

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Clifton Newman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYREECE RAHEAM STOKES,

APPELLANT

APPELLATE CASE NO 2018-001419

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
State's Exhibit 17 (Butcher Knife); State's Exhibit 19 (Knife Blade); and State's Exhibit 20
(Knife)

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) Court of General Sessions
3 _____) Case No. 2016-GS-18-1735
4 STATE OF SOUTH CAROLINA) and 2016-GS-18-1736
5 VS.) Transcript of Record
6 TYREECE RAHEAM STOKES,)
7 Defendant.) DATES:
8 _____) July 23, 2018 - July 25, 2018

8
9 B E F O R E:

10 THE HONORABLE CLIFTON NEWMAN

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1 THE COURT: We are going to review where we stand with
2 this case while the jury is out. Mr. Templeton, if you will
3 call the case.

4 MR. SORENSON: At this time, the State calls the case
5 of State v. Tyreece Stokes, 2016-GS-18-1735, 1736, charging him
6 with one count of attempted murder and one count of armed
7 robbery. Mr. Stokes is present in the courtroom with his
8 attorneys, Mr. Pierce Wehman and Michelle Williams with the
9 Public Defender's Office.

10 THE COURT: And is the defense ready to proceed?

11 MR. WEHMAN: We are, Your Honor.

12 THE COURT: And, Mr. Stokes, are you ready to proceed
13 to trial?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. And with regard to these
16 charges, any plea offers that need to be put on the record to
17 clear the air?

18 MR. SORENSON: I don't believe so, Your Honor.

19 THE COURT: Okay.

20 MR. SORENSON: We had some discussions, but there's
21 been no formal offer. And it doesn't sound like we are even
22 close in our discussions, so ...

23 THE COURT: All right. Well, typically, I place on
24 the record whatever plea offers, if any, was made by the State
25 and the defense's response to those, just to be certain that

1 identification.)

2 THE COURT: Motions, from the defense?

3 MR. WEHMAN: Yes, Your Honor. First motion I would
4 have, and I've had a chance to speak to the prosecution, would
5 be my *Jackson v. Denno* motion based on custodial statement that
6 was taken by Detective Weaver. After speaking to them, my
7 belief is they don't intend to go into any of that at this
8 point. So with that knowledge, I don't know that that's
9 necessary to do until they decide whether or not they are going
10 to go into it.

11 THE COURT: From the State?

12 MR. SORENSON: That would be correct, Your Honor.
13 Mr. Stokes, when he was arrested, does talk with law
14 enforcement. It's our position it's self-serving. He doesn't
15 admit to anything. And at this point in time, we would not be
16 seeking to get into that. Obviously, if something changes, I
17 told Mr. Wehman I would let him know about that, and we could
18 potentially do a *Denno* hearing at that point in time.

19 THE COURT: Okay.

20 Next.

21 MR. WEHMAN: Your Honor, I would at this point take up
22 my motion to suppress evidence, specifically the motion that
23 describes Facebook posts. And at this point, I don't know if
24 the State is intending to go into those posts or whether
25 that's -- no? They tell me they are not intending to use

1 those. So we can move on from that one as well.

2 THE COURT: Is that right, Solicitor?

3 MR. SORENSON: That is correct at this point in time,
4 yes, sir.

5 MR. WEHMAN: My next motion would be the motion to
6 suppress evidence located on my client at the time of his
7 arrest. I believe it might be that we need to take testimony
8 on this. There's a difference in the facts of what was found
9 on him and what was found nearby. But, essentially, on
10 September the 6th, my client was arrested. And there are two
11 knives that were taken into evidence. One of which, I believe,
12 the State would claim came off of my client in his pocket or
13 his pants. The other one, I believe, there were police reports
14 that would suggest was found nearby behind a tree where law
15 enforcement would claim he was in the area of.

16 I don't know if that -- the State agrees it was found
17 nearby or whether or not they want to take testimony and claim
18 that was pulled off of him as well.

19 THE COURT: Yes, sir.

20 MR. SORENSON: If it please the Court, Your Honor. I
21 guess I would differ with the characterization from Mr. Wehman.
22 There are two knives. And this is a way of kind of how the
23 State feels this is relevant to start with. The victim, I
24 submit, it's my understanding is going to testify when she was
25 robbed and assaulted, that the assailant had two knives, a

1 serrated steak knife and larger butcher-type knife, the
2 serrated steak knife is broken off and in her chest, recovered
3 at the scene.

4 The defendant is arrested six days later hiding in the
5 woods from law enforcement. When he is taken into custody,
6 there is a knife that is found. He's wearing basically two
7 pairs of shorts. They are on the inside pocket of the interior
8 shorts. And there's another knife found, basically on the
9 ground, basically where he is recovered from. So we would be
10 seeking and I can -- may I show you? We don't have all the
11 evidence up here, but I do have photographs so we can show you
12 knife-wise, if that will help a little bit.

13 THE COURT: No, I understand what you are saying.

14 MR. SORENSON: So it would be our position that, Your
15 Honor, the fact that he is found with, basically, another steak
16 knife, along with a butcher-type knife, consistent with what
17 the victim described the other weapon being six days later,
18 that that would be relevant.

19 THE COURT: All right.

20 MR. WEHMAN: Your Honor, I know that those knives were
21 taken in for testing. There was some talk at one point that
22 may be there was blood found on one of the knives that was
23 tested. No DNA was recovered from that knife. Obviously, the
24 other knife was tested as well. Nothing came back from it. So
25 there's nothing linking these knives forensically to the

1 incident as well as this is in the woods. There's one knife
2 that is found not on my client's person. I don't know that
3 that knife -- well, I know that knife wasn't tested for
4 fingerprints or anything that would link it to him.

5 Based on the obvious prejudice of a witness coming
6 forward saying -- at one point she states there were two
7 knives. And another point she says there was a gun and a
8 knife. That changes but, regardless, the prejudice of a
9 witness coming forward stating that she saw someone with a
10 steak knife and butcher knife I think outweighs any probative
11 value considering there's no forensic no link from those knives
12 that are found six days later to the incident. And, one,
13 there's no forensic evidence that can link it to him. It
14 wasn't found in his pocket.

15 THE COURT: And you want me to rule based on what?

16 MR. WEHMAN: Your Honor, I would make my motion. It's
17 simply a 403 argument that it would be more prejudicial than
18 probative.

19 THE COURT: All right. At this point, I have no way
20 of knowing that.

21 MR. WEHMAN: It might be that as the testimony and
22 some of these other hearings come forward, it might be more
23 clear, specifically, I believe the *Biggers* hearing and the
24 motion to dismiss based on lack of probable cause.

25 THE COURT: Aside from, I guess, requesting me to rule

1 based on what you have just stated and the solicitor stated, is
2 there -- and existence of this rule, is there any evidence that
3 I'm to base the ruling on?

4 MR. WEHMAN: No, Your Honor.

5 THE COURT: All right.

6 MR. WEHMAN: Judge, after speaking to my colleague, I
7 would like to call witnesses, potentially, that would help.

8 THE COURT: All right.

9 MR. WEHMAN: Defense would call Michael Weaver.

10 MICHAEL WEAVER,

11 having been duly sworn, testifies as follows:

12 DIRECT EXAMINATION

13 BY MR. WEHMAN:

14 Q. Detective Weaver, how are you?

15 A. Good. How about you?

16 Q. Good. I know it's not detective anymore, but are you
17 okay if I call you Detective? It's a hard habit to break.

18 A. Whatever you would like.

19 Q. Tell the Court where you are employed.

20 A. I'm currently employed with Nucore Steel in Berkeley
21 County.

22 Q. Back in September of 2016, were you working for
23 Summerville Police Department?

24 A. Yes, I was.

25 Q. In what capacity were you working for them?

1 A. At that point, I was either detective or sergeant at
2 the time. I was working cases. I worked this case.

3 Q. In fact, you were the on-call detective and the lead
4 investigator for this case with Mr. Stokes; is that correct?

5 A. That is correct.

6 Q. And throughout the course of that investigation, you
7 were eventually able to locate where Mr. Stokes was when you
8 were seeking him to serve warrants, correct?

9 A. Yes, that's correct.

10 Q. Specifically on September 7th of 2016?

11 A. I believe it was September 7th, yes, sir.

12 Q. Okay. And where were you able to locate him?

13 A. I did not personally locate him, but myself and
14 another detective from the office were driving in a
15 neighborhood that he was known to frequent, and we passed by an
16 area known at [REDACTED], I believe it was. And we saw
17 him and some other subjects standing on the front porch.

18 Q. So you located him at [REDACTED]?

19 A. Yes, sir.

20 Q. You didn't take him into custody is what you are
21 saying?

22 A. No, sir. At that point, we knew him to be a very
23 dangerous person, as well as some of the other people he was
24 with. We ran around the corner and parked and called on the
25 people to come to the area to assist us.

1 Q. And a number of officers assisted in the apprehension
2 of Mr. Stokes, correct?

3 A. Yes, sir.

4 Q. And you are the chief investigating officer of this
5 case?

6 A. That's correct.

7 Q. As such, you've had an opportunity to review all the
8 reports that were filed?

9 A. Yes, sir, at some point I reviewed them.

10 Q. Okay. Do you have access to them right now?

11 A. I have, yes.

12 Q. Specifically, let's start with now Detective Fleming,
13 at that point Officer Fleming. In his report, he indicates
14 that when Mr. Stokes was eventually taken into custody, two
15 large knives were located beside him on the ground; is that
16 right?

17 A. That's what he has in his report, yes, sir.

18 Q. And moving on to Officer Owens, who I believe is now
19 with the sheriff's office, isn't it correct in his report, a
20 small kitchen knife was found at the base of a tree where
21 Mr. Stokes was first observed?

22 A. I'm sorry. I have to find his report.

23 MR. WEHMAN: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25 THE WITNESS: Yep, that's what he has.

1 BY MR. WEHMAN:

2 Q. So according to Officer Owens, one of these knives was
3 not found on Mr. Stokes. And according to Officer Fleming,
4 they were both found on the ground; is that correct?

5 A. Yes. That's what they have in their reports.

6 Q. Eventually, you were able to recover two knives from
7 that area, or officers under your control?

8 A. Responding officers out there did. At this point, I
9 was back at the police department typing up a search warrant
10 for the residence, because when the officers went back, he
11 wasn't there. And we wanted to search the inside of the house,
12 but we believed we had to obtain a search warrant. So I wasn't
13 out there when this was going on.

14 Q. Now, when you, as the chief investigating officer,
15 were made aware that two knives were recovered, you ordered
16 those knives be sent off for forensic testing, correct?

17 A. I'm not sure if our forensics -- I'm pretty confident
18 they were tested.

19 MR. WEHMAN: May I approach again, Your Honor?

20 THE COURT: Yes.

21 THE WITNESS: Sorry.

22 BY MR. WEHMAN:

23 Q. Who would that be a report from?

24 A. This is Sergeant Rollins. He's one of our crime scene
25 techs.

1 Q. And that report would indicate that he did receive
2 both of these knives?

3 A. Yes, sir.

4 Q. And what finding did he make as to any forensic
5 evidence that would be useful in your case?

6 A. Oh, he didn't locate any blood on these knives.

7 Q. So there was no blood located on either one of these
8 knives?

9 A. No, sir. That's what it says.

10 Q. And also, there were no fingerprints on either one of
11 these knives that could be linked to Mr. Stokes; is that
12 correct?

13 A. That's correct.

14 MR. WEHMAN: May I approach again, Your Honor?

15 BY MR. WEHMAN:

16 Q. Do you have any forensic evidence in your case file
17 that would support that either one of these knives was used in
18 the incident?

19 A. No, sir, just description.

20 Q. In fact, one of them couldn't possibly have been used,
21 as that one was recovered on scene, correct?

22 A. Right. She actually removed the one out of her chest.

23 MR. WEHMAN: Beg the Court's indulgence.

24 BY MR. WEHMAN:

25 Q. Detective Weaver, when you first received this case,

1 you didn't respond to the hospital at M.U.S.C. where the victim
2 was, did you?

3 A. No, sir. Well, not that night.

4 Q. Eventually you went?

5 A. Yes. Actually, I'm not sure.

6 Q. You are not sure that you went?

7 A. I might not have gone at all. No, I just spoke to the
8 nurses on the phone and the doctor.

9 Q. But you did speak to Officer Boehler with the police
10 department who was at M.U.S.C., correct?

11 A. That's correct.

12 Q. And you were given information that at least for the
13 entire first day, that there was not only a knife that the
14 victim said was used, but also a handgun; is it correct?

15 A. Right.

16 Q. That her story was she had a knife -- that the
17 assailant had a knife and a pistol, and that he, in fact,
18 pistol whipped her in the head?

19 A. Yes, that was the initial -- that's how it came out
20 initially, yes.

21 Q. That story remained consistent not only that day, but
22 at least in the hospital records for the next couple of days at
23 the hospital; is that right?

24 A. Are you saying the hospital might have thought that?

25 Q. Correct. Did you ask for hospital records pursuant to

1 this case?

