR. SIMPSON: Court's indulgence.

22 (PAUSE.)

23 BY MR. SIMPSON:

24 Q. Officer Unterbrink, you are familiar with the
25 jurisdiction of the City of Charleston Police Department,

1 correct?

2 A. Yes, sir.

3 Q. Did this scene that you responded to, was it in
4 CPD's jurisdiction?

5 A. It is.

6 Q. Is it located in Charleston County?

7 A. It is.

8 Q. Officer Unterbrink, please answer any questions
9 that Ms. Penn has for you. Thank you.

10 CROSS-EXAMINATION

11 BY MS. PENN:

12 Q. Good morning, Officer Unterbrink. How are you?

13 A. Fine.

14 Q. In those photos the blood starts in the middle of
15 the street, correct?

16 A. That's correct.

17 Q. It doesn't start on the sidewalk?

18 A. My understanding is it looks as though it did start
19 in the middle of the street.

20 Q. Sure. And you numbered the path that you thought
21 the blood droplets took, right?

22 A. That's correct.

23 Q. Starting with 1?

24 A. Yes.

25 Q. And 1 starts in the middle of the street?

- 1 A. Yes.
- 2 Q. And the street is asphalt, correct?
- 3 A. That's correct.
- 4 Q. Now, the length of Aiken Street is 299 feet, right?
- 5 A. Yes.
- 6 Q. And the blood starts about 123 feet in, correct?
- 7 A. That's correct.
- 8 Q. And that's about halfway down. Is that fair to
- 9 say?
- 10 A. Not quite, but it's a little distance out.
- 11 Q. Half of 300 is 150, so pretty close, right?
- 12 A. You are getting close, yes.
- 13 Q. Okay. And let's say that this right here is Lee
- 14 Street (indicated) and Martin Park right here and this is
- 15 Aiken Street (indicated).
- 16 A. Yes, ma'am.
- 17 Q. And if you are looking down this way, away from the
- 18 ball field, the blood droplets are in the middle of the
- 19 street on the right side; is that correct?
- 20 A. That's correct.
- 21 Q. And on Aiken Street there is one street light; is
- 22 that right?
- 23 A. There is at least one that I photographed.
- 24 (WHEREUPON, Defendant's Exhibit Number 1, a
- 25 Photograph, was marked for identification only.)

1 BY MS. PENN:

2 Q. Officer Unterbrink, I'm showing you what's been
3 marked as Defense Exhibit 1. Do you recognize that?

4 A. I do.

5 Q. And what is that?

6 A. It's the Aiken Street -- indicating the street
7 itself, the sidewalk, and some of the buildings.

8 Q. And you took that picture, correct?

9 A. I did.

10 Q. And that's an accurate representation of what it
11 looked like on that day at that time?

12 A. Yes.

13 Q. Thank you.

14 MS. PENN: Your Honor, at this point we'd ask to
15 move Defense Exhibit 1 into evidence.

16 MR. SIMPSON: Without objection.

17 THE COURT: Defendant's 1 into evidence without
18 objection.

19 (WHEREUPON, Defendant's Exhibit Number 1, a
20 Photograph, was admitted into evidence.)

21 BY MS. PENN:

22 Q. Now, in this picture the street light is on the
23 right side, correct?

24 A. On the left.

25 Q. Maybe I'm confused. I thought that picture was

1 looking down away from Martin Park. Am I right or am I
2 wrong?

3 A. Looking down away from the park.

4 Q. Okay. So if we are facing away from the park that
5 street light is on my right? Let me ask it another way.
6 There's only one street like in that picture, correct?

7 A. It is in the photograph, that's right.

8 Q. And that would be on the opposite side of the
9 street from where most of the blood droplets are; is that
10 right?

11 A. I would have to see more of this. I'm under the
12 impression by looking at it that the park is behind me.

13 Q. Do these help you figure out where?

14 A. It might, yes.

15 (PAUSE.)

16 A. Yes, ma'am. It helps.

17 Q. Okay. And based on that photograph -- let me just
18 ask you; where is the blood?

19 A. The blood would be on the right side.

20 Q. Go ahead and mark it, draw a line.

21 A. It would be on this side. This is where all the
22 photo markers were.

23 Q. Fantastic. Thank you. And there's been a lot of
24 talk about a trail of blood. How big is each individual
25 blood droplet?

1 A. We are looking at relatively small, but a quarter
2 of an inch diameter.

3 Q. And you knew that Mr. Jenkins, Mr. Chris Jenkins,
4 the decedent, eventually ended up on Cooper Street,
5 correct?

6 A. That's correct.

7 Q. But the blood stopped before Cooper Street; is that
8 right?

9 A. Just before Cooper Street.

10 Q. And you didn't find any blood on Cooper Street or
11 anywhere in the yard or anything like that?

12 A. Nowhere else.

13 Q. And during the course of your investigation nobody
14 asked you to photograph Mr. Wright, did they?

15 A. No.

16 Q. Thank you very much. I have no further questions.

17 MR. SIMPSON: Very brief.

18 THE COURT: Okay.

19 MR. SIMPSON: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. SIMPSON:

22 Q. Officer Unterbrink, we referred in your direct to
23 individual photographs of each blood spot?

24 A. Yes, sir.

25 Q. Would those be the best source to go on if we were

1 curious as to how big these blood spots were?

2 A. Yes, sir.

3 Q. Are those a fair and accurate representation of
4 each of the 48 blood spots that you found?

5 A. Yes, sir.

6 MR. SIMPSON: Nothing further, Your Honor.

7 MS. PENN: No recross, Your Honor. Thank you.

8 THE COURT: You may step down. Thank you.

9 Call your next witness.

10 MR. SIMPSON: Thank you, Your Honor. The State
11 calls Dr. Nicholas Batalis from MUSC.

12 NICHOLAS BATALIS, M.D., after having been
13 duly sworn, testified as follows:

14 THE CLERK: You're just going to state your name in
15 to the microphone and spell your last for the record.

16 THE WITNESS: My name Nicholas Batalis,
17 B-a-t-a-l-i-s.

18 DIRECT EXAMINATION

19 BY MR. SIMPSON:

20 Q. Dr. Batalis, good morning.

21 A. Morning.

22 Q. I like the beard, by the way.

23 A. Thank you.

24 Q. Who is your employer, currently?

25 A. I'm employed by the Medical University of South

1 Carolina.

2 Q. And in what capacity?

3 A. I'm employed there as a forensic pathologist.

4 Q. Describe for the jury what a forensic pathologist
5 is.

6 A. Sure. Forensic pathology is a field of medicine
7 that specifically deals with the legal side of medicine,
8 most frequently performing autopsies to determine the
9 means in which somebody died.

10 Q. And can you describe for the jury -- it's a long
11 road to become a forensic pathologist; is that correct?

12 A. Yes, it is.

13 Q. And can you describe to the jury a little bit about
14 that personal journey from, you know, coming out of high
15 school all the way to your current position today.

16 A. Sure. After graduating high school I then went on
17 to get a four-year undergraduate degree at Butler
18 University in Indianapolis, Indiana. Following that I
19 went on to four years of medical school, also in Indiana.
20 Once I graduated medical school I came down here to
21 Charleston at MUSC for a four-year of training in general
22 pathology.

23 So general pathology would include anatomic
24 pathology, which is if you get -- a surgeon takes a
25 biopsy or a tumor the pathologist would be the one to

1 determine is it cancer, is it benign. We're also the
2 ones who would help your physician determine, if you got
3 some blood work drawn, as pathologists we would help them
4 interpret what's going on with your blood work.

5 So after completing the four years of general
6 pathologist training I passed a national exam to become
7 board certified, then went on to do one year of specialty
8 training just in forensic pathology at the Dallas County
9 Medical Examiners Office in Dallas, Texas. So that year
10 was just focussed on forensic pathology. After that year
11 was over I then passed another national board exam to
12 become board certified in forensic pathology.

13 Q. Just to briefly review, a four-year undergraduate
14 degree?

15 A. Yes.

16 Q. A regular medical doctorate degree?

17 A. Yes.

18 Q. And how long is that process?

19 A. Four years for medical school.

20 Q. An additional four years in general pathology?

21 A. Yes.

22 Q. Which follows an exam?

23 A. Yes.

24 Q. I imagine a fairly extensive one?

25 A. Yes.

- 1 Q. And then an additional year in forensic pathology?
- 2 A. Correct.
- 3 Q. Also followed by an exam?
- 4 A. Correct.
- 5 Q. Now, in your field is this a field in which
- 6 education ceases once you are certified?
- 7 A. No. In forensic pathology medicine in general we
- 8 continue to do continuing education requirements that we
- 9 have to fulfill for each year on an ongoing basis.
- 10 Q. And did you personally continue with certifications
- 11 and education, continuing education since you've been a
- 12 forensic pathologist?
- 13 A. Yes. I've kept up with all my standards.
- 14 Q. And how long again have you been a forensic
- 15 pathologist?
- 16 A. Just under six years that I've been practicing full
- 17 time.
- 18 Q. And you stated that the lion's share or the major
- 19 job of your job is the performing of autopsies?
- 20 A. Yes. That's correct.
- 21 Q. And if you -- I know you can't do this exactly, but
- 22 if you had to guess how many autopsies do you think
- 23 you've performed over the course of your career?
- 24 A. At this point over a thousand, probably somewhere
- 25 around 1500 autopsies.

1 Q. Best guess?

2 A. Yes.

3 Q. In your capacity as a forensic pathologist have you
4 ever been qualified as an expert in court before?

5 A. Yes. I've been qualified as an expert in Texas,
6 North Carolina and South Carolina.

7 Q. And did you testify in that capacity as an expert?

8 A. Yes, I did.

9 Q. Thank you, Doctor.

10 MR. SIMPSON: At this time the State would seek to
11 qualify Nicholas Batalis as an expert in forensic
12 pathology.

13 MS. PENN: Without objection, Your Honor.

14 THE COURT: Ladies and gentlemen, normally a person
15 cannot give opinion testimony when they testify.

16 Typically when a person testifies they must testify as to
17 either what they saw, heard or sensed by smell or
18 something of that nature. There is an exemption in our
19 laws that someone may give opinion testimony if they are
20 qualified because of their education or experience.

21 This witness will be qualified in the area of
22 forensic pathology to give opinion testimony in that
23 area. That does not mean that you must accept the
24 opinion. It is simply the evidence for you to use in any
25 way that you see fit.

1 Mr. Simpson.

2 MR. SIMPSON: Thank you, Your Honor.

3 BY MR. SIMPSON:

4 Q. Dr. Batalis, can you explain to the jury a little
5 bit, generally speaking, about what an autopsy is and
6 what procedure you follow in performing an autopsy?

7 A. Sure. Generally what would happen, when a case is
8 presented to us we would get called from one of the
9 coroners in South Carolina. They would tell us that they
10 have a case that they'd like us to examine. They will
11 give us some brief history.

12 We then bring the body into the autopsy suite where
13 we perform a set of photographs that we call our as-is
14 photographs, before we do any manipulation to the body
15 whatsoever. After we take those photographs we then
16 disrobe the body, inventory clothing, personal effects,
17 and get the body cleaned up, take another set of
18 photographs of the body to show how the body is after
19 everything has been cleaned up.

20 At that point we then move on to the external
21 examination, which is basically looking at the body from
22 head to toe, looking for any signs of injury, but also
23 identifying hair color, eye color, any tattoos, scars,
24 any features that we see significant on the outside of
25 the body.

1 Once we finish the external examination we then
2 move on to the internal examination. For this we make
3 surgical type incisions to open the body and then examine
4 each of the major organs one by one, again looking for
5 any evidence of trauma or injury.

6 During this process we may also take small sections
7 of the organs to look at under the microscope to see if
8 we can see any changes at the microscopic level, also
9 collect different samples of body fluid to send for
10 toxicology testing.

11 Once that's all done we get the report together and
12 typically produce a report that's usually somewhere
13 between four and six pages, after we are finished.

14 Q. And, Doctor, you mentioned sending off bodily
15 fluids for toxicology purposes. You would get the
16 results back from another trusted source of that
17 toxicology report?

18 A. Yes. We send these samples to a nationally
19 accredited forensic laboratory. They do the testing.
20 They then provide the results back to us to interpret and
21 incorporate into our report.

22 Q. And are those results something that you rely upon
23 in making -- may be relevant that you rely upon in making
24 your final conclusion?

25 A. Yes. We definitely consider the toxicology

1 findings in determining our cause or manner of death.

2 Q. Doctor, moving on to the autopsy you performed
3 here; did you have occasion on June 12, 2010 to conduct
4 an autopsy on one Christopher Jenkins?

5 A. Yes, I did.

6 Q. You explained to the jury that you begin with an
7 external examination?

8 A. Yes. That's correct.

9 Q. Could you describe for the jury the things you
10 observed from the external examination of Christopher
11 Jenkins.

12 A. Sure. The most significant findings externally on
13 Mr. Jenkins, there were four or five things. One, he had
14 a tear of his skin just outside the left eye. So a small
15 tear about a quarter of an inch, we'll call a laceration.
16 He also had a scrape on the lower lip, two scrapes on
17 right knee, and then about a three-inch bruise on the
18 upper left side of his chest.

19 Q. And again, those were the observations of the
20 external body of Christopher Jenkins?

21 A. Yes. That was the external findings that showed
22 some evidence of trauma on the external examination.

23 Q. If I heard you correctly, a bruise to the chest?

24 A. Correct.

25 Q. A laceration to the eye?

1 A. Just outside the left eye.

2 Q. And lacerations to the lip on the face?

3 A. Scrapes or abrasions on the lip and then on the
4 right knee as well.

5 Q. On the right knee as well. Moving on now to the
6 internal examination of Christopher Jenkins. What did
7 you observe?

8 A. So the notable thing on the internal examination,
9 once we open the body, again by a surgical-type incision,
10 we identified that 10 of the 12 ribs on the right side
11 were all fractured almost in a straight line along the
12 posterior aspect. So that would correspond to basically
13 all of the ribs -- or 10 of the 12 ribs on the right side
14 of the back were all fractured almost in a straight line.

15 Along with these rib fractures there was
16 significant bleeding or bruising into the muscle of the
17 upper right side of the back, then a significant amount
18 of bleeding into the chest cavity around the right lung.

19 A typical individual, which based on his length and
20 weight he was an average size individual, you would
21 expect a person like that to have about five liters of
22 blood in their system, and we recovered about 2500
23 milliliters of blood in his right frontal cavity. So
24 essentially almost half of the blood that should have
25 been circulating through his body was sitting in the

1 cavity around his right lung.

2 Q. And what are the medical effects of a person having
3 nearly half of their blood bleed internally into that
4 cavity?

5 A. So there would be multiple effects. The main thing
6 that your blood serves a purpose to is to deliver oxygen
7 to your different tissue. So if you have half of your
8 blood volume that's sequestered, you know, put away so it
9 can't deliver the blood to the tissues, that could affect
10 all sorts of injuries to different organs; your kidneys,
11 your brain, your heart.

12 In addition, as that blood aggregates or
13 accumulates around the right lung there's only so much
14 space that sits in that cavity, so it's going to inhibit
15 the ability of that right lung to really open up and
16 close down to breathe like you really should. So the
17 combined effects would be decreased amount of oxygen that
18 the body's vital tissues, organs would see over time.

19 Q. I'm going to backtrack to an observation you made.
20 You said 10 of the 12 ribs were broken on the rear right
21 side; is that right?

22 A. Yes.

23 Q. In a straight line?

24 A. Yes, a nearly straight line.

25 Q. Is there any significant medical conclusions you

1 could draw from that being -- that break being -- and
2 correct me if I'm using the wrong determination, but a
3 clean break in a straight line?

4 A. Yes. It can help us, you know, try and determine a
5 little bit about how these rib fractures came about. You
6 know, if we had rib fractures that were on both sides or
7 even on just one side but some were on the front, some
8 were the side, some were on the back, that would make me
9 think that there were multiple impacts, you know,
10 multiple touches, maybe in a car accident where they are
11 thrown around to get breaks in different locations.

12 Seeing them in one location like that would most
13 likely mean that there was an impact site along that
14 area. Ribs are often fractured where they are struck so
15 it's a significant amount of force striking the right
16 side of the back to do this.

17 The other thing is that your ribs along with your
18 chest plate and your spine essentially form a circle. So
19 if you can press those ribs enough, and not necessarily
20 on the back, but you could be on the chest, you could be
21 on the side but if you compress the ribs or the chest
22 enough you could get a fracture where they would all
23 occur in the same spot as well.

24 Q. So if I understand your observations you said that
25 the actual spot of the force could have been on the front

1 or the back?

2 A. Correct.

3 Q. And again, you demonstrated because of the
4 pressure?

5 A. Correct.

6 Q. Would the amount of force needed to make such a
7 break of 10 of the 12 ribs, would that be a significant
8 amount of force?

9 A. Yes. The type of injuries to have in this location
10 and this number of fractures is something we more
11 typically see in motor vehicle accidents or car
12 accidents. We do see rib fractures occasionally from a
13 fall but that would typically be maybe one or two rib
14 fractures and not in that posterior type of location.

15 Q. Would the injuries you observed to the ribs be
16 consistent with -- and I know you can't say that this is
17 what it was but would the injuries be consistent with a
18 forceful stomp of someone that was on the ground to that
19 area?

20 A. That's one way in which the fractures could occur.

21 Q. You noted in your report, also, and maybe this is a
22 good contrary example to give to the jury, there were two
23 other rib breaks that you observed; is that correct?

24 A. Yes. In addition to the rib fractures on the back
25 the second and third ribs on the, kind of anterior

1 lateral, so the front right of the chest were also
2 fractured. When we see fractures in this area here in
3 the front of the chest that certainly could be due to a
4 traumatic incident, again, from being struck or the chest
5 being compressed but when they are on the front or the
6 side those rib fractures could also be caused by
7 resuscitation.

8 So I believe Mr. Jenkins was resuscitated, did
9 receive some CPR type action so I can't rule out that the
10 futures in the front could have been caused by
11 resuscitation, but again, resuscitation would not cause
12 rib fractures along the back.

13 Q. And so if I understand you, you are a professional,
14 correct?

15 A. Yes.

16 Q. An expert in this field?

17 A. Yes.

18 Q. Is it important to you that if you can't make a
19 concrete determination that you answer questions honestly
20 like you just did and say, Hey, I can't tell you that
21 this came from an assault? This could have come from
22 resuscitation. That's an important concept about being
23 any type of professional, right, candor in your
24 conclusions?

25 A. I believe so.

1 Q. And so on the two rib fractures to the front you
2 testified, correct me if I'm wrong, that these very well
3 could have come from the assault?

4 A. They could have.

5 Q. But they also could have come from resuscitation?

6 A. Yes.

7 Q. The injuries, the 10 rib fractures in the straight
8 line on the rear right, could those have come from
9 resuscitation, in your experience?

10 A. Extremely, extremely unlikely that it would come
11 from resuscitation.

12 Q. Would they require a greater force than needed in
13 the resuscitation?

14 A. Yes.

15 Q. Any conclusions in that regard you can make from
16 the amount of blood that you found on the internal cavity
17 of Christopher Jenkins?

18 A. I'm sorry. I'm not sure I quite understand your
19 question.

20 Q. Would a person to -- and I believe you categorized
21 it as half of the person's blood, you observed the
22 internal injuries, correct?

23 A. Yes.

24 Q. Can you make any observations about how long it
25 would have taken for that amount of blood to essentially

1 drown Christopher Jenkins from those injuries?

2 A. How fast the blood accumulates is going to depend
3 on a lot of factors. If somebody gets -- if there's a
4 gunshot and it's shot through the heart or aorta or a
5 major blood vessel somebody could accumulate that amount
6 of blood in a matter of seconds to minutes if you rupture
7 an artery that is really rapidly bleeding.

8 With the injuries he had he didn't have any
9 ruptures of the heart or lungs, any really big organs but
10 because of the breaks in the ribs and the small blood
11 vessels along the ribs that's where the bleeding would
12 have come from.

13 Accordingly, the blood would kind of seep out much
14 slower than somebody who has a stab wound or a gunshot
15 wound. So it's impossible to say exactly how long it
16 would take but certainly with his injuries you would
17 expect it to be more in the line of hours than seconds or
18 minutes.

19 Q. And did that in any way further support your
20 conclusions that the 10 rib fractures did not come from
21 resuscitation?

22 A. It further added to it. Based on the location and
23 the number of rib fractures, again, resuscitation was
24 almost completely ruled out. I'm not sure the bleeding
25 really furthered my conclusion any more.

1 Q. But you have to a degree of medical certainty ruled
2 out resuscitation as a source of the 10 rib breaks?

3 A. Yes.

4 Q. And what following the external and internal exam
5 of Christopher Jenkins, what did you conclude was the
6 cause of death?

7 A. I concluded that the cause of death was blunt force
8 trauma to the chest.

9 Q. And what does that phrase blunt force trauma mean?

10 A. So blunt force trauma means the person was struck
11 with an object or struck a surface with an object that
12 has a blunt or a non sharp side. So as opposed to a stab
13 wound or a gunshot wound there's an impact with a blunt
14 object which could be a fist, a board, the ground, so
15 some sort of blunt trauma like that that was impacted on
16 the chest is what led to the death.

17 Q. And just to be careful. A foot would also
18 categorize as a source of blunt force?

19 A. Yes.

20 Q. And what did you then conclude was the manner of
21 Christopher Jenkins' death?

22 A. The manner of death was homicide.

23 Q. Doctor, there was some evidence of possible
24 seizure-like conditions either previously or from the
25 incident. Could you make any observations about some

1 kind of behavior that would be consistent with what a
2 layperson might call a seizure?

3 A. I'm sorry. Could you rephrase?

4 Q. A person in Christopher Jenkins' condition, is it
5 true would have fairly rapidly deteriorating overall
6 health; is that correct?

7 A. Yes.

8 Q. Would a person in that condition perhaps show
9 symptoms that might be fit with what a layperson would
10 call a seizure?

11 A. Yes. When individuals are dying from any cause
12 near those terminal few moments, again, it could be from
13 an injury like this, blunt force trauma, a heart attack,
14 but as people are kind of entering those final phases
15 immediately before death it's not uncommon at all to have
16 seizure-like activity.

17 Q. And what do you mean by seizure-like activity?

18 A. So everything you would expect in a seizure;
19 shaking, eyes rolling back, all of those sorts of things.
20 That's as opposed to just a regular seizure when that
21 would come about when somebody is sitting there normally,
22 you know, not on the brink of death.

23 Q. Doctor, I want to ask you a pretty direct question
24 here. Does the fact that someone may have observed these
25 seizure-like activities on the day in question or the

1 fact that someone may have had a seizure, say from
2 detoxing in the past, do any of those observations cast
3 in your mind as an expert forensic pathologist any doubt
4 whatsoever as to your conclusions in this case?

5 A. No. This decedent died due to the blunt force
6 trauma. Any seizures he may have had, again, may have
7 been a complication as he was dying but did not cause or
8 contribute to the death.

9 Q. And to use some lay terminology with you, was this
10 a -- was the cause of death in this case, after you
11 performed this autopsy, was this a difficult call?

12 A. I'd say no.

13 Q. Okay. Wasn't like an episode of House where a
14 riddle had to be solved, was it?

15 A. No. This wasn't a difficult case, as we do have
16 several other doctors like myself will discuss them if we
17 have any trouble and we think it's kind of on the brink
18 but this is one that was straightforward enough that it
19 was fairly obvious.

20 Q. So to a person with your extensive training the
21 cause of death in this case would you view as readily
22 apparent to you once the autopsy was performed?

23 A. I believe so.

24 Q. And to a degree of medical certainty you don't
25 believe seizures had anything to do with this cause of

1 death?

2 A. I do not.

3 Q. We referenced earlier a toxicology report. Did you
4 perform that in this case?

5 A. We did submit toxicology to our national
6 laboratory.

7 Q. And would you as part of making your conclusions in
8 this case have reviewed those findings and relied upon
9 them in making your conclusion?

10 A. Yes. I would have reviewed them and interpreted
11 them to determine whether they were significant in the
12 death.

13 Q. And what were the results of that toxicology screen
14 of Christopher Jenkins?

15 A. So we tested blood that we obtained at the autopsy
16 and it was positive for only three substances. One is a
17 drug called atropine, which is commonly used by EMS or
18 physicians in the emergency room to revive the heart or
19 resuscitate somebody. He also had caffeine in his
20 system, and then the drug called Naprosyn, which is an
21 antiinflammatory drug. If you've ever taken Aleve,
22 that's what Naprosyn is. Similar to ibuprofen.

23 Q. So present in his system was a drug commonly used
24 by EMS in treating somebody?

25 A. EMS and physicians, yes.

- 1 Q. Caffeine?
- 2 A. Yes.
- 3 Q. And something you would get from Aleve?
- 4 A. Yes.
- 5 Q. Any alcohol in his blood at the time the toxicology
- 6 report was done?
- 7 A. There was no alcohol whatsoever.
- 8 Q. Any narcotics such as cocaine, marijuana?
- 9 A. No.
- 10 Q. The three we discussed were the only results from
- 11 the toxicology screen?
- 12 A. Yes, and just for an idea for the jury, our screen
- 13 tests for three to 400 different drugs including all the
- 14 different drugs of abuse such as cocaine, heroin,
- 15 alcohol, as well as numerous, numerous medications as
- 16 well.
- 17 Q. And none present other than those you've already
- 18 testified to?
- 19 A. Correct.
- 20 Q. In conclusion, Dr. Batalis -- oh, I forgot. I
- 21 missed something. In part of your external examination
- 22 of Christopher Jenkins would you gauge a person's height?
- 23 A. Yes.
- 24 Q. And what was your conclusion as to Christopher
- 25 Jenkins' height?

1 A. We measured him to be 71 inches in length which
2 would correspond to 5-foot-11 inches.

3 Q. And what was 'Christopher Jenkins' weight?

4 A. His weight was 150 pounds.

5 Q. So roughly my height?

6 A. I believe so.

7 Q. Without measuring me, but your observations, my
8 height?

9 A. Yes.

10 Q. And about 50 pounds lighter. I won't make you
11 guess my weight. But does that seem reasonable to you?

12 A. Approximately, yeah.

13 Q. And again, your conclusion as to cause of death
14 after all of your work was done?

15 A. The cause of death was the blunt force trauma of
16 the chest.

17 Q. And manner of death?

18 A. The manner of death is homicide.

19 MR. SIMPSON: Your Honor, may I approach the
20 witness?

21 THE COURT: You may.

22 BY MR. SIMPSON:

23 Q. Dr. Batalis, I'm going to hand you what's been
24 marked and entered as State's 51. There's an item within
25 that envelope. If you can take a moment and take a look

1 at that. Do you recognize the labeling on that smaller
2 envelope?

3 A. Yes, I do.

4 Q. And what is that?

5 A. This is a -- what we call a blood spot. So in the
6 course of autopsies we will take a sample of the
7 decedent's blood. As we mention, one sample we sent to
8 national laboratory for toxicology testing, another we
9 put on to a filter paper that can be used for DNA testing
10 for years and years into the future. So what we have
11 here is the blood spot that we submitted to authorities.

12 Q. You say submitted to authorities; would that
13 typically be given over to the investigating agency
14 handling the case?

15 A. Yes.

16 Q. Thank you so much for your time, Dr. Batalis. I
17 know you are busy. Please answer any questions that
18 Ms. Penn has for you.

19 THE COURT: Ms. Penn?

20 MS. PENN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. PENN:

23 Q. Morning, Dr. Batalis.

24 A. Good morning.

25 Q. You testified that a stomp was one possibility for

1 what could have caused the fractures, correct?

2 A. Correct.

3 Q. And there are other things that could have caused
4 the fractures, correct?

5 A. Yes.

6 Q. And the reason you think the fractures are
7 consistent with a stomp is because there are 10 going
8 down the back and they are all kind of lined up; is that
9 right?

10 A. Well, just to clarify, I didn't say I think they
11 are due to a stomp, but it's one reason it would be
12 consistent with that, the fact that a foot is long enough
13 and broad enough that it could cause an impact to fracture
14 enough ribs in one impact in that straight line we are
15 talking about.

16 Q. And it could have been other things than a stomp,
17 correct?

18 A. Correct.

19 Q. It could have been a forearm coming down on
20 somebody; is that correct?

21 A. With a great deal of force, correct.

22 Q. Sure. If somebody fell on Mr. Jenkins with, say,
23 their forearm or even their shin that could have caused
24 the breaks; is that correct?

25 A. I don't know about a simple fall. Maybe if there

1 was, again, some additional pressure kind of more of a
2 jumping into. I don't know that a fall itself would be
3 able to generate enough force to cause these fractures.

4 Q. But it's possible; is that true?

5 A. Unlikely, but possible.

6 Q. Okay. And let's talk about these fractures for a
7 second. When you say fractures and you say ribs, the
8 ribs are generally pieces of bone, and when you say
9 fracture you don't mean that the bone is snapped, right?

10 A. Not necessarily snapped in half but it is at least
11 flexed enough or impacted enough to cause a break in it.
12 It doesn't mean, again, that -- you know, your rib is a
13 long bone. It doesn't mean it's broken completely in two
14 but it could be flexed so there's just breaks in part of
15 it.

16 Q. And on Mr. Jenkins about how big was each break?

17 A. So ribs are maybe about half of an inch wide and
18 most all the fractures went the entire height of the rib
19 but did not go all the way through it. So the rib
20 fractures were -- again, each one was about a half of an
21 inch long.

22 Q. And you testified to this a little bit earlier but
23 because the ribs are circular you just are not sure where
24 the force was applied?

25 A. Yes. Usually ribs -- not usually but most

1 frequently will be fractured at the point of impact, so
2 being struck in that location. But again, there's a
3 large percentage of time where it's not from the direct
4 impact but from pressure, and if it's that scenario it
5 could be from any different area.

6 Q. And on the outside of Mr. Jenkins' body there were
7 no obvious bruises or marks to direct you to give you an
8 idea as to where the pressure came from?

9 A. Yeah. The only bruising that we saw on the outside
10 of his body was about a three-inch bruise on the upper
11 left side of the chest.

12 Q. And besides that internal trauma and the small cuts
13 you already mentioned Mr. Jenkins didn't have black eyes?

14 A. No.

15 Q. He did not have a fractured skull?

16 A. No.

17 Q. He did not have a concussion?

18 A. I can't speak to a concussion. A concussion is
19 more of a physiologic thing that would happen. It's not
20 anything that we would see at the autopsy. So somebody
21 could have a concussion without any bleeding or skull
22 fractures but from our point of view we did not see any
23 bleeding around the brain, any bruises of the brain or
24 any skull fractures.

25 Q. Thank you. And you didn't see a broken nose?

- 1 A. No.
- 2 Q. Or any broken teeth?
- 3 A. No.
- 4 Q. Just abrasions on the knees, correct?
- 5 A. That's one of the injuries, yes.
- 6 Q. And a small cut, I think you said on the left eye
- 7 and something on the lip?
- 8 A. Right. Scrape on the lower lip.
- 9 Q. And there was no asphalt embedded in Mr. Jenkins
- 10 body, was there?
- 11 A. I did not observe any, no.
- 12 Q. This injury is not one that you would think
- 13 immediately fatal, correct?
- 14 A. Correct.
- 15 Q. And if Mr. Jenkins had gone to the hospital sooner
- 16 he would have had a pretty good chance of surviving; is
- 17 that fair to say?
- 18 A. It would certainly depend on how much sooner
- 19 between the time of the incident and time of death.
- 20 Certainly the sooner that he presented during the course
- 21 his chances would have been better. So if he would have
- 22 presented two hours before he died it may have been too
- 23 late at that time but if it was immediately after the
- 24 incident then I'd say he would have had a pretty good
- 25 chance of surviving.

1 Q. You testified earlier that at the time you did the
2 autopsy when you did the tox screen there was no alcohol
3 in the body?

4 A. Correct.

5 Q. But just because there was no alcohol at the time
6 of the autopsy that doesn't mean that there was no
7 alcohol in Mr. Jenkins' system during the fight?

8 A. I don't know exactly when the incident occurred but
9 if it was a number of hours before that he died he could
10 have digested or metabolized any alcohol that was in his
11 system.

12 Q. Sure. So the autopsy was done on the morning of
13 June 12th?

14 A. Correct, at 9:00 a.m.

15 Q. And Mr. Jenkins' death was June 11th?

16 A. Correct at 5:54 p.m.

17 Q. And if the fight that we are talking about was the
18 evening of June 10th that's plenty of time to metabolize
19 any alcohol?

20 A. Correct. That would be, you know, roughly 18 to 24
21 hours before death, so he could have metabolized the
22 alcohol. Again, it would depend on how much. If there's
23 an extremely high level in his system at that time even
24 after metabolism there would still be some left but
25 certainly if it was a lower level he could have

1 metabolized it.

2 Once you do die though the alcohol level would not
3 be any further metabolized, so we do know that even
4 though we performed the autopsy on June 12th, on the June
5 11th when he died he obviously did not have alcohol in
6 his system.

7 Q. As part of your autopsy did you look at internal
8 organs?

9 A. Yes.

10 Q. And one of those organs is the liver?

11 A. Yes.

12 Q. And what did Mr. Jenkins' liver tell you about him?

13 A. So his liver had a condition what we call
14 steatosis. So steatosis means there is extra fat cells
15 accumulating within the liver itself. This is a
16 nonspecific process so some people could have this from a
17 drug they are on but other times you do see it in people
18 who chronically ingest alcohol. That's one of the more
19 common places that we'll see steatosis. But again, it
20 can happen with other drugs and other medical conditions.

21 Q. And to chronically ingest alcohol means he drank a
22 lot. Is that fair to say?

23 A. To cause steatosis to this degree if alcohol was
24 the cause, yes, it would be a fairly heavy amount for,
25 you know, more than just one occasion. I can't say the

1 exact number but it would be more of a chronic issue.

2 Q. Thank you very much.

3 MS. PENN: Thank you, Your Honor. Nothing further.

4 MR. SIMPSON: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. SIMPSON:

7 Q. Dr. Batalis, I want to highlight a phrase that you
8 used in cross-examination. Ms. Penn asked you could this
9 have been a fall and you said it -- you expressed some
10 reservations with that?

11 A. Yes. I don't think a fall by itself would really
12 generate enough force to cause, again, the number of rib
13 fractures in that location.

14 Q. And I believe, correct me if I'm wrong, but the
15 phrase that you used on cross-examination was something
16 inflicted, quote, with a great deal of force. Is that
17 correct?

18 A. I believe so.

19 Q. And, again, you said the break in the ribs while
20 not separating the ribs did run along the entire side of
21 the ribs; is that correct?

22 A. Correct. Your ribs are separated by about -- the
23 ribs, like I said, they are about the size of your
24 finger, about a half of an inch. Then you have some
25 muscle in between and then the next rib. So there was

1 muscle in between that was not fractured because there's
2 no bone there but all the ribs were fractured right in
3 line.

4 Q. And fractures to a degree that they lacerated the
5 muscle also around those ribs?

6 A. Some of them did, the muscle and the small blood
7 vessels that run along the ribs.

8 Q. And again, this break runs along the entirety of
9 the 10 of 12 ribs?

10 A. Correct.

11 Q. And again, I'm going to quote you. Tell me if I
12 get you wrong, but when asked if this could come from a
13 forceful blow of the foot -- and again, you weren't
14 there, correct?

15 A. Nope.

16 Q. But that would be consistent with your medical
17 observations?

18 A. That's one way in which the fractures could have
19 occurred.

20 Q. And when asked if they could have occurred in some
21 of the hypotheticals that Ms. Penn gave to you I believe
22 your direct quote was, Possible but unlikely?

23 A. I believe that was to one specific. I believe that
24 was maybe to referencing falling. I know that she had
25 another one. I think she mentioned a forearm and I said

1 that would definitely be plausible with a great deal of
2 force, but I think that was specifically one of her
3 scenarios.

4 Q. And with the phrase, Only if they came with a great
5 deal of force?

6 A. Correct.

7 Q. Ms. Penn asked you if Mr. Jenkins could have
8 survived had he received earlier medical attention, and
9 you answered quite candidly. His chances would have
10 gotten better depending on had it happened right after
11 the assault, at what point in the timeframe he called,
12 correct?

13 A. Correct.

14 Q. The earlier he received attention the better his
15 chances would have been?

16 A. Correct.

17 Q. Now, any sort of injury that requires an opening up
18 of the body cavity runs some risk of not making it; is
19 that correct?

20 A. I'm sorry. Could you rephrase?

21 Q. What kind of medical attention would he have needed
22 had he gotten to the hospital earlier?

23 A. Based on the fact that he had rib fractures they
24 would have probably needed to -- and with the bleeding to
25 insert a tube into his chest to draw the blood that was

1 accumulating along the lung. They would have needed to
2 insert a tube to draw that blood away so that the lung
3 can function properly.

4 In addition, he would have needed blood
5 transfusions to replace the blood that he was losing into
6 the chest cavity. The rib fractures themselves, they
7 generally -- again, I'm not a trauma surgeon but
8 generally they don't go in and fix rib fractures. It's
9 more just kind of getting the bleeding to stop.

10 Q. But we'll be candid. Had he sought medical
11 attention quicker he would have had, directly after the
12 assault, a pretty good fighting chance?

13 MS. PENN: Objection, Your Honor. Asked and
14 answered.

15 THE COURT: Let him finish his question. Thank
16 you.

17 BY MR. SIMPSON:

18 Q. In layperson's terms he would have had -- is it
19 true that he would have had a pretty good fighting chance
20 had he gotten medical attention immediately?

21 A. I would say he would have had an excellent change
22 immediately.

23 Q. And does that progressively get worse as time goes
24 on?

25 A. Yes. As the bleeding continued to occur you can

1 get more and more organ damage, so the chances of
2 surviving become less as the hours pass by.

3 Q. Ms. Penn asked you a little bit about alcohol
4 metabolizing and how the body processes alcohol; is that
5 correct?

6 A. Yes.

7 Q. Once the body ceases to live does that process
8 stop?

9 A. Yes. The process will stop at that point. In
10 fact, if a body sits there for three our four days after
11 they are dead as bacteria starts to consume the body you
12 can actually -- the bacteria can produce alcohol. So
13 sometimes the body if it goes several days alcohol will
14 become more present, but it would never go away after
15 someone has died.

16 Q. So you said even though you didn't perform this
17 autopsy until the 12th you can say that on the 11th he
18 had no alcohol in his system?

19 A. Correct. When he died at 5:54 p.m. there was no
20 alcohol in his system.

21 Q. Now, what about the blood that seeps into the
22 internal cavity? Does that blood cease to be processed
23 and to metabolize alcohol in that blood that's no longer
24 running through the circulatory system?

25 A. Yes. That would actually cease to metabolize

25 A. Not at all.

1 Q. This is a case where there are small fractures that
2 bleed out over the span of many hours, correct?

3 A. Correct.

4 Q. And had Mr. Jenkins died soon after a fight and
5 then had an autopsy done if there was alcohol present it
6 would show up on a tox screen, correct?

7 A. Correct.

8 Q. But because there's time from when the fight
9 happens and when he dies the alcohol could very well have
10 been metabolized by then, correct?

11 A. Correct.

12 Q. Meaning it would be gone from the body and wouldn't
13 show up in the test?

14 A. Correct.

15 Q. Thank you.

16 MS. PENN: Thank you, Your Honor. I have no
17 further questions.

18 THE COURT: You may step down. Thank you.

19 Call your next witness.

20 MR. SIMPSON: Thank you, Your Honor. At this time
21 the State would seek to enter into evidence and publish
22 to the jury a stipulation between myself and defense
23 counsel.

24 THE COURT: All right. Ladies and gentlemen, a
25 stipulation is simply an agreement between the parties,

1 and what that is for you all is of benefit because
2 they've agreed that the witnesses don't have to come in
3 and testify. So this is an agreement between the State
4 and the defendant.

5 And will you publish the stipulation?

6 MR. SIMPSON: I will, Your Honor.

7 THE COURT: Thank you.

8 MR. SIMPSON: Your Honor, for the record I would
9 note that this has been marked as State's 57 and we would
10 seek to enter it into evidence without objection at this
11 time.

12 THE COURT: All right. Please read the
13 stipulation.

14 MR. SIMPSON: In the State vs. Robert Lee Wright,
15 the State and the defense agree that on June 12, 2010
16 Randall Unterbrink, the City of Charleston Police
17 Department Crime Scene Unit, collected blood samples from
18 the area of Aiken Street between Lee Street and Cooper
19 Street. Four of these samples were properly recovered,
20 properly secured and sent to the South Carolina Law
21 Enforcement Division's DNA lab for comparative analysis.

22 Likewise, on June 13, 2010, J. C. Miller, also with
23 the City of Charleston Police Department Crime Scene
24 Unit, collected a sample of Christopher Jenkins' blood
25 from the MUSC Medical Examiner's Lab, Department of

1 Pathology. This blood sample was properly recovered,
2 properly secured and sent to South Carolina Law
3 Enforcement Division's DNA lab for comparative analysis.

4 Likewise, on June 16, 2010, Detective Barry
5 Goldstein executed a buccal swab for Defendant Robert
6 Wright's DNA. This buccal swab was properly recovered,
7 properly secured and also sent to the South Carolina Law
8 Enforcement Division's DNA lab for comparative analysis.

9 For all of these biological samples, from recovery
10 to submission to Matthew G. Fitts, Ph.D., a DNA expert
11 with the South Carolina Law Enforcement Division's DNA
12 lab, all requisite procedures regarding proper chain of
13 custody were adhered to.

14 The following submission by the City of Charleston
15 Police Department to SLED; the four samples of blood
16 collected from Aiken Street, the known DNA sample of
17 Christopher Jenkins, and the known DNA sample from the
18 defendant, Robert Wright, were presented to Matthew G.
19 Fitts, Ph.D., a DNA expert at the South Carolina Law
20 Enforcement Division's national accredited DNA lab, for
21 comparative analysis.

22 Dr. Fitts performed DNA comparative analysis on all
23 of the submitted samples. Dr. Fitts concluded, pursuant
24 to scientifically accepted principles of forensic DNA
25 testing, that all four blood samples collected on Aiken

1 Street matched the known DNA profile of Christopher
2 Jenkins. He also concluded the probability of another
3 unrelated individual having a DNA profile matching these
4 samples is approximately one in one quintillion.

5 Because the State and the defense agree that a
6 proper chain of evidence can be established on these
7 items and agree with the analysis of SLED's DNA expert
8 testimony establishing these facts is not necessary in
9 the present trial.

10 THE COURT: Was the stipulation correctly read,
11 Ms. Penn?

12 MS. PENN: It was, Your Honor. Thank you.

13 THE COURT: Do you wish to have it entered into
14 evidence as State's Exhibit 57?

15 MS. PENN: I have no objection to that, Your Honor.

16 THE COURT: All right. State's 57 into evidence
17 without objection.

18 (WHEREUPON, State's Exhibit Number 57, a
19 Stipulation, was admitted into evidence.)

20 MR. SIMPSON: Thank you, Your Honor.

21 THE COURT: Call your next witness.

22 MR. SIMPSON: Your Honor, at this time the State
23 rests.

24 THE COURT: Ladies and gentlemen, there's a matter
25 of law that I must take up outside of your presence. Do

1 not begin your deliberations, do not discuss this case
2 amongst yourselves.

3 Ladies and gentlemen, I also have some other
4 matters unrelated to this case that I'm trying to handle
5 as well. So it will be just a few moments. And so
6 please enjoy your break.

7 Make sure that they have some snacks and drinks.

8 All right. Thank you. Please rise for the jury.

9 (WHEREUPON, the jury leaves the courtroom at
10 approximately 10:35 p.m.)

11 THE COURT: Thank you. Be seated.

12 All right. Motions or matters?

13 MS. PENN: Your Honor, we have a motion for a
14 directed verdict.

15 THE COURT: All right. I'll be happy to hear from
16 you.

17 MS. PENN: Thank you, Your Honor. In this case, I
18 don't believe the State has proven malice, the element of
19 malice aforethought that you need for murder. Malice,
20 from my understanding of it, is evil. In one definition
21 it's the intent to do grievous bodily harm, and I don't
22 think those facts are present here.

23 At worst, if you credit and believe the State's
24 three teenagers, based on what they say they saw
25 Mr. Wright kick, punch, and stomp Mr. Jenkins and those

1 actions do not show malice aforethought.

2 And the case I would -- I believe I e-mailed to the
3 Court would be State V. Davis, which is a South Carolina
4 Court of Appeals case from 2007. In there what the Court
5 says is grievous bodily harm -- or intent to inflict
6 grievous bodily harm is where the defendant struck the
7 victim on the side of the head with a five-pound sledge
8 hammer. There are no facts like that in this case.

9 The blow or the blows that cause death, that cause
10 the blunt force trauma are to the chest. This is not a
11 case where Mr. Wright had a gun or a bat or stomped on
12 Jenkins' head. It's not that case. It's just a fight
13 between two men. And, Your Honor, it's our position that
14 malice a forethought is just not present in those facts.

15 THE COURT: Hold on, Mr. Simpson. I'm not sure
16 she's done.

17 MS. PENN: I am, Your Honor. Thank you.

18 THE COURT: Thank you.

19 MR. SIMPSON: Thank you, Your Honor. I'll be
20 brief. Of course, it's the State's burden to put up any
21 evidence, not their standard, of course, some evidence of
22 both the fact that the causation of the defendant's acts
23 led to the victim's death, which I believe we've
24 certainly done through the testimony of Dr. Batalis, and
25 also that there is malice here.

1 Malice certainly encompasses the intent to kill but
2 that is a broader concept of that. From State vs. Kinard
3 it encompasses the intent to kill. As Ms. Penn said, The
4 intent to inflict grievous bodily harm.

5 And I would suggest to the Court that it's very
6 easy to go find a case where perhaps like she said there
7 was more intent to commit grievous bodily harm but that's
8 not a legal standard. That's just another factual
9 circumstance hitting someone with the weight to the head.
10 I suggest to you that that does not vary that much from
11 stomping a defenseless man on the ground to the sense
12 that it causes this injury.

13 The other factors, of course, is an attempt of
14 extreme indifference to the value of human life, and I
15 think we've heard testimony that certainly by our any
16 evidence standard reflects that that is present in this
17 case, as well as the intent to commit a felony.

18 And I would present to the Court that the actions
19 of Robert Wright, certainly had Mr. Jenkins lived and
20 suffered at least 10, possibly 12 rib fractures from this
21 assault, we would certainly be looking at a felony level
22 assault certainly under the ABHAN statute that applied in
23 2010, but also there are currently applicable laws.

24 So I believe that based on that any evidence
25 standard we presented perhaps not intent to kill but

1 certainly evidence that would support the intent to
2 inflict grievous bodily harm, the extreme indifference to
3 the value of human life and the intent to commit a
4 felony, all of which, I believe, again, based on the any
5 evidence standard satisfies the elements of malice in
6 this case, and I believe the directed verdict motion
7 should be denied. Thank you, Your Honor.

8 THE COURT: Ms. Penn?

9 MS. PENN: Yes, Your Honor. I didn't address
10 extreme reckless indifference or intent to commit a
11 felony but I will do so now. And I would say that the
12 case that shows extreme reckless indifference would be
13 In Re: Tracy B. where -- that's from South Carolina
14 Court of Appeals, 2010, and that is where the defendant
15 in that case shoots a gun in the direction of the car
16 driving away from him, and that is extreme reckless
17 indifference.

18 I could not find, and I looked, for a case that
19 said a fight was malice or that getting into a fight
20 involving no weapons with just your hands was malice. I
21 could not find one. And this probably goes more towards
22 a jury charge argument but the facts of this case look
23 more like involuntary manslaughter, and the case on that
24 would be State V. Chapman.

25 In State V. Chapman it's a fight between two men.

1 One man, the defendant, I think is on top of the man who
2 eventually dies and he has his forearm around his neck
3 applying pressure, and the victim at some point loses
4 consciousness and dies because he's basically being
5 strangled to death, and the Court in that case says that
6 involuntarily should be charged.

7 Those facts are more similar to ours. There is no
8 gun, there is no bat. According to the pathologist it is
9 a blow that is not likely to cause death, and according
10 to the pathologist he thinks it's one blow. This is not
11 the case of an extended beating where somebody is beating
12 until they cannot get up. Both men get up and both men
13 walk away in this case. And I guess the facts that go
14 towards -- the facts towards one blow would also point to
15 it not being a felony had Mr. Jenkins lived.

16 THE COURT: All right. Ruling on a motion for
17 directed verdict the Court looks to Rule 19 in the Rules
18 of Criminal Procedure. I am concerned with the existence
19 or nonexistence of evidence and not to its weight. I
20 must grant the motion for directed verdict if there is
21 evidence -- if there is a failure of competent evidence
22 tending prove the charge on the indictment.

23 The issue that was first raised by the defendant is
24 the issue of malice, and we'll address that first. Not
25 that I'm giving any weight to that at all but I wanted to

1 address that. Malice is defined as hatred, ill will or
2 hostility towards another person. It is the intentional
3 doing of a wrongful act without just cause or excuse and
4 with an intent to inflict an injury or under
5 circumstances that the law infers evil intent.

6 Malice aforethought does not require that malice
7 exists for any particular time before the act is
8 committed. There was testimony and has been testimony
9 presented that there was an exchange and there was
10 concerns about a relationship in which Mr. Wright's
11 mother was involved. But malice must exist in the mind
12 of the defendant just before and at the time the act is
13 committed.

14 Malice aforethought can be express or inferred, and
15 as we know in those two types of malice that's just a
16 manner in which malice may be shown to exist. There is
17 direct evidence that there was words that Mr. Wright had
18 spoken that expressed ill will or hatred for another and
19 as well as the person prepared -- did prepare and had
20 been thinking about that issue before.

21 Malice may also be inferred from conduct showing a
22 total disregard for human life. There has been testimony
23 that was presented from Mr. Jenkins, **Robert J.** that
24 testified that the defendant pulled up in a vehicle and
25 got out where they were walking and that there were no

1 words being exchanged. The defendant began to attack his
2 uncle and that the defendant threw the victim to the
3 ground and punched him approximately 10 times and kicked
4 him around seven times.

5 The testimony by [REDACTED] Jocqui J. corroborated that
6 of [REDACTED] Robert J., indicating that he was also present at
7 the time the incident occurred and that they were going
8 to the corner store.

9 Mr. Deveau testified as to the same, basically the
10 same facts, that he was present and that [REDACTED] Robert J.
11 yelled at the defendant and said, Get off of him. And
12 that the defendant responded, Shut your ass up. Why
13 don't you come do something about it?

14 And there was the testimony concerning the
15 identification of the defendant. Ms. Jenkins testified
16 that evening of the incident her brother returned home
17 slouched over holding his side and that he was moaning
18 throughout the evening.

19 The detective testified that he took statements of
20 Jenkins and Deveau who identified the defendant, and
21 Officer Unterbrink testified that when viewing the crime
22 scene blood spatter was present on the road.

23 The doctor who did the autopsy testified that there
24 was a laceration on the face, scrapes on his lips and
25 knees and bruises to his chest externally, internally,

1 and that he observed 10 broken ribs and about half the
2 victim's blood was pooled as a result of the internal
3 pleading.

4 Based upon the testimony as presented, the
5 arguments of counsel I deny your motion for a directed
6 verdict at this time.

7 Ms. Penn, I understand that based upon the
8 testimony that could be presented on behalf of the
9 defendant there will be an argument that will coincide
10 with your directed verdict motions as to the charge.

11 Mr. Wright, I remind you -- please stand. I remind
12 you that you are still under oath from yesterday. Have
13 you had an opportunity to speak with your attorney either
14 together or separate, Ms. Penn and Ms. Proctor, as to
15 whether you will testify?

16 THE DEFENDANT: We knew we were going to testify
17 but we haven't discussed it.

18 THE COURT: You will be testifying then?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: I'm just trying to prepare for
21 scheduling. We are going to take 10 minutes, we haven't
22 had a break yet, then I'll address briefly my civil
23 matters. So you all are down for about 15 minutes, if
24 you want to continue to speak with your client. Thank
25 you.

1 MS. PENN: Thank you, Your Honor.

2 MR. SIMPSON: Thank you, Your Honor.

3 (WHEREUPON, a brief recess was taken.)

4 THE COURT: All right, Mr. Simpson. Anything
5 before we bring in the jury?

6 MR. SIMPSON: Nothing from the State, Your Honor.

7 THE COURT: Anything, Ms. Penn?

8 MS. PENN: No, Your Honor.

9 THE COURT: Do you have any witnesses ready?

10 MS. PENN: Yes, ma'am.

11 THE COURT: How many witnesses do you have?

12 MS. PENN: Three, and that's including Mr. Wright.

13 We are going to break by 12:15 for lunch. Thank
14 you.

15 Let's bring in the jury.

16 (WHEREUPON, the jury enters the courtroom at
17 approximately 11:10 a.m.)

18 THE BAILIFF: The jury is all present, Your Honor.

19 THE COURT: Thank you. Please be seated.

20 Ms. Penn, call your first witness.

21 MS. PENN: Thank you, Your Honor. The defense
22 calls Donelle Wright Manigault.

23 DONELLE W. MANIGAULT, after having been duly
24 sworn, testified as follows:

25 THE CLERK: State your name into the microphone and

1 spell your last for the record.

2 THE COURT: Please spell your last name.

3 THE WITNESS: Oh, I'm sorry. M-a-n-i-g-a-u-l-t.

4 THE COURT: Thank you. The spelling of your first
5 name?

6 THE WITNESS: D-o-n-e-l-l-e.

7 THE COURT: Thank you.

8 Ms. Penn?

9 MS. PENN: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. PENN:

12 Q. Good morning, Ms. Manigault. How are you?

13 A. Good morning.

14 Q. I'm going to ask you just to speak up. I know it's
15 hard but this nice lady here has to write down everything
16 you say and if she can't hear you it's going to be --
17 I'll have to ask her to repeat that, which is going to be
18 a mess.

19 Tell the jury a little bit about yourself.

20 A. (There was no response).

21 Q. Well, let's start -- what do you do for a living?

22 A. I'm a student right now.

23 Q. And do you have any children?

24 A. Five children.

25 Q. And how old are your children?

- 1 A. Twenty-two, 14, 12, 8, 5.
- 2 Q. And you know Mr. Wright?
- 3 A. That's my brother.
- 4 Q. You look real nervous. Are you nervous?
- 5 A. Yes, very.
- 6 Q. Try not to be. It's just you and me. I'm just
- 7 asking you questions. You're going to answer them as
- 8 best you can, okay?
- 9 A. Yes, ma'am.
- 10 Q. Now, let's cut right to the chase. On the day of
- 11 June 10, 2010, did you see Chris Jenkins?
- 12 A. Yes, ma'am.
- 13 Q. Tell the jury about that.
- 14 A. Well, when I saw him he was peeping around the
- 15 corner of the building.
- 16 Q. And who -- what building?
- 17 A. My mom.
- 18 Q. Who lives with your mom?
- 19 A. Herself. By herself.
- 20 Q. But you were there that day?
- 21 A. Yes.
- 22 Q. And do you spend a lot of time at your mom's house?
- 23 A. Sometimes.
- 24 Q. That day -- what time did you get there that day,
- 25 do you think?

- 1 A. I don't remember. I don't remember that.
- 2 Q. How many times did you see Christopher Jenkins that
- 3 day?
- 4 A. Probably four times.
- 5 Q. Four times?
- 6 A. Uh-huh.
- 7 Q. And when you saw him what was he doing?
- 8 A. He was looking around the building.
- 9 Q. Can you describe to the jury your mom's building?
- 10 A. It's -- I think it has -- well, it has four
- 11 apartments, and it's like a cut and then the next -- it's
- 12 four apartments, it's a cut and then we have, like, two
- 13 buildings after that, and then it's like another cut and
- 14 then it's like four more buildings.
- 15 Q. When you say cut do you mean a gap between the two
- 16 buildings?
- 17 A. Yes, ma'am.
- 18 Q. And that's where you saw Chris?
- 19 A. Right.
- 20 Q. Now, when you saw Chris and you said he was peeking
- 21 around the cut, he didn't come to the front door, did he?
- 22 A. No.
- 23 Q. He didn't knock on the door?
- 24 A. I don't remember him knocking, no.
- 25 Q. He was just looking around for your mom?

1 A. Right.

2 Q. And do you remember seeing your brother at your
3 mom's house that day?

4 A. Not that day. That evening. You know, like -- I
5 don't know what time it was but it was, like, getting
6 dark. Uh-huh.

7 Q. And where had your brother come from?

8 A. From the park.

9 Q. And what was he doing at the park?

10 A. He had a game, a baseball game.

11 Q. And what happened after he got to your mom's house?

12 A. He came over, I remember, and we all was telling
13 him about how Chris was peeping around the corner, but
14 that was it.

15 Q. And did everyone see Chris peeping around the
16 corner?

17 A. Yes. All of us was up there. Uh-huh.

18 MS. PENN: Court's indulgence.

19 THE COURT: Take your time.

20 BY MS PENN:

21 Q. Thank you, Ms. Manigault. I don't have any more
22 questions for you. Please answer anything Mr. Simpson
23 has.

24 THE COURT: Mr. Simpson?

25 MR. SIMPSON: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. SIMPSON:

3 Q. Ms. Manigault, good morning.

4 A. Morning.

5 Q. Ms. Penn asked you if you were a little nervous
6 today. You don't have anything to worry about from me
7 either. I'll just ask you some questions. All we ask is
8 for you to answer truthfully.

9 A. Oh, yes, sir.

10 Q. And I appreciate that.

11 A. Thank you.

12 Q. You described some incidents with Ms. Penn. I want
13 to show you something and see if you recognize it.

14 A. Okay.

15 MR. SIMPSON: May I approach the witness?

16 THE COURT: You may.

17 BY MR. SIMPSON:

18 Q. I'm showing you kind of a big map. This is State's
19 1 entered into evidence. I want you to take a minute and
20 kind of acquaint yourself with that. Do you recognize
21 what we are showing here?

22 A. Downtown?

23 Q. Downtown. Is this the area that your mother lives
24 in?

25 A. I don't see Jackson Street.

1 Q. Can I help you out?

2 A. Yeah, go ahead.

3 Q. You see this baseball field here?

4 A. Oh, that's the park. Okay.

5 Q. Yeah. Then see?

6 A. Okay.

7 Q. Okay. Do you recognize where your mother's house
8 is on that overhead?

9 A. Well, this is the park right here. This is Jackson
10 (indicated).

11 Q. Uh-huh.

12 THE COURT: Ma'am, I cannot hear you, which means
13 that my court reporter is unable to hear you. So I'm
14 going to need you to speak loudly so that people can hear
15 what you are saying.

16 A. Okay. I just was -- you know, I'm trying to figure
17 it out. You know, but I trying to -- let me see. I
18 don't know what this is right here. So this is the pool
19 right here, right?

20 Q. I believe that is correct. Can I draw your
21 attention to a certain area?

22 A. Yeah.

23 Q. Do these buildings -- I know it's weird because
24 it's an overhead but do these buildings look at all
25 familiar to you, that layout of the building?

1 A. Not sure I can see. This is Harris Street so --
2 and that street -- I'm trying to figure you out which
3 road then is my momma --

4 Q. I'm going to phrase it a little more directly than
5 that.

6 A. All right.

7 Q. If I told you that this has been identified as the
8 building that your mother lives does that seem right to
9 you?

10 A. Is this Sanders Drive?

11 Q. Yes, ma'am.

12 A. Okay, well, yes.

13 Q. It is?

14 A. Uh-huh.

15 MS. SIMPSON: May I ask the witness to step down,
16 Your Honor.

17 THE COURT: I can't hear her with the microphone so
18 I'm going to say no. Thank you.

19 BY MR. SIMPSON:

20 Q. Your mother's apartment there is three buildings
21 that face one another to a parking lot; is that correct?
22 You said there's three or four apartments per building at
23 your mother's?

24 A. Right across from her building is four apartments
25 and then, like, in the middle if you pull into the

- 1 parking lot it's like two so --
- 2 Q. Okay. I'm asking because you stated that you saw
- 3 Christopher Jenkins peep around the corner.
- 4 A. Around my momma building.
- 5 Q. Around your mother's building?
- 6 A. Right.
- 7 Q. Where were you guys hanging out when you saw this?
- 8 A. We was, like, sitting on the sidewalk and some
- 9 people had chairs, like -- like -- like, inside the
- 10 parking lot.
- 11 Q. Okay. So this was by the front door of your
- 12 mother's house?
- 13 A. Well, not right directly in front of the door but
- 14 like, you know -- yeah, you can say almost.
- 15 Q. Around the front door?
- 16 A. Right. Right around.
- 17 Q. And you have sort of a building with several
- 18 apartments?
- 19 A. Uh-huh.
- 20 Q. And then there's a cut, you call it a cut. Is that
- 21 just a gap between buildings?
- 22 A. Right.
- 23 Q. And you saw him just peeping around the corner down
- 24 at the end of the building; is that correct?
- 25 A. Well -- okay. Let me tell you. I think she is

- 1 140-B, so it's the first door, my momma is the second,
2 there's somebody next to her and another apartment.
3 Chris was right there at the last apartment because
4 that's, you know, where the cut is. So I saw him looking
5 around that area. Uh-huh.
- 6 Q. And when he saw that -- did he notice that you all
7 noticed him?
- 8 A. Yes.
- 9 Q. And what would he do when you all --
- 10 A. He ducked back. You know, then he'll look again.
11 I say, Look at Chris. Then he'll duck back. He did it
12 like three or four times.
- 13 Q. Okay. Was this behavior by Chris Jenkins upsetting
14 to your family?
- 15 A. No. We just -- I mean, to my momma it was but, you
16 know, we like him. We did. We liked Chris. So, I mean,
17 she didn't like it because he was doing things that he
18 shouldn't have done to her but, you know, we was kind of
19 scared because, you know, if somebody loves somebody and
20 they being rejected they can do anything. You can't
21 underestimate nobody. So we just tell her to be careful.
- 22 Q. Okay.
- 23 A. Uh-huh.
- 24 Q. And so with that background in mind when you saw
25 Chris peep around the corner --

- 1 A. Uh-huh.
- 2 Q. -- you said it was upsetting to your mom, right?
- 3 A. Right.
- 4 Q. And I'm sure you love your mom, right?
- 5 A. Uh-huh.
- 6 Q. And to the degree that you know, I'm sure you've
- 7 seen -- you know that your brother loves your mom, too,
- 8 correct?
- 9 A. Right.
- 10 Q. So is it fair to say this peeping around was a
- 11 little upsetting to your mom and family?
- 12 MS. PENN: Objection, Your Honor.
- 13 THE COURT: What's the basis?
- 14 MS. PENN: Calls for speculation.
- 15 THE COURT: Overruled. You may answer.
- 16 A. Say it again, sir.
- 17 Q. Is it fair to say that this seeing Chris, keeping
- 18 in mind the background that he had with your mom, peeping
- 19 around the corner was a little upsetting --
- 20 A. Well, we wasn't mad. You know, probably my momma
- 21 probably felt a certain type of way, but we liked him.
- 22 We was not angry with him at all. At all.
- 23 Q. Okay.
- 24 A. Uh-huh.
- 25 Q. Well, let me ask you then. Why are we discussing

1 this peeping around the corner? Why was that something
2 important that you still remember to this day if it was
3 not a big deal?

4 A. That's the only thing that I can remember because
5 his behavior, you know, if you have somebody -- if
6 somebody like me and you reject him and he keeps doing
7 things, coming to your house when you tell him don't
8 come, taking things and, you know, just bad behavior you
9 would think, you know, well, this got to stop.

10 Q. Exactly.

11 A. Yeah.

12 Q. You would think on behalf of yourself and your
13 mother that this behavior needs to stop?

14 A. Uh-huh.

15 THE COURT: Is that a yes?

16 A. Yes, ma'am. Uh-huh.

17 Q. Thank you so much for being here. I have no
18 further questions.

19 A. Thank you, sir.

20 THE COURT: Ms. Penn?

21 MS. PENN: I have no further questions. Thank you.

22 THE COURT: You may step down. Thank you.

23 MS. PENN: The defense calls Betty Scott.

24 BETTY SCOTT, after having been duly sworn,
25 testified as follows:

1 THE CLERK: State your name into the microphone and
2 spell your last for the record.

3 THE WITNESS: Betty Scott, S-c-o-t-t.

4 THE COURT: Ms. Penn.

5 MS. PENN: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. PENN:

8 Q. Good morning, Ms. Scott. How are you?

9 A. Good morning.

10 Q. Are you okay?

11 A. Not really.

12 Q. Are you nervous?

13 A. A little. The medication I just take kind of calm
14 me down a little bit.

15 Q. Are you a little scared today?

16 A. No. Not too scared.

17 Q. Tell the jury a little bit about yourself. I don't
18 want to embarrass you but how old are you?

19 A. Sixty-one.

20 Q. And what is your relationship with Mr. Wright?

21 A. That's my son.

22 Q. And how many children do you have?

23 A. Three.

24 Q. And how old are they?

25 A. My son, he's 43 now. He will be 44 on the 25th of

1 May.

2 Q. Okay. I'm going to ask you to tell the jury about
3 your relationship with Chris Jenkins. When did you all
4 start dating?

5 A. We was over in 2008. That's when we were over, so
6 I'll say before 2008.

7 Q. So you think you started dating before 2008 but
8 your relationship was over around 2008?

9 A. Yeah, not too long.

10 Q. And how did you all meet?

11 A. In the neighborhood.

12 Q. Because he lives close by?

13 A. He wasn't living close by then, not -- you know,
14 three or four blocks or something.

15 Q. Okay. You could walk to his house from your house,
16 right?

17 A. No. His mother house.

18 Q. I'm sorry. Did he sometimes stay with his mother?

19 A. Sometimes.

20 Q. And was her house close by to your house?

21 A. Yes.

22 Q. And you know Ms. Mary, right?

23 A. Yes.

24 Q. And you all used to be friends?

25 A. I thought we did.

1 Q. Now, when you and Chris broke up, and I know this
2 is going to be hard but I need you to be real clear and
3 real loud for the jury. Did he just leave you alone?

4 A. No. He went like a changed person. You know, he
5 just wouldn't leave me alone. He would just curse, come
6 by and scare me. You know, like, if I be doing my work
7 in the house and have the screen locked he would just
8 come up to the door and just curse me out to the point
9 where the neighbors was, you know, coming to the door and
10 saying, You letting him do that to you? You need to call
11 the police on him.

12 You know, but I been trying to keep peace between,
13 you know, his mother household and my household because
14 we lived in housing, and I didn't want to keep calling
15 the police, you know, for them to come and say we causing
16 us to have some confusion in the apartment when we both
17 live there.

18 Q. What kinds of things would he do besides come up to
19 your house and scare you?

20 A. He used to take my clothes off the line and carry
21 it and put it by somebody door. He took my the grill and
22 took it to his by his momma house. He take -- my
23 girlfriend bought me a gift for my birthday and I didn't
24 know she did. She told me. She said, I see you didn't
25 call me and the gift was in the door, you know, in the

1 screen door.

2 But, you know, the screen is the top and the bottom
3 be warm, so she had a fish, one of those fighting fish
4 out there, and some other gifts. He took that. But then
5 so I just happened to look and I see the fish was -- I
6 mean, it was a cold night. The fish was under -- he had
7 put the fish under the flower where I keep my flowers and
8 doing that he just come through there and curse me out
9 like. I don't know why.

10 Q. And we talked a little bit about your birthday.
11 When was your birthday in 2010?

12 A. My birthday in March, the 12th.

13 Q. And did you have a birthday party?

14 A. No. That wasn't for me that time. Yeah, to my
15 sister house. We been over to my sister.

16 Q. And did Chris go to that party?

17 A. Chris never used to go nowhere with me but he found
18 his way to my sister house. I don't know how.

19 Q. And what happened when he got to your sister's
20 house?

21 A. He was -- everybody had to turn around and he was
22 to the window looking directly at my back, and then he
23 came under and go to swing at me. And that's when my
24 niece husband grab him, he was the police, and he grab
25 him by the arm. You know, he ain't hurt him or nothing

1 but he just take him and lead him outside. And my son
2 would get all mad up because he think he was trying to be
3 rude to Chris, but he didn't know what Chris had just do.

4 Q. Clarify for a second. You said your son got all
5 mad. Who did he get mad at?

6 A. He got mad at us at the party.

7 Q. What for?

8 A. Because he think we was being rude to Chris and he
9 like Chris.

10 Q. So he wasn't mad at Chris?

11 A. No, he wasn't mad at Chris. In fact, he said, Come
12 on, Chris, I'll take you home. Him and his girlfriend
13 took Chris home.

14 Q. I'm going to fast forward a little bit to June 10,
15 2010, and that's the night Robert comes to your house
16 after a softball game. On that day or that night did you
17 see Chris?

18 A. Yeah, I saw him.

19 Q. And what was he doing when you saw him?

20 A. Messing around in the parking lot and threw
21 something in my daughter car. Then they were saying,
22 What are you doing in the car? Then he walk off and he
23 gone. He walk off. He gone because I remember seeing
24 him in the parking lot.

25 Q. Did you see him more than once that day?

1 A. No. That night I got tired and I called the
2 officer, and this was the housing officer this time. And
3 her name is Officer Anderson, and I told her I wanted her
4 to get it straight because I don't want them to go back
5 to the office and say there was a fight at my house or
6 nothing like that. I said he was just -- you know, he
7 was just bothering me, cursing me, looking in my door,
8 and I told her I had enough.

9 And she said, I'm going to Ms. Mary house and I'm
10 going to talk to him. Whether she ever did or not,
11 that's what she told me. That's the last time I heard
12 Chris ever come by my door.

13 Q. Now, that same night on June the 10th did Ms. Mary
14 come to your house?

15 A. On June the 10th.

16 Q. The same night that Robert comes over from softball
17 practice?

18 A. Softball practice. Yes.

19 Q. And who came with her?

20 A. Her neighbor and her grandson.

21 Q. And what did she come to your house for?

22 A. She told me Robert -- she said, I didn't come here
23 to say anything but Robert and Chris got into it. I came
24 here to tell you --

25 MR. SIMPSON: Objection, Your Honor. Hearsay.

1 THE COURT: Sustained as to hearsay.

2 A. Okay.

3 Q. Tell what happened without saying what somebody
4 said.

5 A. Oh. Well, I stepped out to see if I see my son, so
6 I could find out what did you tell this child.

7 Q. Well, were they looking for your son?

8 A. I don't know if she was looking to confront him. I
9 think that's what she was going to do, confront him.
10 That's all she said.

11 Q. And what was she concerned about when she came to
12 your house that night?

13 A. She was concerned about her son --

14 MR. SIMPSON: Objection, Your Honor. Hearsay and
15 speculation.

16 THE COURT: Approach.

17 (The following sidebar was reported.)

18 MS. PENN: I'm trying to get what Ms. Winky's
19 conversation was without actually her saying --

20 MR. SIMPSON: Classic hearsay.

21 THE COURT: I'm going to sustain.

22 (The sidebar was concluded.)

23 THE COURT: Sustained as to hearsay.

24 Ladies and gentlemen, I have determined that last
25 statement is not for your consideration. Please strike

1 it from your notes.

2 You may continue, Ms. Penn.

3 MS. PENN: Thank you, Your Honor.

4 BY MS. PENN:

5 Q. When Ms. Mary came to your house did she come to
6 talk to you about Chris and Robert?

7 A. No.

8 Q. And after she came to your house, without saying
9 what you said, did you talk to Robert?

10 A. I called but the message -- I left a message. He
11 must not have gotten home yet.

12 Q. And the next day, so June the 11th, did you go talk
13 to Ms. Mary that day?

14 A. I wasn't doing the talking. My son was doing the
15 talking.

16 Q. What did you all go over to Ms. Mary's house for?

17 A. My son was going over there to see if she could
18 talk to Chris to leave me alone.

19 Q. Is that what you wanted?

20 A. Yes, I did, too.

21 Q. And while you were at that house did you know at
22 that time that Chris was upstairs?

23 A. Something small come across my mind to ask them
24 where he was at but I didn't ask for some reason.

25 Q. Did anyone tell you anything about him while you

1 were there?

2 A. No. They didn't say anything.

3 Q. Did anybody go up to check on you while you were
4 there?

5 A. No, everybody --

6 THE COURT: Could you repeat what you just said.

7 A. Oh. I said everybody stood in the same -- you
8 know, nobody moved to go nowhere.

9 THE COURT: Where they had been. Everybody stood
10 where they had been?

11 A. Stood where they was at the entire time we was
12 there.

13 MS. PENN: Court's indulgence.

14 THE COURT: Take your time.

15 MS. PENN: Thank you, Your Honor. I have no
16 further questions.

17 Q. Ms. Winky, please answer any questions Mr. Simpson
18 may have.

19 THE COURT: Mr. Simpson?

20 MR. SIMPSON: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. SIMPSON:

23 Q. Ms. Scott, good morning.

24 A. Good morning.

25 Q. Alicia, Ms. Penn, asked you if you were a little

- 1 bit nervous to testify; is that a fair thing to say?
- 2 A. At first I was.
- 3 Q. Well, now, I'll tell you, no reason to be. I just
- 4 want to ask you a few questions and kind of go over some
- 5 things that Ms. Penn went over with you --
- 6 A. Uh-huh.
- 7 Q. -- and ask for your answers.
- 8 You did state that you thought that you and Chris
- 9 broke up in 2008?
- 10 A. I saying 2008 I told him I wasn't going to be
- 11 bothered with him because he wouldn't go to the doctor
- 12 and see why he was holding his side.
- 13 Q. Holding his side?
- 14 A. Yes. He been walking and his body had already
- 15 changed. He been leaning over holding his side.
- 16 Q. Okay.
- 17 A. And he was -- he pass out around me twice and it
- 18 scared me.
- 19 Q. Holding his side. That's an interesting phrase to
- 20 use.
- 21 A. Well, I mean, he must have been in pain because
- 22 that's how he been walking.
- 23 Q. Right. Back in 2008?
- 24 A. 2008. You said '10 or '8? Before, yeah, about
- 25 right around that time 2008 I told him I wasn't going to

1 mess with him any more because he wouldn't go to the
2 doctor.

3 Q. Okay.

4 A. I wanted him to, you know, get some help.

5 Q. Okay. And so, Ms. Scott, your testimony to this
6 jury is that so bad were the health problems with his
7 side in 2008 that that caused your break up?

8 A. No. That didn't cause our break up. The break up
9 was he -- I tried to get him to go and get some help.

10 Q. Okay.

11 A. That's -- when he said he refused and I said he was
12 scaring me and I didn't want him -- I didn't want him
13 falling out around me like that.

14 Q. Okay. You just wanted him to get help for his
15 side --

16 A. Or get help for why he been falling out.

17 Q. Okay. Now, you said to this jury that he did
18 things like take the clothes off your line?

19 A. Yes.

20 Q. And so you would have your clothes out and you come
21 back later and they were gone?

22 A. Yes.

23 Q. Okay. You know, you had a grill?

24 A. Yes.

25 Q. And you would come back and the grill would be

- 1 gone?
- 2 A. The grill been gone.
- 3 Q. Okay. And a friend of yours, this is very nice,
- 4 too, brought you a little pet fish once?
- 5 A. And some other things. He took that, too.
- 6 Q. Some other things. And she told you that she put
- 7 it out in front of the house?
- 8 A. In the screen door, inside the door.
- 9 Q. And then you went to look and they weren't where
- 10 she said she left them. They were somewhere else?
- 11 A. Right. Right. He had to -- he didn't carry the
- 12 fish with him. He put the fish out in the cold. He take
- 13 the other things to his mom house with him.
- 14 Q. Okay. And you just testified that that was a
- 15 situation where your friend had told you she had left
- 16 something for you and you came later and it wasn't where
- 17 it was supposed to be?
- 18 A. Right.
- 19 Q. And you had your clothes out on the line and you
- 20 came back later and they weren't where they were supposed
- 21 to be?
- 22 A. Wasn't on the line.
- 23 Q. That's correct. And you had a grill and you came
- 24 back later and it wasn't where it was supposed to be?
- 25 A. Right.

1 Q. Okay. And so you attribute these things to
2 Christopher Jenkins?

3 A. What happened?

4 Q. You attribute these things in your mind to
5 Christopher Jenkins, correct?

6 A. I don't contribute that. He did it.

7 Q. Right. He did it. Okay. We've talked a lot about
8 this area of Charleston. Is that an area -- and, you
9 know, I mean no disrespect by asking this question, but
10 is there an area where crime is sort of a persistent
11 problem, on the east side, upper east side of Charleston?

12 A. I experienced something, so, you know, a lot of
13 people -- a lot of things done happened, I'm sure, on the
14 east side, west side, and all.

15 Q. Sure. Okay. Chris had, in your estimation, at
16 times with this break up not handled it well?

17 A. He just wouldn't take no for an answer.

18 Q. Okay.

19 A. He would still try to be nice to me then I thought
20 if I stopped taking things from him maybe he'll just, you
21 know, go away but he just wouldn't take no for an answer.

22 Q. You said stop taking things. Did he bring you
23 stuff like gifts and things?

24 A. Yeah. He was buying little gifts and stuff like
25 that.

- 1 Q. Sometimes I'm a little embarrassed to admit that
2 maybe I've been in this situation before, but sometimes
3 when there is a break up a party goes from being very
4 nice to a person to being not so nice to a person, and
5 alternates between that caring and that anger for the
6 love not being reciprocated. Is that fair to say how
7 Chris handled the break up?
- 8 A. Yeah, by not taking no for an answer.
- 9 Q. Sometimes he would be very nice?
- 10 A. After he -- after he -- I mean, he just wouldn't
11 stop. He just started getting mean, I mean cursing.
12 Like he -- it was all right, now, it's over but you not
13 going to have a good night. You know, I'm going to just
14 keep cursing you and bothering you and running me
15 crazy --
- 16 Q. I'm sorry to interrupt you.
- 17 A. I had to go to the doctor and all.
- 18 Q. Because it was an upsetting situation, wasn't it?
- 19 A. Yeah. I had a counselor and they trying right now
20 to get me in to a psychiatrist right now, all because of
21 going through all that. I mean, it was awful. I mean,
22 he used to be mean, you know.
- 23 Q. And that was something that was very upsetting to
24 you, I'm sure, correct?
- 25 A. Yeah.

1 Q. And I bet as members of your family, who I'm sure
2 love you very much, I bet it was very upsetting to them
3 as well, wasn't it?

4 A. They don't know -- they didn't know. They just
5 thought Chris was a nice guy he was portraying to be. He
6 talk nice to them just so when he come through if it's my
7 mom or my son or my daughters, I got twin daughters, he
8 feel like as long as they been talking to him he feel
9 like that a good way so when he pass me he will say
10 something rude to me.

11 Q. Okay.

12 A. And they wouldn't know.

13 Q. You never shared with your family this ongoing --

14 A. I never did. Never did tell my kids that, what
15 Chris take me through. I even tell his mother that. I
16 never did tell my son. She told me this -- I mean,
17 shouldn't have anyway.

18 Q. Well, ma'am, do you think it's odd that they seem
19 to know so much about you all's relationship if you never
20 told them about that, the difficulties you were having?

21 A. I mean, I thought I could handle it the way -- you
22 know, I thought he just would go away and just leave me
23 alone, you know.

24 Q. You talked about an instance where you called the
25 housing office and said --

- 1 A. No, I don't call no housing office. I said the
2 police department.
- 3 Q. I'm sorry. I don't want to put words in your
4 mouth, the housing division of the police department?
- 5 A. But she came. I mean, it happened so --
- 6 Q. And that was --
- 7 A. -- over housing. She happened to come when I call
8 that time.
- 9 Q. Okay. And that happened before this incident
10 happened, right?
- 11 A. That happened the night of the same -- the baseball
12 game night.
- 13 Q. Oh, it did?
- 14 A. I told him. I said, That's enough. Yeah.
- 15 Q. Okay. And I believe you said, and I'm going to
16 directly quote you, After that that was the last time
17 Chris ever came by my door.
- 18 A. After the police came she said she was going around
19 to Ms. Mary house. That's the last time I saw him.
- 20 Q. Okay. But that day he did peep around the corner a
21 couple times?
- 22 A. That day he came from through this cut. He come
23 through the cut in the parking lot. Other people been on
24 the corner, been a lot of people out there.
- 25 Q. A lot of people --

1 A. I ain't keeping no eye on what going on but I did
2 watch him because I saw him in the parking lot.

3 Q. Okay. A lot of people out there you said?

4 A. Yeah.

5 Q. Was Chris talking to some of the other people out
6 there?

7 A. I guess so.

8 Q. Okay. So a lot of people, he could have been
9 interacting with other people in the neighborhood?

10 A. Yeah. He could have been with somebody else.

11 Q. Okay. But nevertheless, is it true that you -- and
12 we've heard from your daughter, found his presence to be
13 upsetting in some way?

14 A. I mean, to me he had me -- well, he had me nervous.
15 He had done got me to that point. And the phone calls,
16 too. I would call the phone company and they tell me I
17 didn't have to change any number. They told me what to
18 do.

19 Q. Okay.

20 A. Because he was -- every time I -- I forget how you
21 do the number off. He couldn't use my phone. He go to
22 another person's house, use their phone. I block it. I
23 do just like the phone company told me to do until he
24 stopped doing that. I guess he had done run out of phone
25 booth in the area.

1 Q. Okay. And again, this is an upsetting situation
2 for you and your family, is it not?

3 A. I don't know about my family because they didn't
4 know. I, me, I was upset, still nervous and I have these
5 panic attacks. I keep thinking about this. I am so
6 sorry this happened but I didn't intend for this to
7 happen. And my children love Chris, and they didn't want
8 -- nobody did nothing to Chris like that.

9 Q. Ma'am, I certainly don't say this to be rude to
10 you, but if you could, when I ask a question just answer
11 the question that's asked of you, if you don't mind.

12 A. Okay.

13 Q. You can explain your answers. That's fine.

14 Now, at some point on this evening where Chris was
15 out talking with other people in the neighborhood but out
16 in the parking lot did your son come by to pay his mom a
17 visit? Did Robert come by your house after his ball
18 game?

19 A. After the game?

20 Q. Uh-huh.

21 A. Yeah, I seen his car.

22 Q. And did you share with Robert your ongoing
23 difficulties that you were having with Chris when he came
24 by?

25 A. No, because I been in the house.

1 Q. Okay. You didn't talk to Robert at all?

2 A. No, not before he gone. Unless he come in, he come
3 and say good night, but that's about it.

4 Q. Oh, okay. So at any time did Robert see Chris peep
5 around the corner when he was at your house?

6 A. You'd have to ask Robert that. I don't know what
7 Robert saw.

8 Q. Okay. So it's your testimony that Robert just had
9 no idea at that time about any of these difficulties you
10 were having --

11 A. Until when something gone wrong, when we went to
12 Ms. Mary house the next day.

13 Q. Oh, okay.

14 A. That's the only time I know he know anything.

15 Q. He didn't have any idea that there was any problems
16 whatsoever?

17 A. I never tell him. He didn't even know me and Chris
18 even being together no more. He didn't know. He was
19 shocked by that.

20 Q. Okay. So he didn't have any reason to go talk to
21 Chris at all --

22 A. Right.

23 Q. -- from your point of view? Okay.

24 A. From my point of view I didn't tell him nothing.

25 MR. SIMPSON: Beg the Court's indulgence.

1 BY MR. SIMPSON:

2 Q. I have no further questions, Ms. Scott. Thank you
3 very much.

4 THE COURT: Ms. Penn?

5 MS. PENN: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. PENN:

8 Q. On that night, June 10, 2010, you were inside your
9 house, right?

10 A. Uh-huh.

11 THE COURT: Is that a yes?

12 A. Yes.

13 Q. And Robert, for the most part, was on your front
14 porch; is that right?

15 A. Robert, I know he came to get the car. I couldn't
16 see because I was in the house.

17 Q. Okay. So you don't know what he saw?

18 A. I don't know what Robert saw.

19 Q. And you don't know who he talked to?

20 A. No.

21 Q. And were there other family at your house that
22 night?

23 A. My daughter was sleeping on the couch with a
24 headache.

25 Q. I'm going to ask you to go back for a second to

1 something you said earlier when Mr. Simpson asked you,
2 and that was you wanted Chris to ask for help. And why
3 did you want him to ask for help?

4 A. Because, you know, I care about Chris and I want
5 him to get some help because I told he was scaring me
6 falling out like that and I don't know why he been doing
7 it, you know, and I don't know what was wrong with him.
8 And then when I call, you know, the EMS and stuff I even
9 went with him although we weren't dealing with each
10 other. You know, that happened around me so I go with
11 him, you know, for his momma, and could know where he was
12 going at, you know.