2 A. We probably did get medical records, but I didn't
3 review the medical records.

4 Q. Okay. So you are not aware that she was telling
5 doctors and nurses at the hospital, not just on that day but
6 later, that a pistol was used and not a --

7 A. Right. I was aware that she had said that. I don't
8 know what she told them, but I do know that's the story that
9 was out, that she was pistol whipped.

10 Q. And that story remained to be the case even after she
11 found out that she was stabbed in the eye and not pistol
12 whipped, correct? She still said there was a knife and a gun
13 and, I got established in the eye?

14 A. Maybe. I'm not sure when it transitions into he had
15 two knives and a knife and a gun.

16 Q. But there was certainly a long period of time where
17 there was a knife and a gun, as the story of the victim?

18 A. Yeah. I'm not sure. I guess I don't get the
19 question.

20 Q. So there was a period of time where the victim
21 believed that there was a gun used in the incident and not just
22 two knives?

23 A. Right. She thought she was pistol whipped. That's
24 how the whole thing started. Yes, sir.

25 MR. WEHMAN: I don't have any further questions, Your

1 Honor.

2 THE COURT: Sir.

3 CROSS-EXAMINATION

4 BY MR. SORENSON:

5 Q. May it please the Court. Let's kind of start where
6 Mr. Wehman left off, if we could. You are aware, Detective,
7 that -- let me back up.. Did you have an opportunity to
8 question Ms. Pitt, the victim in this case, when she got out of
9 the hospital on September 6th of 2016?

10 A. Yes, sir.

11 Q. And at that point in time, did she indicate to you --
12 so on September 6th, the day before the defendant was arrested,
13 did she indicate to you at that point in time what kind of
14 weapons were used?

15 A. Yes, she did.

16 Q. And what was it that she indicated the first time you
17 spoke to her about this crime, what weapons the assailant had?

18 A. She said he had one steak-like knife and another knife
19 that was a butcher knife.

20 Q. Did you have an opportunity when you talked to her on
21 September 6th of 2016, to question her about what she
22 remembered telling anybody at the hospital?

23 A. She stated -- I did. She stated she had blacked out
24 at some point immediately after this incident happened and that
25 she didn't remember speaking with anybody.

1 Q. So did she indicate to you -- did she have any
2 recollection of talking with law enforcement whatsoever at the
3 hospital?

4 A. No, she says that she does not.

5 Q. And, ultimately, as part of your investigation, did
6 you learn that, in fact, she had been stabbed in the face, that
7 that was a stab wound that had actually gone through her eye
8 into her brain?

9 A. Yes, sir. It was my understanding -- to add maybe
10 someone substance, that night, I knew she had multiple stab
11 wounds. We had gotten that from M.U.S.C.

12 Q. You learned that that night at the hospital?

13 A. That's correct.

14 Q. That she, in fact, had been stabbed in the face and
15 not hit with a pistol in the face?

16 A. Yes, I knew that, but I'm still not sure what she was
17 telling the nurses.

18 Q. Got you. Did you also, as part of the course of your
19 investigation, learn that she was obviously heavily medicated
20 at the hospital?

21 A. I don't know if I would have -- I might have assumed
22 that. I don't know.

23 Q. All right. I want to ask you about -- Mr. Wehman, he
24 started off asking you about a couple officer reports that were
25 out there at the scene where Mr. Stokes was taken into custody.

1 Do you recall that line of questioning?

2 A. Yes.

3 Q. He had referenced, I believe, a Deputy Owens and an
4 Investigator Fleming's reports?

5 A. Yes.

6 Q. And had you just kind of summarized what the two of
7 them had said? Do you also have a report from Investigator
8 Souder with the Summerville Police Department?

9 A. Uh-huh.

10 Q. And Officer Bateman with Summerville Police
11 Department?

12 A. Yes.

13 Q. And did they both also give reports as to what they
14 observed when Mr. Stokes was taken into custody?

15 A. Yes.

16 Q. Specifically, Investigator Souder, does she indicate
17 that while searching Stokes, PFC Souder located a knife with a
18 large blade in the right front pocket of his shorts? PFC
19 Souder also observed a second knife near Stokes on the ground?

20 A. Yes, sir, that's in her report.

21 Q. And Officer Bateman, does he indicate that Stokes was
22 searched and a large blade kitchen-style knife was located on
23 his person; another similar-style knife was located within
24 arm's reach of Stokes?

25 A. Yes, he does have that in his report.

1 Q. Both of those knives were taken into custody?

2 A. That's correct.

3 MR. SORENSON: Beg the Court's indulgence. I believe
4 that's all I would have as to this issue.

5 THE COURT: Any redirect?

6 MR. WEHMAN: I wouldn't have any redirect for this
7 witness, Your Honor.

8 THE COURT: Thank you, sir.

9 Your next witness.

10 MR. WEHMAN: Judge, that would be the only witness I
11 would have.

12 THE COURT: By the State?

13 MR. SORENSON: I mean, not to this issue, Your Honor.

14 THE COURT: All right. Argument?

15 MR. WEHMAN: Your Honor, I would submit to the Court
16 that the testimony presented by Detective Weaver, not only the
17 number of different stories that law enforcement have and their
18 reports, they all vary, but also with the knowledge he
19 testified that he found out that night that it was a stabbing,
20 that the pistol-whip wound that they thought they had ended up
21 being a stab wound. I believe that the stabbing that was known
22 then just shows how prejudicial the evidence of these knives
23 would be to my client.

24 They were tested. They don't come back to the scene.
25 One of them, according to some officers, was behind a tree.

1 Some it was an arm's reach away. But none of them are
2 forensically linked to him. And the initial story that was
3 given was that there was a pistol and one steak knife. That
4 steak knife was recovered on scene at the time of the incident.
5 Could not have been anything found on my client. And there's
6 nothing that links the knives that were found to this incident.

7 So I believe admitting those is extremely prejudicial
8 and doesn't carry much probative value at all, if any, as they
9 can't be linked to the incident. It's all a propensity-type
10 evidence that he's carrying knife, he must have been the one
11 carrying a knife that night.

12 THE COURT: Response?

13 MR. SORENSON: May it please the Court. It would be
14 our position, Your Honor, that this evidence is highly
15 relevant. We have a victim that is going to describe an
16 assailant as having you two knives, a steak knife and a butcher
17 knife. And he is then caught six days later with a butcher of
18 knife and I submit now a new steak knife, because the old one
19 snapped off in her chest.

20 Officers are going to testify, I mean, based on the
21 reports that I brought out in cross-examination, that one knife
22 was taken off of him. The other was found on the ground right
23 next to him. I do think it is highly relevant and that
24 outweighs any prejudice.

25 It would be no different to me than if our victim

1 described a black gun being used in an armed robbery, and then
2 lo and behold, we find him with a black gun six days later. I
3 mean, clearly, that's probative, relevant and admissible
4 evidence, even if there's no forensic evidence that link it
5 specifically that gun to the armed robbery. I mean, I do think
6 if it fits the description given by the victim, it would be
7 relevant and admissible.

8 THE COURT: All right. Yes, sir.

9 MR. WEHMAN: I would just argue that the description
10 given by the victim was a gun and a knife. Knife is left on
11 scene. There is no gun. And, certainly, if in the solicitor's
12 example, if a gun is used and the ballistics don't match the
13 gun that was used that was found, I think that would be
14 suppressed. I don't think they would be able to get into that
15 evidence under his example. The forensics don't match anything
16 that was used at the scene that day. They don't come back to
17 any of her DNA. And there's nothing that matches the other
18 knife to my client.

19 THE COURT: Anything else?

20 MR. SORENSON: Other than just saying that his
21 example, that's a situation where it was excluded. We don't
22 have that, Your Honor. This isn't -- I mean, a gun that was
23 fired, that you exclude that from being the gun, obviously,
24 that's not admissible. And this, I mean, there is no evidence
25 that excludes that second knife from being the knife that was

1 being brandished that night. It fits the description of it,
2 Your Honor. It was a butcher knife.

3 THE COURT: I will defer ruling on this.

4 What is the next one?

5 MR. WEHMAN: Judge, at this point, I filed a motion to
6 exclude prior bad acts that the State might intend to introduce
7 under State v. Lyle.

8 THE COURT: You have something in mind specifically?

9 MR. WEHMAN: Judge, any and all prior bad acts, I was
10 provided in discovery a number of police reports from 2013 that
11 the State, I think, intends to introduce.

12 THE COURT: They intend to introduce police reports?

13 MR. WEHMAN: I believe they intend to call testimony
14 from an alleged victim in a case from 2013 where they would
15 contend my client had a knife, I believe.

16 THE COURT: Yes, sir.

17 MR. TEMPLETON: Your Honor, there are kind of a litany
18 of events where law enforcement made contact with Mr. Stokes in
19 2012 through 2013. In each of those events, he is stopped by
20 law enforcement. Some of those are what I would argue are not
21 prior bad acts, simply a Terry situation where he's found with
22 kitchen knives or steak knives on his person at that time.

23 There was one set of events that he ultimately gets
24 arrested in. With that one particular set of events, we would
25 not be going into anything except for he had a steak knife or

1 kitchen knife on his person.

2 Just for -- just to kind of show out to Your Honor,
3 the first event is on June 23rd, 2012. It's at [REDACTED]
4 [REDACTED], which is in the same neighborhood that these events
5 occur. Specifically, in that event, actually Detective Weaver,
6 I believe was on the road at that point, made contact with him.
7 He had a steak knife on his person. He was released from the
8 scene. I don't think that's bad acts testimony. I think all
9 of these would be simply 403 analysis for you, whether you
10 believe that the prejudicial effects substantially outweighs
11 its probative value.

12 The second event, May 1st, 2013, again, another
13 officer with Summerville Police Department at [REDACTED]
14 [REDACTED], still in the same neighborhood, ultimately, in that
15 case, a serrated steak knife with a four-inch blade is found on
16 his person.

17 July 7th, 2013, at North Maple and Shamrock Drive,
18 another officer with the Summerville Police Department, again,
19 this is just another basically field interview with him,
20 ultimately, a steak knife is found on his person. He's
21 released from the scene. He's not arrested. There's nothing
22 illegal about him carrying a knife. So I don't think we are
23 into a Lyle situation. I think this is just, again, a 403
24 situation.

25 July 13th, 2013, this is at [REDACTED]. Another

1 officer makes contact with him. He has a five-inch kitchen
2 knife on his person. [REDACTED] is in that same exact
3 neighborhood that we are talking about that all these other
4 events occurred in, as well our ultimate event.

5 July 16th, 2013, again at [REDACTED], I believe
6 he may have been issued a trespass notice on this one, but at
7 that point, he's, again, released from the scene, but he had a
8 kitchen knife on his person.

9 The final event, September 7th, 2013, that, again, is
10 at [REDACTED], again in the same neighborhood. Officer
11 Drayton with the Summerville Police Department, ultimately in
12 this case, there are charges that come out of that event, but
13 the only thing we would be interested in getting into are, he
14 had a black-handled kitchen knife on his person in that
15 particular event.

16 Your Honor, between September 7th, 2013, when that
17 final event occurs, and March 2nd, 2016, Mr. Stokes is either
18 in the Dorchester County Detention Center or in the South
19 Carolina Department of Corrections. So then, ultimately, Your
20 Honor, March 2nd, 2016, he's released. And less than six
21 months later is our event.

22 So those would be the events that we would intend to
23 go into. Again, Your Honor, I think, ultimately, with the
24 exception of the last one where he is charged and, again, we do
25 not intend to go into the events surrounding that with the

1 exception of the fact that he had a black-handled kitchen knife
2 on his person during that event. None of these other ones are
3 bad acts. They are simply interactions with law enforcement.

4 Your Honor, basically, my argument would be, this is
5 no different than, say, we had six incidents where law
6 enforcement came in contact with him and he always had on the
7 same shirt or always had on the same hat or always had on the
8 same exact pair of shoes. And, ultimately, our victim
9 indicates the same. Your Honor, they would be the events that
10 we would intend to go into.

11 THE COURT: Yes, sir.

12 MR. WEHMAN: Judge, I would disagree with the
13 characterization of the solicitor. I think this is clearly
14 Lyle, testimony and Lyle evidence that demands a Lyle review.
15 It is police interaction with an individual where -- whether or
16 not charges were filed, these knives are seized. Reports are
17 done. I think this is clearly bad act testimony. And it's
18 clearly offered for the purpose of those propensity.

19 The only reason that they are wanting to introduce
20 this evidence is to say that this person is known to carry
21 knives, he must have been the person carrying a knife in 2016.
22 I don't know that there's anything in any of the Lyle cases
23 that have anything to exclude the gap in time that is looked at
24 by someone not being in the area. I mean, I don't think
25 that's, based on case law, that he was in the department of

1 corrections or the detention center.

2 What we have is, we have very specific sets of facts,
3 where he is around one certain address, [REDACTED], or
4 something of that nature, and is stopped by law enforcement,
5 has a knife. That knife is seized. I don't think it goes to
6 identity, because the cases are very clear on identity as to
7 things that are admitted.