13 Q. So you called EMS for him?

14 A. I called them.

15 Q. And when you say falling out, what do you mean by
16 falling out?

17 A. When I say fall out I meant like he just -- I mean
18 fall real hard and then like he ain't even breathing.
19 They asked me if he breathing. I say, I don't see him
20 breathing. Then all of a sudden he starts snoring.

21 Q. And these were what you think of as seizures; is
22 that right?

23 A. That's what the doctor had said. That's when I
24 found out what that was.

25 Q. And they were from abusing alcohol?

1 A. Oh, yeah. He got to drink.

2 Q. Now, let me ask this. The things that Chris would
3 do, messing with your stuff, peeping in your windows, did
4 you think these things were cute?

5 A. Cute? No.

6 Q. How did they make you feel?

7 A. They make me feel bad and especially my neighbors
8 calling me all them nasty names. I wasn't even seeing
9 him.

10 MS. PENN: Thank you. I have no further questions.

11 MR. SIMPSON: Nothing further.

12 THE COURT: You may step down. Thank you.

13 Ms. Penn, I understand you have one remaining
14 witness; is that correct?

15 MS. PENN: Yes, Your Honor, and that will be
16 Mr. Wright.

17 THE COURT: All right. Ladies and gentlemen, I've
18 determined it's an appropriate time for us to break for
19 lunch. I typically don't like to break up the witness in
20 the middle of his or her testimony, so we're going to go
21 ahead and break for lunch. There's some other matters
22 that I must attend to so please be back at two o'clock,
23 two p.m. and we will proceed with the trial. Please
24 remember all of my admonitions. They still apply.

25 Have a wonderful lunch. You may leave your

1 notepads and we'll collect them or take them with you out
2 of the courtroom, whatever you wish to do.

3 Please rise for the jury.

4 (WHEREUPON, the jury leaves the courtroom at
5 approximately 11:52 a.m.)

6 THE COURT: Thank you. Be seated.

7 Anything before we break for lunch, motions or
8 matters?

9 MR. SIMPSON: Nothing from the State.

10 MS. PENN: Nothing from us, Your Honor.

11 THE COURT: All right. Mr. Wright, we are going to
12 break for lunch, please make sure you are back. All my
13 admonitions to you remain the same. You understand?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Any questions?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Thank you.

18 Counsel, just approach for some scheduling.

19 (WHEREUPON, a lunch break was taken.)

20 THE COURT: Thank you. Be seated.

21 The jurors are all here. Anything from the State
22 before we bring them in?

23 MR. SIMPSON: Nothing from the State, Your Honor.

24 MS. PENN: Nothing from the defense, Your Honor.

25 THE COURT: All right. Let's bring them in.

1 (WHEREUPON, the jury enters the courtroom at
2 approximately 2:00 p.m.)

3 THE COURT: Thank you. Be seated.

4 Ms. Penn, call your next witness.

5 MS. PENN: Your Honor, the defense calls Robert
6 Wright.

7 ROBERT L. WRIGHT, after having been duly
8 sworn, testified as follows:

9 THE CLERK: Just state your full name in the
10 microphone and spell your last for the record.

11 THE WITNESS: Robert Lee Wright, Jr. W-r-i-g-h-t.

12 DIRECT EXAMINATION

13 BY MS. PENN:

14 Q. Good afternoon, Mr. Wright.

15 A. How you doing, Ms. Penn?

16 Q. How old are you?

17 A. Forty-three.

18 Q. And how tall are you, would you say?

19 A. Five-eight.

20 Q. How much do you weight?

21 A. 150.

22 Q. And what do you do for work?

23 A. For right now I drive for a staffing service
24 company but I'm laid off pending the outcome of the
25 trial.

1 Q. Back in 2010 what was your job?

2 A. I was a sheet metal mechanic, mechanic for Cullum
3 Mechanical Construction Company.

4 Q. And tell the jury a little bit about what that job
5 was like?

6 A. I was working on a jail. Actually, I worked on a
7 new jail, building it from the ground up, and we
8 basically did all the duct work.

9 Q. And as a sheet metal mechanic what kinds of tools
10 did you keep in your car?

11 A. I had hammers, blades, metal shears; multiple
12 tools, screwdrivers, pliers, wrenches.

13 Q. And are you from Charleston?

14 A. Yes, ma'am.

15 Q. Have you lived here your entire life?

16 A. No, ma'am. I lived here up until the time I joined
17 the military.

18 Q. And when was that?

19 A. 1989.

20 Q. How long were you in the military?

21 A. Five years.

22 Q. So you got out in?

23 A. 1994.

24 Q. And that was 20 years ago?

25 A. Yes, ma'am.

- 1 Q. All right. Let's cut to the chase. How did you
2 know Christopher Jenkins?
- 3 A. Christopher was dating my mother.
- 4 Q. And tell the jury, what was your relationship with
5 him like while he was dating your mother?
- 6 A. Me and Chris were cool, you know. We did a lot of
7 things together. He came to my house, and obviously I
8 went to my mother's house. But, you know, we hung out,
9 we drank together, we played cards together. You know,
10 we had a frequent spot that we hung out at during all of
11 this.
- 12 Q. How often you think you saw Mr. Jenkins?
- 13 A. Every day that I came downtown I saw Chris.
- 14 Q. And when did you find out that Mr. Jenkins and your
15 mom had broken up?
- 16 A. I found out at the birthday party in 2010.
- 17 Q. And were you at the birthday party that day?
- 18 A. Yes, ma'am.
- 19 Q. Tell the jury what happened that day.
- 20 A. Well, I was in the backyard at the cookout. So I
21 didn't know what was going on on the inside. But people
22 started coming from the inside to the outside, and they
23 started talking about what had happened inside, and
24 that's when I became aware of what happened.
- 25 Q. And what did you do?

1 A. I stayed, remained in the backyard because that's
2 where we was hanging out at. You know, they had like the
3 ladies and the older people inside. You know, and the
4 younger crowd pretty much outside.

5 Q. Did you see Chris that day?

6 A. Not until they brought him out of the house.

7 Q. And what did you do then?

8 A. Nothing. Everybody was trying to get at him, you
9 know, and putting him out and telling him to walk home,
10 you know. And I didn't know the details at that time, so
11 I was like, Hold on, Chris. So I went and talked to him
12 and I said, You don't have to walk. You know, I'll take
13 you home, because I live downtown and he was going
14 downtown.

15 Q. Now, after you found out what happened at the
16 party, after you found out who took the swing at your mom
17 how did that make you feel?

18 A. I was wondering what was going on the whole time
19 and when I finally got to talk to him on the ride home,
20 you know, that's when he expressed the feeling that he
21 expressed to me about my mom.

22 So being that I was in a relationship and I've had
23 problems in my relationship we kind of talked, and we
24 kind of saw eye-to-eye on some things. So even though it
25 was my mother, you know, I couldn't be a type of person

1 to judge him on something that I had done in the past.

2 Q. Now, let's talk a little bit about the fight you
3 and Chris got into not in June but in April. Tell the
4 jury a little bit about that.

5 A. Oh. I was at home, me and my daughter, and I got a
6 phone call from my grandmother. And my grandmother told
7 me that I need to come around to my mom's house because
8 Chris made her cry. So I packed my little girl up and I
9 went around to my mother's house.

10 Q. And when you got to your mother's house what
11 happened?

12 A. They told me the details, and the neighbors was out
13 there also and they told me that he called her everything
14 pretty much --

15 MR. SIMPSON: Objection, Your Honor. Hearsay.

16 THE COURT: Sustained. No hearsay. Thank you.

17 A. Well, I was made aware of some negative things that
18 were said.

19 Q. And did you see Chris that day?

20 A. I was on the way to his house and that's when I saw
21 Chris. Yes, ma'am.

22 Q. And when you saw him what happened?

23 A. When I saw Chris, Chris must have still been upset
24 because I saw him on the basketball court. His mom lives
25 on the project side where there's a basketball court and

1 he wasn't at his house where I was at. He was on the
2 basketball court. So he became belligerent with me when
3 he saw me.

4 Q. And what happened then?

5 A. First punches were thrown.

6 Q. And how long did you all fight?

7 A. No, it was just punches. It was just punches. And
8 like I said, started off with cussing.

9 Q. Okay. And how long did that last for?

10 A. Just seconds.

11 Q. And what happened afterwards?

12 A. Nothing. I went back to my mother's house.

13 Q. Let's skip ahead in time to June 10, 2010. Tell
14 the jury what you were doing at Martin Park that day.

15 A. I had softball practice, practice every Thursday or
16 Tuesday depending on which field was available, usually
17 at 6:30.

18 Q. What time did practice end?

19 A. Around 8:00 or 8:15.

20 Q. And what did you wear at practice -- or what did
21 you -- I guess what did you wear after practice?

22 A. After practice?

23 Q. Yes, sir.

24 A. Well, after practice you usually strip down, take
25 off your cleats because you don't want to wear them down

- 1 walking on concrete, so I always change into slippers.
- 2 Q. And when you say slippers, describe to the jury
- 3 what you mean about that.
- 4 A. They are black slippers, plastic with one thick
- 5 flap going across the top.
- 6 Q. So you mean like shower slides?
- 7 A. Yes, sir. Yes, ma'am.
- 8 Q. Okay. And what kinds of gear do you bring with you
- 9 to practice?
- 10 A. Baseball bats because I was in the box.
- 11 Q. Now, after practice -- what time did practice get
- 12 out that day?
- 13 A. About 8:15.
- 14 Q. And where did you go after that?
- 15 A. Well, I always park by my mother's house, which is
- 16 right across the street from the field. So I just went
- 17 to my car, put my stuff in the trunk and started talking
- 18 with the people that was over at my mother's house.
- 19 Q. Who was at your mom's house that night?
- 20 A. One teammate from the baseball team, my two
- 21 sisters, my mother, my grandmother, like three neighbors,
- 22 and an aunt, and a grand aunt, and some kids.
- 23 Q. Now, did you see Chris that night?
- 24 A. Which night?
- 25 Q. June 10, 2010.

1 A. Yes, ma'am.

2 Q. And when you say him what was he doing?

3 A. Well, when I saw him my sister had said, There he
4 go peeping around the corner.

5 So everybody just flung around from what they was
6 doing to look. When I look I didn't see nobody. So I
7 walked to the side of the building, and I didn't see
8 nobody again. So when I walked -- because the building
9 is shaped in a square, I walked to the other corner, and
10 that's when I saw him walking away.

11 Q. And after you saw him were you mad?

12 A. No, ma'am.

13 Q. Were you angry?

14 A. No, ma'am.

15 Q. And what did you do next?

16 A. I went back around. Everybody else that came
17 around the building to see him went back around and we
18 just continued to talk, but I got a phone call saying
19 that my food was ready and the game was about to come on
20 so I had to leave.

21 Q. And about what time do you think this was?

22 A. The game came on at nine, so it had to be somewhere
23 like nine o'clock.

24 Q. And what was -- what did it look like outside, the
25 time you decided to leave?

1 A. It was nightttime.

2 Q. After you decided to leave what did you do next?

3 A. Somebody mentioned to me, I can't say -- say it the
4 way Your Honor told me to say, but somebody mentioned to
5 me that I needed to speak with Chris because the way he
6 was peeping around the corner. And my mother sit out
7 there with her back turned and say, You never know what
8 he may do.

9 So I just said, Okay, I'll talk to him. He's right
10 there, because you could see him in plain sight walking
11 across the baseball field, and the field was illuminated
12 because we use the light for baseball practice. So you
13 could see Chris walking across the baseball field. So I
14 didn't have to seek him out. He was right there. That's
15 the only reason I spoke to him, because I saw him.

16 Q. And what were you going to go talk to him about?

17 A. About the concerns that my grandmother had.

18 Q. Did you want to fight him?

19 A. No, ma'am.

20 Q. Were you mad at him?

21 A. No, ma'am.

22 Q. Did you snap when you saw him?

23 A. No, ma'am.

24 Q. Did you act with an uncontrollable impulse to do
25 violence?

1 A. No, ma'am.

2 Q. What did you do?

3 A. Like I said, I never lost sight of Chris. If I
4 hadn't seen him this conversation may have happened
5 another day but he was right there in plain sight. So I
6 got in my car, could have kept straight to go home but
7 being I went to talk to him I made a right on America
8 Street off of Jackson Street.

9 Q. Okay. I'm going to stop you for a second and go
10 grab the map.

11 MS. PENN: Your Honor, may Mr. Wright step down
12 from the witness stand?

13 THE COURT: As long as I can hear him.

14 MS. PENN: Yes, ma'am.

15 (The witness stepped down from the witness stand.)

16 THE COURT: Now, Ms. Penn, we can't hear you.

17 MS. PENN: I'm sorry, Your Honor. I was asking if
18 everybody could see.

19 BY MR. SIMPSON:

20 Q. Now, Robert, show the jury where your mother's
21 house is.

22 A. Right here (indicated).

23 Q. Is it this one right here on the corner?

24 A. No. That's apartment A, and my mother lives in
25 apartment B, which is second one from Jackson Street.

1 Q. And everyone's heard a lot of talk about the cut.

2 What is the cut?

3 A. Right here (indicated). Ladies and gentlemen, you
4 see that little dirt path right there is a walkway. You
5 could walk through right there and right there
6 (indicated).

7 Q. And where was Chris living at the time?

8 A. On Harris Street. Right here (indicated).

9 Q. And how far away is that from your mom's house?

10 A. One block, turn right, pretty much one more block.
11 So about two blocks.

12 Q. How long would it take you to walk back those two
13 blocks?

14 A. Two minutes. Two minutes.

15 Q. Now, you were telling the jury how -- where was
16 your car parked?

17 A. Right here in the parking lot. This space right
18 there (indicated).

19 Q. Show the jury the direction you drove when you got
20 in your car.

21 A. I got in my car, backed out, came towards America
22 Street -- no, that's Jackson Street. Excuse me, made a
23 left on Jackson Street, came to the stop sign right here
24 at Jackson and America, made a right, hang down make
25 another right right here (indicated). This is Lee

1 Street, and where this walkway is is where I pulled my
2 car --

3 THE COURT: We are unable to hear Mr. Wright,
4 Ms. Penn. It's going to be my last reminder for both of
5 you to speak up. Thank you.

6 A. How far you need?

7 Q. You are going to have to be real loud because this
8 is going to block our voices from that way, so you are
9 just going to have to shout it out, as will I.

10 A. Yes, ma'am.

11 Q. Show the jury again where you parked the car.

12 A. Okay. The car was parked right here in front of my
13 mother's apartment.

14 Q. And tell the jury which way you drove to get to
15 where you eventually stopped the car?

16 A. Okay. I came out of the parking lot, made a left
17 onto Jackson, stopped at the stop sign at Jackson and
18 America, made a right, came down and made another right
19 on Lee Street, pulled up near this walkway, and as I
20 pulled up, like I said, I could see Chris coming through
21 the park the whole time before I left the house. So I
22 knew where he was. He was coming out of the cut on the
23 baseball field right there, and that's how he ended up on
24 Aiken.

25 Q. I'm going to ask you a few more questions then

- 1 we're going to sit. Where did you see Chris on Aiken
2 Street?
- 3 A. When I saw Chris, like I said, I never lost sight
4 of Mr. Jenkins, but when I stopped my car Chris was on
5 the right side of Aiken Street.
- 6 Q. And did you see anybody else with Chris?
- 7 A. No, ma'am.
- 8 Q. Okay. Go ahead and have a seat. Please have a
9 seat, Mr. Wright.
- 10 A. (The witness complied.)
- 11 Q. Now, Aiken Street is about 300 feet long. How far
12 away -- how far down Aiken Street was Chris?
- 13 A. I think about a quarter on the right-hand side.
- 14 Q. So not that far?
- 15 A. No, ma'am.
- 16 Q. What happened after you pulled your car over?
- 17 A. Well, he was still walking, I guess the officer
18 said south on Aiken towards Cooper Street. And I got out
19 of the car but I had already yelled at him twice, and the
20 second time -- he must have heard me the first time
21 because by the time I finished the second time he had
22 turned around.
- 23 Q. And when he turned around what did he look like?
- 24 A. I couldn't see him because we were at a distance.
25 I mean, I couldn't see his facial expression, I mean.

1 Q. After he turned around what happened?

2 A. He was up on the sidewalk. So when he --
3 immediately when he stepped in the street he put his
4 hands up like this (indicated).

5 Q. Did he come towards you?

6 A. He came toward my direction, yes, ma'am.

7 Q. So he stepped off the sidewalk into the street and
8 walked towards you?

9 A. Towards Lee Street, yes, ma'am.

10 Q. And when he did that what did you think that meant?

11 A. I asked him. I said, I came to talk to you about
12 my mother and you put your hands up to fight me. That's
13 the words that came out of my mouth.

14 Q. And tell the jury exactly what you meant by that.

15 A. I asked him basically why is he trying to fight me
16 but I said it just the way I said it. I said, I come to
17 talk to you about my mother and you put your hands up to
18 fight me.

19 Q. And what happened after that?

20 A. He kept coming.

21 Q. And then what happened?

22 A. He came to me. He got inside a range where he was
23 acting like he was about to hit me, so I we ended up
24 locking shoulders like this (indicated). Can I move
25 over?

1 Q. Yes, sir.

2 A. All right. Now, we right here face-to-face. I
3 flip him right like this over my leg (indicated). Not a
4 body slam, pick him up, sneak from behind him. Nothing
5 like that. Flipped him. His momentum pulled me from the
6 ground because he still had ahold of me. My knees land
7 toward him. Then I landed on the ground because he was
8 still wiggling.

9 Now, I threw punches. We trying to separate
10 ourselves from each other. I get to my feet first but he
11 never, ever laid flat down on the ground besides when he
12 fell the first time when I flipped him. He had ahold of
13 my waist. When I got to my feet he was wrapped around my
14 waist. He was never flat down on the ground.

15 Q. And go ahead and have a seat, Mr. Wright. When you
16 got up what did you do to next?

17 A. Tried to free myself from him.

18 Q. And did you?

19 A. Yes, ma'am.

20 Q. And what happened after that?

21 A. After that he got to his feet and the fight was
22 over.

23 Q. How long do you think this whole thing took?

24 A. This was not a knock-down drag-out fight, ma'am.
25 Seconds.

1 Q. And after you freed yourself where did you go next?

2 A. I turned around and walked to my car.

3 Q. And did you see Chris after you got up?

4 A. Yes, ma'am.

5 Q. And what was he doing?

6 A. He was walking in the other direction.

7 Q. Let's move forward a little bit to the next day at

8 Ms. Marys's house. Why did you go to Ms. Mary's house?

9 A. Well, first, I got a phone call the night before.

10 I didn't answer the phone because I must have missed the

11 call but I got the voicemail, and my mother said Ms. Mary

12 came by and said I threatened some kids.

13 So I was like, What kids? You know, so I said,

14 well, being out of respect for Ms. Mary I'll go by there

15 and talk to her myself tomorrow.

16 Q. And who went with you?

17 A. The next day my mother was babysitting my niece and

18 nephew, and me, so it was four of us.

19 Q. And when you all got there what did you talk about?

20 A. First, I wanted to let Ms. Mary know that I ain't

21 threatened her kids, her grandkids because I didn't know

22 who no kids they were even taking about, at first.

23 Q. And then you say at first but...

24 A. She is the one who said that her grandkids said I

25 threatened them.

1 Q. Is that true?

2 A. No, ma'am. That's why I went over there, to clear
3 that up.

4 Q. And what else did you all talk about?

5 A. We talked about my mom getting a restraining order
6 on Chris.

7 Q. When you were at the house, at Ms. Mary's house,
8 did anybody ever ask you about Chris?

9 A. No, ma'am.

10 Q. Did anybody ever go up to check on Chris while you
11 were there?

12 A. No, ma'am.

13 Q. Nobody ever said you to, Why did you beat up Chris?

14 A. No. The only thing was said to me was, I don't
15 fault you for fighting Chris because if it was my son I
16 would --

17 MR. SIMPSON: Objection.

18 A. -- expected the same thing.

19 MR. SIMPSON: Objection. Hearsay, Your Honor.

20 THE COURT: Sustained as to hearsay.

21 Ladies and gentlemen, please strike that last
22 response from your notes.

23 You may continue.

24 MS. PENN: Thank you, Your Honor.

25 BY MS. PENN:

- 1 Q. When did you find out Chris had died?
- 2 A. Friday evening.
- 3 Q. And what did you think had happened?
- 4 A. I didn't know. I knew Chris was sick, you know,
- 5 but I didn't know it had anything to do with Thursday
- 6 night.
- 7 Q. And when did you find out you were charged with
- 8 murder?
- 9 A. Saturday.
- 10 Q. And did that surprise you?
- 11 A. Yes, ma'am.
- 12 Q. Why is that?
- 13 A. Because I didn't know anything about it. I just
- 14 found out that they left a police card at my mother's
- 15 house, so I went to retrieve the card and I got in
- 16 contact with Mr. Goldstein, after trying twice.
- 17 Q. And did you ever when you went to go talk to Chris
- 18 think this was going to happen?
- 19 A. No, ma'am.
- 20 Q. Did you stomp Chris?
- 21 A. No, ma'am.
- 22 Q. Did you beat him to a pulp?
- 23 A. No, ma'am.
- 24 Q. Did you body slam him?
- 25 A. No, ma'am.

1 Q. Did you want to hurt him?

2 A. No, ma'am.

3 MS. PENN: Court's indulgence.

4 THE COURT: Take your time.

5 BY MS. PENN:

6 Q. Mr. Wright, thank you. No further questions for
7 the moment. Please answer any questions Mr. Simpson has.

8 A. Yes, ma'am.

9 THE COURT: Mr. Simpson?

10 MR. SIMPSON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. SIMPSON:

13 Q. Mr. Wright, good afternoon.

14 A. Hey. How you doing, sir?

15 Q. I'm well. Thank you. Mr. Wright, you recounted
16 for this jury the fact that you had had some military
17 training and experience?

18 A. Yes, sir.

19 Q. Five years?

20 A. Yes, sir.

21 Q. Thank you for your service.

22 A. Thank you.

23 Q. Appreciate it.

24 A. You're welcome.

25 Q. Did some of that military training, would that

1 naturally have included some training as far as
2 hand-to-hand and personal combat?

3 A. Yes, sir.

4 Q. Mr. Wright, I'm sure this has been a long process
5 these years for you so I'm going to handle your cross by
6 being fairly direct and to the point, okay?

7 A. Yes, sir.

8 Q. I do however want to go back in time from June a
9 little bit and recount some things that Ms. Penn talked
10 about. You said you were at a birthday party in March
11 for your mother; is that correct?

12 A. Yes, sir.

13 Q. I have no doubt that you love your mother very
14 much, right?

15 A. Yes, sir.

16 Q. Okay. You did not see this confrontation between
17 Christopher and your mother, correct?

18 A. That's correct, sir. I didn't see it.

19 Q. But did you ever come during the course of that
20 party to learn that there was something involving perhaps
21 an attempted swing at your mother at this party in March?

22 A. Yes, sir.

23 Q. But she didn't get hit, correct?

24 A. No, sir.

25 Q. But there was either a rearing back or an attempted

1 swing that was thwarted?

2 A. Yeah. I was told an officer stopped it. Yes, sir.

3 Q. I want to ask a little bit about your reaction to
4 learning about that. I believe your testimony was that
5 you were just as calm about that and nonjudgmental as you
6 can be towards Chris; is that correct?

7 A. Yes, sir.

8 Q. Help me to understand that. You had just learned
9 that a man had perhaps tried to take a swing at your
10 mother and you want the jury to believe that that didn't
11 make you angry at this person?

12 A. I didn't know what was going on, sir. But like I
13 said, I honestly -- Chris was my friend. So if it was an
14 enemy maybe I wouldn't have felt the same, but I
15 definitely know that I felt nothing negative about Chris
16 because he was close to me.

17 Q. I understand that you knew Chris but you harbored
18 no resentment or anger toward the man that you thought
19 may have just attempted to assault your mother?

20 A. Like I said, sir, I didn't want to pile on. I
21 think I was the only one that made good judgment that
22 night.

23 Q. And I believe your answer was -- on direct was,
24 quote, I've had some problems I had done in the past.

25 A. Yes, sir.

1 Q. You said that you gave Chris a ride home that night

2 -- I'm sorry. What's your mom's birthday?

3 A. May -- March 12th. Excuse me.

4 Q. Of March 12, 2010 you gave Chris a ride home after

5 that party?

6 A. Yes, sir. Not after the party. After the

7 incident.

8 Q. After the incident.

9 A. Yes, sir. Yes, sir.

10 Q. Thank you. Where did the party take place?

11 A. West Ashley.

12 Q. So you drove Chris from West Ashley to downtown?

13 A. Ardmore to downtown, yes, sir.

14 Q. And during this drive did you have a conversation

15 with Chris about his actions at that party?

16 A. No. We spoke about relationships and what had

17 happened and --

18 Q. And, Mr. Wright, having just learned that this

19 person attempted to assault your mother at no point in

20 time when you are taking the drive downtown do you have a

21 conversation about that?

22 MS. PENN: Objection, Your Honor. Asked and

23 answered.

24 THE COURT: Overruled.

25 BY MR. SIMPSON:

1 Q. About what had just happened at the party?

2 A. Like I said, we spoke about relationships and what
3 had happened.

4 Q. At any time in this drive right after learning
5 about what happened at this party, at any time do you
6 say, Chris, you've got to stop this?

7 A. No, sir. In a roundabout way we spoke about
8 relationships and how we can have problems like this and
9 how not to have problems like that anymore.

10 Q. At no point did you say, Chris, this is
11 unacceptable?

12 A. No, sir. He already knew that.

13 Q. I'd like to carry forward to this incident that you
14 discussed in April between you and Chris where you,
15 quote -- you together, quote, you came belligerent,
16 punches were thrown, there was cussing and an altercation
17 that lasted seconds. I think this was the language you
18 used about April.

19 A. Yes, sir.

20 Q. Do you remember testifying at a previous hearing
21 involving this case?

22 A. Yes, sir.

23 Q. At any time during that hearing did you mention
24 this incident in April?

25 A. No. I was not asked that question at all.

1 Q. Okay. But you did this time, so let's discuss it.

2 A. Yes, sir.

3 Q. And again, you stated that in April, about the
4 month after this incident had occurred at the party in
5 March, you hear that Chris has made your mother cry?

6 A. Yes, sir. I got a phone call. Yes, sir.

7 Q. And your reaction to that phone call -- and,
8 Mr. Wright, mine would have been exactly the same, get in
9 that car and go down there and find out what the hell is
10 going on.

11 A. Yes, sir.

12 Q. You were concerned enough about that, making your
13 mother cry, that you were going to handle it and you were
14 going to take care of what was going on.

15 A. I didn't say that, but I went there to find out
16 what was going on.

17 Q. And when you get down there you speak with your
18 mother, correct?

19 A. I spoke with my grandmother.

20 Q. Your grandmother. Okay.

21 A. Yes, sir.

22 Q. And shortly thereafter you see Chris; is that
23 correct?

24 A. I'm headed to his house. Yes, sir.

25 Q. And when you see Chris things -- and I believe

- 1 these are your words. If I'm wrong correct me, Things
2 become belligerent, punches are thrown, there was cussing
3 and there is some kind of fight that lasts seconds.
- 4 A. He saw me and he became belligerent. Yes, sir.
- 5 Q. Oh, again, in this case it's he that becomes
6 belligerent, correct?
- 7 A. He was already angry, sir. I don't know why but he
8 was already angry.
- 9 Q. So you drove downtown --
- 10 A. I'm already downtown.
- 11 Q. I'm sorry. Let me finish for a second. So you
12 learn that your mother is crying, you go down. You go
13 there to see things and take care of things and it's he
14 that becomes belligerent towards you for some reason?
- 15 A. When I saw him, yes, sir.
- 16 Q. And this is after just a month before you heard
17 that he might have raised a hand to your mom and this is
18 just a month after you heard that he's made your mother
19 cry?
- 20 A. (Nodded).
- 21 Q. Okay. But again, at this incident in April you are
22 Robert Wright as you are on the stand today, calm and
23 cool?
- 24 A. I was the same person in March 2010, also. Same
25 person. Didn't judge him.

1 Q. Carrying forward to June of 2010, we are only two
2 months; again, just a matter of weeks removed from Chris
3 allegedly raising a hand to your mother in March, to
4 Chris allegedly making your mother cry in April, to a
5 physical scuffle between you and Chris in April and here
6 we are a matter of weeks later and you go to your
7 mother's house, correct?

8 A. After baseball practice?

9 Q. Yes, sir.

10 A. That's where my car was parked. Yes, sir.

11 Q. You begin to hear at your mother's house that Chris
12 has been peeping around the corner through the cut?

13 A. No, sir.

14 Q. You didn't hear anybody talking about that before
15 you saw him?

16 A. Because like I said, I was talking with a baseball
17 teammate in the parking lot. Everybody was sitting at my
18 mother's house. I didn't know, wasn't aware about the
19 Chris subject until somebody yelled out, There he go,
20 peeping around the corner.

21 Q. And at that point you look up and see Chris?

22 A. No. When I looked back there was nobody there. So
23 I walked to the side. There was also nobody there. So I
24 went to the other corner and that's when I saw him
25 walking towards the street on America Street.

- 1 Q. Okay. But at some point that night you see Chris?
- 2 A. Yes, sir.
- 3 Q. And you are aware that someone has seen Chris
- 4 peeping around the corner through the cut, or at least
- 5 that's what they said.
- 6 A. That's what they yelled out. Yes, sir.
- 7 Q. So here we are, sir, a mere matter of weeks removed
- 8 from Chris raising a hand, allegedly, to your mother at a
- 9 party, from Chris making your mother cry, from Chris --
- 10 you going down there and having a physical altercation
- 11 with Chris, and here he is weeks later peeping around the
- 12 corner. Certainly now it is not your testimony to the
- 13 jury that you were calm and cool and not the least bit
- 14 upset at Chris.
- 15 A. When I was at my mother's house after baseball
- 16 practice Chris didn't do anything. I felt I could talk
- 17 to Chris because we were friends. You don't think that
- 18 way about everybody. Only my mentality that night at the
- 19 way everything happened, not knowing we would be here
- 20 today is because I treated him as a friend, not knowing
- 21 that he wouldn't be here with us today. I treated him
- 22 with respect. Even when I didn't have to I did.
- 23 Q. And so you weren't angry when he peeped around the
- 24 corner?
- 25 A. Because he didn't do anything.

1 Q. Ok.

2 A. No, sir.

3 Q. And, in fact, you weren't even, after all of that,
4 going to talk to him, according to your direct testimony,
5 until your mother said, You just don't know what Chris is
6 going to do?

7 A. Grandmother.

8 Q. Your grandmother said that?

9 A. Yes, sir.

10 Q. You don't just know what Chris is going to do.
11 Seeing your own grandmother concerned about this
12 developing scenario did that make you angry or upset?

13 A. No. No, sir.

14 Q. But at that point you decided that he needed to be
15 talked to?

16 A. She asked me to talk to him and I did.

17 Q. Again, this follows him raising a hand to your mom
18 and being in a physical altercation with you and making
19 your mother cry, him concerning your grandmother, him
20 peeping around the corner that day, all of that and you
21 are just going to go talk to him?

22 A. I was asked to talk to him. I wasn't going to even
23 bother because he didn't do anything. I was asked to
24 talk to him.

25 Q. I won't have you do this again but you recounted

1 that you didn't have to drive very far to find him once
2 you --

3 A. Correct. I never lost sight of Chris.

4 Q. It was your testimony on direct that there was some
5 things that -- words exchanged between you and Chris as
6 you approached him, correct?

7 A. No, sir. I said I yelled out to him before I got
8 out of the car. By the second time he turned around I
9 got his attention because he turned around by the time I
10 said it the second time. Then when he came off of the
11 sidewalk, that's when he put his hands up, and that's
12 when I said, I come to talk to you about my mother and
13 you put your hands up to fight me.

14 Q. Okay. But these were words spoken between you?

15 A. That's the only words I said. He didn't say
16 anything.

17 Q. And nowhere do you see three young boys?

18 A. No, sir. No, sir, not -- I wasn't made aware of
19 the appearance of the little boys until after the fact.

20 Q. So at some point that evening you did observe the
21 three boys?

22 A. Down the road, yes, sir. But they were saying they
23 were together, and I never saw nobody walking with Chris
24 from my mother's house all the way until I approached.

25 Q. Okay. It's your testimony that he turned then

1 approached you with fists raised?

2 A. He came down off of the sidewalk and when he
3 stepped down into the street, sir, he put his hands up.

4 Q. At this point you get locked face-to-face,
5 according to you?

6 A. No. He walked some more distance towards where I
7 was, yes, sir.

8 Q. Oh, so this wasn't just a turning? This was a
9 walking towards you?

10 A. No. They saying I snuck out, jump out of the car.
11 I wasn't even parked on Aiken Street. So everything that
12 was said is untrue.

13 Q. Okay. Can you think of some reason that three
14 young boys would have to make up untruths about you?

15 A. I can't think of a reason, sir.

16 Q. Having asked that question let me ask a follow-up
17 question. You admit that a person facing what you are
18 facing here this week might have quite a powerful reason
19 to come up with things that are untrue?

20 A. Yes, sir.

21 Q. You stated on your direct that at some point the
22 two of you become locked face-to-face?

23 A. That's initially.

24 Q. Shoulder to shoulder?

25 A. Yes, sir.

- 1 Q. At some point you twist and Chris goes to the
2 ground?
- 3 A. Foot swipe him, yes, sir.
- 4 Q. And you say at this point you threw punches?
- 5 A. No. We both went to the ground first.
- 6 Q. Okay.
- 7 A. The punches only came when we were trying to get
8 up, the first one to get up. There ain't no winners in
9 fights but I didn't want to be on the bottom, sir.
- 10 Q. Okay. And you state that at no point in time did
11 you, while Chris was on the ground, stomp him?
- 12 A. Chris was not on the ground flat besides the time
13 when he hit his face on the concrete from the flip.
- 14 Q. Is your testimony to this jury that at no point did
15 a young boy come up to you and say, Stop, please stop?
- 16 A. No, sir. Chris was by himself.
- 17 Q. And it's your testimony to this jury that this
18 whole encounter merely lasts for seconds?
- 19 A. Yes, sir.
- 20 Q. How many seconds?
- 21 A. I can't say, sir.
- 22 Q. How many punches would you guess that you threw
23 that night?
- 24 A. No more than five. Like three to five. Three to
25 five.

1 Q. And how many kicks or stomps did you throw that
2 night?

3 A. Nobody did any kicking.

4 Q. And at no point did a young boy come up to you and
5 ask you to stop while this was going on?

6 A. No, sir. We stopped on our own.

7 MR. SIMPSON: Court's indulgence.

8 THE COURT: Take your time.

9 MR. SIMPSON: Your Honor, I have no further
10 questions of this witness.

11 THE COURT: Ms. Penn?

12 MS. PROCTOR: Court's indulgence.

13 (PAUSE.)

14 MS. PENN: We have no further questions, Your
15 Honor.

16 THE COURT: You may step down. Thank you.

17 Call your next witness.

18 MS. PENN: Your Honor, the defense rests.

19 THE COURT: All right. Reserving all motions and
20 matters, any rebuttal?

21 MR. SIMPSON: No, Your Honor.

22 THE COURT: Ladies and gentlemen, you have now
23 heard all the testimony you have heard in this case and
24 received into evidence all the exhibits that will be made
25 part of the record in this case. As I indicated to you

1 before, all the exhibits that have been introduced into
2 evidence will go back with you during your deliberation.

3 There is a matter of law that I must take up
4 outside of your presence. Do not begin your
5 deliberations. Do not discuss this case amongst
6 yourselves. What is remaining for the trial is closing
7 arguments on behalf of counsel and then I will instruct
8 you on the law applicable to this case.

9 Mr. Foreman, I'm going to ask you to -- going to
10 excuse you but if you would please poll the jury and see
11 what is the latest you all can stay this evening. After
12 you reached a consensus on the latest you all stay for
13 the evening, please let me bailiff know. All right.
14 Thank you.

15 Please rise for the jury.

16 (WHEREUPON, the jury leaves the courtroom at
17 approximately 2:38 p.m.)

18 THE COURT: Thank you. Be seated.

19 Any motions or matters, Ms. Penn?

20 MS. PENN: Just renew our motion for directed
21 verdict, Your Honor, and then no until jury charge
22 arguments.

23 THE COURT: All right. Any additional arguments?
24 She's made a motion for directed verdict at the close of
25 her case.

1 MR. SIMPSON: I would rely on the same grounds as
2 cited in the previous directed verdict motion.

3 THE COURT: The Court stands by my ruling at the
4 close of the State's case. While I did hear brief
5 witnesses after the close of the State's case based upon
6 the charge of murder I have heard nothing that would
7 change my mind as to that ruling. The charge of murder
8 will go to the jury.

9 Any additional arguments, any additional motions or
10 anything of that nature?

11 MS. PENN: No, Your Honor.

12 THE COURT: Are you requesting lesser included?

13 MS. PENN: Yes, Your Honor.

14 THE COURT: And what lesser includeds are you
15 requesting?

16 MS. PENN: Involuntary manslaughter.

17 THE COURT: What is the State's position as to
18 involuntary manslaughter?

19 MR. SIMPSON: Your Honor, the State's position
20 specifically as to involuntary manslaughter is that the
21 Chaplain case cited by Ms. Penn, while I will argue very
22 strongly against a verdict of involuntary manslaughter I
23 think that that is very different to our situation here;
24 however, I think it does, according to the any evidence
25 standard, I think it does warrant the charge of

1 involuntary manslaughter. As you know, I also have a
2 similar position on voluntary manslaughter that --

3 THE COURT: One at a time.

4 MR. SIMPSON: Yes, ma'am.

5 THE COURT: All right. I will be charging
6 involuntary manslaughter defined as the unintentional
7 killing of another without malice while engaged in
8 unlawful activity not naturally tending to cause death or
9 great bodily harm or a lawful activity, which I do not
10 believe there has been testimony that the activity that
11 he was engaged in was lawful. All right.

12 MS. PENN: Your Honor, we are also asking for a
13 charge of self defense.

14 THE COURT: And I need to hear why. What testimony
15 was presented at the trial that would cause that self
16 defense should be charged?

17 MS. PENN: Yes, ma'am. The testimony that we think
18 was presented in this case that warrants a charge of self
19 defense is Mr. Wright's testimony, which is that he only
20 wanted to talk to Mr. Jenkins, that it's Mr. Jenkins who
21 approached him with hands up and they get into a fight.

22 At the time of the fight Mr. Wright is hundred -- I
23 believe 155 pounds and five-foot-eight, and the victim is
24 a little bit taller. He's five-eleven, and I think
25 there's some testimony he's about 150 pounds. And under

1 the any evidence standard we'd ask that Your Honor charge
2 self defense.

3 THE COURT: Is that -- is any evidence?

4 MS. PENN: I made a mistake, Your Honor, but I
5 believe --

6 THE COURT: Ms. Penn, I don't get to charge self
7 defense just because there is a disparity in sizes. Is
8 that what you are asking me to do?

9 MS. PENN: No, ma'am. I'm asking you because he
10 had his hands up like he wanted to fight, and I think the
11 case I was thinking of when I said any evidence is State
12 V. Taylor. It's a South Carolina Supreme Court case from
13 2003, case cite 356 S. C. 227. And in that case it says,
14 This Court has placed great emphasis on the importance of
15 defendant's right to --

16 THE COURT: Slow down.

17 MS. PENN: I'm sorry, Your Honor.

18 The Court has placed great emphasis on the importance of
19 the defendant's right to assert self defense when there
20 is, in quotes, any evidence to support it and has taken
21 pains to make sure the burden to disprove self defense
22 remains on the State.

23 THE COURT: What's the State's position as to self
24 defense, Mr. Simpson?

25 MR. SIMPSON: Your Honor, similar to involuntary

1 manslaughter I anticipate in my closing argument that I
2 will thoroughly debunk the theory of self defense
3 presented by the defendant.

4 That being the case, the elements of self defense,
5 one, is the defendant was without fault in bringing on
6 the difficulty. Again, after looking in the light most
7 favorable to the defendant he said he was merely going to
8 talk. Of course, I don't believe that to be the case but
9 if that is accepted that is some evidence. He said that
10 -- in short, Your Honor, I believe testimony elicited for
11 the defendant warrants the charge under the any evidence
12 standard.

13 That being the case, it's a little funny position
14 for me to be in. I plan to certainly argue against it
15 but in order to protect any conviction that may or may
16 not come from this jury I am fine with self defense being
17 charged, Your Honor.

18 THE COURT: Anything else, Ms. Penn?

19 MS. PENN: No, Your Honor.

20 THE COURT: What else would you like for me to
21 charge?

22 MS. PENN: We are also asking for a charge on the
23 law of accident.

24 THE COURT: Tell me how this fits under accident.

25 MS. PENN: I believe --

1 THE COURT: Mr. Shelton -- Mr. Simpson. I'm sorry.
2 Mr. Simpson, tell me -- I was just in Berkeley last week.
3 I'm sorry. I called you Mr. Shelton.

4 MR. SIMPSON: That's okay.

5 THE COURT: Tell me what your position is to
6 accident.

7 MR. SIMPSON: Your Honor, we would not be conceding
8 to a charge on accident. The doctrine of accident under
9 the law, I think, applies to the act itself and whether
10 an act is done intentionally or not, and I just don't
11 think there's any conceivable view or any evidence even
12 under that standard that the charge of accident is proper
13 in this case.

14 The charge of accident is different than -- an
15 allegation of accident is different than an allegation
16 that the acts were justified. In self defense the
17 defendant is simply saying that he is legally justified
18 in doing an intentional act. The law of accident, it
19 would have to be that he accidentally punched the victim,
20 he accidentally took the victim to the ground, and I just
21 don't see any conceivable --

22 THE COURT: Ms. Penn, tell me from the facts that I
23 have heard make fit this for me, because I'm having a
24 difficult time making them fit under how I understand the
25 theory of both the State's and the defense cases.

1 MS. PENN: Simply, Your Honor, that Mr. Wright did
2 not intend to cause Mr. Jenkins' death. From my reading
3 of State V. Burress I believe that we must show the
4 killing was unintentional and the defendant was acting
5 lawfully, and, of course, that part about the weapon,
6 which there were no weapons in this case. And I think
7 jury could find that he was acting lawfully in defending
8 himself and that the killing was unintentional.

9 MR. SIMPSON: May I respond?

10 THE COURT: Ms. Penn, maybe I'm having difficulty
11 understanding your analysis. Tell me the difference
12 between accident and self defense in this particular
13 case. I think that's where I'm having a hard time
14 distinguishing the two because if he's claiming self
15 defense he's acting lawfully under that defense, correct?

16 MS. PENN: Yes, ma'am.

17 THE COURT: I mean, that's your position?

18 MS. PENN: It is.

19 THE COURT: And he intended to do that act of
20 defending himself. If you want me to charge accident in
21 my mind even if the facts did fit those are two
22 appositive defenses, meaning you can't act in self
23 defense and it be an accident.

24 MS. PENN: Yes, ma'am.

25 THE COURT: Maybe you could reconcile that for me

1 or have I --

2 MS. PENN: I'm probably not that good, Your Honor,
3 but if the Court is telling me that it's one or the other
4 in that case we would ask for self defense.

5 THE COURT: I'm saying that's how I see it. I want
6 to charge the accurate statement of law based upon the
7 facts as presented. I don't know in this scenario how it
8 can be both.

9 MS. PENN: Yes, ma'am. In that case we would just
10 ask for self defense --

11 THE COURT: Do you need a moment to talk with
12 Ms. Proctor?

13 MS. PENN: No, ma'am.

14 THE COURT: I will not be charging accident. I
15 will charge self defense. Now, is that all your
16 requests?

17 MS. PENN: I think we also have a request for the
18 Court to charge the definition of homicide, and nobody
19 liked my definition of homicide so if the Court has one
20 that -- normally, we would just ask that you charge that.

21 MR. SIMPSON: Your Honor, may I respond?

22 THE COURT: You may, as to homicide.

23 MR. SIMPSON: There was no legal efficacy to that
24 word homicide. The defendant is the not charged with
25 homicide. He's charged with several different types of

1 homicide. I don't see any legal relevance --

2 THE COURT: Tell me why I need to define homicide,
3 Ms. Penn.

4 MS. PENN: Primarily because Dr. Batalis --

5 THE COURT: And that's my concern, is that if I
6 give them a definition and there was no explanation by
7 Dr. Batalis of what he meant by homicide -- I don't
8 recall either of you asking him to define that, then I am
9 actually testifying by putting a statement -- I don't
10 know what he meant. Did he testify as to what homicide
11 meant?

12 MS. PENN: He did not, Your Honor. He just said
13 the finding was.

14 THE COURT: Then how can I do that? Tell me how I
15 can do that without becoming -- without making a factual
16 finding. I don't know what he meant by that. I could
17 assume.

18 MS. PENN: Yes, ma'am. Might I have a moment to
19 confer with Ms. Proctor?

20 THE COURT: Please do.

21 (PAUSE.)

22 MS. PENN: Your Honor, I'll have to respectfully
23 agree with the Court in that I should have asked
24 Dr. Batalis about it and I didn't.

25 THE COURT: You can disrespectfully agree with the

1 Court at that point, Ms. Penn. Thank you. If you find
2 something that let's me charge it, a definition of that
3 nature, I think in some jurisdictions murder is charged
4 as homicide and that likely would make more sense in
5 doing some analysis of the other cases but in this
6 because we did not have Dr. Batalis, especially because
7 we did not have him define it I think it's confusing to
8 the jury.

9 MS. PENN: Yes, ma'am.

10 THE COURT: All right. Anything else?

11 MS. PENN: Nothing further from the defense.

12 THE COURT: All right. I think but for the
13 accident everything you requested has been -- all the
14 standard charges have been included but for accident, and
15 I'm not defining homicide. I think that based upon your
16 request I grant that's the position, correct?

17 MS. PENN: Yes, ma'am.

18 THE COURT: Anything else?

19 MS. PENN: No, ma'am.

20 THE COURT: All right. Mr. Shelton -- Mr. Simpson?

21 MR. SIMPSON: Thank you, Your Honor. The State
22 would request that along with involuntary manslaughter
23 and murder that the Court charges voluntary manslaughter.
24 Again, to agree with Ms. Penn the standard that we are
25 looking at isn't necessarily that we agree that's what it

1 is. The standard we are looking at is, is there any
2 conceivable conclusion based on the evidence that a jury
3 can make that this in fact was not a murder or an
4 involuntary but a voluntary manslaughter?

5 To that point, there are two sort of intertwining
6 elements to a voluntary manslaughter; that is a legal
7 sufficient provocation, number one, which leads to number
8 two, the heat of passion described as a level of anger,
9 you know, that a reasonable person would be unable to
10 control their impulse for violence.

11 As to the first, the legally sufficient provocation
12 I don't believe you'll find much guidance in case law as
13 to what sort of scenarios that warrants human conduct
14 being so varied but it does say words alone are not
15 enough. Well, the defense in this case presented two
16 witnesses, and Mr. Wright just here today, Your Honor.

17 The two prior witnesses have absolutely no
18 relevance to the case whatsoever except to show
19 provocation of Robert Wright, and you heard their
20 testimony about the incident at the party, you heard
21 Mr. Wright's testimony about the prior difficulties
22 directly, the difficulties he was having with his mother.
23 The defense has presented quite a substantial
24 presentation of legally sufficient provocation or at
25 least evidence which a reasonable juror could conclude

1 was legally sufficient provocation.

2 I would also on that point -- or on the point of
3 both provocation and heat of passion, I quote for you the
4 Supreme Court case of State vs. Davis, 278 S. C. 544,
5 Voluntary manslaughter is the unlawful killing of a human
6 being in sudden heat of passion upon sufficient legal
7 provocation. And then these two clear, ambiguous
8 sentences, It is proper to refuse to instruct voluntary
9 manslaughter in a murder case only when there appears no
10 evidence whatsoever tending to show manslaughter.

11 Here a witness testified that appellant and the
12 victim had been fighting. From this circumstance of
13 provocation and heat of passion guilt of voluntary
14 manslaughter could fairly and logically be deduced and it
15 was a proper matter for jury determination. Two very
16 unambiguous sentences that say when you have testimony of
17 fighting, which is the crux of the defense's case, a
18 voluntary manslaughter, a charge is proper.

19 Now, the defense will doubtless rise and say, But
20 my client took the stand and said he wasn't mad. I
21 submit to Your Honor that in countless examples all
22 across both criminal and civil law when a person
23 testifies to their own state of mind it is not the Court
24 or the jury's job to just accept that as if once stated
25 by the accused it is a legal fact as a matter of law.

1 There are two types of evidence presented to you as
2 to his state of mind. His own testimony, and I would
3 submit Your Honor, loads of circumstantial evidence
4 showing that, in fact, the defendant was incredibly angry
5 that evening. And I cite the testimony of all three boys
6 who said he came up, there were no words exchanged. He
7 came up behind the victim and body slammed him, punched
8 repeatedly, stomped repeatedly and, in fact, was so
9 heated that he threatened a young boy when the young boy
10 tried to intervene.

11 I submit to you that that is evidence of heat of
12 passion. And the fact that a person takes the stand and
13 says, I wasn't mad, doesn't end the debate. It doesn't
14 mean we just accept as a matter of law, which is what we
15 would be doing if we refuse to charge it, is accepting as
16 a matter of law that when someone says my mindset was X
17 that is, in fact, what it was, despite loads of
18 circumstantial evidence pointing otherwise.

19 One of the annoying things that lawyers and law
20 students do is hypotheticals, and if you will indulge one
21 briefly --

22 THE COURT: Are you going to annoy me, Mr. Simpson?

23 MR. SIMPSON: Probably, Your Honor.

24 THE COURT: Anything else?

25 MR. SIMPSON: Okay. No, Your Honor. I just would

1 like to -- there's several examples I can give the Court
2 where we don't just say --

3 THE COURT: I've read the case law. I got it.

4 MR. SIMPSON: Okay. Thank you, Your Honor.

5 THE COURT: Ms. Penn, let me hear your argument.

6 MS. PENN: Thank you, Your Honor. The case that we
7 were looking at was State vs. Starnes, a Supreme Court
8 case from 2010. And in that case the Court is very
9 clear, and they say that there must be sufficient legal
10 provocation that would cause the defendant to lose
11 control and create uncontrollable impulse to do violence
12 and that to warrant a voluntary manslaughter charge the
13 defendant here must manifest himself in an uncontrollable
14 impulse to do violence.

15 Mr. Wright was on the stand answering Mr. Simpson's
16 question for a long time over and over again, and my
17 questions; Were you mad?

18 No.

19 Were you angry?

20 No.

21 And I disagree with Mr. Simpson in that it's our
22 position his actions did not show that urge to do
23 violence. He didn't take his car and run over him with
24 it, he didn't grab his bat and run out of the car. All
25 he did was roll down the window and want to talk. That

1 talk turned into a fight, and that is not voluntary
2 manslaughter.

3 THE COURT: Ms. Penn, I can't just go on your -- on
4 the defendant's case alone. I have to take all of the
5 testimony as a whole in crafting my charge. And there
6 was at least one of the State's witnesses who testified
7 that your client used profane language and approached as
8 he was exiting the vehicle to get to the victim.

9 So I must take everything in a whole when I'm
10 crafting a charge. You would not want me to just to take
11 the State's case when I was crafting the charge and
12 disregard what you had presented. Likewise, I cannot do
13 that for you. Anything else that I need to consider?

14 MS. PENN: Nothing from us, Your Honor.

15 THE COURT: All right. I will be charging
16 voluntary as well. I note your exception to my ruling on
17 that one.

18 Is there anything else before we -- we are going to
19 take a break. I'll allow you to collect your thoughts.
20 I'm inclined to push on.

21 MR. SIMPSON: Agreed, Your Honor. Just briefly,
22 the State did submit some language as far as the
23 definition of malice. I don't know what --

24 THE COURT: I read it to you when I ruled on my
25 directed verdict. That's the language I use.

1 MR. SIMPSON: Okay. Thank you, Your Honor.

2 MS. PENN: I'm sorry, Your Honor. Did you use the
3 State's language of malice is the wrongful intention to
4 injure another person and it is the intentional doing of
5 a wrongful act without just case? Because when I looked
6 at the State's proposed instructions --

7 THE COURT: Well, I now have to -- because I'm
8 charging self defense I now have to under Belcher be very
9 clear as to what malice is not and there's no inferences.
10 She's printing my charge off now. I don't have it in
11 front of me.

12 MS. PENN: I guess, Your Honor, if I could just
13 take -- if you wouldn't mind, if I could take a quick
14 look at the malice charge to see if it's the one I'm
15 thinking it is or if it's something else --

16 THE COURT: All right. Thank you.

17 MS. PENN: -- I need to be arguing on the record.

18 THE COURT: Thank you. All right, Counsel. If
19 you'll approach and take a look at the verdict form.

20 (WHEREUPON, a brief recess was taken.)

21 THE COURT: All right. Are you ready, Mr. Simpson?

22 MR. SIMPSON: I am, Your Honor. Thank you.

23 THE COURT: Ready, Ms. Penn?

24 MS. PENN: Yes, ma'am.

25 THE COURT: All right.

1 (WHEREUPON, the jury enters the courtroom at
2 approximately 3:15 p.m.)

3 THE BAILIFF: The jury is all present, Your Honor.

4 THE COURT: Thank you. Please be seated.

5 Ladies and gentlemen, as I indicated to you before
6 our break, we have reached the stage of the trial where
7 you will hear closing arguments on behalf of counsel.
8 Just as what was contained in opening statements is not
9 to be considered evidence neither is what is contained in
10 their closing arguments. It's merely the attorneys'
11 contention as to what the evidence has shown you.

12 After you have heard closing arguments on behalf of
13 the State, the defendant, and the State has an
14 opportunity for a second close I will instruct you on the
15 law applicable to this case, and at that point you will
16 retire to consider your verdict. Please give your strict
17 attention.

18 Mr. Simpson.

19 MR. SIMPSON: Thank you, Your Honor.

20 Ladies and gentlemen of the jury, I say this a lot,
21 but thank you. We are here at the stage of the trial
22 that is closing arguments. I wanted to point one thing
23 out to you quickly. Because the burden of proof is mine
24 and the burden of proof does lie on the government I get
25 an opportunity to speak to you twice during closing

1 arguments.

2 We start with what's called my opportunity to do
3 what's called an opening on the law. So what I'm doing
4 in addressing you now is just merely talking about the
5 law that you will be charged and the law that applies to
6 this case, but my closing argument will come later after
7 Ms. Penn's closing argument.

8 Again, following all of this you'll hear the charge
9 of the law from the Judge, and obviously if anything I
10 say contradicts to what the Judge tells you in her legal
11 charge you are to disregard what I said because she is
12 the ultimate judge of law.

13 But I am going to open on the law because I think
14 it's helpful, and as I stated in my opening statement,
15 the difficulty in this case is not so much the facts as
16 it is applying the law of the State.

17 You will have an option, and it's been asserted by
18 the defense, to find the defendant not guilty by reason
19 of self defense. So it's important that you have an
20 understanding of what that legally means, self defense.

21 To make a finding of self defense you must find
22 that all of these elements are present, and I can't
23 stress that enough. This isn't a matter where you check
24 one of these boxes and say self defense. You must check
25 all of these boxes to find -- make a finding of self

1 defense. But the burden of disproving at least one of
2 them is mine. I don't want to confuse you. The burden
3 is on the State to disprove self defense, but I must only
4 disprove one of those boxes. Again, you must find all
5 four to conclude this was self defense.

6 To make a finding of self defense you must find,
7 first, that the defendant was without fault, clear of
8 fault of bringing on this difficulty. And again, I'm
9 going to have to bite my tongue. In my closing argument
10 I'm going to explain why none of these apply.

11 The defendant to find self defense must be without
12 fault in bringing on the difficulty. The defendant must
13 have been in actual or believed he was in actual imminent
14 danger of losing his life or sustaining serious bodily
15 injury, and note that it says imminent danger. That
16 means danger right that moment of losing his life or
17 serious bodily injury.

18 If the defendant wasn't in actual danger but just
19 believed he was in actual danger you must find that the
20 belief of actual imminent danger of losing his life or
21 sustaining serious bodily injury must have been
22 reasonable. In other words, a person can't say in any
23 situation, Well, hey, I really thought I was going to
24 lose my life. He must have a reasonable belief that he
25 was about to lose his life for self defense to apply.

1 And lastly, ladies and gentlemen, the defendant
2 must have had no other probable means of avoiding the
3 danger. To find self defense in this case, I repeat to
4 you, and I may say this again in my closing, but you must
5 find that all four of those things apply to this case.

6 In this case, ladies and gentlemen, you will have
7 various levels of homicide that are options to use to
8 decide between. One option you will have is involuntary
9 manslaughter. A finding of involuntary manslaughter
10 means you are firmly convinced that this was the
11 unintentional killing of another without malice but while
12 engaged in an unlawful activity not naturally tending to
13 cause death or bodily harm.

14 In other words, the defendant did something that
15 was not naturally, would not naturally tend to cause
16 death or great bodily harm. And the second option will
17 not be an option to you, but that's the key phrase from
18 the involuntary manslaughter.

19 Another level of homicide, voluntary manslaughter.
20 To make a finding of voluntary manslaughter he must
21 conclude that based upon sufficient legal provocation,
22 and you'll get some guidance on what that means from the
23 Court, but let me go ahead and tell you that's a decision
24 that's largely going to be yours.

25 What is sufficient legal provocation to mitigate

1 killing another human being? You must find to find
2 voluntary manslaughter that upon sufficient legal
3 provocation the defendant unlawfully kills another human
4 being in a sudden heat of passion.

5 Well, what does that mean, sudden heat of passion?

6 It means it must be such as would naturally disturb a
7 sway of reason and render the mind of an ordinary person
8 -- in other words, you don't say, Well this wouldn't
9 upset an ordinary person if he's a hot head. You don't
10 get a benefit for being a hot head.

11 It must render the mind of an ordinary person
12 incapable of cool reflection and produce what according
13 to human experience, and that's your experience, may be
14 called an uncontrollable impulse to do violence.

15 So you must find both sufficient legal provocation
16 and that the defendant was acting in a sudden heat of
17 passion when he did this to make a finding of voluntary
18 manslaughter.

19 And finally, murder. And we've discussed this in
20 our opening. Murder is the killing of any person with
21 malice aforethought either express or implied, and that
22 means -- express malice is like you heard in this case
23 from one of the witnesses; the cursing, you know, the
24 threats when someone tried to intervene. Or implied, and
25 that simply means -- you are all smart adults, when a

1 person's conduct reflects to you that there was malice or
2 ill will there.

3 Te killing of another person, the first element for
4 murder. When one's actions are the proximate cause of
5 another's death. That's an important phrase, proximate
6 cause. So I've provided you some guidance, and I believe
7 this is substantially the same guidance you will get from
8 the Court.

9 Proximate cause is that cause without which the
10 death of the victim would not have resulted. Proximate
11 cause does not necessarily mean that it occurred
12 immediately prior to death. There may be more than one
13 proximate cause. The defendant's act may be regarded as
14 the proximate cause if it is a contributing cause of the
15 death of the victim.

16 The fact that other causes also contribute to the
17 death of the victim does not relieve the defendant from
18 responsibility. Let me read that again to you because I
19 believe it is important. The fact that other causes also
20 contribute to this death of the victim does not relieve
21 the defendant from responsibility.

22 And lastly, ladies and gentlemen, killing another
23 with malice aforethought, as I discussed to you in my
24 opening, if someone sets out, goes out to kill another
25 person is that malice? Certainly that is malice, but

1 that is not the only way you can conclude that malice
2 existed.

3 Malice is hatred, ill will or a hostility towards
4 another person. It is the intentional doing of a
5 wrongful act with an intent to inflict injury.

6 You'll receive quite a longer charge from the Court
7 on what malice is and what malice means. I ask that you
8 pay attention, and as I stated previously, the ultimate
9 source of all of this law will come from the Court
10 following both of our closing arguments. I will speak to
11 you again at the conclusion of Ms. Penn's closing
12 argument. Thank you.

13 THE COURT: Ms. Penn?

14 MS. PENN: Thank you, Your Honor. To be guilty of
15 murder you have to mean it. It's not enough to just get
16 into a fight and have a fight go wrong. That is not what
17 murder means. This case, this is not murder. This is a
18 fight between two grown men. It's a quick fight, it's a
19 fair fight, and that's all.

20 When Robert went to talk to Chris he never wanted
21 this to happen. He didn't imagine this would happen.

22 THE COURT: Counsel, could you approach for just a
23 moment.

24 MS. PENN: Yes, ma'am.

25 (WHEREUPON, a bench conference was had.)

1 MS. PENN: What Robert imagined, what Robert
2 thought, those things are important. They are important
3 because he is charged with murder, the most serious crime
4 there is. And our laws, our laws recognize you don't
5 just look at the result. We look at the intent, the
6 intent behind the act.

7 And the issue in this case is going to be what was
8 the intent, what did Robert intend. And I can tell you
9 and I'll argue to you that he did not intend to kill
10 Chris. He did not intend to hurt him, and not only will
11 his actions show that but the actions of Chris, of
12 Chris's family, and of the teenage boys, that those
13 actions show that lack of intent as well.

14 The solicitor showed you a partial definition of
15 malice on the board. And one thing that is interesting
16 is that that definition lacks the word evil. What is
17 malice? What is malice aforethought besides a fancy
18 legal word that we like to use? Malice is evil. That's
19 what it is.. What kind of intent, what kind of person do
20 you have to be to be guilty of murder? And the answer is
21 evil. That's what we mean.

22 And I could go over the charge of malice, I could
23 read it to you but the Judge will do that. And you've
24 seen part of it already. And instead what I would say to
25 you and ask you to think and consider is that malice when

1 you hear it you'll know what malice is. If this case was
2 a different case, if this was a case where someone got
3 into a fight, got another man down on the ground, told
4 him to bite the curb and stomped his head, that's malice.
5 No question.

6 If this were a case where somebody was pointing a
7 gun into a car full of people and shot it, shot the gun,
8 maybe there's no specific intent to kill but he hits
9 somebody and that person dies, that's malice.

10 What malice is not is two grown men getting into a
11 fight, a fight that lasts seconds, and both men get up
12 and they walk away afterwards. If there was malice one
13 or two of them wouldn't be up. There would be no
14 imagining, And they certainly would not be able to walk
15 up and walk away afterwards.

16 And this definition, this requirement of malice is
17 hard. It is a high, high standard. And the reason it's
18 high is because the charge is so important. It's because
19 the charge is murder, the most serious one to be had.

20 And let's take a look at the facts. In this case
21 the facts do not show you evil. They do not show you
22 malice. They do not show you murder. Robert goes to
23 talk to Chris. Gets out of his car, he leaves it
24 running, the door is open.

25 There is plenty, there are plenty of things he

1 could have brought to that fight if he meant to, plenty
2 of tools he could have grabbed, wouldn't have taken a
3 second; bats, hammers, drills, all of those things, but
4 he didn't. What did he bring instead? Nothing.
5 Himself. And you heard him testify, what kind of shoes
6 was he wearing? Slides. Shower shoes.

7 And when Robert went to talk to Chris this is no
8 case of Robert running after him, tackling him and
9 throwing him down. We know that Chris came towards
10 Robert and we know that because Chris was on the sidewalk
11 and the blood drops start in the street. Chris walked
12 back towards Robert with his hands up ready to fight,
13 ready to take a swing just like he took a swing at his
14 mother at her birthday party with everybody around.

15 Now, after the fight Chris gets up and starts
16 walking, so does Robert, and that's how you know that
17 there is no malice here. If there was, one of them would
18 still be on the ground.

19 And how else do we know there's no malice? Who
20 else is there? The teens. Do they act like this is a
21 fight where they have just seen their uncle, their
22 beloved uncle get beat to a bloody pulp? Do they act
23 like they said, that he was hurt so bad that they were
24 scared, that they were worried? No. And what did they
25 do? They go to the store. They go buy chips and sodas.

1 And the fight is quick. What there is of it, it is
2 fast. Robert says seconds, but you have another source,
3 the mom, Ms. Jenkins, of the teens. She says -- and
4 where they are, where they start out is here. And they
5 have to go this way through the park and they end up here
6 at Knight's grocery.

7 She says they leave around nine and they are only
8 gone for about 10 to 15 minutes. Ten to 15 minutes to
9 walk all that way. You split that in half; five, seven,
10 eight minutes each way. That's how fast it was. That's
11 how you know this was quick.

12 To have the malice you need before this is murder
13 you need to mean it. All right. Now, there is certainly
14 a range. There is a range from murder to voluntary, to
15 involuntary. But if you think what happened was that
16 Mr. Wright got into a fight, wanted to hurt Chris but it
17 was a fight, a normal fight, and that he died later the
18 next day that's called involuntary manslaughter.

19 And the definition of involuntary manslaughter --
20 I'm going to read it because sometimes I forget the
21 specific words. But the definition is the unintentional
22 killing of another without malice but while engaged in an
23 unlawful activity not amounting to a felony and not
24 naturally tending to cause death or great bodily harm.

25 That means, in short, someone was doing something

1 unlawful, like fighting, or even attacking somebody. And
2 that activity is not a felony. Assault and battery in
3 South Carolina is not a felony if that unlawful act did
4 not naturally tend to cause death or great bodily harm.
5 And this fight is not that fight. This fight is not the
6 kind that would tend to cause death or great bodily harm.

7 And you don't just have to take my word for it. We
8 had Dr. Batalis on the stand. And what did he say? We
9 are certainly not saying that Chris didn't die. We know
10 he did. We know he did. But the injury that he had
11 even though it was eventually fatal it was fatal hours
12 and hours later.

13 If he had gone to the hospital he would have had an
14 excellent chance of survival. It is not the kind of
15 injury that is normally fatal. And that means his
16 injuries at the time, the time after the fight, that they
17 weren't that bad. That is involuntary manslaughter.

18 Another option you have in this case is self
19 defense. Chris came at Robert with his hands up. Chris
20 is an alcoholic. We heard that testimony. He's been
21 bothering Robert's mom. We heard that, too.

22 We also know he's an alcoholic because he drinks so
23 much alcohol that when he tries to detox he has seizures.
24 That's how bad it is. It is not one drink a night, a
25 couple drinks on the weekends. He has just fought with

1 Robert a month ago. And in South Carolina if somebody is
2 a threat to you you have the right to meet force with
3 force.

4 Robert just wanted to talk. He didn't want to
5 fight. If he had he would have gotten his bat, he would
6 have gotten his box cutter, his drill, he would have
7 brought those with him.

8 Of course, what the teens said on the stand, it
9 sounded bad, but it's simply not true. Some of the
10 things they said can chalk up to exaggerations. The idea
11 that Mr. Wright, who is five-eight, 150 pounds, that he
12 picked up Christopher Jenkins, who was five-eleven and
13 150 pounds, picked him up and slammed him on the ground,
14 this is not the W. W. F. That's not what happens here.
15 Or how about the idea that their beloved Uncle Chris, the
16 same Chris that had been harassing Ms. Winky, the same
17 person who's been scraping with Robert, that that Chris
18 just laid there and did nothing, and just was being like
19 a martyr. That makes no sense.

20 Also, the teens testified that there were lots of
21 punches, ten. Ten kicks, ten stomps. Dr. Batalis
22 testified that besides the cut here, a scrape here, and,
23 of course, the fractured ribs, that he thought was from
24 one blow, there were no other bruises on the body. There
25 was no broken nose. There were no black eyes. There's

1 no fractured skull. Nothing that you would expect to see
2 if someone has been pounding on somebody.

3 And one way you can -- another problem is with the
4 site. One of the teens, **Jocqui J.**, he tells Officer
5 Goldstein that he couldn't see who it was because he
6 didn't have his glasses on, and this is at nite, and you
7 all saw the picture. On this particular street, it's
8 around eight o'clock, nine clock at night, there was one
9 light. And the blood is on the other side of the street,
10 the other side of the sidewalk, and the kids are standing
11 further away.

12 I'm not saying they didn't see a fight. I think
13 they did. I'm saying what they saw is not what they told
14 you all. And, of course, their actions, there is no way
15 that if they saw their uncle get beat like they said they
16 did they wouldn't have done something. Help, home is
17 about two blocks away. They could have run there. They
18 could have gotten somebody.

19 Chris had a cell phone. They could have called.
20 If they didn't want to go during the fight maybe they
21 could go after. They could walk their uncle back home.
22 Where do they go instead? They go to the store. They
23 don't have a cell phone at Knight's Grocery Store, and
24 there's no phone line there? And they didn't tell
25 anybody? They didn't tell anyone?

1 And, you know, their uncle is so hurt they just
2 leave him? They leave him in the street and then he's
3 escorting them? But that's okay. They got their chips
4 and their sodas. So they go back home?

5 I'm not saying this to be nasty. I don't think
6 these kids are bad kids. I don't think they left their
7 beloved uncle on the street because they didn't care
8 about him. No. They left him there because they didn't
9 think anything was wrong. They didn't think he looked
10 that bad. They didn't think he looked hurt, and that is
11 what everybody else thought.

12 If Robert had just run up on Chris out of nowhere
13 don't you think Chris would have said something or told
14 somebody; Robert just beat me up. I don't know why. He
15 just did.

16 But he knew why. He knew he had been harassing
17 Winky. He knew he wasn't doing right. He knew he and
18 Robert got into a fight before and expected to get into a
19 fight again, and that's why he came at Robert like this
20 (indicated).

21 And what was Chris's family worried about when
22 Chris came home? Of course they were worried about him.
23 They check on him. But where did Ms. Mary go? She left
24 the house. She left Chris to go talk to Ms. Winky about
25 disrespecting her grands.

1 Everybody is worried about respect, respect to the
2 children, and the next day it's the same. Everyone is
3 worried about Robert supposedly saying mean things to the
4 kids, and Robert and Ms. Winky are going over there to
5 say, Hey, this is coming. We are putting out a
6 restraining order on Chris. We want to let you all know
7 face-to-face before we do.

8 Nobody says, Chris is upstairs. Why did you do
9 that? You really hurt him. Nobody says that because no
10 one, including Robert, thinks that he hurt him.

11 It never crossed Robert's mind that he would be
12 charged with murder because he didn't mean it. He didn't
13 mean to kill Chris. He didn't mean to beat him up. He
14 didn't want to teach him a lesson. All he wanted to do
15 was talk. And when it turned into a fight he thought it
16 would be like the last one, where they just got up, took
17 care of their business and it would be fine.

18 Everyone wishes they had done things differently
19 that day. Robert wishes he never went to talk to Chris.
20 I'm sure the teens wish they had done more, called
21 someone for help, helped their uncle, called the
22 ambulance. I'm sure Chris's mother and sister wish they
23 would have called sooner. But just because this is
24 tragic, just because it's sad does not make it murder.
25 Just because two men get into a fight it does not make it

1 murder.

2 This whole case is a series of unfounded
3 conclusions and missed opportunities. If only Chris had
4 not come to Robert like this (indicated). If only
5 someone would have called EMS we might not all be here
6 today.

7 There is no murder without malice, and Robert did
8 not mean for any of this to happen. He never wanted to
9 hurt Chris that bad. He never wanted him to die. His
10 actions showed that. The actions of everyone else showed
11 it. Find him not guilty.

12 THE COURT: Thank you.

13 Mr. Simpson.

14 MR. SIMPSON: Thank you, Your Honor.

15 Ladies and gentlemen, thank you again. I submit
16 to you that here at the end of our case where my hard
17 work comes to an end and your hard work begins we find
18 ourselves at the same place we were in the opening
19 statement. If you will recall the first time I talked to
20 you I said, Look, the facts of this case are pretty
21 straightforward and our presentation of them is going to
22 be pretty straightforward. I think I lived up to that
23 promise to you.

24 And I said to you, in fact, at the close of the
25 trial the relevant facts that you will take with you into

1 the jury room, the relevant facts are as follows. On
2 June 10, 2010 around sunset Robert Wright saw a person he
3 was angry at. He saw a person he had ill will toward
4 walking down the street.

5 Now, the fact that the person was walking with
6 three young nephews -- two young nephews and their friend
7 to the store didn't matter to him. It didn't matter
8 enough to trump his desire to do violence.

9 He saw him, got in the car, chased him down, got
10 out with the intention of doing serious violence to him,
11 with the intention of hurting this person to teach him a
12 lesson. He body slammed him from the behind to the
13 pavement, punched him repeatedly, and while another human
14 being laid defenseless on the street he followed up with
15 stomps to his body.

16 This person assaulted Christopher Jenkins, age 46,
17 beloved son, brother, and uncle, father figure to the
18 close Jenkins family, died of these intentional
19 purposefully inflicted injuries less than 24 hours later.
20 That is what I told you in my opening statement, ladies
21 and gentlemen, were the relevant facts you would take to
22 the jury room. I submit to you now at the close of this
23 trial that they are the only relevant facts you will be
24 taking with you to the jury.

25 The defense in this case -- and let me take this

1 opportunity to say I've had the distinct pleasure of
2 working with Ms. Proctor and Ms. Penn for several years
3 now and two smarter lawyers you won't find, two nicer
4 people you won't find. I am very fond of both of them
5 but they have a job to do here, and not just a job that
6 you get paid for. It's a job, in fact, that is mandated
7 by the United States Constitution, and that's to
8 zealously defend their client, and they've done that.

9 But as I told you in opening, as far as the facts
10 of this case go their attempts to muddy those waters, and
11 that's definitely what they are trying to do, will be
12 unsuccessful. And as I told you in the opening
13 statement, I don't say that to be brash or cocky.

14 I say that because they simply don't comport with
15 the testimonial evidence, it doesn't comport with the
16 physical evidence and it doesn't comport with our own
17 human understanding of human interactions. And, ladies
18 and gentlemen, that is why you are here.

19 I insult my whole profession when I say that
20 lawyers, we are lacking in something -- in abundance of
21 just common sense. And so hundreds of years ago they
22 decided let's bring some common sense into this courtroom
23 and pick 12 people from the community, you, to be that
24 common sense, and I ask that you don't leave that at the
25 door. Use it in this case. Because the story that's

1 been presented to you -- again, I'm very fond of her, but
2 by Ms. Penn, is simply unbelievable.

3 There were five people that witnessed what happened
4 out there that night. One of them, sadly, is no longer
5 with us. Three of them tell you substantially the same
6 story, that this man came up behind Christopher Jenkins
7 and body slammed him to the pavement.

8 Now, Ms. Penn -- I'm not trying to suggest to you
9 that he picked him up over his head and spun him around
10 like a wrestling move. He grabbed him just like the boys
11 showed you and slapped him down to the pavement punching,
12 punching and then finished with stomping, stomping to the
13 degree that scared a child -- and again, I kept making
14 this point. I don't have to explain this to you all.
15 You all are adults. The boys that you saw, the
16 soft-spoken, young men that you saw on the stand this
17 week were children when this happened.

18 This happened in 2010, almost four years ago. And
19 I'm sure you all in your own lives now how quickly young
20 people grow from those ages, children. A beating so
21 savage that at some point a scared little kid says, Stop,
22 stop it. You know, Enough. Stop it.

23 Five witnesses, one no longer with us, three to
24 tell you the story of what happened that night, and the
25 defendant, who gives you a story. I asked Mr. Wright,

1 What reason would these children have to make up stories
2 about you? I don't know.

3 I asked Mr. Wright, Well, don't you admit that a
4 person in your situation might have a reason not to tell
5 the truth, might have the most powerful reason you could
6 imagine not to tell the truth?

7 And I give Mr. Wright credit. His answer to that,
8 Yeah.

9 And, look, I've never found myself, thankfully, in
10 that situation but let me tell you; I can't make any
11 promises as to what I would say in his situation. I
12 can't imagine any more powerful reason to tell 12 people
13 something that didn't happen than to be where Mr. Wright
14 sits today. Five witness. Three tell you one story, one
15 tells you a different story, the one with the most
16 powerful motive to lie.

17 But in this case, again, common sense. You don't
18 have to just believe somebody over another. You can look
19 at the evidence, and in a crime like this there isn't an
20 abundance of physical evidence but we do have physical
21 evidence, and all that points to is that the three boys
22 are telling you the truth.

23 Law enforcement said, Where did this occur?

24 They took him to the spot.

25 What did law enforcement find when they get to that

1 spot? Blood at the exact spot that they are telling. We
2 call that corroboration, when somebody tells a story and
3 the physical evidence comports with that story.

4 What did they say happened after the incident?
5 Their Uncle Chris got up and tried to keep walking them
6 to the store. What does the physical evidence at the
7 scene show you? They show you, sadly, Christopher
8 Jenkins -- and rather cynically Ms. Penn referred to him
9 as a martyr. I submit to you that there was at least
10 part of his personality that was, tries to keep walking
11 his nephews to the store.

12 Blood drops. And where are those blood drops?
13 Going exactly where the nephews told you Christopher
14 Jenkins went to. Corroboration, a story given that
15 comports with the physical evidence.

16 So now let's go back to that human experience, your
17 own experience in your own lives. You all know how
18 humans interact. You all understand that. You are all
19 adults. Let's think about the story that Christopher
20 Jenkins -- I mean, that Robert Wright gave you.

21 Just a few months before this happened he told you
22 that Christopher Jenkins, or at least in his mind,
23 attempted to take a swing at his mother. Did that make
24 him angry? No. In fact, I was totally cool with it,
25 totally understanding, and I gave him a ride downtown.

1 You guys have an abundance among you of human
2 experience. Do you think that he wasn't angry at that?
3 Really? Do you believe that? Do you not think that on
4 that drive downtown Robert Wright said to Christopher
5 Jenkins, I'm giving you a ride downtown but this is it.
6 This has got to stop. Stay away from my mother.

7 Again, what do we know happened a month later that
8 fits perfectly with that? Robert Wright gets a call;
9 Christopher has made your mom cry again.

10 What does Robert Wright do? Again, I told him I'd
11 do the same thing. He gets in his car and goes down
12 there and this time it's physical. You don't think that
13 your experience, your welcomed experience as human beings
14 that this wasn't a quick fight like he said, seconds.

15 And again. All right. You know, you've crossed
16 the line. Now it's really got to stop and if this
17 happens again we are really going down, something is
18 really going happen to you.

19 But Robert Wright testifies even though we got into
20 a fight it was cool. I was cool and I was calm. There
21 was no anger there whatsoever, no ill will, no hostility
22 toward him. I submit to you that's unbelievable. You
23 all have been on this earth. That is not how humans
24 react to this, certainly not to threats to their mom,
25 certainly not to physical fights.

1 And then we get to the day in question. Gave him
2 that first chance, gave him a ride home. Roughed him up
3 a little bit that second chance that he crossed line,
4 walked away. And here we are at the third strike on June
5 10th. He's going over there to see his mom.

6 You know, I don't know, that sounds to me like they
7 were taking about Chris peeping around the corner quite a
8 bit. He says he didn't hear about that but you believe
9 what you will. But at some point he sees Chris peeping.
10 And, ladies and gentlemen, that's the third strike. In
11 Robert Wright's mind that's the third strike.

12 All right. I gave him a ride home the first time.
13 I just roughed him up a little bit the second time. The
14 third strike, now it's on.

15 He sees Christopher walking his nephews to the
16 store. He goes up behind him. You heard from one of the
17 boys, Yeah, Chris heard somebody coming around. He got
18 about halfway, and boom, to the pavement, and the punches
19 and the stomping.

20 You've heard from Dr. Batalis. I'm sorry. Let me
21 backtrack for a second. Crime scene collects the blood
22 from the scene, and I don't believe you have any doubts
23 about that but all 48 drops of blood dripping from
24 Christopher Jenkins we can deduce are the blood of
25 Christopher Jenkins. There's no blood matching Robert

1 Wright. Again, consistent with the stories we hear from
2 the boys, not very consistent with what we hear from
3 Mr. Wright.

4 And on that note, you heard from Detective
5 Goldstein that he observed no injuries to Mr. Wright, and
6 boy, don't you think if Mr. Wright had injuries you would
7 have heard about them from the defense? Don't you think
8 if Mr. Wright, in fact, had a black eye or had bruises or
9 had something from this fight you would have heard about
10 it from the defense? You didn't because there were none.

11 I can tell you again I'm very fond of Ms. Penn, but
12 I have to make an admission. Language is important in
13 these trials. She used a phrase and a word and every
14 time she used it in the trial and every time she used it
15 in her closing arguments I kind of get all tense because
16 it really kind of hits me the wrong way, but she does it
17 for a purpose and she does it to do her job. How many
18 times did you hear the phrase from Ms. Penn fight, fair
19 fight, quick fight, the fight?

20 Ladies and gentlemen, what have you heard this week
21 in trial that makes you conclude that this was a fight?
22 A fight among two adults? There is a difference between
23 a fight and an assault. This is an assault. This is an
24 uncle walking his nephews to the store who had someone
25 come up behind him and assault him. That is not a fight.

1 That is not a quick fight, that is not a fair fight.

2 That is an assault.

3 Ms. Penn criticized the actions of the young boys,
4 and I get that. The boys that you saw this week, while
5 they are still very soft spoken -- nice boys, I agree
6 with Ms. Penn. She judges their actions after the
7 assault by the standard of an older teen or an adult.
8 Ladies and gentlemen, they were children going to the
9 corner store to get sodas. In fact, asked by their mom
10 to get sodas.

11 And I'm sure when their Uncle Chris had got up and
12 tried to walk with them to the store they wanted to, in
13 that child's mind, think -- that's how children think.
14 I'm old, I'm cynical. I always think the worst, but a
15 child thinks the best. They've witnessed the violence,
16 they've witnessed something awful. They see their uncle
17 stand up and try to walk with them. Okay, all right.
18 Let's think the best. He's fine. He's okay. It's over.

19 Don't judge going to the store as if it has any
20 kind of relevance as to how badly Christopher Jenkins was
21 hurt. We know how badly he was hurt. We know that from
22 the expert medical examiner. We know he had 10 broken
23 ribs, a laceration over his eye, a busted lip, bruising
24 to the legs. We know how bad he was hurt. Medically,
25 scientifically we know how bad he was hurt, but the kids

1 are acting like kids. They are acting like children and
2 want to think the best, so they go on to the store.

3 Also, they call into question the conduct of the
4 family, and I just want to point out to you the testimony
5 from Ms. Mary Jenkins, as if they think this was no big
6 deal. Mary Jenkins, a loving mother, stayed up all
7 night. She told us she didn't sleep one bit, continually
8 checking on Christopher.

9 Now, do you think that as we stand here today that
10 they sit here and wish that they had called an ambulance
11 earlier? Of course they do. That's going to stay with
12 them the rest of their lives, but to use that as some
13 kind of shifting of the blame to divert blame from the
14 person who assaulted this man?

15 I can't stand here, although I'll try to, and
16 address everything Ms. Penn said in closing argument. I
17 want to go back with you, back to the beginning, because
18 I submit to you all these little arguments and all these
19 little attacks have done nothing to change the relevant
20 facts, and that Mr. Wright intentionally assaulted
21 Mr. Jenkins and caused these injuries.

22 Like I've said from the beginning, the challenge in
23 this case is the law. So I'd like to address you again
24 on that, specifically because you are going to have
25 options in this case, and because this is a very

1 difficult decision it's important that you understand
2 what those options are.

3 Now, I've noticed that you all -- I believe this is
4 the only slide this small of a font, I promise you. I
5 noticed throughout the trial that all of you, and thank
6 you so much, have been paying attention and a lot of you
7 have been using your notebooks. I want to ask you guys
8 some questions, just have you come up with an answer in
9 your head on what you think the answer is, and use your
10 notebooks if you like.

11 Was it Christopher Jenkins who chased down Robert
12 Wright that night with intent to do violence? Once
13 together did Christopher Jenkins initiate the violence
14 that night? Now, again, you heard from the defendant,
15 fists up. That doesn't fit with what all other three
16 witnesses say.

17 If Robert Wright would have just stayed at his
18 mother's would there have been violence that night? Was
19 Robert Wright ever in actual imminent danger of being
20 hurt or killed that night? Could Robert Wright just have
21 driven home? Could Robert Wright even after going after
22 the victim just have walked away without committing
23 violence? Were there not hundreds of conceivable ways
24 that Robert Wright could have handled that situation that
25 night that didn't involve violence? And did he have to

1 severely beat the victim? Was it the only way to avoid
2 his own injury or death?

3 I'm guessing that most of your answers to those
4 questions are the same as mine on that screen. I'm
5 guessing that as if you answered those questions in your
6 head you answered some of -- all of them like I do, but
7 that's not necessary. If you answered any of those
8 questions like me then self defense is not the answer,
9 self defense does not legally apply to this case. And
10 again, remember, you have to check all four boxes to find
11 self defense. And I believe the State has thoroughly
12 proved to you that it does not apply.

13 First of all, Robert Wright was not without fault
14 in bringing on the difficulty. In fact -- and we'll
15 address Christopher's actions in a bit, but, in fact, the
16 majority of the fault lies on him, so not self defense.