8 THE COURT: Well, it appears that whenever they deal
9 with him, he has a knife. So why isn't it admissible?

10 MR. WEHMAN: I think it at least deserves to be
11 reviewed under Lyle. I think these are clearly bad acts that
12 they intend to get into and it doesn't meet the Lyle
13 exceptions. Doesn't go to identity. Doesn't go to a common
14 scheme or plan, or any of the other ones, absence of mistake or
15 accident. I don't see what exception that they intend to fit
16 this in under. And, certainly, they haven't provided any case
17 law that would support something like this coming in for any of
18 those exceptions.

19 It's clearly character evidence, is my argument, that
20 this is bad character evidence that is specifically excluded by
21 Lyle and its following cases.

22 THE COURT: Yes, sir.

23 MR. TEMPLETON: Your Honor, I would degree. To begin
24 with, my argument is, this is not Lyle testimony. With the
25 exception of the final event, he's not arrested. He's not

1 taken into custody. Ultimately, he's released from the same --
2 it's not a crime to carry a knife. But what it is, is it shows
3 us on all of these events, he's doing the same exact thing.
4 Basically, that it's the same kind of situation as if we had
5 six events where we know he wears the same exact hat and our
6 victim said he's wearing the same exact hat. A kitchen knife
7 is not like somebody walking down the road with a pocket knife.
8 It's exceptional. It's not normal in that everybody does this.
9 It's something that's distinctive of him. So, therefore, I
10 think it does go to ID, as well as a common scheme or plan that
11 he's always got this on him for whatever reason he has decided
12 to carry kind of an unusual thing on him.

13 People don't walk up and down the street with five-
14 and six-inch -- five-, six-, eight-inch knives on their person.
15 I think it goes directly to ID in this case.

16 THE COURT: So it fits the element of identification?

17 MR. TEMPLETON: I believe it does, Your Honor.

18 THE COURT: Is identification an issue in the case?

19 MR. TEMPLETON: Yes, Your Honor.

20 THE COURT: Well, that is one of the motions you
21 filed.

22 MR. WEHMAN: It is, Your Honor. And I don't mean --
23 if you have more questions for the solicitor, I don't want to
24 speak out of turn.

25 THE COURT: Well, I do have another question. You

1 said it's not -- carrying a knife is not a bad act?

2 MR. TEMPLETON: I don't believe so in this case, Your
3 Honor. I don't believe there's any offense that he could have
4 been charged with for just having a knife on his person, which
5 is the event in -- with exception of one of these, in all --
6 with exception of No. 6, the first 5, it's not unlawful. I
7 think in that case, he ultimately assaults a police officer.
8 So, arguably, in that situation, it could be unlawful in the
9 final situation, the assault on a police officer on September
10 7th.

11 THE COURT: Which crime he went to Department of
12 Corrections of committing?

13 MR. TEMPLETON: That is the event where he assaults a
14 police officer.

15 THE COURT: With a knife?

16 MR. TEMPLETON: He does not assault him with a knife.
17 He actually chokes out the officer. But the knife is on his
18 person when he's ultimately taken into custody.

19 MR. WEHMAN: It's not on his person when he's taken
20 into custody. It was removed earlier before the incident, the
21 fighting incident.

22 But I would argue, Judge, that the rule doesn't just
23 say crimes. It says bad acts. And I believe that this
24 testimony is admitted as a bad act. I mean, the knives are
25 seized by law enforcement. That's how we have these reports.

1 The solicitor mentioned identity. The case law is very clear
2 about what types of things can be admitted by identity.

3 In *State v. Thomas*, a South Carolina case, the victim
4 in that case testified that she was raped. And the suspect
5 told her before it happened that he's been planning this since
6 she put him in jail for stealing her watch. That crime, where
7 he was convicted of stealing her watch, was allowed to be
8 discussed because it proves that the person that stole her
9 watch would then be the person that raped her. That points
10 clearly to the identity of the person in the crime which the
11 trial is --

12 THE COURT: But that was that case.

13 MR. WEHMAN: There's more, Judge. *State v.*
14 *Sutherland*. There was testimony admitted that the defendant
15 stole a murder weapon two weeks before a homicide and traded it
16 in for drugs. They were able to get in to trading it in for
17 drugs because that came back to the murder weapon, proof of who
18 traded in that weapon shows --

19 THE COURT: That was that case.

20 MR. WEHMAN: I don't think any of the -- in those
21 incidents, each one, the proving of the bad act tends to show
22 who did that crime. Nothing about these knives that were found
23 in 2013 can possibly relate to a stabbing that happens in
24 between 2016. None of these knives are the same knives. It's
25 just propensity, prior bad act evidence that the State wishes

1 to get in. And I think if they do intend to get into it, they
2 at least have to prove it by clear and convincing evidence by
3 testimony of officers, since no charges they say came from
4 them. Convictions can't be used to support them. And I think
5 the rule requires that.

6 THE COURT: Anything else on that issue?

7 MR. WEHMAN: No, sir. I would point out that the
8 admission of all these instances where Mr. Stokes has stopped
9 walking down the street, patted down and knives are found, is
10 simply also just going to play into the jury's mind that this
11 is the kind of person that law enforcement is looking out for.
12 And it tends to speak to bad character on his part. No charges
13 were filed. He was just walking down the street, patted down.
14 I think that a jury can infer that what the State is saying is
15 that this is a bad guy who is always searched by law
16 enforcement.

17 MR. TEMPLETON: Your Honor, I think that's very easily
18 remedied by instructions to the jury if that is a concern for
19 Mr. Wehman. At the end of the day, I think it does go directly
20 to identification, as well as kind of a common scheme that he
21 is also in possession of these same types of things. And it
22 does go to that ultimate conclusion.

23 MR. WEHMAN: I'm sorry. I think the case law
24 disagrees with that conclusion as well. Common scheme or plan
25 requires more than the mere conviction of two similar crimes by

1 the same person. It must show a close degree of similarity or
2 connection between the prior crime and the crime charged. Not
3 just propensity in that something happened similar in 2013 to
4 something that happens in 2016. Appropriately, that case that
5 says that is *State v. Stokes* from 1983.

6 There has to be such a visible connection between the
7 extraneous crimes and the crime charged as would make evidence
8 of one logically tend to prove the other as charged.

9 Nothing about carrying steak knives or whatever type
10 of knives they may be tends to prove anything about this except
11 he's the type of guy that would carry a knife around in this
12 area, which is propensity evidence, which Lyle specifically
13 prohibits.

14 THE COURT: All right. I will defer ruling on that
15 issue.

16 What's the next one?

17 MR. WEHMAN: Just my final motion, I believe it would
18 be the motion to dismiss based on a lack of probable cause in
19 this case. I believe there will be testimony that would need
20 to be taken over the course of two days. One of our witnesses
21 is not available tomorrow. That would be Detective Weaver.
22 And one of our witnesses is only available tomorrow from
23 M.U.S.C. So I don't know how -- if the Court would allow me to
24 take testimony today and then finish it tomorrow.

25 THE COURT: You said a motion to dismiss?

1 MR. WEHMAN: Yes, Your Honor.

2 THE COURT: Based on what?

3 MR. WEHMAN: Absolutely. Before I start with that, I
4 forgot to mention, I did have a sequestration motion. And that
5 was a little late for the motion that I've already gone
6 through. But from this point forward, I would ask that the
7 State's witnesses and any other witnesses on my witness list be
8 sequestered.

9 THE COURT: Based on what?

10 MR. WEHMAN: Based on the possible -- or based on due
11 process concerns and the possibility of contamination of
12 testimony from hearing each other's testimony.

13 THE COURT: Well, there's no state court right to
14 sequester. So due process, if it was a matter of right based
15 on due process, then it would be part of the rules. It
16 wouldn't be up to judicial discretion, would it?

17 MR. WEHMAN: And I would agree, Judge. It is
18 completely in your discretion. We would just ask that, out of
19 abundance of caution, that witnesses be sequestered.

20 THE COURT: Based on what?

21 MR. WEHMAN: Judge, I believe that there is, in this
22 case specifically, there are conflicting statements that are
23 given.

24 THE COURT: Such as? I mean, I know nothing about the
25 case other than what y'all have told me thus far. Running

1 people down the hall to find witnesses is time consuming,
2 delays trials, and there are a lot of reasons not to do it.

3 MR. WEHMAN: I understand, Your Honor. We have a room
4 right over here that the witnesses can stay in. They would be
5 five seconds away from anybody handling them into the
6 courtroom. It's actually attached right behind that wall. We
7 would ask they be sequestered in that location. And I hope
8 that would alleviate any delays the Court would have.

9 THE COURT: What says the State?

10 MR. SORENSON: Initially, Your Honor, as to the
11 victims, we would ask that she be allowed to remain.

12 THE COURT: The victim has a right to be in the
13 courtroom per the victim's Bill of Rights.

14 MR. SORENSON: Our chief investigating officer --

15 THE COURT: The State has a right to have assisting
16 officer.

17 MR. SORENSON: And beyond that, to be honest with you,
18 I am not too sure what the concern is with the witnesses. He's
19 talking about inconsistent statements. That's going to involve
20 the victim, who is allowed to be here.

21 THE COURT: We have various fact witnesses who are
22 eyewitnesses, medical witnesses?

23 MR. SORENSON: There are no eyewitnesses. There's a
24 doctor who treats her. There are a couple of officers involved
25 in responding to the scene, and then what you heard about the

1 officers if you allow us to get into the two knives that were
2 recovered.

3 As far as inconsistent statements, I mean, the victim
4 would be who he's talking about. She's allowed in here. I
5 don't quite know what the --

6 THE COURT: What are you concerned about that
7 necessitates this motion? Because you've given me some
8 officers. And they've given me some officers. And, you know,
9 you gave me 12 names. The State gave me 21 names. That's
10 about 30 people we are going to be in charge of keeping track
11 of. And if there's a legitimate reason, that's what I want to
12 know, what is it?

13 MR. WEHMAN: Well, Judge, I can tell you, the
14 solicitor is right in that there's one fact witness for this
15 entire case. And we've discussed prior consistent statements
16 by her. However, there are numerous witnesses who she
17 interacts with. The concern would be that they would conform
18 their testimony to match not only each other, but also
19 potentially her testimony that would be given, I would imagine,
20 as she would be the first witness, just to alleviate any
21 concerns.

22 I don't know what they might get up and say or what
23 they might remember from the stand, but it would alleviate any
24 concerns going forward if they are sequestered and not able to
25 hear that testimony.

1 THE COURT: The jurors usually love the lawyers to
2 say, well, didn't you just share what the person said, and is
3 that why you are parroting what that witness says. That
4 sharpens your sword as a litigator.

5 MR. WEHMAN: I understand that, Your Honor. I'm
6 willing to concede that, however, if you would sequester the
7 witnesses.

8 THE COURT: Rule 615 says, at the request of a party,
9 the Court may order witnesses excluded so that they cannot hear
10 the testimony of other witnesses and it may make the order its
11 own motion. This rule does not authorize exclusion of a party
12 who is a natural person, or an officer or employee of a party
13 which is not a natural person or a person whose presence is
14 shown by a party to be essential to the presentation of the
15 party's cause.

16 Then the note, the federal rule requires sequestration
17 upon the request of a party. The State of South Carolina rule
18 adheres to prior state practice which leaves the sequestration
19 decision in the sound discretion of the trial judge.

20 And, typically, for me, if you have a lot of people
21 who supposedly saw the same thing and they are giving
22 various -- possibly various versions of the same facts, and the
23 lawyer doesn't want the witness to hear what the others said
24 about that, so they can hopefully catch some contradiction or
25 something, then those are instances where exclusion of

1 witnesses are important. And I always grant it. But just as a
2 routine motion, without any specific purpose, then I don't
3 grant it. So distinguish this case for me.

4 MR. WEHMAN: Judge, I would point to the prior motion
5 that we have already heard. Detective Weaver testified,
6 through both myself and the solicitor, at the issue of knives
7 that were found, which will be again testified to at the course
8 of the trial, I'm sure. And there are four different officers
9 that were brought up during that hearing, all that have four
10 different renditions of what happened that day.

11 THE COURT: As to where they found the knives or
12 whether they were on him or near him?

13 MR. WEHMAN: Correct. All of them are different.

14 THE COURT: You have the reports of the officers? I
15 thought all of that was fairly consistent in where they were
16 found.

17 MR. WEHMAN: I do. I do have those reports. They are
18 consistent in that they are in the general area of him, but
19 they are also different in where they find them. I believe
20 that that shows that there's at least a chance that if these
21 officers are in the courtroom during that testimony, that their
22 testimony can then begin to be conformed around the one most
23 prejudicial to my client. Also, there's going to be testimony
24 from medical professionals as to things that were stated in the
25 hospital that might contradict what law enforcement would say

1 when they are called to testify.

2 This is all based on one fact witness, Judge, and her
3 recollection of these events and how they maybe change over
4 time. And there are a lot of different witnesses that will be
5 called and questioned about that recollection. And I think
6 that keeping them all out of the courtroom -- I understand she
7 can stay. All of her statements have been recorded. What my
8 concern is that all these witnesses that would come in and
9 maybe testify to their recollection of what went on would be
10 shaped by hearing each other testify. And that concern would
11 not be there if they are not in the courtroom to hear it.