17 Secondly, at no point was Robert Wright under
18 imminent threat of bodily harm or death. And if he
19 believed he was that belief wasn't reasonable.

20 And lastly, there were many probable ways to avoid
21 this that night. No element of self defense applies to
22 this case, legally.

23 So his actions resulted in the death of another
24 human being, but what level? And I know you didn't know
25 there would be a quiz at the end of all this, but two

1 very important questions. And boy, I can't stress
2 enough, I want you to think about your answer to these
3 questions, especially number one. Is body slamming
4 another human being on the pavement, repeatedly punching
5 them, then stomping their body as they lie defenseless on
6 the ground an act which, important language, naturally
7 tends to cause great bodily harm?

8 Is stomping a person while they lay on the ground
9 after you've body slammed them an act that naturally
10 tends to cause great bodily harm? Of course it is. And
11 I believe that if you formed your answer to that question
12 in your mind your answer is the same as mine.

13 That's the point. The point of body slamming
14 someone, punching them over and over again, stomping them
15 is to cause harm. What other course of action naturally
16 causes harm if not to assault another person, and that's
17 what Robert Wright did. That is the key question because
18 if your answer was yeah, of course body slamming and
19 punching and stomping someone causes serious harm, then
20 involuntary manslaughter is not the correct verdict.

21 Involuntary manslaughter can be an unlawful act but
22 it has to be an unlawful act that a reasonable person
23 would not think to cause great bodily harm, and a
24 reasonable person knows that when you body slam somebody
25 and stomp them it can cause great bodily harm, as it did

1 in this case.

2 Ladies and gentlemen, I stand before you as an
3 attorney, as an advocate, and that doesn't mean that I
4 can't acknowledge you have something -- you have before
5 you a difficult decision to make under the view of those
6 facts, and that is not the decision of whether self
7 defense applies. It doesn't.

8 It's not the decision of whether this is an
9 involuntary manslaughter. It isn't. But you have to
10 decide between voluntary manslaughter and murder, and so
11 it is up to you to decide was Robert Wright provoked to a
12 degree that you believe was legally sufficient.

13 I ask you to think carefully about this. Peeking
14 around the corner, are you ready to say that's legally
15 sufficient to mitigate hurting someone else, this bad,
16 killing someone else? You will get the guidance that
17 words alone are not enough to be legal sufficient
18 provocation. You have to have more than words.

19 Is this the type of thing -- secondly, define
20 voluntary manslaughter. Is this the type of thing that
21 should and did send a reasonable person -- and again, you
22 don't say, Oh, well, he's a hot head. He doesn't get
23 that benefit. Would this kind of thing send a reasonable
24 ordinary person into such a heat of passion that he could
25 not fairly be expected to control his impulse to do

1 violence? Those are the two things you must find to find
2 voluntary manslaughter.

3 Some things to think about when you all answer this
4 difficult question. How would a normal, average,
5 reasonable person react to this? Are some calls, some
6 walking by, the history you find between -- and I'll
7 admit there was a little more than this, the attempt to
8 pull back a hand at, some stealing that they prescribe to
9 Christopher Jenkins, even though there was no evidence
10 that that was Christopher Jenkins, is that enough to
11 minimize a violent killing in your mind?

12 Another thing to consider is what did the defendant
13 himself say about his own state of mind? What did he say
14 about his own heat of passion? As I recall, he
15 repeatedly told you that he wasn't angry at all.

16 As I recall, he told you there was no heat of
17 passion; however, I think you can look at the evidence
18 and how he acted, and what you heard about the whole
19 situation from other witnesses and maybe, though I don't
20 think this is the right answer to conclude, heat of
21 passion. This is your decision and this is your
22 difficult decision.

23 Lastly, remember heat of passion is more than just
24 being angry. If all you needed to have heat of passion
25 was to show someone is angry there would be no such thing

1 as murder. When people kill other people someone is
2 angry. This is more than mere anger. This is something
3 that would drive a reasonable person into an
4 uncontrollable impulse.

5 Unless you find both of those existed, legally
6 sufficient provocation and that heat of passion, if you
7 find them both existed then the answer is voluntary
8 manslaughter. I submit to you that taking the view of
9 this case that peeking around a corner is not legally
10 sufficient and the defendant himself said he wasn't angry
11 that is not the correct answer.

12 And so we are back to where we begun, where we
13 began. When you find yourself in a jury room trying to
14 twist the facts and trying to twist things to fit a round
15 peg in a square hole you are probably not making the
16 right decision. There's a philosophical principle for
17 that. It's called Occam's Razor, the most simple answer
18 is usually the right answer, and I ask you to apply that
19 to this case.

20 Did Robert Wright decide that night to teach
21 Christopher Jenkins a violent message, a violent lesson
22 about messing with his family? Yes.

23 Did he approach Christopher Jenkins with hostility
24 towards him and the purpose of inflicting a serious
25 injury? Yes.

1 Were the injuries the proximate cause of
2 Christopher Jenkins' death? And please go back to that
3 definition of proximate cause. We will look at it one
4 more time. Murder is the killing of another person with
5 malice aforethought. We've been through this. Killing
6 of another person, was it the proximate cause?

7 Again, let me repeat. The fact that other causes
8 also contribute to the death of that victim does not
9 relieve the defendant from responsibility. It doesn't
10 get any clearer than that, folks.

11 The fact of that, regrettably, that they did not
12 immediately seek medical attention does not relieve the
13 defendant of any degree of responsibility. It can't be
14 stated clearer than that, and that, I believe, is a
15 phrase you will hear directly from the Judge.

16 Malice is hatred, ill will or hostility towards
17 another person. It is the intentional doing of a
18 wrongful act with an intent to inflict an injury.

19 Ladies and gentlemen, that is the round peg in the
20 round hole. Those are the elements that fit this case.
21 And so your proper verdict, ladies and gentlemen, is
22 guilty of murder.

23 I'm almost finished. I promise. I've been talking
24 for a while. A couple of other points I'd like to make.
25 The proper verdict in this case is not, ladies and

1 gentlemen, saying that you accept and approve of
2 everything Christopher Jenkins did or is alleged to have
3 done. I do not believe and I don't believe you think
4 this either, that Christopher Jenkins handled this break
5 up in a way that we approve of, but today is Robert
6 Wright's day in trial.

7 Robert Wright is sitting over there. We are here
8 to talk about the conduct of Robert Wright. So coming
9 back with that verdict against Robert Wright doesn't mean
10 you are okay with everything Christopher Jenkins did. So
11 don't confuse those two incredibly distinct issue.

12 As you go into the jury room I want each of you to
13 remember individually this is very much about bringing in
14 your own common sense, you're brining in your own sense
15 of what the evidence shows, and I ask you, of course, to
16 stick to your principles and to, you know, do what you
17 believe individually is the right thing.

18 I want to ask and point out to you another part of
19 your duty very quickly before I sit down. We are here
20 four years removed from the death of Christopher Jenkins.
21 Another part of your job, and I hope this doesn't sound
22 like I'm contradicting myself, is consensus building.

23 So please go back there with an open mind. You are
24 here today a jury of different ethnicities, different
25 ages, different genders, different life experiences. You

1 all bring something to the table. Please keep an open
2 mind. Please discuss these issues. Please listen to
3 your other jurors and remember that consensus building is
4 an art of this exercise.

5 Four years since the death of Christopher Jenkins.
6 We ask that you end this four-year ordeal for the Jenkins
7 family today and render a verdict of guilty of murder.
8 Thank you very much this week for your time and
9 attention. I appreciate it.

10 THE COURT: All right. We have reached the stage
11 in the trial where I will instruct you on the law
12 applicable to this case. Ladies and gentlemen, please
13 pay close attention because I typically do not send back
14 a copy of my instructions, so please pay close attention.

15 Mr. Foreman, you are responsible for writing the
16 verdict form. I'll give you further instructions at the
17 close of my charge on the law, but that is one of your
18 responsibilities.

19 Ladies and gentlemen, I remind you that during this
20 trial you and I have had certain duties to perform. As
21 the trial judge, it is my responsibility to preside over
22 the trial of this case and I have the duty to rule on the
23 admissibility of the evidence offered during this trial.

24 You are to consider only the evidence before you.
25 If there was any testimony ordered stricken from the

1 record you must disregard that testimony. You are to
2 consider only the testimony that has been presented from
3 the witness stand, the exhibits that have been made part
4 of the record in this case, as well as the stipulations
5 of counsel.

6 I have the additional duty to charge you the law
7 applicable to this case. As the presiding judge, I am
8 the sole judge of the law of this case. It is your duty
9 as jurors to accept the law and apply the law exactly as
10 I state it to you now.

11 If you have any idea as to what the law is or what
12 the law ought to be and it does not agree with what I'm
13 about to tell you you must abandon your own ideas because
14 you are sworn to accept the law and apply the law exactly
15 as I state it to you now.

16 In every case tried in this Court before a jury the
17 jury becomes the sole and exclusive judges of the facts.
18 A trial judge may not make any comment regarding the
19 facts in this case. You are not to infer from anything
20 that I have said or done throughout the progress of this
21 trial when ruling upon the admissibility of evidence or
22 anything that I say during my charge on the law to you
23 that I have any opinion about the facts in this case.
24 The law does not allow me to have an opinion about the
25 facts in this case. This is solely a matter for you, the

1 jury, to determine.

2 The indictment in this case charges Mr. Wright with
3 one count of murder. I remind you, the fact that
4 Mr. Wright was arrested, charged and indicted in this
5 case is not evidence and cannot be considered by you as
6 evidence of guilt nor does it create any presumption or
7 inference of guilt.

8 An indictment is simply the formal written
9 instrument which contains the charge made against the
10 defendant. It is the formal document by which this case
11 is brought into court.

12 Just as the indictment in this case is not evidence
13 any terminology or labels used to refer to the
14 individuals involved in this case cannot be considered as
15 evidence. For example, the use of the words defendant
16 and victim are merely formal labels and may not be
17 considered by you as evidence.

18 Mr. Wright has pled not guilty to this indictment.
19 A person charged with committing a criminal offense in
20 South Carolina is never required to prove himself
21 innocent. I charge you it is an important rule of law
22 that the defendant in a criminal trial, no matter what
23 the seriousness of the charge may be will, always be
24 presumed to be innocent of the crime for which the
25 indictment was issued unless guilt has been proven by

1 evidence satisfying you of that guilt beyond a reasonable
2 doubt.

3 The presumption does not end when you begin your
4 deliberations but it accompanies the defendant throughout
5 the trial until you reach a verdict of guilt based upon
6 the evidence satisfying the standard of guilt beyond a
7 reasonable doubt.

8 The presumption of innocence is not a mere legal
9 theory, it's not just a legal phrase. It is a
10 substantial right to which every defendant is entitled
11 unless you, the jury, are satisfied from the evidence of
12 the defendant's guilt beyond a reasonable doubt.

13 The State has the burden of proving Mr. Wright
14 guilty beyond a reasonable doubt. Some of you may have
15 served as jurors before in civil cases where you were
16 told that it was only necessary to prove that a fact is
17 more likely true than not true, such as by a greater
18 weight or preponderance of the evidence.

19 Proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of the defendant's guilt.
21 There are very few things in this world that we do know
22 with absolute certainty and in criminal cases the law
23 does not require proof that overcomes every possible
24 doubt.

25 If, based upon your consideration of the evidence,

1 you are firmly convinced that the defendant is guilty of
2 the crime charged you must find the defendant guilty. On
3 the other hand, if you think there is a real possibility
4 that the defendant is not guilty you must give the
5 defendant the benefit of the doubt and find him not
6 guilty.

7 There are two types of evidence that are generally
8 presented in a trial; direct evidence and circumstantial
9 evidence. Direct evidence directly proves the existence
10 of a fact and does not require deduction.

11 Circumstantial evidence is proof of a chain of
12 facts and circumstances indicating the existence of a
13 fact. Crimes may be proven by circumstantial evidence.

14 The law makes no distinction between the weight or
15 value to be given either direct or circumstantial
16 evidence; however, to the extent the State relies on
17 circumstantial evidence all of the circumstances must be
18 consistent with each other and when taken together point
19 conclusively to the guilt of the defendant beyond a
20 reasonable doubt. If the circumstances merely portray
21 the defendant's behavior as suspicious the proof has
22 failed.

23 The State has the burden of proving the defendant
24 guilty beyond a reasonable doubt. This burden rests with
25 the State regardless of whether the State rests or relies

1 on direct evidence, circumstantial evidence or a
2 combination of the two.

3 Necessarily, you must determine the credibility of
4 the witnesses who have testified in this case.
5 Credibility simply means believability. It becomes your
6 duty as jurors to analyze the evidence and determine
7 which evidence convinces you that it's true.

8 In determining the believability of the witnesses
9 who have testified in this case you may believe one
10 witness over several witnesses or several witnesses over
11 one witness. You may believe a part of the testimony of
12 one witness and reject the remaining part of the
13 testimony of that same witness. You may believe the
14 testimony of a witness in its entirety or reject the
15 testimony of a witness in its entirety.

16 You may consider whether the witness has exhibited
17 to you any interest, bias, prejudice or other motive in
18 this case, and you also may consider the appearance and
19 the manner of a witness while the witness was testifying
20 on the witness stand.

21 The rules of evidence ordinarily do not permit
22 witnesses to testify to opinions or conclusions. An
23 exception to this rule exists for witnesses we call
24 expert witnesses. A witness who by education and
25 experience has become expert in some art, science,

1 profession or calling may state an opinion as to relevant
2 and material matter in which the witness claims to be an
3 expert and may also state the reasons for that opinion.

4 You should consider any expert opinion received in
5 evidence in this case and like any other evidence give it
6 the weight you think it deserves. If you decide that the
7 opinion of an expert witness is not based on sufficient
8 education and experience or if you conclude that the
9 reasons given in support of the opinion are not sound or
10 that the opinion is outweighed by other evidence you may
11 disregard the opinion entirely.

12 An expert witness's testimony is to be given no
13 greater weight than that of other witnesses simply
14 because the witness is an expert. Further, you are not
15 required to accept an expert's opinion even though it is
16 not contradicted.

17 In order to establish criminal liability criminal
18 intent is required. For example, the mental State
19 required to be proven by the State for a particular crime
20 might be purpose, intent, knowledge, recklessness or
21 criminal negligence.

22 Criminal intent must be proven by the State beyond
23 a reasonable doubt. Criminal intent is always a matter
24 that must be determined by the jury from the
25 circumstances surrounding the situation.

1 There is no way to prove intent to a mathematical
2 certainty because there is no way to tell with exact
3 certainty what the person had to mind. The law says that
4 criminal intent may be inferred from the circumstances
5 shown to have existed. This is how you make a
6 determination of whether or not the element required in
7 intent was present.

8 It is not necessary to establish intent by direct
9 and positive evidence but may be established by inference
10 in the same way as any other fact by taking into
11 consideration the acts of the parties and all the facts
12 and circumstances in the case.

13 Criminal intent is a mental state, a conscious
14 wrongdoing. It is up to you to determine what the
15 defendant intended to do based upon the circumstances
16 shown to have existed.

17 Where a person inflicts a fatal injury on another
18 person and that person dies at a later time you must be
19 convinced beyond a reasonable doubt that the infliction
20 of the first injury was the proximate cause of the
21 victim's death.

22 Proximate cause is the direct cause. It is the
23 immediate cause. It is the efficient cause. It is the
24 cause without which the death of the victim would not
25 have resulted. There must be a chain of causation from

1 the time of the injury inflicted by the defendant until
2 the time of the victim's death.

3 Proximate cause does not necessarily mean that it
4 occurred immediately prior to death. There may be more
5 than one proximate cause. The acts of two or more
6 persons may combine together to be a proximate cause of
7 the death of a person.

8 The defendant's act may be regarded as a proximate
9 cause if it is a contributing cause of the death of the
10 victim. The fact that other causes also contribute to
11 the death of the victim does not relieve the defendant
12 from responsibility.

13 The defendant's act need not be the sole cause of
14 death but must be a proximate cause contributing to the
15 death of the victim. It is not a defense to show that
16 the victim might have recovered had he been treated
17 according to the most proved surgical or medical
18 standards or as a reasonably prudent doctor would have
19 treated in a case or even by showing that the treatment
20 was negligent.

21 If, however, the death was caused not by the wound
22 or the injury that the victim had but was caused by the
23 gross, erroneous, willful, deliberate treatment the
24 defendant would not be liable. In other words,
25 negligence on the part of someone else would not relieve

1 the defendant from liability if the injury was the
2 proximate cause of the victim's death.

3 Mr. Wright is charged with murder. The State must
4 prove beyond a reasonable doubt that Mr. Wright killed
5 another person with malice aforethought. Malice is
6 hatred, ill will or hostility toward another person. It
7 is the intentional doing of a wrongful act without just
8 cause or excuse and with an intent to inflict an injury
9 or under circumstances that the law will infer an evil
10 intent.

11 Malice aforethought does not require that malice
12 exists for any particular time before the act is
13 committed but malice must exist in the mind of the
14 defendant just before and at the time the act is
15 committed; therefore, there must be a combination of
16 previous evil intent in the act.

17 Malice aforethought maybe express or inferred.
18 These terms express and inferred do not mean different
19 kinds of malice but merely the manner in which malice
20 may be shown to exist; that is either by direct evidence
21 or by inference from the facts and circumstances which
22 are proved.

23 Express malice is shown when a person speaks words
24 which express hatred or ill will for another or when the
25 person prepared beforehand to do the act which was later

1 accomplished. For example, lying in wait for a person
2 or any other acts of preparation going to show that deed
3 was within the defendant's mind would be express malice.
4 Malice may be inferred from the conduct showing a total
5 disregard for human life.

6 If you find that the State has failed to prove
7 beyond a reasonable doubt that Mr. Wright committed
8 murder you may also -- you may consider whether the State
9 has proved beyond a reasonable doubt that Mr. Wright
10 committed voluntary manslaughter.

11 To prove voluntary manslaughter the State must
12 prove beyond a reasonable doubt that Mr. Wright took the
13 life of another in the sudden heat of passion based upon
14 sufficient legal provocation. Both heat of passion and
15 sufficient legal provocation must be present at the time
16 of the killing to constitute voluntary manslaughter.

17 Sudden heat of passion may for a time affect a
18 person's self control and temporarily disturb a person's
19 reason. The sudden heat of passion must be the type that
20 would make an ordinary person unable to coolly reflect on
21 his actions and would produce an uncontrollable impulse
22 to do violence.

23 Sufficient legal provocation must be the type that
24 would make a person of ordinary reason and caution become
25 enraged and to lose control temporarily.

1 The provocation needed for voluntary manslaughter
2 must come from some act of or related to the victim.
3 Words alone, however vulgar or insulting, are not enough
4 to be legal provocation. Where death is caused by the
5 use of a deadly weapon the words must be accompanied by
6 some overt threatening act which could have produced the
7 heat of passion.

8 The exercise of a legal right no matter how
9 offensive it is to another is never sufficient legal
10 provocation for voluntary manslaughter. If the heat of
11 passion had cooled or if there was enough time between
12 the provocation, if any, and the killing for the passion
13 of a reasonable person to cool the killing would not be
14 voluntary manslaughter.

15 In deciding whether a reasonable person would have
16 had enough time to cool off you should consider all the
17 circumstances surrounding the killing. You may consider
18 the nature of the provocation, if any, the defendant's
19 mental and physical state and the circumstances and
20 relationships between the parties.

21 If you find that the State has failed to prove
22 beyond a reasonable doubt that Mr. Wright committed
23 murder you may consider whether the State has proved
24 beyond a reasonable doubt that Mr. Wright committed
25 involuntary manslaughter.

1 To prove involuntary manslaughter the State must
2 prove beyond a reasonable doubt that Mr. Wright
3 unintentionally killed the victim without malice but
4 while engaged in an unlawful activity not naturally
5 tending to cause death or great bodily harm, or that
6 Mr. Wright unintentionally killed the victim without
7 malice while engaged in a lawful activity with reckless
8 disregard for the safety of others.

9 Unintentional means that the defendant did not
10 intend for anyone to be killed or seriously injured.
11 Reckless disregard for the safety of others is more than
12 mere negligence or carelessness. Mere negligence or
13 carelessness is the failure to use the care that a person
14 of ordinary reason would use under the same
15 circumstances.

16 Recklessness is a conscious failure to use ordinary
17 care. Reckless disregard for the safety of others means
18 that you are not interested in the consequences of your
19 acts or the rights and safety of others.

20 If a person who knows or should know that ordinary
21 care requires certain caution to be taken for the safety
22 of others when using a dangerous instrumentality such as
23 a gun or a car and that person fails to use those
24 precautions without concerns the person's actions are
25 considered reckless. The State must also prove beyond a

1 reasonable doubt that Mr. Wright's act was the proximate
2 cause of death.

3 Mr. Wright has raised the defense of self defense.
4 Self defense is a complete defense and if established you
5 must find the defendant not guilty. The State has the
6 burden of disproving self defense by proof beyond a
7 reasonable doubt.

8 If you have a reasonable doubt of the defendant's
9 guilt after considering all of the evidence, including
10 the evidence of self defense, then you must find the
11 defendant not guilty. On the other hand, if you have no
12 reasonable doubt of the defendant's guilt after
13 considering all the evidence, including the evidence of
14 self defense, then you must find the defendant guilty.

15 The following elements are required to establish
16 self defense. First, the defendant must be without fault
17 in bringing on the difficulty. If the defendant's
18 conduct was the type which was reasonably calculated to
19 and did provoke a deadly assault the defendant would be
20 at fault in bringing on the difficulty and would not be
21 entitled to an acquittal based upon self defense.

22 The second element of self defense is that the
23 defendant was actually in imminent danger of death or
24 serious bodily injury or that the defendant actually
25 believed he was in imminent danger of death or serious

1 bodily injury.

2 If the defendant was actually in imminent danger it
3 must be shown that circumstances would have warranted a
4 person of ordinary firmness and courage to strike the
5 fatal blow to prevent death or serious bodily injury. If
6 the defendant believed he was in imminent danger of death
7 or serious bodily injury it must be shown that a
8 reasonably prudent person of ordinary firmness and
9 courage would have had the same belief.

10 In deciding whether the defendant actually was or
11 believed he was in imminent danger of death or serious
12 bodily injury you should consider all of the facts and
13 circumstances surrounding the crime including the
14 physical condition and characteristics of the defendant
15 and the victim.

16 The defendant does not have to show that he was
17 actually in danger. It is enough if the defendant
18 believed he was in imminent danger and a reasonably
19 prudent person of ordinary firmness and courage would
20 have had the same belief.

21 The defendant has the right to act on appearances
22 even though the defendant's belief may have been
23 mistaken. It is for you to determine and decide whether
24 the defendant's fear of immediate danger, death or
25 serious bodily injury was reasonable and would have been

1 felt by an ordinary person in the same situation.

2 The relative sizes, ages and weights of the
3 defendant and the victim may be considered in deciding
4 the apparent or actual need for force in self defense and
5 the amount of force needed.

6 The final element of self defense is that the
7 defendant had no other probable way to avoid the danger
8 of death or serious bodily injury than to act as the
9 defendant did in this particular instance.

10 The defendant has a duty to retreat if by doing so
11 the danger of being killed or suffering serious bodily
12 injury would increase. A person cannot be required to
13 make an exact calculation as to the degree or amount of
14 force which may be needed to avoid death or serious
15 bodily harm; therefore, in self defense the defendant has
16 the right to use the force needed to avoid death or
17 serious bodily harm.

18 The force used in self defense does not have to be
19 limited to the degree or amount of force used by the
20 victim. The defendant has a right to use so much force
21 as appeared to be necessary for complete self protection
22 and which a person of ordinary reason and firmness would
23 have believed to be needed to prevent death or serious
24 bodily harm.

25 Ladies and gentlemen, I'm now going to go over the

1 verdict form with you. Please remember, there's
2 absolutely no significance in the way that I read what is
3 contained on the verdict form. It's simply something had
4 to go on the paper first.

5 As I indicated, Mr. Foreman, you are responsible
6 for filling out the verdict form.

7 In the Court of General Sessions for the Ninth
8 Judicial Circuit indictment 2010-GS-10-6153, State of
9 South Carolina vs. Robert Lee Wright. Verdict form
10 number one, we, the jury, find the defendant, Robert Lee
11 Wright, not guilty; or we the jury find the defendant,
12 Robert Lee Wright, guilty of murder; or we, the jury,
13 find the defendant, Robert Lee Wright, guilty of
14 voluntary manslaughter; or we, the jury, find the
15 defendant, Robert Lee Wright, guilty of involuntary
16 manslaughter.

17 Mr. Foreperson, you will make one selection. After
18 you have done so -- it must be the unanimous decision,
19 meaning all 12 of you must agree, you will sign the
20 verdict form indicating that you have reached a unanimous
21 decision.

22 Ladies and gentlemen, this is the last time that I
23 will say this to you. Do not begin your deliberations,
24 do not discuss this case amongst yourselves. We'll be
25 gathering the evidence to go back to you. At that time

1 the bailiff will indicate to you that you may begin your
2 deliberation.

3 To my two alternates, I ask that you abide by the
4 same rules. Do not begin your deliberations, do not
5 discuss this case amongst yourselves. I will have to two
6 of you in a separate area and once I am assured that the
7 first 12 have begun their deliberations I will come and
8 release you.

9 Is there any member of my first 12 who for whatever
10 reason feel that you would be unable to complete your
11 deliberations at this time? I have two alternates for
12 this very purpose. Is there any of my initial 12, the
13 first 12, that will be unable to complete deliberations
14 at this time? If you cannot complete your deliberations,
15 please raise your right hand.

16 (There was no response.)

17 THE COURT: Thank you. All 12 have indicated that
18 they are able to complete their deliberations.

19 Please rise for the jury. Thank you.

20 (WHEREUPON, the jury leaves the courtroom at
21 approximately 4:30 p.m.)

22 THE COURT: Thank you. Be seated.

23 Any motions, matters, additions, corrections to the
24 charges read, from the State?

25 MR. SIMPSON: None from the State, Your Honor.

1 MS. PENN: None from the defense, Your Honor.

2 THE COURT: And if you will please just come one
3 more time and check the verdict form and ensure that all
4 the exhibits that go back are accurate exhibits.

5 Mr. Wright, as your attorney is gathering those, at
6 this time I'm going to have you placed into custody
7 awaiting the verdict. All right. Thank you. If there's
8 anything in your pockets that you wish for your attorney
9 to hold or anything of that nature I will allow you to
10 give that to your family member at this time.

11 All right. Everything ready to go back?

12 MR. SIMPSON: Yes, Your Honor.

13 THE COURT: Anything before we are awaiting a
14 verdict?

15 MR. SIMPSON: Nothing from the State, Your Honor.

16 MS. PENN: Nothing from the defense, Your Honor.

17 (WHEREUPON, the jury was instructed to begin
18 deliberations at approximately 4:34 p.m., and court was
19 in recess while awaiting a verdict from the jury.)

20 (WHEREUPON, Court's Exhibit Number 2, a Note from
21 the Jury, was marked and made a part of the record.)

22 THE COURT: Thank you. Be seated. We have a note,
23 Court's 2. They are requesting a definition of malice.
24 How do you wish for me to handle that?

25 MR. SIMPSON: Your Honor, the State would just

1 propose you reading the entire malice charge, that
2 section of your standard charge, Your Honor.

3 THE COURT: How would you wish for me to address
4 it?

5 MS. PENN: That's fine, Your Honor. I think that's
6 totally reasonable.

7 THE COURT: You want me to bring them in and read
8 that to them?

9 MR. SIMPSON: The State is also fine with just
10 sending that back in writing. Either way is fine.

11 THE COURT: What's your preference, Ms. Penn?

12 MS. PROCTOR: Was there one part to the malice
13 charge or two?

14 THE COURT: My malice appears -- is consumed in the
15 murder definition.

16 MS. PENN: Your Honor, our preference is that you
17 just read the malice charge.

18 THE COURT: All right. So I'll just bring them in
19 and read it.

20 Let's bring in the jury.

21 (WHEREUPON, the jury enters the courtroom at
22 approximately 5:52 p.m.)

23 THE BAILIFF: All present.

24 THE COURT: Thank you. Please be seated.

25 All right. You have requested a definition of

1 malice. Malice is hatred, ill will or hostility towards
2 another person. It is the intentional doing of a
3 wrongful act without just cause or excuse and with an
4 intent to inflict an injury or under circumstances that
5 the law will infer an evil intent.

6 Malice aforethought does not require that malice
7 exist for any particular time before the act is committed
8 but malice must exist in the mind of the defendant just
9 before and at the time the act is committed; therefore,
10 there must be a combination of the previous evil intent
11 and the act.

12 Malice aforethought maybe be express or inferred.
13 These terms express and inferred do not mean different
14 types of malice but merely the manner in which malice may
15 be shown to exist. That is either by direct evidence or
16 by inference from the facts and circumstances which are
17 proved.

18 Express malice is shown when a person speaks words
19 which express hatred or ill will for another person or
20 when the person prepared beforehand to do the act which
21 was later accomplished. For example, lying in wait for
22 a person or any other acts of preparation going to show
23 that the deed was within the defendant's mind would be
24 express malice. Malice may be inferred from conduct
25 showing a total disregard for human life.

1 Ladies and gentlemen, that answers and is the
2 definition of malice.

3 Mr. Foreperson, did that answer your question?

4 THE FOREPERSON: Yes, ma'am.

5 THE COURT: All right. Please go forward and
6 continue your deliberations.

7 (WHEREUPON, the jury leaves the courtroom to resume
8 deliberations at approximately 5:54 p.m.)

9 THE COURT: Thank you. Be seated.

10 Any objection, correction to the charge as read?

11 MR. SIMPSON: None from the State, Your Honor.

12 MS. PENN: No, Your Honor.

13 THE COURT: All right. We are at ease.

14 (WHEREUPON, the trial of this case was recessed
15 while awaiting a verdict from the jury.)

16 THE COURT: All right. We have a verdict.

17 Anything before I bring in the jury, from the State?

18 MR. SIMPSON: No, Your Honor.

19 MS. PENN: No, Your Honor.

20 THE COURT: All right. Let's bring in the jury.

21 (WHEREUPON, the jury enters the courtroom at
22 approximately 7:01 p.m.)

23 THE BAILIFF: The jury is all present, Your Honor.

24 THE COURT: Thank you. Please be seated.

25 I understand you have reached a verdict. If you'll

1 hand the form to the bailiff. I just to need make sure
2 the form is in order.

3 All right. Madam clerk.

4 THE CLERK: In the Court of General Sessions for
5 the Ninth Judicial Circuit, indictment number
6 2010-GS-10-6153, State of South Carolina, County of
7 Charleston, State of South Carolina vs. Robert Lee
8 Wright, defendant. We, the jury, find the defendant,
9 Robert Lee Wright, guilty of murder. Signed John
10 Moffitt, foreperson, February 25th, 2014.

11 Ladies and gentlemen of the jury, if this is your
12 verdict, please raise your right hand.

13 (All hands were raised.)

14 THE COURT: Anything required from the State of the
15 jury?

16 MR. SIMPSON: Nothing from the State, Your Honor.

17 Ms. Penn: We ask that you poll the jury, Your
18 Honor.

19 THE COURT: All right. Madam clerk, if you will
20 please poll using numbers.

21 You may have a seat, Mr. Wright.

22 THE CLERK: Ladies and gentlemen, I will be calling
23 you by your juror number. When I do I will ask you two
24 questions. If this is your verdict, please indicate by
25 saying it is.

1 Juror number 23, is this your verdict?
2 JUROR NUMBER 23: It is.
3 THE CLERK: Is it still your verdict?
4 JUROR NUMBER 23: It is.
5 THE CLERK: Juror number 193?
6 JUROR NUMBER 193: It is.
7 THE CLERK: Is it still your verdict?
8 JUROR NUMBER 193: Yes, it is.
9 THE CLERK: Juror number 52?
10 JUROR NUMBER 52: It is.
11 THE CLERK: Is this still your verdict?
12 JUROR NUMBER 52: It is.
13 THE CLERK: Juror number 128, is this your verdict?
14 JUROR NUMBER 128: It is.
15 THE CLERK: Is it still your verdict?
16 JUROR NUMBER 128: It is.
17 THE CLERK: Juror number 22 --
18 JUROR NUMBER 22: It is.
19 THE CLERK: -- is this your verdict? Is it still
20 your verdict?
21 JUROR NUMBER 22: It is.
22 THE CLERK: Juror number 198, is this your verdict?
23 JUROR NUMBER 198: Yes, it is.
24 THE CLERK: Is it still your verdict?
25 JUROR NUMBER 198: Yes, it is.

1 THE CLERK: Juror number 85, is this your verdict?
2 JUROR NUMBER 85: Yes, it is.
3 THE CLERK: Is it still your verdict?
4 JUROR NUMBER 85: Yes.
5 THE CLERK: Juror number 12, is this your verdict?
6 JUROR NUMBER 12: Yes, ma'am.
7 THE CLERK: Is it still your verdict?
8 JUROR NUMBER 12: Yes.
9 THE CLERK: Juror number 58, is this your verdict?
10 JUROR NUMBER 58: Yes.
11 THE CLERK: Is it still your verdict?
12 JUROR NUMBER 58: Yes.
13 THE CLERK: Juror number 168, is this your verdict?
14 JUROR NUMBER 168: It is.
15 THE CLERK: Is it this still your verdict?
16 JUROR NUMBER 168: It is.
17 THE CLERK: Juror number 170, is this your verdict?
18 JUROR NUMBER 170: It is.
19 THE CLERK: Is it still your verdict?
20 JUROR NUMBER 170: It is.
21 THE CLERK: Juror number 14, is this your verdict?
22 JUROR NUMBER 14: It is.
23 THE CLERK: Is it still your verdict?
24 JUROR NUMBER 14: It is.
25 THE CLERK: Juror number 194 -- I'm sorry. The

1 jury has been polled, Your Honor.

2 THE COURT: Was there any juror that was not
3 called? If so, please raise your hands.

4 Thank you. There are none. 194 was the alternate.

5 THE CLERK: Yes.

6 THE COURT: You just went a bit far.

7 THE CLERK: Yes, ma'am.

8 THE COURT: All right. Anything further, Ms. Penn?

9 MS. PENN: No, Your Honor.

10 THE COURT: Anything further from the State?

11 MR. SIMPSON: Nothing from the State, Your Honor.

12 THE COURT: Are you prepared to go forward with
13 sentencing at this time?

14 MR. SIMPSON: The State is the prepared.

15 MS. PENN: Your Honor, I'm sorry. Might I do my
16 posttrial motions in a written form.

17 THE COURT: You may. At a later date?

18 MS. PENN: Yes, ma'am.

19 THE COURT: Yes. So preserving all your posttrial
20 motions.

21 Ladies and gentlemen, I'm going to impose sentence
22 at this time, so if there's anyone who does not wish to
23 remain for sentencing you do not have to stay for
24 sentencing. I just ask that you wait in the jury
25 deliberation room. Is there anyone that does not want to

1 be present for sentencing?

2 (There was no response.)

3 THE COURT: All right. Do you have sentencing
4 sheets?

5 MR. SIMPSON: I do, Your Honor. May I approach?

6 THE COURT: You may.

7 All right. Mr. Simpson, I heard the facts. Is
8 there anything else from the State?

9 MR. SIMPSON: Just briefly, Your Honor. As you
10 stated, you've heard this trial. You are as familiar
11 with the facts as alleged as anyone. I would like to
12 recount for you the defendant's criminal history.

13 In 2003, he was convicted of criminal domestic
14 violence and contempt of family court. In 2005, four
15 resisting arrests, and then 2006 possession of cocaine.
16 He also currently has pending -- of course, he's presumed
17 innocent of these charges, but a criminal domestic
18 violence second offense and a criminal domestic violence
19 of a high and aggravated nature in Dorchester County.

20 I would suggest to Your Honor relevant to
21 sentencing that it's been a long ordeal and I've had
22 probably more interactions with Mr. Wright than I would
23 any other defendant. I can say that at his best
24 Mr. Wright is a polite, intelligent, articulate person
25 but his history, the facts of this case and some other

1. circumstances certainly reflect that there is a very dark
2. side to Mr. Wright, a person that has certainly shown a
3. pattern, not just in this case but others, of solving
4. problems with violence. It's that inclination and that
5. inclination alone the State's position that led to the
6. untimely death of Christopher Jenkins.

7. I know that two members of Mr. Jenkins' family
8. would like to address you, Your Honor, whenever you would
9. like to hear from them. They understand it's late in the
10. day and they are going to be brief.

11. THE COURT: All right. I'll need them,
12. Ms. Percell, to state their name for the record and spell
13. their last name.

14. MS. JENKINS: My name is Mary Jenkins,
15. J-e-n-k-i-n-s.

16. THE COURT: Thank you. Ms. Jenkins, I'll be happy
17. to hear from you.

18. MS. JENKINS: Yes, ma'am. Thank you. I just want
19. this Court to know about my son. First of all, he was my
20. backbone. He was my oldest child. He was my love of my
21. life. Chris did a lot of things in his life but Chris
22. wasn't a fighter. He jokes around. And no means was
23. some of the things that were said in this court today.
24. But I want this Court to know my son was not a fighter.

25. I love and I miss my son. I'm hurting. I've been

1 hurting for four years. I haven't had a good night's
2 rest since then. I can't rest. I can't sleep. All I do
3 is think about my son.

4 I want this Court to know I don't hate Robert nor
5 do I hate his family, but I want this Court to know about
6 Chris. He was my life and my heart. He was my chain
7 link, and I'm hurting. People tell you you'll get over
8 it but I haven't get over it. I haven't get over it.
9 Thank you.

10 THE COURT: Thank you, Ms. Jenkins.

11 Anything further from the State?

12 MR. SIMPSON: Nothing further from the State, Your
13 Honor.

14 THE COURT: Thank you.

15 Ms. Penn, I am assuming that you have indicated to
16 your client not to address the Court for appellate
17 reasons, and the fact that he is not addressing the Court
18 will not be considered at all when I impose my sentence.
19 Is there anything else that you wish to present before I
20 impose sentence?

21 MS. PENN: Just on behalf of my client, Your Honor,
22 and you sat through this case and heard all the facts but
23 I think the case shows, and nobody would argue with that,
24 that Robert is a family man, that he loves his family.
25 And we would ask the Court to show mercy to him and his

1 family in this case. Thank you.

2 THE COURT: You have explained, Ms. Penn, to your
3 client his right to appeal and he needs to do so within
4 10 days?

5 MS. PENN: Yes, ma'am.

6 THE COURT: You explained to your client that this
7 is considered a violent and most serious offense and what
8 that means to him?

9 MS. PENN: Yes, ma'am.

10 THE COURT: And that the potential is for 30 years
11 to life on this offense?

12 MS. PENN: Yes, ma'am.

13 THE COURT: Anything else before I impose sentence?

14 MS. PENN: No, Your Honor.

15 THE COURT: Mr. Wright, please stand.

16 Mr. Wright, I understand that you have been advised
17 not to speak to the Court. I understand that and I will
18 not take that into consideration in imposing sentence. I
19 will give you an opportunity to say anything before I
20 impose sentence that you wish to say to the Court.

21 THE DEFENDANT: No, ma'am. I would just like to
22 say that I haven't spoken to Ms. Mary in four years and
23 do respect Ms. Mary. And everything that I said about
24 Ms. Mary was genuine and everything that I did in this
25 case was before the fact that Chris passed away. So I

1 had no reason to go back and second guess anything
2 because I did everything the first time. I treated him
3 with respect before he passed away, and I just wish that
4 the Court would take that into consideration, also.

5 THE COURT: It's the order of the Court on
6 2010-GS-10-6153 that you be committed to the State
7 Department of Corrections for a term of 40 years. I'll
8 give you credit for any time that you have served. Good
9 luck to you, sir.

10 You have completed your service to this case. If
11 you'll please return to your jury room I'll be there in
12 just a few moments. Thank you.

13 (WHEREUPON, the jury leaves the courtroom.)

14 THE COURT: Anything further required from the
15 State?

16 MR. SIMPSON: No, Your Honor.

17 THE COURT: From the defendant?

18 MS. PENN: No, Your Honor.

19 THE COURT: Again, I just wanted to thank you. I
20 don't know that I placed this on the record. To the
21 attorneys, thank you for being prepared and thoughtful.

22 Ms. Penn, you and Ms. Proctor presented a very
23 aggressive defense and did an excellent job for your
24 client. Thank you for your zealous representation. And
25 I know Mr. Wright did not get to hear this but he should

1 be proud of the representation that you presented and
2 provided for him.

3 Mr. Simpson, on behalf of the State, and
4 Ms. Baldwin, you also did an excellent job representing
5 the victims and interest on behalf of the State.

6 And all four of you always have been so
7 professional in presenting your cases, and ethical, and
8 it's always a pleasure to try cases with you. You are so
9 respectful to the Court and to my staff and I do
10 appreciate that.

11 With that being said, I'm going to release the
12 jury. Have a wonderful evening. Thank you.

13 (WHEREUPON, the trial of this case was concluded.)

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1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the trial of the captioned
8 case in Circuit Court on the 24th and 25th day of
9 February 2014.

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

12

13 September 16, 2014

14 s/Sharon L. Vizer

15 SHARON L. VIZER

16 CIRCUIT COURT REPORTER

17

18

19

20

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22

23

24

25

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)

-versus-)

ROBERT LEE WRIGHT JR,
Defendant.)**IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT**

Indictment No: 2010-GS-10-06153

Warrant No: K-639859

Charge: Murder

MOTION TO RECONSIDER SENTENCE2014 FEB 27 PM 4:42
JULIA HARRINGTON
CLERK OF COURT
BY *MA***FILED**

TO: Benjamin Chad Simpson, Deputy Solicitor for the Ninth Judicial Circuit:

PLEASE TAKE NOTICE that the above-captioned defendant, by and through the undersigned attorney, moves this Honorable Court for a reconsideration of the forty year sentence imposed upon the defendant on February 25, 2014 by the Honorable Kristi Lea Harrington, pursuant to the above-captioned charge.

Mr. Wright is forty-one years old. His prior record is minimal and old, consisting of a possession of cocaine charge from eight years ago, a criminal domestic violence charge from eleven years ago, and a resisting arrest from ten years ago. He served our country in the military for five years and was deployed during the first Desert Storm, Desert Shield. Mr. Wright has always worked hard to provide for his family, and during the time this attorney has represented him he has always been employed.

By the time he finishes serving the minimum sentence of thirty years, day for day, he will be seventy-one years old. He has five children, including one six year old daughter whom he is very

close too. His mother, whose relationship with Mr. Jenkins, the deceased, was a factor in this case, is sixty-one.

Mr. Wright never intended for his actions to result in Mr. Jenkins's death. He asks that the Court reconsider his sentence and impose upon him the thirty-year sentence allowed by law.

Respectfully Submitted,



Alicia V. Penn
Counsel for Defendant
Ninth Circuit Public Defender's Office
Charleston, South Carolina

February 27, 2014

FILED
2014 FEB 27 PM 4:42
JULIE J. ADKINS
CLERK OF COURT
BY MA

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
STATE OF SOUTH CAROLINA)
-versus-)
ROBERT LEE WRIGHT JR,)
Defendant.)

**IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT**

Indictment No: 2010-GS-10-06153

Warrant No: K-639859

Charge: Murder

MOTION FOR A NEW TRIAL

BY Julie J. Armstrong
CLERK OF COURT

2014 FEB 27 PM 4:42

FILED

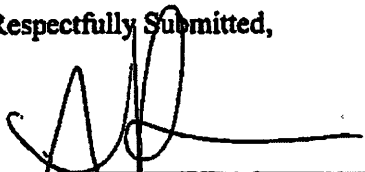
The Defendant, indicted for Murder, proceeded to trial before the Honorable Kristi Lea Harrington on February 24, 2014. The jury returned a verdict on Tuesday, February 25, 2014, finding the Defendant guilty of Murder. The Court sentenced him that same day to forty years in prison.

The Defendant hereby moves for a new trial on the following grounds:

1. All other defense motions made, but denied; and
2. All defense objections made, but overruled.

WHEREFORE, the Defense respectfully requests this Court order a new trial in this matter.

Respectfully Submitted,


Alicia V. Penn
Counsel for Defendant
Ninth Circuit Public Defender's Office
Charleston, South Carolina

February 27, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)

v.)

ROBERT LEE WRIGHT,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2010-GS-10- 6153

ORDER

FILED
 2014 MAR 25 AM 11:05
 JULIE J. JONES
 CLERK OF COURT
 BY [Signature]

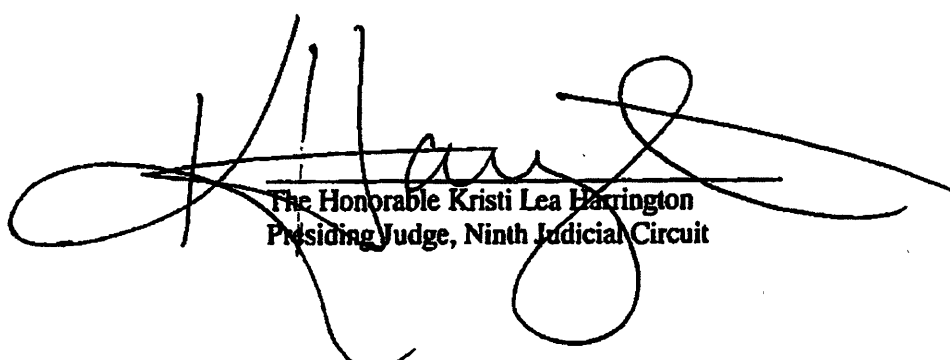
THIS MATTER IS BEFORE THE COURT on Defendant Robert Lee Wright's Motion for a New Trial and Motion to Reconsider Sentence. On February 24, 2014, the above case proceeded to jury trial on Defendant's indictment for Murder. Defendant Robert Lee Wright was found guilty of Murder on February 25, 2014, and was sentenced to forty (40) years in prison. Defendant filed the instant Motion for a New Trial and Motion to Reconsider Sentence on February 27, 2014.

Upon review of the case, the Court finds that the sentence imposed February 25, 2014, shall remain in place.

THEREFORE, IT IS HEREBY ORDERED that Defendant Robert Lee Wright's Motion for a New Trial and Motion to Reconsider Sentence is **DENIED**.

IT IS ORDERED.

March 21, 2014
 Charleston, South Carolina


 The Honorable Kristi Lea Harrington
 Presiding Judge, Ninth Judicial Circuit

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE WRIGHT,

APPELLANT

APPELLATE CASE NO. 2014-001023

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to charge the jury on the law of accident where the trial judge's ruling was based upon an incorrect legal conclusion that accident and self-defense were mutually exclusive defenses?

STATEMENT OF THE CASE

On June 12, 2010, a Charleston County grand jury indicted Appellant for murder (2010-GS-10-6153). R. 417. The state, represented by Benjamin Simpson and Jessica Baldwin, called the case for trial before the Honorable Kristi L. Harrington and a jury on February 24, 2014. Lorelle Proctor and Alicia Penn represented Appellant. R. 1. The jury found Appellant guilty of murder. R. 405, lines 10. Judge Harrington sentenced Appellant to forty years' imprisonment. R. 413, lines 5 – 9; R. 419.

Appellant filed a notice of appeal. This brief follows.

ARGUMENT

The trial judge erred in refusing to charge the jury on the law of accident where the trial judge's ruling was based upon an incorrect legal conclusion that accident and self-defense were mutually exclusive defenses.

Relevant facts

Christopher "Chris" Jenkins and appellant's mother, Betty Scott, had been involved in a long-term romantic relationship. R. 277, lines 20-21; R. 278, line 2-9; R. 302, lines 1-3. When Betty ended the relationship, Chris was unwilling to accept her rejection of him. Instead, Chris vacillated between trying to win Betty's affections back through gifts and expressing his anger by berating her publicly or stealing from her. R. 279, line 1 – R. 280, line 9; R. 286, lines 8-12; R. 287, line 17 – R. 290, line 25; R. 293, lines 14-25; R. 302, lines 14-16; R. 274, lines 13-21; R. 276, lines 4-9. Chris's conduct escalated. In fact, several months before his death, Chris tried to hit Betty while at a birthday party. R. 280, line 10 – R. 281, line 13; R. 302, line 17 – R. 304, line 1; R. 319, line 19 – R. 320, line 22.

Approximately, one month later in April 2010, Appellant learned that Chris made his mother cry. R. 304, lines 2-9; R. 323, lines 3-14. At the insistence of his grandmother, who was worried about Betty's safety, Appellant went to talk to Chris. Appellant found Chris at a nearby basketball court. R. 304, line 19 – R. 305, line 3; R. 323, lines 17-24; R. 327, lines 3-9. When Appellant approached, Chris became belligerent and combative. Appellant and Chris threw punches. The fight lasted mere seconds, however, with both men walking away unscathed. R. 305, line 3 – 12; R. 322, lines 13-19; R. 324, lines 1-15.

On June 10, 2010, Appellant parked his car at his mother's house and attended softball practice at a nearby field. R. 305, lines 13-19; R. 306, lines 14-16; R. 325, lines 6-10. After softball practice, Appellant went to retrieve his car. R. 294, lines 17-21; R. 306, lines 16-18. While at his mother's home, he learned that Chris had been peeping around the corner and hanging out in the area of Betty's apartment building that day. R. 281, line 14 – R. 282, line 15; R. 292, line 9-25; R. 293, lines 11-18; R. 325, lines 11-20; R. 326, lines 3-6; R. 267, lines 10-19; R. 268, lines 2-8; R. 268, line 25 – R. 269, line 1; R. 269, lines 11-17. When Chris peeped around the corner while Appellant was present, Appellant walked around the building to see Chris, but all Appellant saw was Chris walking away. R. 307, lines 1-10; R. 325, lines 21-25.

When Appellant prepared to leave, someone suggested that he talk to Chris about his continued harassment of Betty. R. 308, lines 2-8. While driving home, Appellant saw Chris walking down the street. Appellant stopped his car, got out, and called out to Chris. R. 308, lines 9-15; R. 312, lines 3-5; R. 312, lines 17-22; R. 328, lines 4-10. Chris stepped into the street with his fists up. R. 313, lines 1-9; R. 328, lines 10-11; R. 328, line 25 – R. 329, line 3. Despite Appellant telling Chris he had no interest in fighting, Chris continued to approach in a threatening way. R. 313, lines 11-25; R. 328, lines 11-13. The two men then started fighting. This fight, like the previous one, lasted only seconds with both men walking away at the end. R. 314, lines 2-25; R. 315, lines 1-6; R. 329, line 21 – R. 331, line 6.

Chris walked home where he told no one of the fight. R. 85, lines 1-6; R. 101, lines 4-8; R. 133, lines 3-5; R. 157, lines 2-7. Instead, he went to bed. R. 85, lines 14-21; R. 140, lines 6-8; R. 157, lines 2-6. The following day, Chris's brother checked on him.

Chris appeared to be having a seizure. His family called for help, and Chris was transported to a hospital where he later died. R. 86, lines 8-10; R. 143, line 9 – R. 144, line 6. The pathologist concluded Chris died from blunt force trauma to the chest. R. 234, lines 4-16. There were almost no external injuries, but Chris suffered ten fractured ribs on his right side and internal bleeding. R. 226, line 9 – R. 228, line 1; R. 243, line 6 – R. 244, line 14. Had Chris received medical attention more quickly, he would have survived. R. 244, lines 15-25.

During the charge conference, the state conceded the facts supported the judge instructing the jury on the law of self-defense. R. 336, lines 4-17. However, the state objected to Appellant's request for an instruction on accident. R. 337, lines 7-21. Appellant argued he was entitled to a jury instruction on accident because the evidence showed he did not intend to cause the death of the decedent. Citing State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999) for the proposition that in order to charge the law of accident, the evidence must demonstrate the killing was unintentional and that the defendant was acting lawfully, Appellant argued the evidence showed just that. R. 338, lines 1-8.

The judge asked Appellant to explain "the difference between accident and self-defense in this particular case" because the judge was "having a hard time distinguishing between the two." R. 338, lines 10-15. According to the judge's view, in order to claim self-defense, Appellant was admitting that he "intended to do that act of defending himself." The judge further expressed that "even if the facts did fit those two are appositive defenses, meaning you can't act in self-defense and it be an accident." R. 338, lines 19-23. Thereafter, the judge asked defense counsel to reconcile the two. R. 338, line 25 – R. 339, line 1. Defense counsel responded, "I'm probably not that good, Your Honor, but if the

Court is telling me that it's one or the other in that case we would ask for self-defense." R. 339, lines 2-4. Thereafter, the judge announced she would "not be charging accident." R. 339, line 14.

Discussion

The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). A trial court's refusal to grant a jury instruction based upon a sound principle of law applicable to the case before the trial court is an error law. Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000). If there is any evidence to support a jury charge, the trial judge should give the charge in question. State v. Burris, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Light, 378 S.C. 641, 648, 664 S.E.2d 465, 468 (2008).

Much of the case law in South Carolina involving the defense of accident includes discussions of the elements of self-defense and how those elements integrate with the defense of accident. "In South Carolina, the defense of accident requires a showing that the harm caused was unintentional, that the defendant was acting lawfully at the time of the incident, and due care was exercised in handling the weapon." State v. Harris, 382 S.C. 107, 116, 674 S.E.2d 532, 537 (Ct. App. 2010); see also State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009)(citing Burris, 334 S.C. at 259, 513 S.E.2d at 106); State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994); State v. Brown, 205 S.C. 514, 32 S.E.2d 825 (1945). In the context of a death caused by a gunshot wound, the homicide is excusable as an accident when the evidence shows the defendant was acting lawfully in

self-defense and the victim was shot by accident through the unintentional discharge of a gun. Goodson, 312 S.C. at 281, 440 S.E.2d at 372 (citing State v. McCaskill, 300 S.C. 256, 387 S.E.2d 268 (1990)).

“[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.” Burris, 334 S.C. at 262, 513 S.E.2d at 108. Thus, a person armed in self-defense is entitled to a charge of accident if the killing was unintentional. Id.

In State v. Chatman, 336 S.C. 149, 519 S.E.2d 100 (1999), the South Carolina Supreme Court affirmed a trial court’s refusal to instruct the jury on accident. The evidence showed Chatman was holding another person in a non-traditional chokehold. Id. at 152-153, 519 S.E.2d at 101-102. Analyzing the requirement that a defendant must act lawfully in order for accident to apply, the Court reasoned that Chatman “was not acting lawfully, since he was engaged in an assault and battery, unless he was acting in self-defense.” Id. at 153, 519 S.E.2d at 102. Thereafter, the Court analyzed the evidence of Chatman’s conduct to conclude he was not acting in self-defense. The Court reasoned “[i]f [the defendant] was not acting in self-defense, then he could not have been acting lawfully and he was not entitled to an accident charge.” Id. at 154, 519 S.E.2d at 102.

In Tisdale v. State, 378 S.C. 122, 124, 662 S.E.2d 410, 412 (2008), the South Carolina Supreme Court held defense counsel provided ineffective assistance by failing to request an instruction as to accident. Id. At the trial, the defendant testified that when he refused to drive the alleged victim where he wanted to go, the alleged victim began yelling and punched him in the face. Id. Then, the alleged victim pulled a gun. Id. The two struggled over the gun. Id. The gun went off while it was still in the alleged victim’s

hand. Id. The defendant testified that he gun was never in his hand. Id. The Court held that evidence indicated the alleged victim was the aggressor as shown by him punching the defendant in the face and presenting a gun. This evidence along with evidence that the gun discharged accidentally supported the charge of accident. Id. at 126, 662 S.E.2d at 412-413.

Contrary to the trial judge's contention that self-defense and accident were mutually exclusive, the two may work in conjunction. In fact, this Court made exactly this point in State v. Williams, 400 S.C. 308, 317, 733 S.E.2d 605, 610 (2012) by explaining that when the evidence in the record supports both charges, then both must be given. Thus, the trial judge committed a legal error in concluding that accident could not be charged if self-defense were also charged. The judge's legal error forced Appellant to select a single defense.

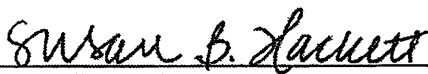
Further, the trial judge's legal error prevented the jury from considering a defense supported by the evidence. Without question, Chris's death was unintentional. The evidence before the jury was that Appellant was defending himself when he struck Chris. Thus, Appellant was acting lawfully. There was no evidence that Appellant used a weapon so the third requirement of exercising due care in the handling of a weapon is not applicable. Even if the third element were to be read to require that a person exercise due care more generally, then Appellant satisfied that element as well. There was no evidence that Appellant was acting recklessly or negligently when he was fighting with Chris. The evidence established the two fought, the fight lasted mere seconds, and the two walked away from the fight. Chris's death was an accident, and the judge's

erroneous legal conclusion that the defenses of accident and self-defense were mutually exclusive denied Appellant a just verdict.

CONCLUSION

Appellant respectfully requests this court reverse his conviction for murder in remand for a new trial.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of April, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE WRIGHT,

APPELLANT

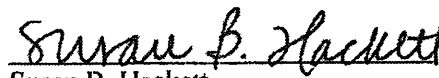
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Robert Lee Wright states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Kristi Lea Harrington, which was held on February 24-25, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Robert Lee Wright.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of April, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE WRIGHT,

APPELLANT

APPELLATE CASE NO. 2014-001023

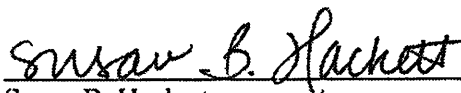
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Trial transcript dated February 24 & 25, 2014;
- (2) Court's Exhibit #1;
- (3) True-billed indictment;
- (4) Sentence sheet

I certify that this designation contains no matter which is irrelevant to this appeal.

April 7th, 2015



Susan B. Hackett
Appellate Defender

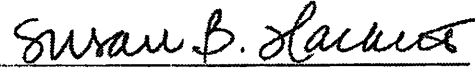
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 7, 2015



Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

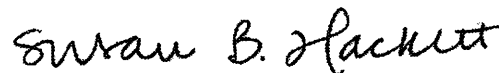
V.

ROBERT LEE WRIGHT,

APPELLANT

CERTIFICATE OF SERVICE

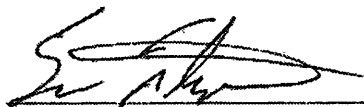
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Robert Lee Wright, #358939 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 7th day of April, 2015.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of April, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Robert Lee Wright, Appellant.

Appellate Case No. 2014-001023

ORDER

Counsel has submitted a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and a motion to be relieved as counsel. We deny the motion to be relieved as counsel and direct the parties to brief the following issue and any other issue of arguable merit:

Whether the trial court erred in ruling the defenses of accident and self-defense are mutually exclusive and whether this issue is preserved for appellate review.

Appellant shall serve and file his brief within thirty days of the date of this order. Thereafter, Respondent shall have thirty days to serve and file its brief.

Paul E. Short, Jr.

FOR THE COURT

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
Susan Barber Hackett, Esquire

FILED

March 3, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE WRIGHT,

APPELLANT

APPELLATE CASE NO. 2014-001023

BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in ruling the defenses of accident and self-defense are mutually exclusive and whether this issue is preserved for appellate review?

STATEMENT OF THE CASE

On June 12, 2010, a Charleston County grand jury indicted Appellant for murder (2010-GS-10-6153). R. 417-418. The state, represented by Benjamin Simpson and Jessica Baldwin, called the case for trial before the Honorable Kristi L. Harrington and a jury on February 24, 2014. Lorelle Proctor and Alicia Penn represented Appellant. R. 1. The jury found Appellant guilty of murder. R. 405, lines 4-10. Judge Harrington sentenced Appellant to forty years' imprisonment. R. 413, lines 5 – 9; R. 419.

Appellant filed a notice of appeal. On April 7, 2015, Appellant filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). On March 3, 2016, the Honorable Paul E. Short, Jr., of this Court denied undersigned counsel's motion to be relieved and directed the parties to brief the following issue: Whether the trial court erred in ruling the defenses of accident and self-defense are mutually exclusive and whether this issue is preserved for appellate review. Pursuant to this Court's order, Appellant now files this brief.

ARGUMENT

The trial court erred in ruling the defenses of accident and self-defense are mutually exclusive, and this issue is preserved for appellate review.

Relevant facts

Christopher “Chris” Jenkins and Appellant’s mother, Betty Scott, had been involved in a long-term romantic relationship. R. 277, lines 20-21; R. 278, line 2-9; R. 302, lines 1-3. When Betty ended the relationship, Chris was unwilling to accept her rejection of him. Instead, Chris vacillated between trying to win Betty’s affections back through gifts and expressing his anger by berating her publicly or stealing from her. R. 279, line 1 – R. 280, line 9; R. 286, lines 8-12; R. 287, line 17 – R. 290, line 25; R. 293, lines 14-25; R. 302, lines 14-16; R. 274, lines 13-21; R. 276, lines 4-9. Chris’s conduct escalated. In fact, several months before his death, Chris tried to hit Betty while at a birthday party. R. 280, line 10 – R. 281, line 13; R. 302, line 17 – R. 304, line 1; R. 319, line 19 – R. 320, line 22.

Approximately, one month later in April 2010, Appellant learned that Chris made his mother cry. R. 304, lines 2-9; R. 323, lines 3-14. At the insistence of his grandmother, who was worried about Betty’s safety, Appellant went to talk to Chris. Appellant found Chris at a nearby basketball court. R. 304, line 19 – R. 305, line 3; R. 323, lines 17-24; R. 327, lines 3-9. When Appellant approached, Chris became belligerent and combative. Appellant and Chris threw punches. The fight lasted mere seconds, however, with both men walking away unscathed. R. 305, line 3 – 12; R. 322, lines 13-19; R. 324, lines 1-15.

On June 10, 2010, Appellant parked his car at his mother's house and attended softball practice at a nearby field. R. 305, lines 13-19; R. 306, lines 14-16; R. 325, lines 6-10. After softball practice, Appellant went to retrieve his car. R. 294, lines 17-21; R. 306, lines 16-18. While at his mother's home, he learned that Chris had been peeping around the corner and hanging out in the area of Betty's apartment building that day. R. 281, line 14 – R. 282, line 15; R. 292, line 9-25; R. 293, lines 11-18; R. 325, lines 11-20; R. 326, lines 3-6; R. 267, lines 10-19; R. 268, lines 2-8; R. 268, line 25 – R. 269, line 1; R. 269, lines 11-17. When Chris peeped around the corner while Appellant was present, Appellant walked around the building to see Chris, but all Appellant saw was Chris walking away. R. 307, lines 1-10; R. 325, lines 21-25.

When Appellant prepared to leave, someone suggested that he talk to Chris about his continued harassment of Betty. R. 308, lines 2-8. While driving home, Appellant saw Chris walking down the street. Appellant stopped his car, got out, and called out to Chris. R. 308, lines 9-15; R. 312, lines 3-5; R. 312, lines 17-22; R. 328, lines 4-10. Chris stepped into the street with his fists up. R. 313, lines 1-9; R. 328, lines 10-11; R. 328, line 25 – R. 329, line 3. Despite Appellant telling Chris he had no interest in fighting, Chris continued to approach in a threatening way. R. 313, lines 11-25; R. 328, lines 11-13. The two men then started fighting. This fight, like the previous one, lasted only seconds with both men walking away at the end. R. 314, lines 2-25; R. 315, lines 1-6; R. 329, line 21 – R. 331, line 6.

Chris walked home where he told no one of the fight. R. 85, lines 1-6; R. 101, lines 4-8; R. 133, lines 3-5; R. 157, lines 2-7. Instead, he went to bed. R. 85, lines 14-21; R. 140, lines 6-8; R. 157, lines 2-6. The following day, Chris's brother checked on him.

Chris appeared to be having a seizure. His family called for help, and Chris was transported to a hospital where he later died. R. 86, lines 8-10; R. 143, line 9 – R. 144, line 6. The pathologist concluded Chris died from blunt force trauma to the chest. R. 234, lines 4-16. There were almost no external injuries, but Chris suffered ten fractured ribs on his right side and internal bleeding. R. 226, line 9 – R. 228, line 1; R. 243, line 6 – R. 244, line 14. Had Chris received medical attention more quickly, he would have survived. R. 244, lines 15-25.

During the charge conference, the state conceded that the evidence supported a jury instruction as to involuntary manslaughter, and the judge agreed to give the instruction. R. 333, line 17 – R. 334, line 11. Additionally, the state conceded the facts supported the judge instructing the jury on the law of self-defense. R. 336, lines 4-17.

However, the state objected to Appellant's request for an instruction on accident. R. 337, lines 7-21. Appellant argued he was entitled to a jury instruction on accident because the evidence showed he did not intend to cause the death of the decedent. Citing State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999) for the proposition that in order to charge the law of accident, the evidence must demonstrate the killing was unintentional and that the defendant was acting lawfully, Appellant argued the evidence showed just that. R. 338, lines 1-8.

The judge asked Appellant to explain "the difference between accident and self-defense in this particular case" because the judge was "having a hard time distinguishing between the two." R. 338, lines 10-15. According to the judge's view, in order to claim self-defense, Appellant was admitting that he "intended to do that act of defending himself." The judge further expressed that "even if the facts did fit those two are apposite defenses,

meaning you can't act in self-defense and it be an accident." R. 338, lines 19-23. Thereafter, the judge asked defense counsel to reconcile the two. R. 338, line 25 – R. 339, line 1. Defense counsel responded, "I'm probably not that good, Your Honor, but if the Court is telling me that it's one or the other in that case we would ask for self-defense." R. 339, lines 2-4. The judge indicated she wanted the charge to be "the accurate statement of law based upon the facts as presented." R. 339, lines 507. Further, the judge stated she did "not know in this scenario how it can be both." R. 339, lines 7-8. To this, defense counsel responded, "In that case we would just ask for self-defense." R. 339, lines 9-10. Thereafter, the judge announced she would "not be charging accident." R. 339, line 14.

During her closing argument, defense counsel argued the case involved "a fight between two grown men." R. 354, lines 17-18. Further, defense counsel argued the question before the jury was what Appellant "thought." R. 355, lines 1-2. It was necessary for the jury to "look at the intent, the intent behind the act." R. 355, lines 5-6. The jury would be required to examine what Appellant intended. R. 355, lines 7-8. According to defense counsel, the evidence showed Appellant "did not intend to kill Chris." R. 355, lines 8-10. Defense counsel told the jury "[i]t never crossed [Appellant]'s mind that he would be charged with murder because he didn't mean it. He didn't mean to kill Chris." R. 363, lines 11-13. She told the jury that Appellant "did not mean for any of this to happen. He never wanted to hurt Chris that bad. He never wanted him to die." R. 364, lines 7-9.

The judge instructed the jury concerning murder, voluntary manslaughter, involuntary manslaughter, and self-defense. R. 392, line 3 – R. 398, line 24. During its deliberations, the jury requested a definition of malice. R. 401, lines 22-24; R. 416. In

response, the judge re-instructed the jury on malice. R. 402, line 25 – R. 404, line 2. Just over one hour later, the jury reached a verdict. R. 404, lines 7-8; R. 404, lines 21-22.

Discussion

Legal error

During the prosecutor's opening statement, he told the jury "the central issue in this case, is that exactly what [Appellant] had in mind when he violently beat Christopher Jenkins? I don't know. *And at the close of this trial you won't either.*" R. 59, lines 3-10 (emphasis added). From the very beginning, the jury was put on notice – by the prosecution – that the evidence was not definitive as to what Appellant intended to do. Rather, the jury would be required to examine the evidence before it to deduce Appellant's intent. Continuing in his opening statement, the prosecutor asked the jury if Appellant "set out to do violence? Did [Appellant] set out to hurt someone? If the answer to that question is yes and the person died as a cause of those injuries then the correct verdict is guilty of murder." R. 59, lines 3-10. Thus, the prosecutor understood that the facts before the jury would require a determination of what Appellant intended to do, specifically whether he intended to cause harm, the issue at the very heart of the accident defense. Nevertheless, when the time arrived for the jury to make this determination, the defense of accident was not permitted due to the judge's misapprehension that self-defense and accident were mutually exclusive defenses.

The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). A trial court's refusal to grant a jury

instruction based upon a sound principle of law applicable to the case before the trial court is an error of law. Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000). If there is any evidence to support a jury charge, the trial judge should give the charge in question. State v. Burris, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Light, 378 S.C. 641, 648, 664 S.E.2d 465, 468 (2008).

Much of the case law in South Carolina involving the defense of accident includes discussions of the elements of self-defense and how those elements integrate with the defense of accident. "In South Carolina, the defense of accident requires a showing that the harm caused was unintentional, that the defendant was acting lawfully at the time of the incident, and due care was exercised in handling the weapon." State v. Harris, 382 S.C. 107, 116, 674 S.E.2d 532, 537 (Ct. App. 2010); see also State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009) (citing Burris, 334 S.C. at 259, 513 S.E.2d at 106); State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994); State v. Brown, 205 S.C. 514, 32 S.E.2d 825 (1945); State v. Williams, 400 S.C. 308, 316, 733 S.E.2d 605, 610 (Ct. App. 2012).

In the context of a death caused by a gunshot wound, the homicide is excusable as an accident when the evidence shows the defendant was acting lawfully in self-defense and the victim was shot by accident through the unintentional discharge of a gun. Goodson, 312 S.C. at 281, 440 S.E.2d at 372 (citing State v. McCaskill, 300 S.C. 256, 387 S.E.2d 268 (1990)). "[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." Burris, 334 S.C. at 262, 513 S.E.2d at 108. Thus, a person armed in self-defense is entitled to a charge of accident if the killing was unintentional. Id.

In State v. Chatman, 336 S.C. 149, 519 S.E.2d 100 (1999), the South Carolina

Supreme Court affirmed a trial court's refusal to instruct the jury on accident. The evidence showed Chatman was holding another person in a non-traditional chokehold. Id. at 152-153, 519 S.E.2d at 101-102. Analyzing the requirement that a defendant must act lawfully in order for accident to apply, the Court reasoned that Chatman "was not acting lawfully, since he was engaged in an assault and battery, unless he was acting in self-defense." Id. at 153, 519 S.E.2d at 102. Thereafter, the Court analyzed the evidence of Chatman's conduct to conclude he was not acting in self-defense. The Court reasoned "[i]f [the defendant] was not acting in self-defense, then he could not have been acting lawfully and he was not entitled to an accident charge." Id. at 154, 519 S.E.2d at 102.

In Tisdale v. State, 378 S.C. 122, 124, 662 S.E.2d 410, 412 (2008), the South Carolina Supreme Court held defense counsel provided ineffective assistance by failing to request an instruction as to accident. Id. At the trial, the defendant testified that when he refused to drive the alleged victim where he wanted to go, the alleged victim began yelling and punched him in the face. Id. Then, the alleged victim pulled a gun. Id. The two struggled over the gun. Id. The gun went off while it was still in the alleged victim's hand. Id. The defendant testified that the gun was never in his hand. Id. The Court held that evidence indicated the alleged victim was the aggressor as shown by him punching the defendant in the face and presenting a gun. This evidence along with evidence that the gun discharged accidentally supported the charge of accident. Id. at 126, 662 S.E.2d at 412-413.

Contrary to the trial judge's contention that self-defense and accident were mutually exclusive, the two may work in conjunction. In fact, this Court made exactly this point in State v. Williams, 400 S.C. 308, 317, 733 S.E.2d 605, 610 (Ct. App. 2012)

by explaining that when the evidence in the record supports both charges, then both must be given. Thus, the trial judge committed a legal error in concluding that accident could not be charged if self-defense were also charged. The judge's legal error forced Appellant to select a single defense. Further, the trial judge's legal error prevented the jury from considering a defense supported by the evidence.

Without question, Chris's death was unintentional. The evidence before the jury was that Appellant was defending himself when he struck Chris. Thus, Appellant was acting lawfully.

There was no evidence that Appellant used a weapon so the third requirement of exercising due care in the handling of a weapon is not applicable. However, if this Court were to determine Appellant's use of his hands during the fight were to qualify as use of a weapon, then Appellant still exercised due care. Appellant recognizes that under South Carolina common law, "ordinary objects also may become deadly weapons when the facts indicate that they have been used to inflict serious bodily harm or death." State v. Davis, 309 S.C. 326, 343-344, 422 S.E.2d 133, 144 (1992), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). In Davis, 309 S.C. at 344, 422 S.E.2d at 144, the Court held that whether an object had been utilized as a deadly weapon depended upon the facts and circumstances of each case. The pathologist testified the deceased sustained blows to her head caused by being battered against a wall, which were consistent with injuries that a person who had been struck with a heavy object would receive. Additionally, the pressure from strangulation caused the deceased's thyroid gland and a portion of her larynx to hemorrhage. The Court "discern[ed] no reason to distinguish injuries caused by an instrumentality from similar

injuries inflicted by a hand or fist.” *Id.* The Court concluded “that a hand or fist may be found by the jury to be a deadly weapon or object, depending upon the manner and means of its use, the wounds inflicted, and other relevant facts.” *Id.* Appellant’s testimony was that Chris approached him in a threatening manner, Appellant swept his legs forcing Chris to fall, but Chris’s momentum forced Appellant to fall as well. R. 314, lines 2-8. Appellant “threw punches” and the two men separated. R. 314, line 9. Appellant’s conduct during this fight was not reckless or negligent.

Even if the third element were to be read to require that a person exercise due care more generally, then Appellant satisfied that element as well. There was no evidence that Appellant was acting recklessly or negligently when he was fighting with Chris. The evidence established the two fought, the fight lasted mere seconds, and the two walked away from the fight.

Chris’s death was an accident, and the judge’s erroneous legal conclusion that the defenses of accident and self-defense were mutually exclusive denied Appellant a just verdict.

Preservation

“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)(citing Creech v. South Carolina Wildlife and Marine Resources Dep’t, 328 S.C. 24, 491 S.E.2d 571 (1997)). “Moreover, an objection must be sufficient specific to inform the trial court of the point being urged by the objector.” *Id.* “Error preservation requirements are intended ‘to enable the lower court to rule properly after it has considered all relevant facts, law, and

arguments.” Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000)(quoting I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)). “Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.” Id. The rationale of issue preservation is to prevent “a party from keeping an ace card up his sleeve – intentionally or by chance – in hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.” I’On, L.L.C., 338 S.C. at 422, 526 S.E.2d at 724. Further, an appellant may waive his right to appeal a decision by the trial judge through acquiescence. State v. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000); Erickson v. Jones Street Publishers, L.L.C., 368 S.C. 444, 481, 629 S.E.2d 653, 673 (2006).

Generally, the rules of issue preservation are strictly enforced. However, the appellate courts have carved out certain limited exceptions. First, the “lack of subject matter jurisdiction may be raised at anytime, including for the first time on appeal.” State v. Passmore, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005). Another exception is the “doctrine of futility.” Id. Our courts have recognized “that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused.” Id. A third “exception exists where the interests of minors or incompetents are involved.” Id. at 585, 611 S.E.2d at 282. The final exception is where exceptional circumstances require excusal of error preservation. Id. For example, the Supreme Court found exceptional circumstances existed where failure to review the merits of a sentencing error would result in the defendant remaining incarcerated beyond the legal sentence. State v. Johnston, 333 S.C. 459, 463-464, 510 S.E.2d 423, 425 (1999); see also State v. Vick, 384

S.C. 189, 203, 682 S.E.2d 275, 281-282 (Ct. App. 2009)(excusing error preservation where the sentencing for kidnapping was in violation of the statute).

Appellant's request for a jury instruction concerning the defense of accident is preserved for review by this Court. Defense counsel requested the charge and the judge made a ruling. Defense counsel cited State v. Burris, supra, and noted the elements of accident, which Appellant argued were supported by evidence presented. R. 338, lines 1-8.

Although the judge requested additional argument and wanted to know the "the difference between accident and self-defense in this particular case" because the judge was "having a hard time distinguishing between the two," R. 338, lines 10-15, there was no additional argument to provide. Defense counsel made the request, supported the request by citation to applicable case law, and the request was denied. Defense counsel even made clear that she was not acquiescing in the ruling by explaining that she understood the judge's ruling, which was based upon a legal error, to require trial counsel to select between self-defense and accident. See R. 339, lines 2-4 (defense counsel responding to the judge by stating "if the Court is telling me that it's one or the other in that case we would ask for self-defense"); R. 339, lines 9-10 (defense counsel responding to the judge by stating, "In that case we would just ask for self-defense").

If this Court determines the issue is not preserved for review, then this Court should apply one of the exceptions to error preservation. Further argument with the trial judge regarding the instruction would have been futile. The judge was applying a wrong standard to determine what instructions she would give because she was requiring trial counsel to differentiate between two defenses – self-defense and accident. The question for a trial judge is not how do two defenses differ, but whether *any evidence* exists to support the

instruction. The judge indicated her view that a person could not be acting in self-defense and that the resulting harm be an accident, and therefore, both could not be charged, regardless of the set of facts presented. In short, she viewed the two as mutually exclusive. Further, there was no need to continue argument with the judge as the request had been made fully and rejected. There was simply no addition argument to provide to change the judge's mind in light of the judge's misapprehension of the law in this regard. Thus, even if this Court were to determine the error were not preserved for review, this Court should excuse the failure based on the futility doctrine.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction for murder in remand for a new trial.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of March, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE WRIGHT,

APPELLANT

CERTIFICATE OF SERVICE

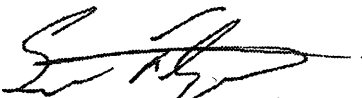
The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Robert Lee Wright, #358939, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 29th day of March, 2016.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of March, 2016.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE WRIGHT,

APPELLANT,

Appellate Case No. 2014-001023

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

Whether the trial court erred in ruling the defenses of accident and self-defense are mutually exclusive and whether this issue is preserved for appellate review?

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

- I. Whether the issue is preserved for appellate review when Appellant withdrew his initial request for an accident instruction during the charge conference and then failed to contemporaneously object to the jury charges after they were given?
- II. Whether the trial judge erred in stating the defenses of accident and self-defense were appositive defenses in this case and did not charge the law of accident where South Carolina law often treats the two defenses as mutually exclusive, except with one specific situation that is inapplicable to the facts of this case, and where there was no evidence presented at trial alleging the incident was an accident?

RESPONDENT'S STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant, Robert Lee Wright, in September 2010 for the murder of Christopher Jenkins (Indictment Number 2010-GS-10-6153).

On February 24, 2014, Appellant's case was called to trial before the Honorable Kristi Lea Harrington. (R. p. 1). Deputy Public Defender Lorelle Proctor and Assistant Public Defender Alicia Penn represented Appellant during the trial. (R. p. 1). Assistant Solicitors Benjamin Simpson and Jessica Baldwin represented the State. (R. p. 1). On February 25, 2014, the jury returned a verdict of guilty. (R. p. 405). Judge Harrington sentenced Appellant to incarceration for forty (40) years. (R. p. 413).

On February 27, 2014, Appellant filed a motion for a new trial and a motion to reconsider the sentence. On March 25, 2014, Judge Harrington filed an order denying both motions. Appellant filed a notice of appeal with the Charleston County Clerk of Court on March 31, 2014. However, the appeal was not received by the South Carolina Court of Appeals until May 12, 2014. On May 20, 2014, Appellant filed a motion to allow for late filing of the notice to appeal. On June 16, 2014, the South Carolina Court of Appeals filed an order granting the motion. Thus, Appellant filed a timely notice of appeal.

On April 7, 2015, Appellant's counsel, Susan B. Hackett, Esquire, filed a brief pursuant to *Anders v California*, 386 U.S. 738 (1967) and petitioned to be relieved as counsel. On March 3, 2016, the Honorable Paul E. Short, Jr., of the South Carolina Court of Appeals, denied counsel's motion to be relieved and directed the parties to brief the following issue: Whether the trial court erred in ruling the defenses of accident and self-defense are mutually exclusive and whether the issue is preserved for appellate review.

RESPONDENT'S STATEMENT OF FACTS

During the early evening hours of June 10, 2010, Robert Wright, Appellant, assaulted Christopher Jenkins, the victim, by repeatedly punching and stomping him while he lay on the ground. (R. pp. 80, pp. 81, pp. 110). Victim's two nephews and one of their friends witnessed the beating. (R. p. 77, lines 3-15; R. p. 107, lines 8-18; R. p. 121, lines 19-25). The next day, Victim died as a result of the attack. (R. p. 245, line 16). The pathologist concluded that cause of death was blunt force trauma and noted that the victim had ten broken ribs and numerous external injuries. (R. pp. 226, pp. 227).

Background

Victim and Appellant's mother, Betty Scott, had dated each other on and off for several years.¹ (R. p. 163, lines 14-25; R. p. 278, lines 2-8). Betty ended the relationship but the two maintained contact with one another. (R. pp. 278-279). Thereafter, a series of events unfolded that ultimately led to the underlying incident. In March 2010, Appellant learned the Victim had recently attempted to strike Betty. (R. p. 319, lines 19-24). In April 2010, Appellant received a phone call that Victim had upset Betty and made her cry. (R. p. 323, lines 3-6). That same day, Appellant tracked down Victim and they engaged in a physical altercation. (R. p. 323, line 7-p. 324, line 20). On June 10, 2010, Appellant was told that Victim had been seen lingering around Betty's house. (R. p. 325, lines 16-20). Apparently, it was after hearing this information that Appellant decided to take action.

June 10, 2010

On June 10, 2010, Victim's two nephews, thirteen year old Robert and fourteen year old Jocqui, were playing with a friend, thirteen year old Maurice, at their home. (R.

¹ Throughout the trial, Betty Scott was often referred to as "Ms. Winky".

p. 72, line 10- R. p. 73, line 1). At that point in time, Victim and his two nephews lived with Mary Jenkins, Victim's mother. (R. p. 70, line 21-R. p. 71, line 25). While the children were playing, Tamika Jenkins, the mother of Robert and Jocqui and sister of Victim, asked the boys to go to the store for her. (R. p. 73, line 3). It was getting dark so Victim decided to walk with the boys. (R. p. 74, line 3). The three boys were walking a few feet in front of Victim down the sidewalk. (R. p. 76, lines 2-3). When Robert turned around to make sure Victim was still following them he saw a car pull up. (R. p. 76, lines 3-10). All three boys witnessed Appellant get out of the vehicle and walk towards Victim. (R. p. 77, lines 3-15; R. p. 107, lines 8-18; R. p. 121, lines 19-25). Before Victim could turn around completely, Appellant picked up Victim and "body slammed" him to the ground. (R. p. 79, lines 3-5). Appellant then began to punch Victim in the face, between five and ten times. (R. p. 80, lines 11-25). He then proceeded to forcefully stomp Victim's body with his feet, between five and ten times. (R. p. 81, lines 1-5). During the assault, Victim did not fight back but "was just laying there on the ground". (R. p. 110, line 5). Victim did not speak to or act violent towards Appellant leading up to or during the assault. (R. p. 83, lines 2-17; R. p. 113, line 25-R. p. 114, line 6). Robert yelled at Appellant to stop attacking his uncle. Appellant responded to Robert, "shut your retarded ass up and come do something about it". (R. p. 124, lines 5-7). Appellant then walked back to his car and drove away. (R. p. 110, lines 11-15).

After Appellant left, Victim stood up and attempted to walk with the boys the remainder of the way to the store. (R. p. 83, line 19-p. 84, line 5). Victim was unable to continue so the boys went on to the store without him. (R. p. 84, lines 6-19). Minutes later, both Victim and the boys returned home. (R. p. 85, lines 1-4). The family watched

as a bleeding and bruised Victim walked upstairs, holding his side in pain, to rest. (R. p. 85, lines 7-21; R. p. 138, lines 21-24). Sounds of moaning could be heard by everyone downstairs. (R. p. 85, line 24; R. p. 140, lines 20-24). Robert explained to Mary that Appellant had just attacked Victim and had yelled at Robert. (R. p. 155, line 15). Mary, being a concerned mother and grandmother, went to Betty's house to talk about Appellant and the incident. (R. p. 166). Betty did not know about the incident and Appellant was not there when Mary arrived. (R. p. 168, line 21).

June 11, 2010

The next day, June 11, 2010, Victim was still in excruciating pain and spent the day lying in bed. (R. p. 141, lines 2-12). Appellant and Betty came over to Victim's house to speak with Mary, not about the assault but the statement to Robert. (R. p. 141, line 16). Timeka was present and felt that Appellant was not the least bit concerned about victim. (R. p. 142, line 4). Appellant told Timeka, "he was tired of Chris disrespecting his mother and he would have did it again if he had to." (R. p. 144, lines 15-17). Appellant and Betty left soon thereafter.

A couple of hours later, Timeka decided to call EMS after her other brother went upstairs to check on Victim and witnessed Victim having two seizures. (R. p. 143, lines 9-20). At approximately 3:00 p.m., an ambulance arrived at the home and transported Victim to the hospital. (R. p. 162, line 21). Victim died at 5:54 p.m. that same day. (R. p. 245, line 16).