12 THE COURT: All right. Anything else?

13 MR. SORENSON: No, sir.

14 THE COURT: What else do you have today?

15 MR. WEHMAN: Judge, I can go into the motion to
16 dismiss. I can go into the argument, I guess, as to why I
17 believe testimony should be taken. I believe there's a
18 determination to be made whether --

19 THE COURT: I'm just trying to understand. When you
20 file a motion to dismiss a criminal case, it's sort of an
21 unusual type of motion. The person typically has had a
22 preliminary hearing. The case has been presented to the grand
23 jury. And they have been indicted. And so then to come and
24 say I want the trial judge to dismiss the case without a trial,
25 that's a rather atypical motion unless there's some defect in

1 the indictment or some procedural flaw that would justify
2 throwing the case out of court.

3 MR. WEHMAN: And I can argue why I think I'm entitled
4 to the hearing, or I can call a witness and then make the
5 arguments, however, the Court would like to proceed. I would
6 have one witness as to the argument. It would be Detective
7 Weaver again.

8 THE COURT: And you want the people who may testify
9 during the trial to be excluded from hearing this issue as
10 well?

11 MR. WEHMAN: Yes, Your Honor.

12 May I call the witness, Your Honor? They have all
13 been sequestered? I've been told that everyone is out of the
14 courtroom that would fit that motion.

15 THE COURT: All right. Y'all voluntarily sequestered
16 them.

17 MR. SORENSON: They are just not here. I don't think
18 there's anybody here that would pertain to it.

19 THE COURT: Nobody is here anyway.

20 Mr. Sorenson.

21 MR. SORENSON: I just don't understand why -- what we
22 are doing on this motion, Your Honor. As Your Honor pointed
23 out, this case has had a preliminary hearing, has been
24 indicted. Obviously, anything that Detective Weaver may have
25 testified to at that prior hearing, I mean, is fair game, I

1 supposed, of cross-examination when he testifies. But,
2 obviously, if we get to a point in time at the close of our
3 case, we are going to have to be well beyond probable cause at
4 that point or Your Honor is going to grant a directed verdict.

5 So he's asking to dismiss for lack of probable cause.
6 He's basically asking to have another preliminary hearing, is
7 basically what he's asking for at this point in time. We are
8 well past that.

9 THE COURT: I'm looking at a seven-page motion. I
10 haven't had a chance to read it because you gave it to me this
11 morning. We were doing other things. But, you know, you filed
12 a motion, so I have to rule on it in some form or fashion.
13 Anyway, so we will press on with the motion. Plus, y'all asked
14 the jury to leave, so we have nothing else to do.

15 MR. WEHMAN: Would you like me to take testimony at
16 this point?

17 THE COURT: Whichever way you prefer. You can give an
18 opening statement concerning the motion. You can call
19 witnesses. It would be helpful if -- since I -- this might be
20 the first time I've seen a motion to dismiss for lack of
21 probable cause in a criminal case, probably over the last 40
22 years. So 1976 to now, how many years would that be? 42
23 years? First time seeing it in 42 years. So let me hear it,
24 whatever it is.

25 MR. WEHMAN: Yes, Your Honor. And I believe this

1 actually would be an issue of first impression in South
2 Carolina. I do not believe it would be an issue of first
3 impression in the country. But the basis for this argument
4 comes from case law that I've cited in my motion that would
5 tend to suggest that if it can be shown that each probable
6 cause determination that's made along the way, the solicitor is
7 right, there's been a probable cause determination made at the
8 arrest warrant stage. There's been a probable cause
9 determination made at preliminary hearing. And also, the grand
10 jury, generally, is a probable cause determination as well,
11 assuming a true bill is rendered.

12 But the case law tends to suggest that if there is a
13 defect, if testimony is excluded from those hearings that would
14 have a bearing on probable cause, that it can be reviewed. And
15 that's why I intend to call a witness to show that there was
16 material evidence that was not presented, that if the finder of
17 probable cause, whether it be a municipal court judge, in this
18 case, Judge Whittington, or the grand jury, if they had heard
19 that evidence, the determination would be different. And if
20 the Court finds that, based on that lack of information
21 presented, the lack of the complete case being presented, that,
22 therefore, you could find that probable cause does not exist.
23 And the remedy for that would be dismissal of these
24 indictments.

25 And that is why I intend to call Detective Weaver to

1 inquire as to what all went on. I have a recording of the
2 preliminary hearing, if he doesn't remember. Obviously, we
3 have the arrest warrants that has the sworn affidavit. And the
4 grand jury summary is also in my case packet as well, I
5 believe, shows what would have been testified to at that
6 hearing and also what was not testified to.

7 THE COURT: And the standard through which I am to
8 gauge this is what? At the directed verdict stage, I will take
9 the evidence in the light most favorable to the State.

10 MR. WEHMAN: Judge, it is definitely our burden to
11 show that probable cause does not exist. And I also, I believe
12 we do that first by showing that there's a defect in the
13 testimony that was presented.

14 THE COURT: A defect in the testimony?

15 MR. WEHMAN: A material defect, yes, Your Honor.

16 THE COURT: Is that a term of art?

17 MR. WEHMAN: Yes, Your Honor.

18 THE COURT: Defect in the testimony, a material defect
19 in the testimony.

20 MR. WEHMAN: And, Judge, so a lot of this case law is
21 in reference to eyewitness identification, which is our case,
22 essentially. The warrant and also preliminary hearing and
23 grand jury, the probable cause is based on an identification
24 made out of a six-pack photo lineup. *Padgett vs. Greenwood*
25 which is out of South Carolina states that unless there's an

1 apparent reason for the officer to believe that the eyewitness
2 was lying, did not accurately describe what he had seen or was
3 in some fashion he mistaken regarding his recollection of the
4 confrontation that's sufficient probable cause. I believe that
5 if we can show that all of the probable cause information was
6 not given to a grand jury or to a municipal court judge and can
7 establish that probable cause didn't exist for his arrest, I
8 believe that the remedy for that would be a dismissal at this
9 point.

10 THE COURT: But you have no case authority to support
11 the -- you know, I think an indictment by a grand jury presumes
12 that there's adequate evidence for the indictment to be issued.

13 MR. WEHMAN: I do have *State vs. Davis*, which is a
14 South Carolina case, a recent case. And in that, it states
15 that, grand jury proceedings are presumed to be regular unless
16 clear evidence indicates otherwise. And that's 420 S.C. 20.
17 In that case, it was testified to by the officer that a witness
18 identified the defendant in that case in a lineup. And that's
19 all that he left his testimony to. But that wasn't all the
20 evidence that existed as to the identification in that case.
21 And the court made that determination that it is susceptible to
22 review. A grand jury indictment is not definitive. It can be
23 reviewed, but there must be clear evidence that indicates that
24 the procedure and the evidence presented was regular and the
25 complete picture, essentially.

1 THE COURT: And I know you said something about
2 starting calling witnesses today and calling witnesses
3 tomorrow. So are you saying that you want me to listen to the
4 entire trial before the jury hears the trial?, ..

5 MR. WEHMAN: Judge, I believe most of his testimony
6 you would hear from this motion probably would be distinct from
7 what I would get into with the jury. Some of it involving the
8 preliminary hearing would be similar. Obviously, that was
9 testimony, but a lot of it would also be what was not testified
10 to. I don't think Detective Weaver's testimony will be very
11 long.

12 THE COURT: All right. Press on.

13 MR. WEHMAN: Defense would call Detective Weaver.

14 THE COURT: All right. You are still under oath.

15 MICHAEL WEAVER,

16 having been previously sworn, testifies as follows:

17 REDIRECT EXAMINATION

18 BY MR. WEHMAN:

19 Q. Detective, how are you?

20 A. Good.

21 Q. So do you recall testifying in a preliminary hearing
22 in this case?

23 A. I did testify. I don't remember it.

24 Q. You don't remember it?

25 A. No, what was said.

1 Q. Okay. Do you remember swearing out an arrest warrant
2 in this case?

3 A. I do.

4 Q. When did you do that? Would that have been on
5 September 6th?

6 A. Yeah, around there. There's a date on the warrant.
7 September 6th.

8 Q. Okay. And there are actually two, one for attempted
9 murder and one for armed robbery; is that correct?

10 A. There's three.

11 Q. Two that are here for trial today.

12 A. Oh, okay.

13 Q. Armed robbery and attempted murder, are those two of
14 the warrants that you secured?

15 A. Right, yes, that one, yes.

16 Q. Do you have that warrant in front of you?

17 A. I do.

18 Q. And at that time, you met with Judge Whittington,
19 correct?

20 A. Yes, that was the judge.

21 Q. You were sworn?

22 A. Yes.

23 Q. And you presented this warrant for his review?

24 A. Yes.

25 Q. And in that warrant, you state that the defendant did

1 take, steal, carry away a purse and two cell phones; is that
2 right?

3 A. Yes.

4 Q. And then you list the factual basis for your warrant,
5 correct?

6 A. Yes.

7 Q. Specifically, you state that the victim was sitting in
8 her vehicle in front of her apartment, approached by an unknown
9 subject, correct?

10 A. That's correct.

11 MR. WEHMAN: Judge, may I approach?

12 THE COURT: You don't need my permission to approach
13 the witness throughout the entire trial.

14 MR. WEHMAN: I meant approach the bench. I thought it
15 might be helpful to see the arrest warrants that we are
16 referring to.

17 BY MR. WEHMAN:

18 Q. And in your warrant you state the defendant took two
19 cell phones and a purse from the victim, correct?

20 A. Yes.

21 Q. And that you stated that the victim stated the victim
22 was armed with two knives, correct? Next line?

23 A. Yeah, I probably put that in there.

24 Q. Are you looking -- let me make sure we are looking at
25 the same one.

1 A. Robbery with a deadly weapon?

2 Q. Okay. Look at that one. So you stated the victim was
3 sitting in her vehicle, approached by a suspect who said, give
4 me what you got?

5 A. Yes.

6 Q. She was stabbed twice in the chest and once in the
7 eye?

8 A. Correct.

9 Q. You listed her injuries that she suffered?

10 A. Uh-huh.

11 Q. You state that the suspect fled on foot with cell
12 phones and a purse?

13 A. Yes.

14 Q. And that the victim had seen the subject walk by her
15 apartment six times?

16 A. Approximately six times.

17 Q. And that she positively identified the defendant from
18 a SLED photographic array?

19 A. That's correct.

20 Q. Nowhere in that warrant do you mention that she was
21 not able to identify the defendant; is that correct?

22 A. She did identify the defendant.

23 Q. You presented a photo lineup. You sent a photo lineup
24 to Officer Boehler at M.U.S.C., correct?

25 A. That's correct.

1 Q. She presented that lineup to the victim?

2 A. Uh-huh.

3 Q. And the victim -- may I approach the bench again?

4 THE COURT: Yes, sir.

5 Q. The victim selected No. 1 or No. 2 in that
6 photographic array, correct?

7 A. That's correct.

8 Q. Were either one of those the defendant in this case?

9 A. No, sir.

10 Q. As to the identification and your arrest warrant, you
11 mention that she identified the defendant. But nowhere in
12 there do you mention she was unable to identify and, in fact,
13 identified two other people before that, correct?

14 A. That's correct.

15 Q. Now, you also mention in here that she stated that she
16 had seen the suspect approximately six times, right?

17 A. Yes.

18 Q. And as the chief investigating officer, you have all
19 the body camera available to you. It's your responsibility to
20 know everything that's said in this case so that you can
21 appropriately investigate, correct?

22 A. Right. I'm supposed to review all of that, yes.

23 Q. So you were able to review the body camera where at
24 the hospital the victim says that she believes her child's
25 father is the one responsible for this attack, correct?

1 A. Yeah. I don't remember that at all.

2 Q. Okay. And, in fact, when Officer Gebhardt arrives on
3 scene initially, she says, I don't know who did this; is that
4 correct?

5 A. Yeah. I knew she didn't think she knew. Why it took
6 several days to get the warrant, yes, sir.

7 Q. So any of that confusion as to the suspects, that
8 didn't make it in your warrant as well; is that correct?

9 A. Yeah, no.

10 Q. And that wasn't told to the judge who was signing this
11 warrant either; is that correct?

12 A. I have no idea. I'm not sure.

13 Q. Okay. But what he had to look at was that she had
14 seen the person around six times and identified him out of a
15 photographic array; is that correct?

16 A. That's correct.

17 Q. Now, you said you don't remember the preliminary
18 hearing. I have a transcript that I've made. I also have the
19 original. I can see if this refreshes your recollection, if
20 you would like.

21 A. Yeah, sure. Yeah, please.

22 Q. Take a moment to review that.

23 A. Just the highlighted parts?

24 Q. You can review the whole thing. The highlighted part
25 was just my own.

1 A. Do you have a question about it?

2 Q. Did you have a chance to look at it, your testimony,
3 not the question and answer, but your testimony. Now, nowhere
4 in your testimony do you mention that -- you said that she was
5 unable to identify. But nowhere in your testimony do you
6 mention that she identified two different people than
7 Mr. Stokes; is that correct?

8 A. Right. I guess unable to identify, yeah, I guess, to
9 me, that covered that basis.

10 Q. Okay. But you would agree that it's a distinction
11 between, I can't pick one out, and, it's either one or two, and
12 neither one of them is the defendant? That's distinct in your
13 mind, correct? Those are two different scenarios?