June 12, 2012

On June 12, 2010, Detective Barry Goldstein of the Charleston Police Department responded to Mary's home to investigate Victim's death. (R. p. 173, line 2). He spoke

with Robert and Maurice about the incident and asked if they could identify the man that had attacked their uncle. (R. p. 88, lines 4-22; R. p. 126, lines 10-25). They both positively identified Appellant out of a photo lineup. (R. p. 88, lines 4-22; R. p. 126, lines 10-25). After interviewing Robert and Maurice, the children took Detective Goldstein to the incident location. (R. p. 175, line 5). Detective Goldstein observed blood spatter and drops where Victim had been assaulted. (R. p. 175, line 20). Officer Randall Unterbrink, with the Charleston Police Department Crime Scene Unit, photographed and collected samples of the blood found on scene. (R. p. 199, lines 3-5; R. p. 201, line 10). He was able to determine that a total of forty-eight blood drops had been left at the incident location. (R. p. 208, line 21). The blood samples were positively identified as belonging to Victim. (R. p. 256, line 1). Later that day, Detective Goldstein obtained an arrest warrant for Appellant. (R. p. 176, line 23). Detective Goldstein observed Appellant did not have any bruising or injuries to his body. (R. p. 177, line 13).

On June 12, 2010, an autopsy was performed on Victim by Dr. Nicholas Batalis. (R. p. 226, line 3). Dr. Batalis observed multiple injuries when conducting an external examination of Victim's body. (R. p. 226, line 12). Victim had a laceration to his left eye, a scrape to the lower lip, two scrapes on the left knee, and a large bruise on the upper left side of his chest. (R. p. 226, lines 12-18). During the internal examination of Victim, Dr. Batalis noted that ten of the twelve ribs on Victim's back right side were fractured in a straight line, which could only have occurred by the use of a significant amount of force. (R. p. 227, lines 8-14; R. p. 229, line 15). The pathologist conceded that forceful stomping could cause fracturing similar to Victim's injuries. (R. p. 230, lines 15-20). This fracturing caused significant bleeding into the chest cavity and bruising to the right

side of his back. (R. p. 227, lines 15-18). Dr. Batalis' ultimate finding was that Victim's cause of death was blunt force trauma to the chest. (R. p. 234, line 7).

Appellant's version

At trial, Appellant testified to his version of the facts. (R. pp. 300-331). He claimed he followed Victim so they could talk about Betty. (R. p. 327, lines 14-24). Appellant got out of his car and called out to Victim. (R. p. 328, lines 7-10). Appellant testified that Victim turned around and put his hands up to fight. (R. p. 328, lines 10-13). According to Appellant, the two then locked shoulders and Appellant flipped Victim over onto the grounds. (R. p. 313, lines 22-24; R. p. 314, lines 2-15). Appellant admitted to intentionally punching Victim three to five times. (R. p. 330, lines 22-25). Appellant then walked to his car and left the scene. (R. p. 315, line 2).

ARGUMENT

- I. The trial judge did not commit error and a new trial should not be granted where the issue is procedurally barred from appellate review, the trial judge correctly held that accident and self-defense are appositive defenses, and there was no evidence presented at trial to support a charge on accident.**

Appellant contends the trial court erred in not instructing the jury on the defense of accident and holding that the defenses of accident and self-defense are mutually exclusive. Respondent disagrees and submits Appellant's argument is without merit. Firstly, the present issue is procedurally barred for review because Appellant abandoned the request for an accident charge during the charge conference and then failed to make a contemporaneous objection after the instructions were read to the jury. Secondly, the trial court was correct in viewing accident and self-defense as mutually exclusive defenses in this case. Self-defense and accident do not automatically coexist as a matter of law. However, there is a recognized specific situation that allows for an instruction on both defenses. The facts of this case do not fit within that particular situation, and so both defenses could not have been charged. Lastly, counsel never asserted at trial that the incident was an accident. Neither the State nor Appellant presented any evidence that would support a defense of accident; therefore, an accident charge was not required.

Charge Conference

During the charge conference, Appellant requested a charge on the defense of accident. (R. p. 336, line 22). Before hearing from Appellant, Judge Harrington asked the State to assert its position. The colloquy was as follows:

The Court: Tell me what your position is to accident.

Mr. Simpson: Your Honor, we would not be conceding to a charge on accident. The doctrine of accident under the law, I think, applies to the act itself and whether an act is done intentionally or not, and I just don't think

there's any conceivable view or any evidence even under that standard that the charge of accident is proper in the case.

The charge of accident is different than – an allegation of accident is different than an allegation that the acts were justified. In self defense the defendant is simply saying that he is legally justified in doing an intentional act. The law of accident, it would have to be that he accidentally punched the victim, he accidentally took the victim to the ground, and I just don't see any conceivable –

The Court: Ms. Penn, tell me from the facts that I have heard make fit this for me, because I'm having a difficult time making them fit under how I understand the theory of both the State's and the defense cases.

Ms. Penn: Simply, your honor, that Mr. Wright did not intend to cause Mr. Jenkin's death. From my reading of State v Burrell I believe that we must show the killing was unintentional and the defendant was acting lawfully, and, of course, that part about the weapon, which there were no weapons in this case. And I think jury could find that he was acting lawfully in defending himself and that the killing was unintentional.

Mr. Simpson: May I respond?

The Court: Ms. Penn, maybe I'm having difficulty understanding your analysis. Tell me the difference between accident and self defense in this particular case. I think that's where I'm having a hard time distinguishing the two because if he's claiming self defense he's acting lawfully under the defense, correct?

Ms. Penn: Yes, ma'am.

The Court: I mean, that's your position?

Ms. Penn: It is.

The Court: And he intended to do that act of defending himself. If you want me to charge accident in my mind even if the facts did fit those are two apposite defenses, meaning you can't act in self defense and it be an accident.

Ms. Penn: Yes ma'am.

The Court: Maybe you could reconcile that for me or have I –

Ms. Penn: I'm probably not that good, Your Honor, but if the court is telling me that it's one or the other in that case we would ask for self defense.

The Court: I'm saying that's how I see it. I want to charge the accurate statement of law based upon the facts as presented. I don't know in this scenario how it could be both.

Ms. Penn: Yes, ma'am. In that case we would just ask for self defense.

The Court: Do you need a moment to talk with Ms. Proctor?

Ms. Penn: No, ma'am.

The Court: I will not be charging accident. I will charge self defense.

(R. p. 336, line 12-R. p. 339, line 15).

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). A trial court is required to charge the current and correct law of South Carolina. *State v. Rayfield*, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006). The law to be charged must be determined from the evidence presented at trial. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001); *State v. Holland*, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). If any evidence supports a jury charge, the circuit court should grant the request. *State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (citing *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007)). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Mattison*, 388 S.C. at 479, 697 S.E.2d at 58.

- A. A new trial is not proper on a failure to instruct on accident because the issue is not preserved for appellate review. Appellant withdrew his initial request for an accident instruction during the charge conference and then failed to contemporaneously object to the jury charges after they were given.**

The parties must have an opportunity to object to the giving or failure to give an instruction, and any objection must “state distinctly the matter objected to and the grounds for objection.” Rule 20, SCRCrimP (emphasis added). “Failure to object in accordance with this rule shall constitute a waiver of objection.” *Id.* (emphasis added); *see also State v. Whipple*, 324 S.C. 43, 476 S.E.2d 683, 688 (1996) (“failure to object to the charge as given, or to request an additional charge when given an opportunity to do so constitutes a waiver of [defendant’s] right to complain on appeal”).

“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [appellate courts] with a platform for meaningful appellate review.” *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640, 465 (2011); *State v. Byers*, 392 S.C. 438, 710 S.E.2d 55, 58 (2011) (to be preserved for appellate review, the objection must be made with sufficient specificity to inform the trial court of the point being urged by the objector); *see also I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724-25 (2000) (the preservation requirement enables the lower court to rule properly after it has considered all relevant facts, law, and arguments, and prevents a party from keeping an ace card up his sleeve in the hope that an appellate court will accept that ace card and give him another opportunity to prove his case).

Appellant initially requested a jury charge on the defense of accident during the charge conference. (R. p. 336, line 22). A review of the record reveals Appellant did not object when Judge Harrington decided not to charge the law on accident. In fact, it

appears that Appellant agreed with the Judge in not charging the defense of accident. The Judge asked Appellant to explain the request for an accident charge. Ms. Penn responded, "I'm probably not that good, Your Honor, but if the court is telling me that it's one or the other in that case we would ask for self defense." (R. p. 339, lines 2-4). The Judge stated she did not see how accident was applicable to the case at hand and Ms. Penn consented, "Yes, ma'am. In that case we would just ask for self defense". (R. p. 339, lines 9-10). Appellant's decision to ask for only a self-defense charge was as an abandonment of the initial request for an accident charge. In *State v. Rios*, the Court ruled that the Defendant had waived his appellate argument on a jury charge request when he withdrew his request during the charge conference, and thus was not preserved for review. 388 S.C. 335, 341, 696 S.E.2d 608, 612 (Ct. App. 2010) "Defendant abandoned his request for jury charges on involuntary manslaughter and self-defense when he acquiesced and asked the trial court to charge voluntary manslaughter, accident, and murder." *Id.*; see also *State v. McMillian*, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (a party cannot acquiesce to an issue at trial and then complain on appeal).

Additionally, Appellant waived any challenge to the jury instructions. When the trial court completed giving her instructions, she asked "Any motions, matters, additions, corrections to the charges read...?" (R. p. 400). Appellant's counsel responded: "Not from the defense." (R. p. 401). As a result, Appellant waived any objection to the charge. See *Rios*, 388 S.C. at 342, 696 S.E.2d at 612 ("Even after the trial court specifically asked if there were any objections to the charges given, Rios responded, 'None.' By failing to contemporaneously object to the jury charges, Rios has waived his right to allege error on appeal.").

Appellant argues that if the Court finds that the issue is not preserved for review, which it is not, then the “doctrine of futility” should apply. Under this doctrine, a failure to object to an issue will be excused if it would have been futile to raise the objection to the trial judge. *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005); *See also State v. Pace*, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994). The doctrine of futility applies in situations where raising an objection would place the defendant “in a perilous posture”. *State v. Higgenbottom*, 337 S.C. 637, 640, 626 S.E.2d 250, 251 (Ct. App. 1999), *overruled on other grounds by State v. Higgenbottom*, 344 S.C. 11, 542 S.E.2d 718 (2001).

Appellant contends that further argument with Judge Harrington would have been futile because the request had been made fully and rejected. However, the trial record clearly proves otherwise. The judge specifically asked Appellant for further explanation on the law on accident and how it was applicable to the case. (R. p. 338, line 10-R. p. 339, line 8). Furthermore, before her decision to not charge the defense, she gave trial counsel the opportunity to discuss the issue further with co-counsel to ensure that they wanted to withdraw their request for the charge. (R. p. 339, lines 11-12). Counsel declined this offer and proceeded on the request to charge only self-defense. (R. p. 339, line 13). Thus, the doctrine of futility is inapplicable to the case at hand when the judge explicitly welcomed further input from Appellant before she made her ruling and Appellant refused the opportunity.

Therefore, Respondent submits the issue is not preserved for review and the Court should not excuse the failure and grant a new trial.

- B. The trial judge did not err in stating the defenses of accident and self-defense were apposite defenses in this case where South Carolina law often treats the two defenses as mutually exclusive, except with one specific situation that is inapplicable to the facts of this case. Furthermore, the trial judge did not err in not charging the law on accident since there was no evidence presented at trial alleging the incident was an accident.

Accident and self-defense do not automatically co-exist as a matter of law

Appellant argues that the defenses of accident and self-defense are not mutually exclusive. This is an incorrect statement of the law in South Carolina. Accident and self-defense are generally treated as mutually exclusive defenses. *State v. Williams*, 400 S.C. 308, 317, 733 S.E.2d 605, 610 (Ct.App.2012) (noting that self-defense and accident charges are often mutually exclusive).

For a homicide to be excusable on the ground of accident, it must be shown that (1) the harm was unintentional; (2) the defendant was acting lawfully; and (3) due care was exercised in the handling of the weapon. *State v. Brown*, 205 S.C. 514, 32 S.E.2d 825 (1945); *State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994). The elements of self-defense are significantly different from those of accident, especially the *mens rea* element.² It is axiomatic that a defendant may claim and be entitled to a jury charge on self-defense only if there is evidence in the record that he acted intentionally in self-

² Four elements must exist for a defendant to be entitled to a self-defense charge:

(1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger. *State v. Day*, 341 S.C. 410, 416, 535 S.E.2d 431, 434 (2000)(citation omitted).

defense. *See State v. Light*, 378 S.C. 651, 649, 664 S.E.2d 470, 469 (2008). “Because of the intentional nature of the act involved in self-defense, defenses of accident and self-defense generally are not both involved in a case.” 40 Am. Jur. 2d Homicide § 139; *see also State v. McDaniel*, 68 S.C. 304, 47 S.E. 384, 389 (1904) (“It is distinguishable from self-defense as a plea, which admits an intentional killing, and sets up as justification a necessity to kill in order to save the accused from death or serious bodily harm, whereas a defense of homicide by accident denies that the killing was intentional.”). Accordingly, the defense of accident is only applicable in cases where there is a lack of criminal intent to inflict harm.

Nevertheless, the two defenses can coincide with one another and be considered not mutually exclusive in a very specific situation. As explained above, the defendant can only assert the defense of accident if they are acting lawfully. Courts have found that this can apply to situations where one is acting lawfully in self-defense and accidentally harms another, particularly in cases of unintentionally discharging a firearm. *State v. Wharton*, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009); *Tisdale v. State*, 378 S.C. 122, 126, 662 S.E.2d 410, 412 (2008); *State v. Cameron*, 137 S.C. 371, 135 S.E. 364 (1926). If the circumstances of a case show a defendant was entitled to arm himself in self-defense when the gun went off, he would be entitled to a charge of accident supposing evidence satisfies the other elements of the doctrine. *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). In *State v. McCaskill*, 300 S.C. 256, 259, 387 S.E.2d 268 (1990), the Court stated that “a homicide is excused when caused by the discharge of a gun ... where the accused is lawfully acting in self-defense and the victim meets death by accident, through the unintentional discharge of a gun or the like On the other hand, a

homicide is not excusable on the ground of accident or misadventure unless it appears that the act of the slayer was lawful.”

Within all of the aforementioned cases, the defendants claimed to be acting lawfully in self-defense and the victim was killed by an accidental shooting. In other words, asserting they intentionally defended themselves but unintentionally shot the victim. Hence, the defense of accident applies to the act itself, not the result. The facts presented in this case do not fall within this specific category. Even if Appellant’s version of the facts were true, the defense of accident and self-defense could not both be asserted. Contrary to the abundance of evidence proving otherwise, Appellant asserted he was acting in self-defense. However, unlike the above-mentioned cases, Appellant does not contend he was acting lawfully in self-defense and then accidentally punched and stomped Victim, thereby causing Victim’s death. In order for Appellant’s case to fit within this exception, he would be required to assert that he did not intend, whatsoever, to assault Victim. That is simply not the case. Appellant admitted to intentionally flipping Victim over and punching Victim three to five times while he was on the ground. (R. p. 314, lines 2-9). Appellant testified, “There ain’t no winners in fights but I didn’t want to be on the bottom, sir.” (R. p. 330, lines 8-9). It was no accident when Appellant used his hands and feet to brutally beat Victim to death. Consequently, Appellant’s case does not fall within the narrow exception where the two defenses are not mutually exclusive.

“Undoubtedly, determining when multiple charges are appropriate turns on the facts of each case, so there is no bright-line rule that can be universally applied.” *State v. Sams*, 410 S.C. 303, 314, 764 S.E.2d 511, 516 (2014), reh’g denied (Nov. 7, 2014). As explained above, Appellant could not have been intentionally acting in self-defense and

unintentionally attacking Victim, and thus, Appellant cannot allege both defenses. Therefore, based on the facts of the case, the trial court did not err in ruling that accident and self-defense are mutually exclusive defenses.

Accident charge not required because no evidence to support the defense

Putting aside the fact that self-defense and accident are mutually exclusive defenses in this case, an accident defense would still be unavailable to the Appellant. “The law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it should be given.” *Buriss*, 334 S.C. at 262, 513 S.E.2d at 108. Despite Appellant’s contention that the evidence supported a charge on accident, Respondent submits the trial judge properly denied the requested instruction because there was absolutely no evidence presented at trial that would warrant a charge on accident. Moreover, a thorough review of the trial transcript reveals that the word “accident” was never used until the defense of accident was requested during the charge conference. Since Appellant never asserted his actions were accidental or presented evidence to support the defense, an instruction on accident was not required.

As stated above, evidence of three elements must be presented at trial to allege a defense of accident. A homicide will be excusable on the ground of accident when (1) the killing was unintentional, (2) the defendant was acting lawfully, and (3) due care was exercised in the handling of the weapon. *State v. Chatman*, 336 S.C. 149, 153, 519 S.E.2d 100, 102 (1999). The record is completely devoid of any evidence from the State or the Appellant that indicated Appellant’s actions met these three requirements.

The first element, an unintentional killing, has already been discussed in detail. The testimony from multiple witnesses and the Appellant himself shows that Appellant intended to beat Victim. (R. pp. 79-81, pp. 107-109, pp. 122-124, p. 314). Appellant's knowledge of the difficulties between Betty and Victim leading up to the incident further show his desire to harm Victim. (R. p. 369-p. 371). Therefore, Appellant intentionally attacked Victim and does not satisfy the first element for an accident defense.

Likewise, Appellant does not satisfy the second element of acting lawfully. Under both versions of the facts, Appellant was committing an assault and battery, a criminal act, at the time of the incident. In order for Appellant to claim this act was lawful, he must have been acting in self-defense. Here, Appellant initiated the contact with Victim and was not in imminent danger when he slammed Victim to the ground. (R. p. 77, lines 3-15; R. p. 107, lines 8-18; R. p. 121, lines 19-25). Appellant could have easily left to avoid any possible danger, but he continued to attack Victim as he lay helpless on the ground. (R. p. 110, line 5). Thus, Appellant was not acting lawfully in self-defense and does not meet the second element for accident.

As to the third element, exercising due care in the handling of the weapon, Appellant asserts that this requirement is not applicable because Appellant did not use a weapon. However, South Carolina has recognized that a person's hands or feet can constitute a deadly weapon. The Court in *Davis* specifically stated, "We agree with the trial judge that a hand or fist may be found by the jury to be a deadly weapon or object, depending upon the manner and means of its use, the wounds inflicted, and other relevant facts." *State v. Davis*, 309 S.C. 326, 344, 422 S.E.2d 133, 144 (1992) *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999). Therefore,

Appellant's use of his hands and feet to beat the Victim could be deemed as use of a deadly weapon.

Next, Appellant contends that if the Court were to find that hands or feet qualify as deadly weapons then Appellant exercised due care in handling them. This argument is without merit. It is evident from the trial record that Appellant used a substantial amount of force to inflict the deadly blows to Victim. Dr. Batalis stated multiple times that a significant amount of force would have had to been used to break Victim's ten ribs. (R. p. 229, line 15; R. p. 230, lines 9-20; R. p. 232, lines 12-14; R. p. 241, lines 19-21; R. p. 242, line 3; R. p. 247, lines 11-18; R. p. 249, lines 1-6). He explained, "The type of injuries to have in this location and this number of fractures is something we more typically see in motor vehicle accident or car accident." (R. p. 230, lines 9-12). The three children that witnessed the attack testified that Appellant body slammed Victim to the ground, then began to forcefully punch and stomp Victim while he laid there helpless. (R. pp. 79-81, pp. 107-109, pp. 122-124). Based on the severity of the Victim's injuries and Appellant's senseless acts of violence on an unarmed Victim, the only reasonable conclusion was that Appellant's hands and feet were used as deadly weapons with which he did not exercise due care.

Accordingly, Appellant does not satisfy any of the three elements for an accident defense. The law to be charged must be determined from the evidence presented at trial. *Knoten*, 347 S.C. at 296, 555 S.E.2d at 391. Appellant neither mentioned nor insinuated to a defense of accident until the charge conference. "No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence." *State v. Weaver*, 265 S.C. 130, 137, 217 S.E.2d

31, 34 (1975). Consequently, a charge on accident was not required since no evidence was presented at trial to support that defense.

In conclusion, Respondent submits the trial court did not err in holding that the accident and self-defense are apposite defenses regarding the facts of this case. Regardless, the trial court did not commit error in not charging the defense of accident since no evidence was presented at trial to justify the instruction.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

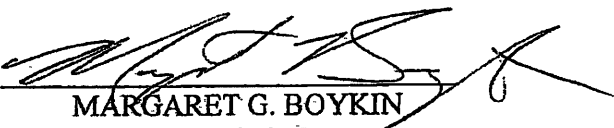
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ATTORNEY FOR RESPONDENT

August 1, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE WRIGHT,

APPELLANT,

Appellate Case No. 2014-001023

CERTIFICATE OF SERVICE

I, Margaret Boykin, counsel for the Respondent, certify that I have served the within Brief of Respondent on Appellant by depositing copies of the same in the United States mail, first class, postage prepaid, addressed to:

Susan B. Hackett, Esq.,
SCCID/Division of Appellate Defense
1330 Lady Street
Suite #401
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.

This 1st day of August, 2016.


MARGARET G. BOYKIN
Assistant Attorney General
SC Bar No. 101017

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Robert Lee Wright, Appellant.

Appellate Case No. 2014-001023

Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2017-UP-005
Submitted December 1, 2016 – Filed January 11, 2017

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General Margaret Graham Boykin, all
of Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, all for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Rios*, 388 S.C. 335, 341, 696 S.E.2d 608, 612 (Ct. App. 2010) (stating a defendant "abandoned his request for jury charges on involuntary manslaughter and self-defense when he acquiesced and asked the trial court" for different charges); *id.* (holding a defendant could not argue an issue on appeal when the defendant waived appellate review of the issue by conceding it at trial).¹

AFFIRMED.²

WILLIAMS, THOMAS, and GEATHERS, JJ., concur.

¹ The doctrine of futility is inapplicable to this appeal. See *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005) ("[O]ur courts have developed the doctrine of futility, which recognizes that *in circumstances whe[n] it would [have] be[en] futile to raise an objection to the trial [court], failure to raise the objection will be excused.*" (emphasis added)).

² We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
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January 27, 2017

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State v. Robert L. Wright
Lower Court Case No. 2010GS1006153
Appellate Case No. 2014-001023

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Jay A. Kitchings
CLERK

Enclosure

cc: Robert Lee Wright, 358939
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
~~Susan Barber Hackett, Esquire~~
Margaret Graham Boykin, Esquire
John W. McIntosh, Esquire
Scarlett Anne Wilson, Esquire

RECEIVED

JAN 27 2017

APPELLATE DEFENSE

FORM 5

STATE OF SOUTH CAROLINA)

County of CHARLESTON)ROBERT LEE WRIGHT #358939)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2017-CP-10-1648
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEF
AFFIDAVIT OF FACTSBY
JULIE J. ARMSTRONG
CLERK OF COURT
2017 MAR 31 PM 3:56

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER CORRECTIONAL INSTITUTION STONO - A-60
P.O. BOX 205 RIDGEVILLE, S.C. 29472
2. Name and location of Court which imposed sentence THE COURT OF GENERAL
SESSIONS FOR THE NINTH JUDICIAL CIRCUIT; CHARLESTON COUNTY.
3. Name(s) of co-defendant(s) (if any) N/A
" "
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-10-6153 MURDER
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) FEBRUARY 25, 2014
- (b) I WAS SENTENCED TO FORTY (40) YEARS IN PRISON.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS.
- ii. "
- iii. "
- (b) the result in each such Court to which you appealed:
- i. CONVICTION AFFIRMED
- ii. "
- iii. "
- (c) the date of each such result:
- i. JANUARY 11, 2017
- ii. "
- iii. "
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. "
- iii. "
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) "

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 5TH, 6TH, 13TH, 14TH, 15TH AMENDMENT VIOLATIONS;
- (b) SUBJECT MATTER JURISDICTION; DUE PROCESS VIOLATION;
- (c) FRAUD UPON THE COURT.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACH SHEETS
- (b) "
- (c) "
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. "
- iii. "
- iv. "
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. "
- iii. "
- iv. "

(c) the disposition thereof:

- i. N/A
- ii. "
- iii. "
- iv. "

(d) the date of each such disposition:

- i. N/A
- ii. "
- iii. "
- iv. "

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. "
- iii. "
- iv. "

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. "
- iii. "

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. "
- iii. "

ARGUMENT

(1) DID THE TRIAL COURT ERR, AND WAS THE APPELLANTS 5TH, 6TH, 13TH, 14TH, 15TH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION, AS WELL AS ARTICLE IV § 2, AND HIS DUE PROLESS RIGHTS VIOLATED, BY THE LANGUAGE AND OR CHARGE CONTAINED THEREIN, WHICH DID CREATE AND OR FORM CONCLUSIVE PRESUMPTION(S), THAT TOOK AWAY THE APPLICANTS PRESUMPTION OF INNOCENCE, AND AUTOMATICALLY SHIFT THE BURDEN OF PERSUASION TO THE DEFENDANT, IN REGARD TO THE CRUCIAL ELEMENTS OF DISPUTE?

THE APPELLANT HUMBLY CONTENDS, IT IS WELL ESTABLISHED BY THE CONSTITUTION, THE 5TH, 6TH, 14TH AMENDMENT(S) AND THE BILL OF RIGHTS, THAT WHEN AN INDIVIDUAL IS BROUGHT BEFORE A COURT OF JURISPRUDENCE UPON ACCUSATION, THAT THE INDIVIDUAL ALLEGED THEREUPON, IS INNOCENT, UNTIL PROVEN BY A JURY OF HIS PEERS, GUILTY OF AFORESAID ACCUSATION BEING BROUGHT BEFORE THE COURT.

THIS IS THE DEFENDANT'S MOST BASIC, AND MOST FUNDAMENTAL RIGHT BY
 FEDERAL AND STATE LAWS PERTAINING TO DUE PROCESS. BECAUSE THEY POSSESS A
 STRUCTURAL CONSTITUTIONAL ERROR AND OR DEFECT, IN THAT THE LANGUAGE AND
 OR CHARGE CONTAINED THEREIN, IS CONSTRUCTED TO PRODUCE CONCLUSIVE PRESUMPTION(S),
 THAT IMMEDIATELY SHIFT THE BURDEN OF PERSUASION TO THE DEFENDANT IN REGARD
 TO THE CRUCIAL ELEMENTS OF THE OFFENSE(S), THE INDICTMENTS AND OR COMPLAINT
 DOCUMENTS VIOLATE DUE PROCESS AS WELL AS THE 13TH AND 15TH AMENDMENTS.

THE APPELLANT DID NOT OBJECT TO THIS DEFECT AND OR ERROR AT THE
 TIME HE GAVE HIS GUILTY PLEA, AND OR BEFORE TRIAL, BUT THE DEFECT AND OR
 ERROR SERVE TO RENDER THE INDICTMENT(S) AND COMPLAINTS AROUND THE NATION
 WHOLLY INVALID. DEFECTS IN AN INDICTMENT THAT ARE OF SUCH A FUNDAMENTAL
 CHARACTER AS TO RENDER AN INDICTMENT WHOLLY INVALID ARE NOT SUBJECT TO
 WAIVER BY THE DEFENDANT, 41 AM JURS 2d INDICTMENTS AND INFORMATION § 299
 (1986), STATE V. MUNN, 357 S.E. 2d 461 (S.C. 1987).

JUDICIAL NOTICE TAKES PLACE OF PROOF. IT SIMPLY MEANS THAT THE COURT WILL ADMIT INTO EVIDENCE AND CONSIDER WITHOUT PROOF OF FACTS, MATTERS OF COMMON AND GENERAL KNOWLEDGE, MOSS V. AETNA LIFE INS. CO., 228 S.E. 2d 108; STATE V. BROAD RIVER POWER CO., 177 S.C. 240, 180 S.E. 41; 31 C.J.S. EVIDENCE §§ 6 AND 9; FEDERAL RULES OF EVIDENCE, RULE 201(a).

THIS IS ALSO A MANIFEST CONSTITUTIONAL ERROR. AN ERROR ON THE PART OF THE TRIAL COURT THAT HAS AN IDENTIFIABLY NEGATIVE IMPACT ON THE PROCEEDINGS TO SUCH A DEGREE, THAT THE CONSTITUTIONAL RIGHTS OF THE PARTY ARE COMPROMISED. A MANIFEST CONSTITUTIONAL ERROR CAN BE REVIEWED BY A COURT OF APPEALS EVEN IF THE APPELLANT DID NOT OBJECT AT THE PROCEEDINGS. (BLACK LAW DICTIONARY 8TH EDITION).

BY THAT WHICH IS CITED IN SANDSTROM V. MONTANA, 442 U.S. 510 AT 520, 99 S.C. (2450) AT 2457 (61 LED 2d 39) (1979), UNDER (4) CRIMINAL LAW [WEST KEY] 324. THE SUPREME COURT WAS UNEQUIVOCAL AND UNAMBIGUOUS WHEN IT STATED

VERBATIM:

"CONCLUSIVE PRESUMPTIONS CONFLICT WITH THE OVERRIDING PRESUMPTION OF INNOCENCE WHICH THE LAW ENDOWS THE ACCUSED AND WHICH EXTEND TO EVERY ELEMENT OF THE CRIME CHARGED, AND THEY INVADE THE FACT-FINDING FUNCTION WHICH IN A CRIMINAL CASE THE LAW ASSIGNS THE JURY, MORISSETTE SUPRA, AT 275, 72 SCT AT 255 AND UNITED STATES GYPSUM CO. SUPRA, AT 446, 98 SCT AT 2878. THE INDICTMENTS AND COMPLAINT DOCUMENTS AROUND THE NATION REQUIRE THE JURY, IF SATISFIED AS TO THE FACTS THAT TRIGGER THE PRESUMPTION TO FIND INTENT UNLESS THE DEFENDANT OFFERS EVIDENCE TO THE CONTRARY. THE INDICTMENTS AND COMPLAINTS AROUND THE NATION, BY THEIR STRUCTURAL CONSTITUTIONAL ERROR AND OR DEFECT, LANGUAGE AND OR CHARGE, MISLED THE JURY, AND WE CAN ADD THE DEFENDANT, TO BELIEVE THE PRESUMPTION WAS NOT LIMITED TO REQUIRING THE DEFENDANT TO SATISFY THE BURDEN OF PRODUCTION, WHEN THE BURDEN OF PRODUCTION IS TO BE CONSISTENTLY BORED BY THE STATE. A PRESUMPTION ALTHOUGH NOT CONCLUSIVE, THAT HAS THE EFFECT OF SHIFTING

THE BURDEN OF PERSUASION WOULD SUFFER THE SAME SIMILAR INFIRMITIES,"

MULLANEY V. WILBUR, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975), EVEN

IF ITS EMBODIED WITHIN THE CHARGE OF AN INDICTMENT OR CRIMINAL COMPLAINT.

TO STATE BY USE OF AN INDICTMENT OR CRIMINAL COMPLAINT WITHIN THE

50 STATES THAT AN INDIVIDUAL "DID" WITH INTENT, KNOWINGLY, MALICE, AFORETHOUGHT,

AND OTHER SUCH. ELEMENTS IMPLY CONCLUSIVE FIRST HAND KNOWLEDGE OF THE EVENTS

PERTAINING TO THE ACCUSATION BEING BROUGHT BEFORE THE COURT. TO SUCH

KNOWLEDGE THE GRAND JURY WHO SWORE TO SUCH INDICTMENTS, "[C]ANNOT" BY ALL

SCIENTIFIC REASON AND JURIS PRUDENCE ASCERTAIN AS BEING TRUE UNDER SUCH

CIRCUMSTANCES, ESPECIALLY WITHOUT A TRIAL. IT IS UNIVERSALLY RECOGNIZED THAT

EVERY OATH [O]UGHT AND [M]UST BE. FOUNDED UPON [C]ERTAIN [K]NOWLEDGE,"

MEANING KNOWLEDGE THAT IS CERTAIN BEYOND A REASONABLE DOUBT AS BEING

TRUE (OMNE SACREMENTUM DEBET ESSE DE CERTA SCIENTIA). INASMUCH, THE REALITY

OF THIS MATTER IS THAT THE ISSUES IN QUESTION, EMBODIED IN SAID INDICTMENTS

ARE ALLEGATIONS, THEY ARE ACCUSATIONS, NOT PROVEN FACTS. SO HOW COULD THEY BE SWORN BY INDICTMENT AS BEING TRUE? IT IS THE COMMAND OF THE U.S. CONSTITUTION THAT ANYTHING, TO INCLUDE ANY AND ALL LEGISLATION, WHETHER IT BE BY STATUTE, INDICTMENT, OR OTHERWISE, THAT IS CONTRARY TO ITS INHERENT INTRINSIC, AND EXPLICIT PRESUPPOSITIONS SHALL [N]OT [S]TAND, AND THEREFORE SHOULD BE ABOLISHED AND OR RENDERED [VOID] (ARTICLE IV 2 U.S. CONST.).

"THE STATE MUST PROVE", I REPEAT, "THE STATE MUST PROVE", NOT THE DEFENDANT, EVERY SINGLE ELEMENT THAT IS CHARGED, AND THAT IS CRUCIAL TO THE OFFENSE. IT IS NOT TO BE GIVEN TO THEM IN ANY WAY. THEY [M]UST FIRST PROVE IT BEFORE IT CAN EVER BE DECLARED. EVERY SINGLE TIME AN INDICTMENT IS SWORN WHERE IT STATES CLEARLY WITHOUT AMBIGUITY A DEFENDANT "DID", ETC., IT IMMEDIATELY WITH DESTRUCTIVE RESULTS TEAR DOWN THE COMMON WEALTHS CONSTITUTIONAL DUE PROCESS OF BEING INNOCENT UNTIL PROVEN GUILTY, AND AUTOMATICALLY SHIFT THE BURDEN OF PERSUASION TO THE INDIVIDUAL OR COMMONWEALTH CHARGED. IT GIVES THE FALSE

UNCONSTITUTIONAL PREMISE AND OR PRESUMPTION THAT SUCH HAS ALREADY BEEN
 PROVEN BY A JURY OF ONE'S PEERS, OR EVEN MORE SPECIFIC, WITHOUT A TRIAL BY
 A JURY OF ONE'S PEER IN VIOLATION OF DUE PROCESS LAW. TO HAVE SUCH
 UNCONSTITUTIONAL PRESUMPTION(S) EMBODIED IN INDICTMENTS AND CRIMINAL COMPLAINTS
 THAT RELY ON SUCH LANGUAGE IS CONSTITUTIONALLY INFIRM.

THE APPELLANT AVERS, IN MULLANEY V. WILBUR, 421 U.S. 684, 95 Sct 1881, 44
 LED 2d 508, THE COURT FOUND AS A VIOLATION OF DUE PROCESS AND WINSHIP, 397 U.S.
 358, 90 Sct 1068, 25 LED 2d 323 (1970), AN INDICTMENT THAT [P]RESUMED THAT A
 DEFENDANT ACTED WITH "[M]ALICE AND [A]FORETHOUGHT," IF IT WERE FOUND THAT THE
 HOMICIDE WAS INTENTIONAL AND UNLAWFUL, THE DEFENDANT THEN BORE THE BURDEN OF
 DISPROVING THE ELEMENTS. SIMILAR IN SANDSTROM, THE JURY WAS INSTRUCTED IN
 DETERMINING WHETHER OR NOT THE DEFENDANT HAD THE [P]REREQUISITE INTENT TO
 COMMIT MURDER [T]HE LAW PRESUMES THAT THE PERSON INTENDED THE ORDINARY
 CONSEQUENCES OF HIS VOLUNTARY ACTIONS, THEREBY RELIEVING THE STATE OF ITS

BURDEN ON THAT ELEMENT. THE LANGUAGE AND OR CHARGE IN THE INDICTMENT(S) DO THE SAME THING, TAKING AWAY THE PRESUMPTION OF INNOCENCE, AND BY WHAT'S WRITTEN PREDETERMINE IN ADVANCE THE OUTCOME OF THE PROCEEDING AND PRESUMES THAT A PERSON INTENDS THE ORDINARY CONSEQUENCES OF HIS VOLUNTARY ACTIONS, THEREBY RELIEVING THE STATE OF ITS BURDEN ON THE ELEMENTS CRUCIAL TO THE OFFENSE. WHAT IF A PERSON WAS FORCED TO COMMIT THE CRIME AT GUN POINT? OR WAS THE VICTIM OF BRAINWASHING BY THE INDUCTION OF SOME CHEMICALLY BASED MIND CONTROLLING DRUG, AND UNDER SUCH CONTROL HE COMMITTED THE CRIME? OR IT SIMPLY WAS AN ACCIDENT DEPENDING UPON THE CRIME CHARGED? THESE ARE JUST A FEW REASONS WHY SUCH WORDING IS IMPERMISSABLE, MOORE V. DEMPSEY, 43 SCT 265, 67 LED 542 (1923).

ONCE THE COURTS OF SOUTH CAROLINA, NEW JERSEY AND THE REMAINING 50 STATES CONSTRUCTED AN INDICTMENT OR CRIMINAL COMPLAINT CONTRARY TO THE LAWS OF DUE PROCESS, THE ATTORNEY FOR THE APPELLANT TELLING THE APPELLANT HE IS

INNOCENT UNTIL PROVEN GUILTY, OR THE JUDGE GIVING AN INSTRUCTION TO THE APPELLANT AND OR JURY OF BEING INNOCENT UNTIL PROVEN GUILTY, OR STATING THAT THE STATE OR FEDERAL GOVERNMENT HAS THE ULTIMATE BURDEN AND MUST PROVE EVERY ELEMENT, TO THE APPELLANT OR JURY, OR STATING THE INDICTMENT OR CRIMINAL COMPLAINT IS NOT EVIDENCE TO THE APPELLANT OR JURY, DOES "[N]OT" CURE THE DUE PROCESS PROBLEM CREATED AND PRESENTED BY THE STRUCTURAL CONSTITUTIONAL ERROR, DEFECT, AND OR CHARGE IN THE INDICTMENT(S) AND COMPLAINT(S).

CONSTITUTIONAL LAW [WEST KEY] 266 (7), IN SITUATIONS WHERE ELEMENTS OF OFFENSE AND "SO-CALLED" "AFFIRMATIVE DEFENSE," POSE SAME ULTIMATE ISSUE OF SHIFTING THE BURDEN OF PERSUASION, THE DUE PROCESS PROBLEM IS "[N]OT" ELIMINATED BY INCLUDING AN INSTRUCTION IN A CHARGE THAT THE STATE HAS THE ULTIMATE BURDEN OF PROVING EVERY ELEMENT BEYOND THE REASONABLE DOUBT, AND WE CAN ADD TO THIS, STATING THE INDICTMENTS OR CRIMINAL COMPLAINTS ARE NOT EVIDENCE BY THE COURT. THE TEACHING OF THESE CASES IS THAT "[A]NY" PRESUMPTION, EVEN IF ITS

NOT CONCLUSIVE, EVEN IF ITS EMBODIED WITHIN THE CHARGE OF AN INDICTMENT
OR CRIMINAL COMPLAINT, THAT HAS THE EFFECT OF SHIFTING THE BURDEN OF
PERSUASION TO THE DEFENDANT ON ANY ELEMENT OF THE CRIME CHARGED
VIOLATES DUE PROCESS, U.S.C.A. CONST. AMEND. 14) HUMANIK V. BEYERS, 871
F2d 432 (3RD CIR. 1989).

SUCH IS A SUBSTANTIVE DISADVANTAGE AND NOT MERELY PROCEDURAL
 DISADVANTAGE TO THE DEFENDANT RELATED TO HIS RIGHTS OF DUE PROCESS. IF THE
 INDICTMENTS AND OR CRIMINAL COMPLAINTS AROUND THE NATION, BY THEIR DEFECT
 CONTAINED THEREIN, REQUIRE THAT THE DEFENDANT PROVE HE DID NOT POSSESS THE
 "MENS REA" ON ANY ELEMENT PERTAINING TO THE ALLEGED CRIME AT TRIAL AND
 OR BEFORE A GUILTY PLEA, 421 U.S. AT 684, 95 S.CT AT 1888, IT BECOMES
 OBVIOUS THAT THE BURDEN OF PROOF IS SHIFTED.

THE COURT RECOGNIZED BY REQUIRING THE DEFENDANT TO PROVE THE
 CRITICAL ELEMENTS OF SAID DISPUTE, ID AT 710, 95 S.CT AT 1890, THE MAINE

RULE, AS DO THE NATIONS INDICTMENT(S) AND CRIMINAL COMPLAINT(S) AFFIRMATIVELY SHIFT THE BURDEN OF PROOF TO THE DEFENDANT(S) THUS CREATING A FURTHER LIKELIHOOD OF AN ERRONEOUS CONVICTION AND OR GUILTY PLEA, DUE TO THE SHIFTING OF THE BURDEN OF PERSUASION TO PROVE ONE'S INNOCENCE AS IMPLIED BY THE LANGUAGE AND OR CHARGE IN THE INDICTMENT(S) AND CRIMINAL COMPLAINT ID AT 421 U.S. AT 701, 95 S.CT AT 1890. SUCH SERVE TO NEGATE CERTAIN FACTS OF THE CRIME WHICH THE GOVERNMENT IS TO PROVE TO THE JURY IN ORDER TO CONVICT THE DEFENDANT OF A CRIME CHARGED, 432 U.S. AT 207, 97 S.CT AT 2325. THE WINSHIP RULE IS CLEAR IN WHICH THE DEFENDANT CREATES A REASONABLE DOUBT ON ANY ELEMENT OF THE OFFENSE(S) CHARGED IS ENTITLED TO AN ACQUITTAL.

IN SUCH A SITUATION THE RELEVANCE OF THE SUBSIDIARY FACTS IN THIS CASE ARE THE SAME AND THE SOLE SIGNIFICANCE OF THE DEFENDANT'S EVIDENCE AND OR TESTIMONY CONCERNING THE "SO-CALLED" "AFFIRMATIVE DEFENSE,"

IS TO CREATE A REASONABLE DOUBT ON THE EXISTENCE OF AN ELEMENT OF THE OFFENSE, BY THE PREPONDURANCE OF EVIDENCE TO COUNTERACT AN UNCONSTITUTIONAL PRESUMPTION.

AS STATED IN UNITED STATES V. CLEMENS, 843 F.2d 741, 752

(3RD CIR. 1988):

JUSTLY PUT MERELY LABELLING SOMETHING AS "AFFIRMATIVE DEFENSE," A STATUTORY PROCEDURE," AND WE CAN ADD TO THIS, "AN INDICTMENT OR CRIMINAL COMPLAINT" DOES NOT MEAN THAT SUCH CONSTRUCTED, CONTRARY TO THE LAWS OF DUE PROCESS ARE CONSTITUTIONAL. IT MUST APPEAR THAT THE AFOREMENTIONED, AS RELATED THERETO, DO [N]OT [N]EGATE ANY ELEMENT OF THE CRIME, AND WE CAN ADD TO THIS, SHIFT THE BURDEN OF PERSUASION, AS THE INDICTMENTS AND OR CRIMINAL COMPLAINTS OF THIS NATION DO," ID W. LAFAVE & SCOTT SUBSTANTIVE CRIMINAL LAW § 1.8 AT 75 (1986) SEE GENERALLY SANDSTROM V. MONTANA SUPRA. A DEFENDANT MAY BE REQUIRED TO BEAR THE BURDEN OF PERSUASION WITH

RESPECT TO DEFENSES SUCH AS SHOWING JUSTIFICATION OR EXCUSE, BUT NOT WITH RESPECT TO THOSE THAT NEGATE GUILT BY CANCELLING OUT THE EXISTENCE OF SOME REQUIRED ELEMENT OF THE CRIME, NOR SHOULD HIS PRESUMPTION OF INNOCENCE BE DEPRIVED, W. LAFAVE & SCOTT SUPRA AT 71, 75. ACCORDINGLY, ACCESSING THE CONSTITUTIONALITY OF AN "AFFIRMATIVE DEFENSE," "A STATUTORY PROCEDURE," AND WE CAN ADD TO THIS "AN INDICTMENT OR CRIMINAL COMPLAINT," ETC., OF ANY KIND RELATED THERETO, EVEN BY TERMS OF THAT WHICH THE STATUTE REQUIRES, IS DEFINED IN TERMS OF FACT SO CENTRAL TO THE NATURE OF THE OFFENSE THAT IN EFFECT, THE PROSECUTION HAS BEEN FREED OF THE BURDEN OF ESTABLISHING EACH CONSTITUENT ELEMENT OF THE CRIME CHARGED. IF THE INDICTMENTS AND CRIMINAL COMPLAINT AROUND THE NATION ALREADY PREDETERMINE IN ADVANCE OF ANY PROCEEDING THAT YOU "DID" WITH MALICE, AFORETHOUGHT, INTENTIONALLY, WILLFULLY, ETC., THE STATE HAS BEEN RELIEVED OF PROVING IT, SEE ID AT 2.13 AT 233 ALSO SEE MOORE V. DEMPSEY 43 S.C.T 265, 67

LED 542 (1923). BY THE STRUCTURAL CONSTITUTIONAL ERROR AND OR DEFECT,
 ITS ALREADY GIVEN AND NO LONGER BY THE CHARGE AND OR DEFECT, HAVE
 TO BE ESTABLISHED. IN ORDER TO CONTRIBUTE SOME SIGNIFICANT BURDEN, A
RATIONAL TRIAL JUROR'S ONLY OPTION, AND WE CAN ADD, THE DEFENDANT'S ONLY
OPTION, IS TO CONCLUDE THAT THE INDICTMENTS OR CRIMINAL COMPLAINTS ARE
TRUE, OR ARE TO BE CONSIDERED AS TRUE, BECAUSE THE LANGUAGE AND OR
CHARGE REFLECTS SUCH IN DEPRIVING ONE OF THE PRESUMPTION OF INNOCENCE. IT
IS CLEAR FROM MARTIN V. OHIO, 480 U.S. 228, 107 S. CT 1098, 94 LED 2d 267
(1987) AND MOORE V. DEMPSEY, 43 SCT 265, 67 LED 542 (1923), THAT THIS
IS CONSTITUTIONALLY IMPERMISSIBLE.

PERHAPS THE 50 STATES OF THIS NATION WOULD CONTEND, THAT SUCH
 IS MERELY THE CONVEYING OF INFORMATION FROM WITNESSES 1, 2, 3, OR MORE
 POSSIBLY, AND UPON THIS TESTIMONY SUCH AN OATH IS BASED. EVEN IF ONE
 WOULD ADOPT THIS PREMISE STILL THE INDICTMENTS AND CRIMINAL COMPLAINTS

OF THIS NATION "[C]ANNOT" BE DEEMED AS THAT WHICH IS FOUNDED UPON
 "[C]ERTAIN [K]NOWLEDGE" (OMNE SACRAMENTUM DEBET ESSE DE CERTA SCIENTIA),
 BUT IT IS FOUNDED UPON THE BASIS OF HEARSAY AND OR SECOND HAND
 KNOWLEDGE, NOTWITHSTANDING, IT HAS BEEN RECORDED THROUGHOUT HISTORY
 SINCE THE EARLIEST STAGES OF CIVILIZATION THAT PEOPLE DO BEAR FALSE
 WITNESS IN GROUPS AND IN NUMBERS DEPENDING UPON THEIR MOTIVATION. FOR
 EXAMPLE, YOU HAVE AN UNJUST KING AND QUEEN, AITAB AND JEZEBEL, COERCING
 SEVERAL PEOPLE TO LIE IN A COVERT PLOT TO STEAL THE LAND OF A
 RIGHTEOUS MAN IN I KINGS CHAPTER 21. IN MICAH, A MAN'S CLOSEST MEMBERS
 OF HIS HOUSEHOLD BEAR FALSE WITNESS AGAINST A PROPHET OF GOD. IN
 CHRISTIANITY YOU HAVE OFFICIALS WHO WERE IN POWER, SADUCEES, SCRIBES AND
 PHARISEES, INCITE AND PAY GROUPS OF PEOPLE IN THE GOSPEL(S) OF MATTHEW, MARK,
 LUKE AND JOHN TO BEAR FALSE WITNESS AGAINST THE MESSIAH. IN ISLAMIC
 PROPHECY THE PROPHET MUHAMMAD (PBUH), IN SAHIH AL BAKHARI VOL. NO. 9

HADITH NO. 7086, PROPHESED HOW IN THESE TIMES THERE WILL HARDLY BE A TRUSTWORTHY PERSON LEFT IN THE WORLD. THE SPANISH INQUISITION OF 1478 AND THE ENGLISH INQUISITION OF 1518 FOUND PEOPLE UNJUSTLY BURNED AT THE STAKE AND OR HANGED, DUE TO UNJUST ACCUSATION BY PEOPLE IN NUMBERS FOR FALSE CLAIMS OF HERESY. ADOLPH HITLER, AND A GROUP OF PEOPLE CALLED "NAZIS", BROUGHT NUMEROUS UNJUST CLAIMS AGAINST THE JEWS, FALSELY ROOTED IN LIES, IN THE HOLOCAUST OF THE 1930'S. THE SALEM WITCH TRIALS IN THE 17TH CENTURY, IN MASSACHUSETT, FOUND NUMEROUS MEN, WOMEN AND CHILDREN, BURNT AT THE STAKE FOR FALSE CLAIMS OF PRACTICING WITCHCRAFT, BROUGHT BY GROUP OF PEOPLE IN NUMBERS. THE KU KLUX KLAN THROUGHOUT THE SOUTH, BROUGHT UNJUST ACCUSATION THE INNOCENT POST CIVIL WAR ERA, AND IN THE 1930'S THROUGH 1960'S. JUDAISM, CHRISTIANITY, ISLAM, AMERICAN HISTORY, EUROPEAN HISTORY, WORLD HISTORY, [A]LL ARE FILLED WITH UNSPEAKABLE ATROCITIES ORIGINATING IN LIES. PERPETRATED BY PEOPLE IN

NUMBERS AND IN GROUPS AGAINST THE INNOCENT. OUR CONSTITUTIONAL
 FOREFATHERS IN THEIR WISDOM AND JURISPRUDENCE SAW THE REPEATED PATTERN
 THAT LIKE A POISONOUS VENOMOUS SNAKE, ROSE ITS HEAD FROM THE SOULS
 OF SOCIETY TO FATALLY BITE THE COMMONWEALTH. AND IN THEIR WISDOM
 THEY SET UP "[B]ULWARKS," "[B]ARRIERS" OF PROTECTION FOR THE AMERICAN
 CITIZENRY, ALL WHO ARE HELD BY US, ALL WHO ENTER OUR BORDERS OR
 TERRITORIES, THAT UNDER NO CIRCUMSTANCE, OUTSIDE OF AN INDIVIDUAL
 COMMITTING AN ACT OF TREASON, WERE TO BE TORN DOWN, BECAUSE PEOPLE IN
 GROUPS AND IN NUMBERS DO BRING FALSE ACCUSATION AGAINST THE INNOCENT.

REFERRING BACK TO THE THIRD SITUATION HERE AS ILLUSTRATED BY
STATE V. BREAKIRON, 108 N.J. 591, 532 A2d 199 (1987) AND STATE V. ZOLA,
 112 N.J. 384, 548 A2d 1022 (1988), IN INFERRING THE STATE OF MIND
 ELEMENT, WHETHER THE PREREQUISITE INTENT AND OR PURPOSE WAS PRESENT
 AT THE TIME OF THE CRIME. THE GRAND JURY, IN THE FORM OF THE INDICTMENTS

OR CRIMINAL COMPLAINTS AROUND THE ENTIRE NATION, "[C]ANNOT" SAY WHAT WAS IN A PERSON'S MIND, NOR DO THEY HAVE FIRSTHAND KNOWLEDGE OF THE FACTS RELATED TO THE INCIDENT CHARGED. THEY DO "[N]OT" POSSESS "[C]ERTAIN [K]NOWLEDGE" (OMNE SACRAMENTUM DEBET ESSE DE CERTA SCIENTIA). THUS, AGAIN: THE VERY LANGUAGE AND OR STRUCTURAL CONSTITUTIONAL ERROR AND OR DEFECT, AND OR CHARGE OF THE INDICTMENT(S) AND CRIMINAL COMPLAINTS AROUND THE NATION PREDETERMINE IN ADVANCE BEFORE TRIAL OR PLEA AN INDIVIDUAL IS GUILTY OF THE STATE OF MIND ELEMENT AND FORCES A DEFENDANT, DUE TO THE SHIFTING OF THE BURDEN OF PERSUASION, TO PROVE HIS INNOCENCE BY THE PREPONDERANCE OF EVIDENCE AND OR TESTIMONY IN VIOLATION OF DUE PROCESS LAW. THIS CREATES AN INSTANT DOUBLE JEOPARDY ISSUE SHOWING THIS IS NOT A HARMLESS ERROR, MOORE V. DEMPSEY SUPRA.; STATE V. GORDON, 588 S.E. 2d 105, 356 S.C. 143 (SC 2003); STATE V. PERRY, 595 S.E. 2d 883, 358 S.C. 633 (SC 2004).

IN REGARDS TO A CHARGE, AND WE CAN ADD TO THIS, A CHARGE
IN AN INDICTMENT OR CRIMINAL COMPLAINT, THAT CONSTITUTES A CONSTITUTIONALLY
IMPERMISSABLE CHARGE / INSTRUCTION, OR CONTRADICTS THE PRESUMPTION OF
BEING INNOCENT UNTIL PROVEN GUILTY, EVEN WITH A LATER INSTRUCTION "BOILERPLATE"
OF BEING INNOCENT UNTIL PROVEN GUILTY BY THE COURTS OR STATING THAT
THE INDICTMENTS OR CRIMINAL COMPLAINTS ARE NOT EVIDENCE BY THE COURTS,
THE [P]ROBLEM IS [N]OT [C]URED WHERE THERE EXIST A REASONABLE
LIKELIHOOD THAT THE JURORS, AND WE CAN ADD IN THIS CASE, THE DEFENDANTS,
MAY HAVE CONSIDERED THE CHARGE, AND WE CAN ADD TO THIS, THE CHARGE
IN THE INDICTMENTS OR CRIMINAL COMPLAINTS AROUND THE NATION AS CONVEYING
AN UNCONSTITUTIONAL MESSAGE IN BOTH STATE AND FEDERAL PROSECUTIONS,
FRANCIS V. FRANKLIN, 471 U.S. 307, 105 SCT 1965, 85 LEd 2d 344 (1983).

SUCH PRESUMPTIONS INTRINSICALLY AND EXPLICITLY ESTABLISHED
 SNATCH THE BLINDFOLD OFF OF "LADY JUSTICE" HERSELF, AND NOW, NOT

ONLY IS SHE NO LONGER IMPARTIAL, UNBIAS OR FAIR; BUT NOW SHE SAYS
BECAUSE ITS YOU, BECAUSE ITS THIS PARTICULAR CRIME OR ALLEGED ACTION
AS OPPOSED TO ANOTHER, BECAUSE YOU ARE CHARGED IN THIS PARTICULAR STATE
AS OPPOSED TO ANOTHER, BECAUSE YOU FALL UNDER THIS PARTICULAR STATUTE
AS OPPOSED TO ANOTHER, YOU ARE NO LONGER INNOCENT UNTIL PROVEN GUILTY
AND YOUR CONSTITUTIONAL RIGHTS ARE HEREBY REVOKED. SUCH PRESUPPOSITIONS
DESTROY THE VERY METAL OF THE SHIELD OF PROTECTION PLACED AROUND
THE AMERICAN CITIZENRY, THOSE WHO ARE HELD BY US, AND THOSE WHO
ENTER OUR BORDERS OR TERRITORIES, AND ABOLISHES THE VERY CORE
INTEGRITY OF THE DUE PROCESS CLAUSE OUR CONSTITUTIONAL FOREFATHERS HAVE
DIED AND SHEDDED THEIR BEST BLOOD TO ESTABLISH AND PRESERVE, THE
GREATER ASPECT OF EVIL RELATED TO SUCH ACTION BY THE CRIMINAL
COMPLAINTS AND OR INDICTMENTS AROUND THE ENTIRE NATION, FAR AND
EXTREMELY OUTWEIGH THE GREATER ASPECT OF GOOD THAT IT SOUGHT TO

ESTABLISH RELATED THERETO. IF WE AS RESPONSIBLE CITIZENS OF THE
COMMONWEALTH ALLOW INDIVIDUALS WHO ARE PLACED IN POSITIONS OF
LEGISLATIVE AUTHORITY, WHETHER IT BE AT TOWN, CITY, STATE OR FEDERAL LEVEL,
WHETHER IT BE INTENTIONAL OR UNINTENTIONAL TO INITIATE OR PLACE INTO
EFFECT LEGISLATION BY STATUTE OR ANY OTHER MEANS, THAT DETERIORATE
THE VERY PILLARS OF THAT WHICH OUR CONSTITUTION WAS FOUNDED UPON,
THEN WE NO LONGER ESTABLISH OURSELVES AS A TRUE DEMOCRACY, WHERE
THE GOOD OF THE MANY OUTWEIGH THE GOOD OF THE FEW. WE STEP MORE
INTO THE REALM OF MONARCHY, AND SET OURSELVES ON A PATH OF
CONSTITUTIONAL DESTRUCTION DETRIMENTAL TO THE COMMONWEALTH THAT CAN
ONLY LEAD TO ANARCHY CREATING THE SIMILARITIES THAT MANIFESTED
THEMSELVES IN THE AFOREMENTIONED NAZI OCCUPATION, SALEM WITCH TRIALS,
THE SPANISH INQUISITION AND THE LIKE WHERE TRIALS AND CRIMINAL
PROCEEDINGS BECAME AN ARBITRARY ACTION, AN ABUSIVE AND RECREANT PROCESS,

FRAUDULENTLY DESIGNED TO ROB THE COMMONWEALTH OF THEIR GOD GIVEN
LIBERTY. THIS WE CANNOT DO !!! IT IS OUR COURTS OUR SUPREME COURTS,
AND OUR FEDERAL DISTRICT COURT'S INHERENT RESPONSIBILITY AS GUARDIANS
OF THE FAITH AND INTEGRITY OF OUR SYSTEM OF JURISPRUDENCE TO PROTECT
THE COMMONWEALTH FROM SUCH A DARK DEMISE. THE PRESUPPOSITIONS SET
FORTH BY OUR CONSTITUTIONAL FOREFATHERS "E PLURIBUS UNUM," WERE ONE
NATION UNDER GOD, INDIVISIBLE, WITH LIBERTY AND JUSTICE "FOR ALL", "FOR ALL"
AND WAS NOT TO BE TAKEN AWAY SIMPLY BECAUSE AN INDIVIDUAL FELL
VICTIM TO ACCUSATION, OR FELL UNDER A PARTICULAR STATUTE OF LAW AS
COMPARED TO ANOTHER, OR WAS CHARGED IN ONE PARTICULAR STATE AS
OPPOSED TO ANOTHER. THE ONLY EXCEPTION TO THIS SACRED STANDARD AND
TRUST WAS TO BE IF AN INDIVIDUAL COMMITTED ACTS OF HIGH TREASON
AGAINST OUR GOVERNMENT ITSELF, WHICH IN SOME PARTICULARITY IS WHAT
THE INDICTMENTS AND CRIMINAL COMPLAINT DOCUMENTS AROUND THE ENTIRE

NATION REFLECT, BECAUSE THEY INNATELY SWEAR ALLEGIANCE TO THAT WHICH SETS ITSELF AT WAR, ENMITY AND VARIANCE TO THE CONSTITUTIONAL RIGHTS OF ALL CITIZENS OF THE COMMONWEALTH AND ALL OTHERS WHO ARE SUBJECT TO THEM. THEREFORE, THEY ARE A FORM OF TREASON. THE INDICTMENTS AND CRIMINAL COMPLAINT DOCUMENTS AROUND THE ENTIRE NATION BETRAY OUR CONSTITUTION. HENCEFORE THEY "MUST" BE ABOLISHED AND OR REFORMED. THEY ARE INTENSE ESPIONAGE AND DIABOLICAL SABOTAGE AND STAND AT WAR WITH THE RIGHTS OF THIS NATION'S COMMONWEALTH IN VIOLATION OF DUE PROCESS. THEY COVERTLY WITH CORROSIVE RESULTS STEAL AWAY STEALTHLY THE FUNDAMENTAL TRUTHS BY WHICH THE CONSTITUTION WAS FOUNDED UPON AND THROW A MONKEY WRENCH INTO THE MECHANICAL WORKS OF JUSTICE AND FAIRNESS BY DETONATING EXPLOSIVE RESULTS THAT DETRIMENTALLY TEAR DOWN THE BULWARKS THAT WERE FORTHRIGHTLY ESTABLISHED TO PROTECT THE COMMONWEALTH AGAINST UNJUST

PROSECUTION. BY THE DEFECT, LANGUAGE AND OR CHARGE CONTAINED
WITHIN THE INDICTMENTS AND CRIMINAL COMPLAINTS AROUND THE ENTIRE
NATION YOU HAVE ALREADY SURMISED AND ASCERTAINED WITHOUT THE
TOTAL WEIGHT OF EVIDENCE SET FORTH BEFORE A JURY AN INDIVIDUAL'S
GUILT IN VIOLATION OF STATE AND FEDERAL LAWS ALSO PERTAINING TO
THE U.S. CONSTITUTION, INFERRING THE STATE OF MIND ELEMENT, NEGATING
THE BURDEN OF PROOF THAT BY LAW WAS TO BE CONSISTENTLY BORED BY
THE PROSECUTION, FRANKLIN V. FRANKLIN SUPRA.; MOORE V. DEMPSEY
SUPRA.

THE COURT HOLDS THAT A CHARGE, AND WE CAN ADD TO THIS, A
CHARGE IN AN INDICTMENT OR CRIMINAL COMPLAINT, WHICH IMPART TO THE
JURY, AND WE CAN ADD TO THIS CASE, THE DEFENDANT, AN UNCONSTITUTIONAL
UNDERSTANDING OF THE ALLEGATIONS, EVEN MORE SPECIFIC, THE BURDEN
OF PERSUASION, AND THE PRESUMPTION OF INNOCENCE, CREATE A

REASONABLE LIKELIHOOD THAT THE JURORS UNDERSTOOD THE CHARGE,
AND WE CAN ADD, THAT THE DEFENDANT UNDERSTOOD THE CHARGE IN
THE CRIMINAL COMPLAINTS AND INDICTMENTS IN AN UNCONSTITUTIONAL
MANNER UNLESS OTHER LANGUAGE IN THE COMPLAINTS OR INDICTMENTS
EXPLAIN THE INFIRM LANGUAGE SUFFICIENTLY TO ELIMINATE THIS POSSIBILITY.
IF SUCH A REASONABLE POSSIBILITY EXIST, "WE HAVE NO WAY OF KNOWING
THAT [T]HE DEFENDANT WAS [N]OT [C]ONVICTED, AND WE CAN ADD, GAVE
HIS GUILTY PLEA, ON THE BASIS OF THE UNCONSTITUTIONAL CHARGE, SPECIFICALLY
THE CHARGE EMBODIED WITHIN THE INDICTMENTS AND COMPLAINTS," SANDSTROM
442 U.S. AT 526 (99 SCT AT 2460). FOR THIS REASON IT HAS BEEN WELL
SETTLED SINCE STROMBERG V. CALIFORNIA 283 U.S. 359, 51 SCT 532, 75 LEd
117 (1931) THAT WHERE THERE EXIST A REASONABLE LIKELIHOOD AND OR
POSSIBILITY THAT THE JURY, AND WE CAN ADD, THE DEFENDANT, RELIED ON AN
UNCONSTITUTIONAL UNDERSTANDING OF THE LAW IN REACHING A VERDICT, AND

WE CAN ADD, IN GIVING HIS GUILTY PLEA, THAT VERDICT AND OR GUILTY
PLEA MUST BE SET ASIDE, ID AT 323 N 7, 105 SCT AT 1976 N 7. WE
CONCLUDE THAT THERE IS MORE THAN A REASONABLE LIKELIHOOD THAT
THE JURORS, AND WE CAN ADD, DEFENDANT(S) RECEIVED AN UNCONSTITUTIONAL
UNDERSTANDING OF THE SITUATION PERTAINING TO THEIR TASKS.

THIS IS NO WAY A MISCHARACTERIZATION OF THE LAW PERTAINING
TO THE CASES CITED HERE. EVEN THOUGH SOME OF THE CASES CITED DEALT
WITH CONCLUSIVE PRESUMPTION(S) GIVEN BY JUDGES IN CHARGES THAT HAVE
THE EFFECT OF SHIFTING THE BURDEN OF PERSUASION TO THE DEFENDANT
REGARDING THE CRUCIAL ELEMENTS, IN THIS CASE WE ARE DEALING WITH A
SIMILAR CHARGE EXCEPT THIS TIME ITS GIVEN BY THE GRAND JURY IN THE
FORM OF AN INDICTMENT OR CRIMINAL COMPLAINT, THAT HAS THE EFFECT OF
SHIFTING THE BURDEN OF PERSUASION TO THE DEFENDANT REGARDING THE
CRUCIAL ELEMENTS. THE SUBSIDIARY FACTS RELATED TO THE SHIFTING OF

THE BURDEN OF PERSUASION TO THE DEFENDANT REGARDING THE CRUCIAL ELEMENTS AND THE INFERRING OF THE STATE OF MIND ELEMENT(S) TO THE OFFENSES ARE THE SAME IN THESE MATTERS. DUE TO THE DEFECT IN THE CONSTRUCTION OF THE INDICTMENTS AND CRIMINAL COMPLAINTS NATIONALLY, THE DEFENDANTS' PRESUMPTION OF INNOCENCE IS CLEARLY TAKEN AWAY, ALSO GUILT OF THE OFFENSE(S) IS ILLEGALLY PREDETERMINED IN ADVANCE BY THE GRAND JURY WHO DO NOT HAVE THE POWER BY STATE AND OR FEDERAL LAW OR CONSTITUTION TO CONVICT DUE TO THE LANGUAGE AND OR CHARGE CONTAINED THEREIN, AND THE INDICTMENTS AND OR CRIMINAL COMPLAINTS NATIONALLY SERVE TO NEGATE THE BURDEN OF PROOF.

THIS CREATES A STRUCTURAL CONSTITUTIONAL ERROR AND OR DEFECT. STRUCTURAL CONSTITUTIONAL ERRORS AND OR DEFECTS COMPROMISE THE ENTIRE TRIAL AND OR PLEA HEARING PROCEEDINGS. IT REQUIRES REVERSAL AND OR VACATING AS IT INVOLVES DEPRIVATION OF CONSTITUTIONAL PROTECTION SO

BASIC, AND SO FUNDAMENTAL, THAT IN ITS ABSENCE CRIMINAL TRIALS AND OR PLEA PROCEEDINGS "[C]ANNOT" RELIABLY SERVE ITS FUNCTION AS A VEHICLE FOR DETERMINATION OF GUILT OR INNOCENCE, AND "[N]O" CRIMINAL PUNISHMENT MAY BE DEEMED OR REGARDED AS FUNDAMENTALLY FAIR,

ROBINSON V. ARVONID, 27 F3d 877 REHEARING DENIED, CERT. GRANTED VACATED 115 SCT 1247, 513 U.S. 1186, 131 LEd 2d 129. SUCH A STRUCTURAL CONSTITUTIONAL ERROR AND OR DEFECT OF THIS MAGNITUDE IS "[N]OT" SUBJECT TO THE HARMLESS ERROR ANALYSIS. STRUCTURAL CONSTITUTIONAL ERRORS AND OR DEFECTS NOT SUBJECT TO THE HARMLESS ERROR ANALYSIS ARE DEFECTS AND OR ERRORS AFFECTING FRAMEWORK, IN WHICH TRIAL AND OR PLEA PROCEEDINGS "[C]ANNOT" RELIABLY SERVE ITS FUNCTION AS A VEHICLE FOR DETERMINING GUILT OR INNOCENCE, INVOLVING DEPRIVATION OF CONSTITUTIONAL PROTECTION SO BASIC, AND SO FUNDAMENTAL, THAT IN ITS ABSENCE NO TRIAL OR PLEA CAN BE DEEMED RELIABLE, NOR ANY PUNISHMENT FUNDAMENTALLY FAIR, VINES V.

UNITED STATES, 28 F3d 1123 CRIM. LAW 1163(1), 1165(1). IT IS
 PERSPICUOUS THAT SUCH A DEFECT AND OR ERROR DOES AFFECT THE
 FRAMEWORK OF THE PROCEEDINGS, BECAUSE THE COURT(S) MUST CONSTRUCTIVELY
 AMEND THE INDICTMENTS AND CRIMINAL COMPLAINTS AROUND THE NATION
 ON THE "MENS REA" CRUCIAL ELEMENTS OF THE OFFENSE(S) TO CORRECT,
 RATHER IN AN ATTEMPT TO CORRECT THE STRUCTURAL CONSTITUTIONAL ERROR
 AND OR DEFECT BY GIVING A JUDGES' CHARGE. THE BOUNDARIES CITED BY
 LAW ARE CLEAR AND CERTAIN EVEN AS CITED BY WINSHIP RULE AND
HUMANIK V. BEYERS SUPRA. ANY CONCLUSIVE PRESUMPTION, OF ANY KIND,
 THAT'S PLACED BEFORE A JURY TO OBTAIN A CONVICTION, OR WE CAN ADD,
 PLACED BEFORE A DEFENDANT TO MANIPULATE, MENTALLY AND OR PSYCHOLOGICALLY
 COERCE, AND OR FORCE THE DEFENDANT INTO AN UNFREELY, UNKNOWNLY,
 INVOLUNTARILY OR UNINTELLIGENTLY GIVEN GUILTY PLEA, THAT DETERMINES IN
 ADVANCE A PERSON'S GUILT, THAT HAS THE EFFECT OF SHIFTING THE BURDEN

OF PERSUASION TO THE DEFENDANT, VIOLATES DUE PROCESS AND IS
GROUNDS FOR AN ACQUITTAL, EVEN IF ITS EMBODIED WITHIN AN INDICTMENT
OR CRIMINAL COMPLAINT, MOORE V. DEMPSEY SUPRA. CLEARLY THERE IS
NOTHING CITED BY LAW THAT WOULD MANDATE THAT THESE STRICT RULES OF
COURT, AND REQUIREMENTS OF DUE PROCESS LAW, BE SOLELY LIMITED TO A
JUDGE'S CHARGE. THEY APPLY TO ANY CHARGE THAT'S PLACED BEFORE A
JURY TO OBTAIN A CONVICTION, OR A DEFENDANT IN ORDER TO MANIPULATE,
MENTALLY AND OR PSYCHOLOGICALLY COERCE, AND OR FORCE HIM INTO A
GUILTY PLEA, SUCH A HEAVY WEIGHT OF SHIFTING THE BURDEN OF
PERSUASION, AND THE TAKING AWAY OF ONE'S PRESUMPTION OF INNOCENCE,
BY THE INDICTMENTS AND CRIMINAL COMPLAINTS OF THIS ENTIRE NATION,
HAVE BEEN UNJUSTLY AND UNCONSTITUTIONALLY USED AGAINST DEFENDANTS
IN THIS NATION, IN THIS NEW JIM CROW AND RACIAL CASTE SYSTEM, TO
MENTALLY AND OR PSYCHOLOGICALLY COERCE, AND OR FORCE THEM INTO

PLEA BARGAINS, AND AT THEIR TRIALS FOR FAR TOO LONG.

TO ELABORATE ON OR BOLSTER THIS PROPOSITION, IF THE HONORABLE COURT WOULD PLEASE TAKE NOTICE OF THE WARRANT(S) PERTAINING TO THE OFFENSE(S) AS IT IS FOR EVERY WARRANT IN THE NATION. IN THE BODY OF THE WARRANT IN THE STATE IT READS:

"I FURTHER STATE THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT NAMED ABOVE DID ETC ***."

THIS IS THE LANGUAGE THAT EXPLAINS THE CONSTITUTIONALLY INFIRM LANGUAGE AND OR CHARGE. THIS IS THE LANGUAGE THAT AIDS IN THE MAINTAINING OF THE PRESUMPTION OF INNOCENCE, AND ALSO WHICH CONFIRMS THE SPECIFIC JOB OF THE GRAND JURY. THE JOB OF THE GRAND JURY IS TWO PRONG, ONE IS TO DETERMINE AND ENSURE THAT SOME STATE AND OR FEDERAL OFFICIAL IS NOT ACTING ARBITRARILY IN BRINGING ACCUSATION AGAINST A CITIZEN OF THIS COUNTRY. THE SECOND IS TO DETERMINE

WHETHER OR NOT THERE IS SUFFICIENT PROBABLE CAUSE TO BRING
 A DEFENDANT TO TRIAL, STIRONE V. UNITED STATES, 361 U.S. 212 (1960);
EX PARTE BAIN, 121 U.S. 1 (1887); GAITHER V. UNITED STATES, 413 F2d
 1061 (D.C. CIR. 1969); THE 50 STATES CONSTITUTIONS; UNITED STATES V. ABRAMS,
 539 F. SUPP. 378, 384 (S.D. N.Y. 1982); UNITED STATES V. CALANDRA, 414
 U.S. 338, 342-343, 98 S.Ct. 613, 617, 38 LEd 2d 561, 568 (1974);
BRANZBURG V. HAYES, 408 U.S. 665, 92 S.Ct. 2646, 33 LEd 2d 626
 (1972). TO DETERMINE GUILT OF THE OFFENSE(S), TO INCLUDE THE
 "MENS REA" ON THE CRUCIAL ELEMENTS OF DISPUTE, IS A VIOLATION OF ITS
 SHIELDING FUNCTION. A GRAND JURY MERELY INVESTIGATES AND REPORTS. THEY
 ARE NOT AUTHORIZED BY FEDERAL OR STATE CONSTITUTION, NOR FEDERAL OR
 STATE LAWS, TO CONVICT, JENKINS V. MCKEITHEN, 395 U.S. AT 430, 89
 S.Ct. AT 1853, 23 LEd 2d AT 422 (1969). THE POWERS OF THE GRAND
 JURY ARE NOT UNLIMITED, AND ARE SUBJECT TO SUPERVISORY OF A JUDGE.

GRAND JURIES MAY INDIVIDUALLY OR COLLECTIVELY ENJOY PROTECTIONS ASSERTABLE IN SUITS FOR DEFORMATION, BUT THE PRIVILEGE IS NOT APPLICABLE TO BAR THE PETITION OF AN APPELLANT TO REMOVE LANGUAGE FROM THE INDICTMENTS AND CRIMINAL COMPLAINT AROUND THE ENTIRE NATION, COMPARE PIERSON V. RAY, 386 U.S. 547, 87 S.Ct. 1213, 18 LEd 2d 288, 294-295 (1967). WHEN THE GRAND JURY GOES BEYOND THE SCOPE OF THE POWER AND AUTHORITY GIVEN TO THEM, IT IS INDEED A VIOLATION OF DUE PROCESS, UNITED STATES V. CHADWICK CA 9 (NEW) 1977, 556 F2d 450; UNITED STATES V. BRIGGS, 514 F2d 794 (5TH CIR. 1975). YET, BY THE STRUCTURAL CONSTITUTIONAL ERROR, DEFECT, LANGUAGE AND OR CHARGE OF THE INDICTMENTS AND CRIMINAL COMPLAINTS, BOTH STATE AND FEDERAL AROUND THE NATION, THE GRAND JURY ADJUDICATED NOT ONLY GUILT OF THE OFFENSE(S) CHARGED, BUT ALSO THE "MENS REA" RELATED THERETO. IF SUCH OR SIMILAR LANGUAGE AS AFOREMENTIONED, IS NOT EMBODIED

WITHIN THE BODY OF THE CHARGING INSTRUMENT(S) THEN THE INDICTMENTS AND CRIMINAL COMPLAINTS ARE NOT CONSTITUTIONALLY SOUND AND THEY VIOLATE DUE PROCESS. THE EVIL THAT HAS DEVELOPED FROM THIS, FAR AND EXTREMELY OUTWEIGH THE ORIGINAL GOOD IT INTENDED.

ANY INDICTMENT OR CRIMINAL COMPLAINT, WHETHER IT BE IN THE SMALLEST OF DETAIL, WHETHER IT BE IN THE SMALLEST OF TOWNS, OR THE LARGEST OF CITIES, WHETHER IT BE WITHIN THE BOUNDARIES OF ANY COUNTY OR STATE, WHETHER IT BE INTENTIONAL OR UNINTENTIONAL, THAT'S CONSTRUCTED IN A FASHION WHERE IT AUTOMATICALLY SHIFT THE BURDEN OF PERSUASION FROM THE STATE OR FEDERAL GOVERNMENT TO THE DEFENDANT, TAKES AWAY ONE'S PRESUMPTION OF INNOCENCE, AND BY THE LANGUAGE PREDETERMINES IN ADVANCE THE OUTCOME OF THE PROCEEDINGS, GIVING OFF AN UNCONSTITUTIONAL IMPRESSION AND UNDERSTANDING OF HIS OR HER RIGHTS BY THE LAWS OF DUE PROCESS, CONTRARY TO THE U.S. CONSTITUTION "[S] HALL [N]OT [S]TAND." THEY

VIOLATE THE APPELLANTS RIGHTS UNDER THE 4TH, 5TH, 6TH, 13TH, 14TH, 15TH
AMENDMENTS AND SEEK TO UNJUSTLY DEPRIVE ONE OF LIFE, LIBERTY, AND
PROPERTY. IT IS FOR THIS REASON THAT THE NEW JERSEY AND MAINE
SUPREME COURTS OVERTHREW SUCH SIMILAR ACTIONS IN THOSE STATES, AND ON
THIS SAME PREMISE THE SAME SHOULD BE DONE FOR EVERY STATE WITHIN THIS
NATION NOW. AND YES, UNDER THESE CIRCUMSTANCES, IT MAY BE FAR MORE
DIFFICULT FOR THE PROSECUTION TO OBTAIN SAID CONVICTION OR GUILTY PLEA.
BUT IT IS FAR BETTER THAT THEY ENDURE THE DIFFICULTY THAN THE GREATER
DEGREE AND OR LIKELIHOOD, FOR INNOCENT MEN AND WOMEN TO BE SUBJECT
TO AN ERRONEOUS CONVICTION AND OR GUILTY PLEA, THAT IS NOT FREELY,
KNOWINGLY, VOLUNTARILY OR INTELLIGENTLY GIVEN, BECAUSE IT PREJUDICE THE
INDIVIDUALS SUBJECTED TO THESE CRIMINAL INDICTMENTS AND COMPLAINTS
WITHIN THIS NATION. PROSECUTORS MUST BE MADE TO KNOW AND
UNDERSTAND, THAT SUCH IS "THE NATURE OF THE BEAST." THE BURDEN

IS THEIRS AND WE ARE TO BE PRESUMED INNOCENT IN EVERY DETAIL UNTIL FAIRLY AND JUSTLY CONVICTED. THIS GOES WITH THE PROFESSIONAL TERRITORY AT HAND.

THE FOLLOWING STATEMENT IN RELEVANT PART WAS MADE BY THE COURT IN BRADY V. MARYLAND, 373 U.S. 83, 83 SCT 1194 (1963). IT PERTAINED TO THE SUPPRESSION OF EVIDENCE FAVORABLE TO THE DEFENSE, BUT THE SUBSIDIARY FACTS RELATED TO DUE PROCESS VIOLATION HAVE A BEARING ON THESE MATTERS HERE. IT HAS BEEN SLIGHTLY MODIFIED TO PAINT A MORE TRUE PICTURE OF THIS ISSUE:

"WE HOLD, THAT SUCH PRESUMPTIONS VIOLATE DUE PROCESS IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF THE PROSECUTION. THE PRINCIPLE HERE IS NOT TO PUNISH SOCIETY FOR SUCH DUE PROCESS VIOLATIONS, OR THE MISDEEDS OF THE PROSECUTING BODY, BUT THE AVOIDANCE OF AN UNFAIR TRIAL AND OR PLEA HEARING TO THE ACCUSED. SOCIETY NOT ONLY WINS WHEN THE GUILTY

ARE CONVICTED, BUT WHEN CRIMINAL TRIALS AND OR PLEA HEARINGS ARE
FAIR; OUR SYSTEM OF ADMINISTRATION OF JUSTICE SUFFERS WHEN ITS
CITIZENS ARE TREATED UNFAIRLY IN THE COURTS. AN INSCRIPTION ON THE
WALL OF THE DEPARTMENT OF JUSTICE STATES THE PROPOSITION CANDIDLY FOR
THE FEDERAL DOMAIN: THE UNITED STATES WINS ITS POINT WHENEVER
JUSTICE IS DONE FOR ITS CITIZENS IN THE COURTS," BRADY V. MARYLAND
SUPRA.; CITING MOONEY V. HOLOHAN, 294 U.S. 103.

THE APPELLANT HUMBLY QUOTES THAT WHICH IS STATED IN UNITED
STATES V. WALSH, 194, F3d 37 (2nd CIR. 1999) AND UNITED STATES V. PIRRO,
212 F3d 89 (2nd CIR. 2000):

"THE INDICTMENT(S) DO MORE THAN SIMPLY TRACK THE LANGUAGE OF
 18 U.S.C. § 242, WHICH PROVIDES PENALTIES FOR ANY PERSON, WHO UNDER COLOR
 OF ANY STATE OR FEDERAL LAW, STATUTE, ORDINANCE, REGULATION, CUSTOM, AND
 WE CAN ADD TO THIS, "AN INDICTMENT OR CRIMINAL COMPLAINT," WILLFULLY

SUBJECTS ANY PERSON, ... TO THE DEPRIVATION OF "[A]NY," "[A]NY, RIGHTS,
 PRIVILEGES, OR IMMUNITIES SECURED AND PROTECTED BY THE U.S. CONSTITUTION
 AND LAWS OF THE UNITED STATES ***," AND THIS WAS DONE IN VIOLATION
 OF THE APPELLANT'S RIGHTS TO EQUAL PROTECTION OF THE LAWS, SCREWS V.
UNITED STATES, 325 U.S. 91, 65 SCT 1031 (1945); STATE V. MIDDLETON, 207
 S.C. 473, 36 S.E. 2d 742 (1946); ESLINGER V. THOMPSON, 340 F.SUPP. 886
 (DSC 1972) AFF'D 476 F2d 225 (4TH CIR. 1973); MCLAUGHLIN V. FLORIDA, 379
 U.S. 184, 85 SCT 283, 13 LED 2d 222 (1964); DUBINKA V. JUDGES OF SUPERIOR
COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, 23 F3d
 218; JONES V. STATE OF ARKANSAS, 929 F2d 275; HICKS V. OKLAHOMA, 447 U.S.
 343, 346, 100 SCT 2227, 2229, 65 LED 2d 175 (1980); DOZIER V. LOOP COLLEGE,
CITY OF CHICAGO, 776 F2d 752; LUGAR V. EDMONDSON OIL CO., 457 U.S. 922,
 928-930, 102 SCT 2744, 2749-2750, 73 LED 2d 482 (1982).

BY THE STRUCTURAL CONSTITUTIONAL ERROR, DEFECT, LANGUAGE, AND OR

CHARGE CONTAINED WITHIN THE INDICTMENTS AND CRIMINAL COMPLAINTS AROUND THE ENTIRE NATION, THE DEFENDANT(S) MOST BASIC AND MOST FUNDAMENTAL RIGHT TO BE VIEWED AS INNOCENT UNTIL PROVEN GUILTY, AND TO HAVE THE STATE BEAR THE BURDEN OF PRODUCTION ON THE CRITICAL ELEMENTS OF DISPUTE HAS BEEN CLEARLY TAKEN AWAY. THIS IS A SERIOUS PRICE TO PAY FOR THE SAKE OF OBTAINING A CONVICTION.

"THE TEACHING OF THESE CASES IS THAT "[A]NY," "[A]NY," PRESUMPTION, EVEN IF ITS NOT CONCLUSIVE, EVEN IF ITS EMBODIED WITHIN THE CHARGE OF AN INDICTMENT OR CRIMINAL COMPLAINT, THAT'S PLACED BEFORE A JURY TO OBTAIN A CONVICTION, AND OR A DEFENDANT TO COERCE HIM OR HER INTO A GUILTY PLEA, THAT HAS THE EFFECT OF SHIFTING THE BURDEN OF PERSUASION TO THE DEFENDANT ON ANY ELEMENT OF THE CRIME CHARGED, OR DEPRIVES HIM OF HIS PRESUMPTION OF INNOCENCE, PREDETERMINING IN ADVANCE THE OUTCOME OF THE PROCEEDINGS, VIOLATES DUE PROCESS AND IS GROUNDS FOR AN