14 A. I mean, sure, yeah.

15 Q. Nowhere in the preliminary hearing did you mention
16 speaking to a witness that you developed, William Dodd; is that
17 correct?

18 A. Is he the neighbor?

19 Q. He's the neighbor.

20 A. I'm not sure if I referred to him in prelim or not.

21 Q. You spoke to him, because you had information that he
22 had seen someone that was known to the area that was hanging
23 out in front of those houses that week prior to the incident,
24 correct?

25 A. Yeah. I was talking to everybody and anybody in that

1 neighborhood.

2 Q. Specifically, Officer Gebhardt talked to him that
3 night and he had said he had seen somebody right out in front
4 of that apartment as recently as the day before, correct?

5 A. Yeah, I think so.

6 Q. And so you showed him a lineup as well?

7 A. Uh-huh.

8 Q. And he identified person No. 2 tentatively, correct?

9 A. Yeah. I'm going to have to go back and look.

10 Q. I believe your report says, they all look the same,
11 but if he had to pick, it would be No. 2; is that right?

12 A. That's probably right. He wasn't sure. I do remember
13 that.

14 Q. But if he had to pick one, he said No. 2?

15 A. I believe so. That's how it went.

16 Q. You also spoke to Malaya Collier. That would be the
17 daughter of the victim in this case?

18 A. Yes.

19 Q. Because she had indicated to law enforcement that she
20 had seen somebody walking in that area that would come up to
21 the houses as well, which is the allegation in this case,
22 right?

23 A. Right. I think she said she had seen somebody walking
24 up and down the street. And it was one or two, I think she
25 said.

1 Q. I believe she said No. 2?

2 A. No. 2?

3 Q. Don't take my word for it. Do you want me to show you
4 your report?

5 A. Yeah, No. 2.

6 Q. So you have three witnesses now, Ms. Pitts in the
7 hospital, Mr. Dodd, who is the next-door neighbor who sees
8 someone within that week that is there pretty often in front of
9 the houses, and you talked to Malaya Collier, who had seen
10 someone walking up and down that street recently. All of them
11 pick out No. 2 at some point?

12 A. Yes. No. 2 is picked up.

13 Q. And Mr. Stokes is No. 3?

14 A. Correct.

15 Q. Up until the September 6th photo lineup, he's never
16 identified?

17 A. Whatever -- Nikia was the first one to identify him.

18 Q. None of that was mentioned in the preliminary hearing
19 or in your warrant, correct?

20 A. No, it was not.

21 Q. Now, you had an opportunity to testify at the grand
22 jury; is that correct?

23 A. No. I don't think I presented this case.

24 Q. Did you create the grand jury summary that was located
25 in my case file?

1 A. Yes. I have it right in front of me.

2 Q. And in that summary, correct me if I am wrong, but it
3 states that you have a photographic lineup that identifies
4 Mr. Stokes, that the victim was transported to M.U.S.C. where
5 it was discovered that she had been stabbed twice in the chest
6 and once in the eye which penetrated her brain, correct?

7 A. Yes.

8 Q. And then it says the victim positively identified the
9 defendant from a SLED photographic array?

10 A. Yes. That's the PC.

11 Q. That's the probable cause that would have been
12 presented?

13 A. Yes.

14 Q. Now, one other factor, when Ms. Pitts met with you on
15 I believe it was September 6th and identified person No. 3 in
16 that photo lineup, she also presented you with a picture at
17 that time; is that correct?

18 A. That's correct.

19 Q. And that picture would have been of what appears to be
20 Mr. Stokes in jail attire, correct?

21 A. Yes. I think he was -- I don't know if he was in
22 prison or jail or which one.

23 Q. Would that be the picture?

24 A. That's the one, yep.

25 Q. So she presents a photo to you before doing that

1 photographic lineup and tells you, this is the person?

2 A. No, she didn't show me that. She showed Detective
3 Santana that photograph. I never looked at that photograph
4 before I showed her the photo lineup.

5 Q. I think your report mentions that she tried to show it
6 to you, but you asked Detective Santana to take it so that you
7 didn't see it?

8 A. Detective Santana took the photo before I did.

9 Q. She told you also that she was told by the person who
10 gave her that photograph that that was a bad person from the
11 area, correct?

12 A. I'm not sure exactly. It was something along those
13 lines. But her friend showed her a bunch of people that, I
14 think, went to Summerville High School and hung out in the
15 Robynwood neighborhood and were "bad people", I guess you could
16 say, or -- I don't know how they worded it.

17 Q. She wrote you a written statement, correct?

18 A. Yeah, she did.

19 Q. And she said in the written statement that she sent a
20 couple of pictures of people who have a rep for doing bad
21 things?

22 A. Yes, that sounds right.

23 Q. And you gave her that picture. She tries to hand it
24 to you at the identification. And then she identifies the
25 person in that picture, Mr. Stokes?

1 A. Right.

2 Q. Was any of that testified at the preliminary hearing
3 or at the warrant, signing of the warrant? Did you supplement
4 the warrant with that testimony as well?

5 A. You mean, like, a second affidavit?

6 Q. Oral -- did you give oral testimony to the judge?

7 A. Whenever I signed the warrants? I am not --
8 typically, we go into a lot more than what's on the affidavit
9 to a judge. I'm not sure if he has a recording on that. I
10 don't know. It typically is more than the affidavit given to
11 him. Like I said, I don't remember if I said anything about --
12 I don't know.

13 Q. Court's indulgence. In the preliminary hearing, you
14 testified she was shown a photograph, and left out the part --
15 and the transcript is right there -- left out the part it was a
16 person who had a reputation for doing bad things? Is that
17 right? I know you said it was a person from the area, but I
18 don't believe you testified that that picture was supplemented
19 with the condition that the person she was being shown was of a
20 bad person; is that correct? Is it in the preliminary hearing
21 transcript that you got there that you said that it was a bad
22 person that she was told she was being shown?

23 A. So you are asking if I testified that this person was
24 a bad person?

25 Q. That she was told he was a bad person?

1 A. Oh, I don't think I would have said that.

2 Q. Okay. And, certainly, that wasn't in the grand jury
3 summary?

4 A. That he was a bad person?

5 Q. That information, that explanation of the photograph
6 that she was shown?

7 A. I'm not sure what was said in the grand jury.

8 Q. I'm talking about the summary that you prepared to be
9 presented, the grand jury summary form?

10 A. The synopsis? Oh, yeah. It's just the five or six
11 sentences.

12 Q. And that's not in there?

13 A. No, no, that being a bad person, no, that's not in
14 there.

15 Q. None of the failed lineups, none of the lineups with
16 the other potential witnesses, none of that is in there as
17 well?

18 A. No. You forgot the prelim.

19 Q. I will get it. As the chief investigating officer,
20 you are also -- you said before in I think the other hearing
21 that medical records would be something you would ask for?

22 A. Yeah.

23 Q. Typically?

24 A. I have the medical records.

25 Q. Okay. You have the medical records in front of you?

1 A. I think this is them.

2 Q. You were aware that --

3 A. I think this is a copy that Nikia provided me.

4 Q. Would you be aware that Ms. Pitts was intoxicated the
5 night of the incident?

6 A. No. I heard that this morning and you told me that a
7 little while ago.

8 Q. So you haven't seen this from the Medical University
9 that has the ethanol test? That's the first time you've seen
10 that document?

11 A. Yes, this is the first time. Yeah, this is different
12 from the records that I have. Yeah, I haven't seen that.

13 Q. You also didn't have the documents that would indicate
14 that, I believe -- have you seen this document there where Ms.
15 Pitts's mother was saying that she would drink six drinks a
16 day? Is that something you would have seen, or is that not in
17 your file as well?

18 A. I don't think I have this, but I don't know.

19 Q. Okay.

20 MR. WEHMAN: That would be all the questions I would
21 have.

22 THE COURT: By the State?

23 MR. SORENSON: Just a few, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. SORENSON:

1 Q. September 6th of 2016, you sat down with Ms. Pitts; is
2 that correct?

3 A. I think that's the date, yes.

4 Q. She gave you -- told you what she recalled occurring
5 on the evening of September 1st, 2016; is that correct?

6 A. Yes, sir.

7 Q. At that point in time, she was shown a photographic
8 lineup by you of Mr. Stokes; is that correct?

9 A. Yes.

10 Q. And she identified Mr. Stokes in that photographic
11 lineup?

12 A. She did.

13 Q. She indicated to you that she did not recall anyone
14 showing her that lineup prior to that day; is that correct?

15 A. It is. But the reason she was shown that lineup is
16 because she said she had no recollection of anything from that
17 night. She says she blacked out.

18 Q. She indicated to you she had no recollection of being
19 shown that lineup at the hospital the night that she was
20 stabbed in the chest and the head; is that correct?

21 A. She just said she blacked out and she did not remember
22 anything until two days later.

23 Q. Therefore, did not recall seeing that lineup before;
24 is that correct?

25 A. Yes, yes.

1 Q. I mean, that's what you took out of that, is that
2 correct?

3 A. Correct, that's all I took.

4 Q. That single photograph that Mr. Wehman showed you of
5 Mr. Stokes appearing to be in some jail garb, that's not a
6 photograph that law enforcement created or showed to Ms. Pitts,
7 is it?

8 A. No.

9 Q. And Mr. Wehman asked you about showing that lineup to
10 a neighbor, Mr. Dodd. Do you recall that question?

11 A. Yes.

12 Q. And then also to Nikia's daughter, Malaya, is that
13 correct? It's true that neither one of them witnessed what
14 happened to her out in that parking lot; is that correct?

15 A. That's correct.

16 Q. So they were not eyewitnesses to what occurred the
17 night of September 1st of 2016; is that correct?

18 A. Correct.

19 Q. The evidence that you presented to the magistrate,
20 looking back at the warrants, is that all -- as far as your
21 knowledge of the investigation, do you believe that to be
22 truthful evidence that was presented to the magistrate?

23 A. Absolutely.

24 Q. Evidence that was presented at the preliminary
25 hearing, yet again, truthful evidence?

1 A. Yes.

2 Q. You were subject at that point in time to
3 cross-examination. I mean, Mr. Wehman at the preliminary
4 hearing could have asked you any questions he wanted to at that
5 point in time; is that correct?

6 A. That's correct.

7 Q. And as far as you know, you had indicated you don't
8 believe you were the witness that presented evidence to the
9 grand jury; is that correct?

10 A. That's correct.

11 Q. Do you have any knowledge of any false evidence being
12 presented to the grand jury, to your knowledge?

13 A. No, sir.

14 Q. Is it your belief, Detective Weaver, that you
15 presented to each of those steps to that magistrate for the
16 warrant, to the preliminary hearing, and what was presented to
17 go to the grand jury, was evidence that proved probable cause
18 in this case, that he more probably than not committed these
19 offenses?

20 A. Yes.

21 MR. SORENSON: That would be all I have as to this
22 issue, Judge.

23 THE COURT: Anything further?

24 MR. WEHMAN: No, Your Honor.

25 THE COURT: Thank you, sir.

1 Sir, next witness.

2 MR. WEHMAN: Judge, that would be the only witnesses I
3 would have. I believe it's the only witness that would have
4 relevant information as to my motion for probable cause.

5 Judge, based on the testimony that was taken, I
6 believe that there was a defective probable cause examination
7 at both the warrant and the preliminary hearing stage, and in
8 addition, at the grand jury stage as well.

9 The only evidence that probable cause rests on is a
10 September 6th, 2016, identification that I passed up to the
11 Court. That is a photo lineup that Detective Weaver stated
12 that he took from Ms. Nikia Pitts. He took that lineup after
13 being presented by a photograph of my client in obvious jail
14 attire. Now, I am not here arguing the *Biggers* aspect of my
15 pretrial motions, but that is the basis of their probable cause
16 evidence.

17 Now, what wasn't testified to, based on the substance
18 of the warrant, or it wasn't testified to that it was
19 supplemented, or wasn't testified to at the preliminary hearing
20 and is not in the grand jury summary notes, and based on the
21 testimony of the other two hearings, I doubt it would have
22 been, is that the victim originally identified two other
23 suspects from the exact same photo lineup and had failed to
24 identify the defendant. It was not testified to at any of
25 these hearings that the victim gave drastically different

1 descriptions of the perpetrator.

2 It was testified to that there were "I don't know him"
3 was one of the descriptions. "He may have been the father of
4 my children", then "I've seen him walking down my road." Those
5 vacillations were not presented at the time of the probable
6 cause determination.

7 I have a doctor coming, who is not available until
8 tomorrow. But the detective did mention that he found out
9 today that the victim was intoxicated at the time of this
10 incident. And that doctor will be testifying to that tomorrow.

11 Two other witnesses were shown the same photo lineup
12 and picked out different suspects. The State mentions that
13 they weren't eyewitnesses to the crime. But their testimonial
14 value must have been seen by Detective Weaver or he would not
15 have shown them the photographic lineups.

16 They told law enforcement that they had seen someone
17 that matched the description in the area the days leading up to
18 this incident. Were shown photographic lineups. They picked
19 the same photographs that the victim did at the hospital. That
20 was not testified to.

21 And the victim gave drastically different descriptions
22 of the incident. At one point, there's a knife and a gun.
23 Another point, there's two knives. And then we end up with a
24 steak knife and a butcher knife.

25 And that September 6th identification is inherently

1 unreliable due to the nature of the photograph that was
2 presented to her. It's a photograph of the defendant -- or not
3 presented to her, the one she presented to law enforcement.
4 Law enforcement did not give that to her, but she handed it to
5 law enforcement. And, essentially, they traded her that for
6 the photo lineup where she then selects him. That makes that
7 identification inherently unreliable. The nature of that
8 photograph was not testified to. It's not in the warrant. It
9 wasn't testified to at the preliminary hearing.

10 I understand that the officer is subject to ,
11 cross-examination, but at the same time, he's required to
12 present his probable cause, and we are not required to ask any
13 questions to flush out anything further. He testified that
14 there was no identification made. It was not specified that
15 there was an identification made and it was of two different
16 people.

17 Based on all of these points that were not made to any
18 finder of probable cause, I don't believe that those finders
19 had the adequate information necessary to make the appropriate
20 decision. Based on the testimony that's been presented today,
21 I don't think there's enough -- if they had heard that
22 information, I don't think that they would have made a finding
23 of probable cause.

24 The only thing linking Mr. Stokes to this crime is an
25 identification of a witness who was inebriated at the time of

1 the incident, who makes a wrong identification of two
2 additional -- of two different people, whom two other witnesses
3 that would have at least have said that they had seen someone
4 matching the description of the area also not picked. It is
5 not until the victim is shown a photograph of my client in jail
6 attire that she's able to identify him.

7 Absent any physical evidence, I don't think that any
8 finder of probable cause would say that the State has
9 sufficient evidence. And for that reason, I'm asking the Court
10 to do an examination as to whether probable cause exists. And
11 to find that it not and to dismiss these indictments.

12 THE COURT: All right. Mr. Sorenson.

13 MR. SORENSON: Thank you. May it please the Court. I
14 would start off by pointing out that at preliminary hearings,
15 grand jury presentations are not full-blown trials. I think
16 Mr. Wehman wants them to be treated that way, where every piece
17 of evidence possibly related to the case is presented at those
18 hearings. The purpose of the preliminary hearing is to
19 establish probable cause. I believe that was done in this
20 case. And I believe it was done at all three steps that Mr.
21 Wehman has talked about where -- all this other stuff he's
22 bringing up is obviously stuff subject to cross-examination and
23 ultimately would be a jury issue to determine the credibility
24 of the victim and of her identification.

25 But the mere fact that she did, when presented with a

1 photographic lineup, indicated to Detective Weaver she had no
2 recollection of ever even talking to law enforcement at the
3 hospital due to, I submit, the injuries she suffered and the
4 medication that she was administered in the hospital that
5 night, that it was appropriate for Detective Weaver to show
6 that lineup to her again.

7 I mean, the fact that she picks the defendant out and
8 not one of the other two pictures that she apparently had
9 gestured to six, five nights earlier, I think shows the fact
10 that she did not have any recollection of that five days
11 earlier. And that, ultimately, probable cause was presented.

12 I mean, Mr. Wehman, as Your Honor indicated, we have a
13 seven-page motion that he's filed, mostly citing cases from
14 other circuits. I think the first South Carolina case that I
15 come up on here that he references in his argument earlier
16 isn't even -- it's a South Carolina appellate court unpublished
17 opinion citing cases from other circuits or from another
18 circuit.

19 THE COURT: Which case is that?

20 MR. SORENSON: That would be *Padgett vs. City of*
21 *Greenwood* that he referenced in his initial argument to you on
22 page 4. It's listed in here as an unpublished opinion. I
23 don't know if that's accurate or not. I haven't looked it up,
24 but talking about eyewitness identification.

25 I mean, Your Honor, has said you've been doing this 42

1 years. I've been doing it not quite that long. I've been
2 doing it for over 20. And have never had this, literally go
3 back and basically have to do a prelim prior to trial.

4 I think at the end of the day, as I indicated from the
5 outset, that Your Honor is going to have to make a
6 determination, obviously, a whole lot larger standard than just
7 probable cause to get us past the directed verdict. But I also
8 note just looking at just the ethical rules, rules of
9 professional conduct, I mean, I have a responsibility as a
10 prosecutor to refrain from prosecuting a charge that I know is
11 not supported by probable cause.

12 So I assume they are alleging that I'm violating that
13 by going forward on this case. And I would submit to the Court
14 that that is not true. I think we have a victim that has made
15 an identification of this defendant, that she was sure of that
16 identification. And there is corroborating evidence based on
17 the description she gives, the location of where he is found
18 six days later, the items he's found with that corroborate
19 that. And I do think there was probable cause from the outset
20 and there is still probable cause today.

21 THE COURT: Yes, sir.

22 MR. WEHMAN: In my motion, I cite -- and the solicitor
23 is right, I told the Court from the outset, this is a case of
24 first impression in South Carolina. However, as to the
25 identification, the Second Circuit has found that conflicting

1 eyewitness identifications is viewed as a factor that cut
2 against a finding of probable cause when one identification was
3 of limited value. And it also links or references *Perry vs.*
4 *New Hampshire*, United States Supreme Court, that says study
5 after study demonstrates that eyewitness recollections are
6 highly susceptible to distortion by post event information or
7 social cues.

8 And it cites these studies that are done that our
9 Supreme Court cites and finds has value that says, when
10 witnesses who are encountered with an innocent person's photo
11 in initial identification procedure, were more likely to
12 misidentify different photo of them in a second procedure, even
13 if they did not misidentify them in the first procedure. But
14 the effect is especially strong if they are also misidentifying
15 the person in the first procedure.

16 This is nothing that I can point to a South Carolina
17 case. But I can point to other circuits who are seeing this
18 issue. And it have ruled that these identification issues are
19 relevant and are dispositive at times when it comes to probable
20 cause determinations, especially in cases such as this one
21 where the identification is the only evidence in the case. The
22 solicitor just listed that he's found six days later in the
23 area, that he had knives that are not forensically linked to
24 the incident. These are not -- the only strong evidence that
25 they would purport to have would be this identification. That

1 is what was presented at the probable cause determinations, was
2 that they had an eyewitness identification that identified
3 Mr. Stokes.

4 And all of the information that would give the
5 probable cause determiner the information they need to make a
6 determination as to whether or not that was reliable was
7 omitted. Those things were not said to them. They could not
8 make a proper determination whether to find that identification
9 reliable. And as such, this Court is entitled to review and
10 make a finding otherwise, which I believe the facts of this
11 case warrant.

12 THE COURT: And you want me to review it based on what
13 you presented?

14 MR. WEHMAN: That's correct. I have a copy of the
15 preliminary hearing for the Court's review, if you would like
16 to review it. I passed up the warrants. I have the grand jury
17 summary if the Court wants that as well. I also have passed up
18 my motion, which has various case law cited within.

19 THE COURT: As I said earlier, I haven't had a chance
20 to review your motion, six-page motion. So I will review it
21 and tell you what I think. I can tell you, just based on what
22 you've said up to this point, that this case is then in this
23 court as a result of an indictment returned by the grand jury.
24 It's not here based on a warrant that was presented to the
25 magistrate. And that's a hurdle that you will have a hard time

1 getting across, even assuming that most of what you say is
2 true. But I'm going to review the motion and see where we go
3 from there. It's extremely unlikely that I'm going to agree
4 with you that this should be dismissed, but I need to review
5 what you submitted.

6 MR. WEHMAN: Thank you, Your Honor.

7 THE COURT: That gives me my nighttime reading.

8 What's next?

9 MR. WEHMAN: The final motion will be a *Biggers*
10 motion, Your Honor, to suppress the identification that we've
11 been referencing.

12 THE COURT: All right. Ready to go with that?

13 MR. SORENSON: Yes, sir. May it please the Court,
14 Your Honor.

15 THE COURT: Yes, sir.

16 MR. SORENSON: The State would call Nikia Pitts.

17 NIKIA PITTS,

18 having been duly sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. SORENSON:

21 Q. Good morning, Ms. Pitts. How are you doing?

22 A. Okay.

23 Q. You need to make sure you keep your voice up nice and
24 loud for us. Okay? Will you tell the Court how old you are?

25 A. 30.

1 Q. How many children do you have?

2 A. Four.

3 Q. How old are your children?

4 A. I have a 12-year-old that's about to turn 13 in

5 [REDACTED]. I have a 9-year-old, 10-year-old and

6 four-year-old.

7 Q. And what do you do for a living, Ms. Pitts?

8 A. I work at T-Mobile.

9 Q. How long have you worked for T-Mobile?

10 A. Over five years now.

11 Q. And back on September 1st of 2016, where were you
12 living at that time?

13 A. [REDACTED].

14 Q. And that's in the Robynwyn subdivision in Summerville;
15 is that correct?

16 A. Yes.

17 Q. How long have you lived there?

18 A. We had just moved there about two months in. We had
19 just moved in there, between two and three months that we were
20 just there.

21 Q. Prior to September 1st of 2016?

22 A. Yes, I believe we moved in in August.

23 Q. And that's a townhome that you were living in?

24 A. Yes.

25 Q. I now want to turn your attention, Nikia, to the

1 evening of September 1st. Do you remember what you were doing
2 around 8:30 to 8:45 that evening?

3 A. Around that time, the exact time, I am not familiar
4 with the exact time, but I know around that time, I was just
5 getting home from the store with my kids. And we were -- or I
6 had shortly just got back from the store, getting something
7 with my kids. Came back to the townhome and we were unloading
8 groceries inside of the house.

9 Q. Okay. And let me ask you. When you were at home that
10 evening, had you had anything to drink that evening that you
11 recall now?

12 A. Yes.

13 Q. Ultimately, did there come a time that you went
14 outside for some reason?

15 A. Yes. There was a time that I had to -- my daughter's
16 birthday party was coming up. I was having a conversation with
17 her dad about her surprise party. I didn't want her to hear
18 what we had planned. Her birthday was [REDACTED]. So we
19 wanted to surprise her. I went outside to have a cigarette and
20 talk to him about what we were planning on surprising her for
21 her birthday for.

22 Q. Where did you go when you went outside to talk to your
23 daughter's father?

24 A. Inside of my car, parked in the front.

25 Q. I'm going to talk to you in a few minutes about the

1 injuries that you assert you sustained that evening. But let
2 me kind of -- before I get into that, tell the Court, do you
3 have a clear recollection or a clear memory of what occurred
4 outside your home that evening?

5 A. Yes.

6 Q. And tell the judge. You go outside. Are you on the
7 phone with your daughter's father?

8 A. Yes.

9 Q. And tell the judge what happened then as you are
10 sitting out in your car that evening?

11 A. That evening, I'm sitting in my car, and I have him on
12 speaker phone. I was sitting on the driver's side of my car.
13 And I was smoking a cigarette. I don't like to smoke in front
14 of my kids, so I was outside smoking my cigarette while we were
15 planning on her birthday party. That particular night, I
16 noticed Tyreece walking up the street. This is someone that I
17 have seen a few times walk around the neighborhood. We are
18 fairly new to the neighborhood. So I wasn't, you know, sure
19 about it being -- you know, where we were staying. I am a very
20 people person. So if I see someone walking in the area,
21 normally, I look up and say hi or I address them head on.

22 But I remember seeing him a few times prior to before,
23 but he was always walking. Where my townhome is, there's a
24 road that you come from Robynwoods Way. And there are trees
25 that's in front of my townhome that back off to a trail.

1 That -- normally that -- normally when I see that individual,
2 Tyreece, I saw him walking down the street, a couple of times
3 he would, you know, look at me and wouldn't say anything, or he
4 was playing music on his phone, he would walk by, but he would
5 typically walk behind the cars parked in front of the townhome
6 and then walk into some woods.

7 That particular night, he walked in front of my car,
8 which had me on guard, because he's never -- like, all the
9 times that I've seen him walk around, he always went around the
10 cars and walked through some wood trails that way. He never
11 came directly in front of the actual house. So whenever I saw
12 him, he looked and turned and looked at me whenever he glanced
13 inside, looking towards me, inside of the car. And then he
14 kept walking by.

15 At that time, I thought that it was alarming for me to
16 be able to see him walk by, you know, so close to the house,
17 because he normally never walks that close. So it was alarming
18 to me, but I really didn't think anything of it, because I'm
19 thinking this is a young kid. You know, I don't know why he
20 did that at that time, so I just kept talking to my child's
21 father about what was going on with the party.

22 Shortly after that, a few, I would say maybe like a
23 minute less, he comes around, he walks around the car. He goes
24 down and he walks through the cars and somehow circles back
25 next to where I was parked on the driver's side. At that

1 point, he came over. And he had two knives in his hands, one a
2 butcher knife and one a steak knife. His hands were crossed
3 like this. And I do remember seeing the actual knives crossed.
4 And I remember his deep voice, which I thought, like I said
5 before, he was a young guy, so I thought that, you know, how
6 does this young boy have such a deep voice. I was shocked. I
7 don't know what's going on at this moment. He has two knives
8 crossing in his hand.

9 And next thing he does is ask me, come up off your
10 purse. And the first thing I immediately did was just let him
11 know, I put my hands up, please, don't hurt me that, night I
12 was in the car. And I remember I said, you know, please don't
13 hurt me, if you need anything, please don't hurt me, I have
14 kids. At that moment, he came -- he said right to me, I don't
15 give an F about your kids, but really said the word.

16 At that moment, I grabbed over and grabbed my purse,
17 which was on the right side, because we were just coming from
18 the store and everything. So my purse was on the right side.
19 And I grabbed over and reached over and gave him my purse. He
20 took my purse.

21 And at that moment, I already saw the knife
22 beforehand. But for some reason, I'm not sure if my body went
23 into shock, it felt like it was a punch in my face. So I'm
24 thinking, you know, logically, I don't know what's going on,
25 but I know that it feels like I just got punched in my face.

1 And then he reaches in and stabs me in my chest as well. He
2 reached in. I had my phone on my lap. And I was afraid to say
3 anything or blow the horn, because I didn't want my kids to
4 come outside and hear, you know, me screaming or anything. And
5 he's attacking me. I didn't want them -- I was scared for them
6 to have to come outside and see me like that.

7 And so he reached in and grabbed my phone off my lap
8 also. So I had no phone. I had nothing. He took my purse and
9 everything. At that point, I looked down, and I saw that I had
10 a knife still -- knife blade still stuck inside of my chest.
11 And once I saw him run away, which he turned back and looked at
12 me again, once I turned -- once I saw him turn around and he
13 ran off, that's when I was like, okay, now I can be able to go
14 inside of my house and see -- you know, go and call the police.

15 My first instance, before going into the house is --
16 because I had my kids inside my house. It was just us there by
17 ourselves. First thing they are going to do when they see
18 their mom come in is see me with, you know, blood coming down
19 my face and a knife in my chest. So I didn't want to scare my
20 kids. So I took the knife out of my chest and then threw it on
21 the ground before going inside the house. And I tried to cover
22 up my face.

23 The next thing is, I go inside of the house. My
24 daughter, she starts screaming. My kids start screaming.
25 Everybody is screaming. And I'm just trying -- I locked the

1 door and telling them to calm down, to calm down, just be calm,
2 mommy is going to be okay, just calm down. I told my daughters
3 to call the police and just have the police, call them and tell
4 them that they need to come here, and call your dad and tell
5 him that -- you know, call your dad also and tell him he needs
6 to come as well.

7 Shortly after me trying to calm the kids down, my
8 daughter was saying she didn't have -- she was, like, mom, my
9 phone is dead. And I was like, it's okay, it's okay, wait
10 until you charge your phone, and as soon as you charge your
11 phone, just call the police.

12 I went to the back room of the townhouse where the
13 master suite is, and I went to the bathroom, and I looked at my
14 eye. And I saw a cut and I saw blood coming down, but I didn't
15 think that it was as deep, as bad as it was. I just saw blood
16 coming down. At that moment, my only concern was protecting my
17 kids and making sure that they were okay. And they were
18 screaming and crying.

19 And then after me going inside the bathroom and just
20 trying to wipe off my face, after that, I totally blacked
21 out.

22 Q. Okay. All right. Let me back up and just ask you a
23 couple of questions kind of about what happened outside. Okay?

24 A. Okay.

25 Q. You testified about seeing this individual walk kind

1 of in front of your car. Did you get a good look at his face
2 at that point?

3 A. Yes.

4 Q. Let me ask you. It's dark out outside?

5 A. Yes.

6 Q. Was your porch light on?

7 A. Yes.

8 Q. Anything obstructing your view of the person's face at
9 that point in time as he walks in front of your vehicle?

10 A. No. When he turned and looked, I saw his whole face.

11 Q. And then the person that came back that had the two
12 knives, any doubt in your mind that's the same person that had
13 walked in front of your vehicle?

14 A. Yes. I knew that that was the same person because I
15 looked up whenever he said -- whenever I told him, don't hurt
16 me, please, I have kids, I looked up at him. And I'm not sure
17 if that's what triggered him to stab me, because I saw his
18 face, because I had already given him my purse. But, yes, I
19 did see a clear view.

20 Q. And is there any doubt in your mind that that person
21 that you saw, that you recognized him as being somebody you had
22 seen out in your neighborhood, any doubt in your mind as to
23 that?

24 A. I knew that that was the same guy that was walking
25 around the neighborhood before.

1 Q. And you had described him kind of throughout your --
2 when you were testifying earlier as being a young male; is that
3 correct?

4 A. Uh-huh.

5 Q. White male, black male?

6 A. Black male.

7 Q. And you said he had a deep voice?

8 A. Yes. He had a very deep voice.

9 Q. That you had seen him walking in your neighborhood on
10 multiple occasions before; is that correct?

11 A. Yes.

12 Q. And what else do you recall about him as far as
13 physical build?

14 A. He was really skinny. I remember he was really slim,
15 really tall. I'm not sure the actual height, but he was really
16 tall, skinny guy. At that time, he had, like, little dreads
17 that were on top of his head. And, like I said, he had a deep
18 voice.

19 Q. Now, you testified a few moments ago, Nikia, that you
20 ultimately ended up kind of blacking out at your townhome?

21 A. Yes.

22 Q. Do you remember the ride to the hospital in the
23 ambulance?

24 A. No. The only thing that I remember is, when I woke
25 up, at one period of time, getting on the ambulance, I kind of

1 woke up and I was on the ambulance bed. And I woke up and saw
2 lights. But after that, I went right back out.

3 Q. Do you remember arriving at M.U.S.C.?

4 A. No, sir.

5 Q. Do you remember at any point at the hospital at
6 M.U.S.C. speaking with a female Summerville police officer?

7 A. No, sir.

8 Q. Do you remember that night that you were stabbed any
9 officers with Summerville showing you any photographs at the
10 hospital?

11 A. No, sir.

12 Q. So you had said that your kind of last recollection
13 was being loaded in the ambulance, just briefly kind of coming
14 to?

15 A. Yes, just briefly.

16 Q. What's the next thing that you recall after that,
17 after being loaded in the ambulance?

18 A. The next day that I recall, it was about two -- it
19 felt like it was about two or three days later on. I woke up
20 in the hospital. And I went into a shock mode, because I woke
21 up and all I saw was me in a hospital bed. And the first thing
22 I did was freak out, where is my kids, and I just started
23 repeating, where is my kids, where is my kids. And they were
24 like, calm down, your kids are okay, everything is going to be
25 okay.

1 Q. Did you ultimately learn from talking to the doctors
2 what injuries you had suffered?

3 A. Later on, I did.

4 Q. You learned you had been stabbed in the chest?

5 A. Yes, I learned that I had been stabbed in my chest and
6 my eye.

7 Q. And that you had suffered a brain injury?

8 A. Yes.

9 Q. Did you know about how many days you were in the
10 hospital?

11 A. No, sir.

12 Q. Let me ask you this. On September 6th of 2016, so
13 five days later, do you remember meeting with Detective
14 Weaver --

15 A. I do remember.

16 Q. -- at your townhome?

17 A. Yes.

18 Q. Had you talked to any police officers prior to that
19 that you recall, that you remember?

20 A. No, sir.

21 Q. And so on September 6th when you met with Detective
22 Weaver, did you tell him what you recalled happening that
23 night?

24 A. Yes.

25 Q. So by that point in time, on September 6th of 2016,

1 did you have a clear recollection in your mind about what had
2 happened on that night?

3 A. Yes.

4 Q. Now, I asked you earlier about law enforcement. You
5 don't recall being shown any photographs at the hospital by law
6 enforcement?

7 A. No, sir. No, sir.

8 Q. Did there come a time when somebody else showed you
9 some photographs?

10 A. After I was released from the hospital, there was
11 someone that actually showed me -- my sister actually showed me
12 photos that she had, because she was trying to figure out, you
13 know, herself as well about what was going on. She did show me
14 photos, yes.

15 Q. And out of those photographs that she showed you, was
16 law enforcement involved in that at all, to your knowledge?

17 A. No, sir.

18 Q. Did you ultimately recognize any of those photographs
19 that she did show you?

20 A. Yes.

21 Q. And, Nikia, let me show you what's been marked just
22 for ID as State's Exhibit No. 4. Do you recognize that
23 photograph?

24 A. Yes.

25 Q. Is that one of the photographs your sister showed you?

1 A. Yes, yes.

2 Q. And what did you tell your sister when you saw that
3 photograph?

4 A. That's him.

5 Q. Is that actually printed out on a piece of paper or
6 was it on any kind of electronic device, or do you remember
7 when you first saw it?

8 A. I don't remember.

9 Q. Now, on the 6th, September 6th, when Detective Weaver
10 came out to meet with you, did you tell him about the
11 photograph that you had seen that your sister showed you?

12 A. Yes.

13 Q. And did he ultimately show you that day a photographic
14 lineup?

15 A. I don't recall if it was that day, but him and another
16 officer came, another officer came.

17 Q. Let me show you what's been marked as State's Exhibit
18 No. 2 for ID. Do you remember being shown that lineup?

19 A. Yes.

20 Q. And did you ultimately pick anybody out of that
21 lineup?

22 A. Yes.

23 Q. And what number did you pick out?

24 A. No. 3.

25 Q. Is that on your initials and date and time and

1 circled?

2 A. Yes, yes.

3 Q. What's the date and time?

4 A. 9/6/16.

5 Q. And when you were shown State's Exhibit No. 2, do you
6 recall ever seeing that document prior to Detective Weaver
7 showing it to you that evening?

8 A. No.

9 Q. Or that afternoon?

10 A. No.

11 Q. Do you remember, did he tell you who to pick out of
12 that lineup?

13 A. No.

14 Q. Or suggest to you in any way who to identify in that
15 lineup?

16 A. No, sir.

17 Q. Did he tell you you had to pick somebody out of that
18 lineup?

19 A. No, sir.

20 Q. And you said you identified and circled photograph No.
21 3?

22 A. Yes.

23 Q. And tell the Court why is it that you picked No. 3.

24 A. I know that face. That's the same face that I saw
25 that night. That's the same face that I looked into before he

1 stabbed me as well. I will never forget that face.

2 Q. And, Nikia, do you see that person in the courtroom
3 today?

4 A. Yes.

5 Q. Will you point him out for the Court.

6 A. (Witness complies.)

7 Q. Seated at the defense table on the right in the white
8 shirt?

9 A. That is correct.

10 Q. Any doubt in your mind that that's the person that
11 stabbed you back on September 1st of 2016?

12 A. No, there's no doubt that it's him.

13 MR. SORENSON: Beg the Court's indulgence. That will
14 be all I have from this witness on this matter, Your Honor.

15 THE COURT: By the defense?

16 MR. WEHMAN: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. WEHMAN:

19 Q. Ms. Pitts, how are?

20 A. Okay.

21 Q. So this incident was September 1st, you said?

22 A. Yes.

23 Q. Okay. And the lineup we were just talking about was
24 on the 6th?

25 A. Yes.

1 Q. Okay. Now, let me go through some of the things that
2 you testified to with Mr. Sorenson. You said that you were
3 just getting home from the store with your children, correct?

4 A. That's correct.

5 Q. Okay. And you testified that you had finished
6 unloading groceries? How long had you been home at this point?

7 A. I don't remember.

8 Q. You don't remember?

9 A. No.

10 Q. What had you done before going to get groceries?

11 A. Just had gotten off of work, picked my kids up from
12 daycare and came home.

13 Q. So you got off work, picked your kids up from daycare?

14 A. Went to the store.

15 Q. When did you start drinking?

16 A. When I got home.

17 Q. How much did you have to drink?

18 A. I can't recall. I remember just having a cupful. I
19 remember drinking some liquor, but I can't recall how much.

20 Q. Would you be surprised to find out that you drank a
21 lot that day?

22 A. Yes.

23 Q. So you would be surprised if you had a blood alcohol
24 content of .12 at the hospital an hour and a half after the
25 accident?

1 A. Yes, that would be surprising.

2 Q. So you had a mixed drink, is that fair to say?

3 A. Normally, it would be off the rocks.

4 Q. Okay. But you don't remember that day what you had?

5 A. No.

6 Q. And that would have been before or after taking your
7 kids to get groceries?

8 A. That was after.

9 Q. So after taking the kids to get groceries, you started
10 drinking, and then went outside to get on the phone?

11 A. That's correct.

12 Q. And that's the first time you've ever mentioned that
13 to law enforcement or in any of these statements that you've
14 given, correct?

15 A. That's correct.

16 Q. Is it because you didn't remember or just didn't think
17 it was relevant?

18 A. I didn't remember.

19 Q. But now you remember?

20 A. Well, I remember having a drink, but I didn't recall
21 it being that much when they told me -- I didn't remember
22 drinking that much.

23 Q. So you do remember drinking, though?

24 A. Yes, that night, I had a cup.

25 Q. And you said that eventually you went outside and

1 started smoking a cigarette?

2 A. Yes.

3 Q. And you mentioned something interesting. You said, I
4 saw Tyreece. That's the first time you ever mentioned that
5 name, correct?

6 A. Yes.

7 Q. You've never said that in any statement?

8 A. No.

9 Q. You don't know anybody named Tyreece Stokes, do you?

10 A. I know his face now.

11 Q. But you don't know that person?

12 A. No, I don't know that person.

13 Q. Never met that person?

14 A. Never met him before.

15 Q. Now, you said that you are confident in your
16 identification; is that correct?

17 A. That's correct.

18 Q. And you don't remember meeting with Lieutenant
19 Gebhardt at your house?

20 A. No, sir.

21 Q. You don't remember telling him, when he asked who did
22 this, I don't know?

23 A. No, sir.

24 Q. You don't remember telling him it was just some young
25 black male?

1 A. No, sir.

2 Q. Would that surprise you that you said that?

3 A. It doesn't sound like I would say some young black
4 male.

5 Q. You don't think you would say that?

6 A. No. I don't recall. I don't remember anything from
7 that night. Last thing that I recall is getting on the
8 stretcher. Everything else I blacked out.

9 Q. You remember getting on the stretcher?

10 A. No. I remember being on the stretcher, waking up and
11 seeing police lights, and I went back out.

12 Q. Okay. So you don't -- you testified earlier you don't
13 remember speaking to officers at the hospital?

14 A. No.

15 Q. You don't remember Officer Boehler asking you, do you
16 know who stabbed you, and you saying no?

17 A. No.

18 Q. That would surprise you?

19 A. That would surprise me. No, I didn't say -- I don't
20 remember saying that.

21 Q. You don't remember her asking you, was it someone from
22 the neighborhood, and do you know who he is, and you just
23 saying, I just know how he looks?

24 A. No.

25 Q. You don't remember her asking, where do you usually

1 see him around the neighborhood, and you saying, I haven't seen
2 him before?

3 A. No.

4 Q. Would that surprise you?

5 A. Yes.

6 Q. You don't remember her asking, is there anything else
7 that you can tell me about him, and you saying, he's the father
8 of my son?

9 A. No.

10 Q. You don't remember saying that it was Carl Washington,
11 and then, I don't remember if it was him or not, it all
12 happened so quick?

13 A. No.

14 Q. That would surprise you?

15 A. That would surprise me.

16 Q. Okay. Do you remember at any point, whether it was
17 that night to Officer Boehler or to any of the hospital staff,
18 saying that the person was armed with a pistol?

19 A. No.

20 Q. You don't?

21 A. Remember that night? No.

22 Q. So you don't remember telling hospital staff that
23 there was a person outside of her (sic) house that she noticed
24 that was suspicious patrolling, and that you went outside to
25 see it?

1 A. No.

2 Q. And that you were stabbed and pistol whipped?

3 A. No, no.

4 Q. You don't remember saying that?

5 A. No.

6 Q. You don't remember telling Officer Boehler again later

7 on that night that he seemed familiar from the neighborhood?

8 A. No.

9 Q. Now, you also testified just now with Mr. Sorenson
10 that as he was walking by, the person turned and made eye
11 contact with you. You've never said that before, have you?

12 A. I am not -- I can't recall the -- I do remember him
13 looking at me.

14 Q. You wrote a written statement in this case, correct?

15 A. Yes.

16 Q. And you don't recall whether or not you put in there
17 whether or not he made eye contact with you as he walked by?

18 A. I don't recall.

19 Q. You also mentioned that the knives were crossed,
20 correct? That's a pretty vivid memory?

21 A. That's correct, crossed knives.

22 Q. Is there any reason why you wouldn't have mentioned
23 that in in your written statement that you gave on -- this
24 would have been September 19th?

25 A. No.

1 Q. Would it refresh your recollection to see the written
2 statement again?

3 A. I can.

4 Q. Does that look like the statement you made?

5 A. Uh-huh.

6 Q. What is the date at the top there?

7 A. 9/19/2016.

8 Q. That is your handwriting, your signature? That's your
9 statement?

10 A. That's correct.

11 Q. Would you read through there and just verify whether
12 or not you mentioned to law enforcement that statement about
13 the crossed knives?

14 THE COURT: Is that a two-page statement?

15 MR. WEHMAN: That's a four-page statement, Judge.

16 THE COURT: We will take a break while she's reading
17 the four-page statement. We will take about five minutes or
18 so.

19 (Whereupon, a recess transpired.)

20 THE COURT: You may proceed.

21 MR. WEHMAN: Thank you, Judge.

22 BY MR. WEHMAN:

23 Q. Have you had a chance to review the statement?

24 A. Yes.

25 Q. In that statement, did you mention anything about

1 knives being crossed?

2 A. No. I just said that I know he had a butcher knife
3 and a steak knife.

4 Q. You mentioned when speaking to Mr. Sorenson that you
5 were able to recognize a deep voice; is that correct?

6 A. Yes.

7 Q. Do you remember being specifically asked at the
8 hospital whether or not the assailant had a deep voice and you
9 saying no?

10 A. No.

11 Q. That would surprise you as well?

12 A. Yes.

13 Q. Now, you said that you had a purse that was taken; is
14 that right?

15 A. Yes.

16 Q. And a cell phone?

17 A. I had my cell phone that I was talking to on my phone,
18 and I had another cell phone -- I forgot the model of it, but I
19 believe it was Samsung inside of my first.

20 Q. But you had two phones at that time; only one was
21 taken?

22 A. No. One of them was inside my purse, and he took that
23 one. That one was already inside my purse. And the one that
24 was on my lap, he snatched. He went in and grabbed it off my
25 lap.

1 Q. And you also mentioned to Mr. Sorenson that after the
2 attack had happened, that the assailant turned around and made
3 eye contact with you again before you were able to get inside?

4 A. Uh-huh.

5 Q. Do you remember stating that in your written
6 statement?

7 A. I don't see it in here.

8 Q. So that's the first time where you've heard that bit
9 of information as well; is that right?

10 A. Yes.

11 Q. Now, I'm going to show you State's Exhibit 2. You saw
12 that with Mr. Sorenson?

13 A. Yes.

14 Q. And that is a copy of the lineup that you did on
15 September the 6th?

16 A. Yes.

17 Q. Okay. And you testified that you do not remember
18 speaking to Officer Boehler and doing a photo lineup?

19 A. That is correct.

20 (Defendant's Exh. 1, Lineup, was marked for
21 identification.)

22 Q. You do not remember seeing this exact lineup?

23 A. No, sir.

24 Q. Now, you don't remember telling Officer Boehler at the
25 hospital that it was suspect No. 1 or No. 2 at that time?

1 A. No, sir.

2 Q. But you do remember being shown a photograph by your
3 sister?

4 A. Yes.

5 Q. And your sister gave you that photograph because she
6 said that it was someone who was a bad person from the area; is
7 that right?

8 A. I can't recall that verbatim, but I remember her
9 showing me people around their neighborhood that went -- that
10 were known for being around the neighborhood that fit that
11 description.

12 Q. All right. But in your statement, your written
13 statement, you tell -- on the 19th, you say that -- and correct
14 me if I am wrong -- on page No. 3, that the photos that you
15 were shown were people that had a rep for doing bad things; is
16 that right?

17 A. Yes.

18 Q. This is the photograph you saw, State's Exhibit No.
19 4?

20 A. Yes.

21 Q. Of this person in a jail uniform?

22 A. Yes.

23 Q. And you handed that to Detective Weaver, or you handed
24 that to Detective Santana on September the 6th when you made
25 your second identification, correct?

1 A. Yes.

2 Q. But you said you don't remember doing that?

3 A. Between the 6th?

4 Q. Right.

5 A. I remember, after me coming from the hospital, I do
6 remember him and another detective came over to the house.

7 Q. Okay.

8 A. After I was released from the hospital, they did. I
9 don't remember any conversations at the hospital.

10 Q. Okay. Well, I'm saying, do you remember the
11 photographic lineup? Because I believe you testified earlier
12 that you did not.

13 A. The one that he showed me, the one that I circled,
14 that's the one, that is the same one.

15 Q. You remember doing that lineup?

16 A. Yes.

17 Q. And you remember showing him this photograph on the
18 exact same day?

19 A. That's correct.

20 Q. And you remember telling him that it was your sister
21 who gave it to you?

22 A. Yes.

23 Q. And you remember telling him that she told you that
24 that person had a rep for doing bad things in the area?

25 A. She showed me pictures of people that may potentially

1 have -- you know, that were -- that basically had a rep, yes.

2 Q. Rep for doing bad things?

3 A. Yes.

4 Q. If it was something different --

5 A. I can't remember.

6 Q. You don't remember speaking to your sister?

7 A. No. I do remember speaking to my sister. And I
8 remember her showing me photos. And that photo she was saying
9 that, you know, look at these guys and see if -- and that's one
10 of the photos that she showed me.

11 Q. So you said "I don't remember". What do you not
12 remember? I'm confused.

13 A. No. I remember talking to my sister about whenever
14 she asked me, as far as, you know -- I remember my sister
15 coming to me and showing me photos about the guys around that
16 area that were known for doing, yes, I guess, bad things.

17 Q. Okay. But you told the solicitor you don't remember
18 if they were pictures or if they were on the computer? You
19 don't know how you saw them?

20 A. I can't remember. I can't remember.

21 Q. How did you get this?

22 A. My sister.

23 Q. She handed it to you?

24 A. I don't remember.

25 Q. You don't know how you got that piece of paper?

1 A. No. I can't remember where she gave me the photo at,
2 but I remember her showing me the photo. I'm not sure if she
3 handed it to me or handed from cell phone and we went and
4 printed it out. I can't remember.

5 Q. Now, do you remember -- you say you don't remember
6 some of the stuff with your sister. Do you remember the number
7 of photographs she showed you?

8 A. I believe it was two.

9 Q. She showed you two?

10 A. I believe so.

11 Q. And this was one of them?

12 A. That was one.

13 Q. Okay. Same day? Different day?

14 A. I can't remember.

15 Q. You don't remember if you saw them both the same day
16 or one?

17 A. I can't remember if she said -- if it was the same day
18 that she gave it to me. I know that she was working on trying
19 to figure out who did it on her side as well. I can't remember
20 if it was all one day.

21 Q. So she was doing her own investigation?

22 A. She was just trying to see in that area who,
23 because -- yeah, that's it.

24 Q. Okay. And do you remember telling Detective Weaver
25 when you handed him this photograph: This is how I was able to

1 identify?

2 A. Yes. Well, no, I gave him that one. I said, my
3 sister gave me a photo, and this is the guy. So I contacted
4 him and told him, this is the guy; my sister gave me a photo,
5 this is the guy.

6 Q. You don't remember saying to him, the photograph is
7 how you were able to identify him?

8 A. No, I don't remember that.

9 MR. WEHMAN: I don't have any further questions, Your
10 Honor.

11 THE COURT: Redirect?

12 MR. SORENSON: Very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SORENSON:

15 Q. Do you remember -- showing you, Nikia, State's Exhibit
16 No. 2, the lineup?

17 A. That's correct.

18 Q. And you indicated that you viewed that and picked No.
19 3 out. And that was on September 6th; is that correct?

20 A. That's correct.

21 Q. Do you remember talking to Detective Weaver that day
22 and kind of telling him about what had happened and all of
23 that?

24 A. Yes.

25 Q. And then, ultimately, you give the written statement.

1 That's given a couple weeks later; is that correct?

2 A. Yes.

3 Q. That's, I believe, September --

4 A. The 19th.

5 Q. -- 19th, about 13 days later. But you do recall
6 talking to him prior to him showing you this lineup; is that
7 correct?

8 A. Yes.

9 Q. And may I approach? Let me show you this document.
10 That's Investigator Weaver's notes, the parts that's
11 highlighted in blue. Do you recall telling him that on
12 September 6th, what's highlighted in blue?

13 A. Yes.

14 Q. What is that that you told him that I highlighted in
15 his report?

16 A. That he had stated that he had two knives and that he
17 had stated that he had knives crossed sticking in her face.

18 Q. That's what you testified to earlier; is that correct?

19 A. Yes, yes.

20 Q. And back on September 1st, that evening, you've
21 testified you had seen the person before; is that correct?

22 A. Yes.

23 Q. Did you know him?

24 A. No, sir.

25 Q. Did you know his name?

1 A. No, sir.

2 Q. Know where he lived?

3 A. No, sir.

4 MR. SORENSON: That will be all I have.

5 THE COURT: Anything further?

6 MR. SORENSON: Not from this witness, Your Honor.

7 MR. WEHMAN: No, Your Honor.

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

9 MR. SORENSON: Call the next witness, Your Honor?

10 THE COURT: Yes, sir.

11 MR. SORENSON: The State calls Mike Weaver.

12 THE COURT: He's still under oath, Your Honor.

13 MICHAEL WEAVER,

14 having been previously sworn, testifies as follows:

15 RECROSS-EXAMINATION

16 BY MR. SORENSON:

17 Q. If you would, tell the Court what your background is
18 in law enforcement, how many years you were in law enforcement.

19 A. I had almost eight years in law enforcement.

20 Q. And in September of 2016, where were you employed?

21 A. Summerville Police Department.

22 Q. In capacity at that time?

23 A. I was an investigations -- I was either a detective
24 corporal or detective sergeant. I'm not sure which.

25 Q. And I think you testified earlier that you ultimately

1 were assigned as a lead investigator in this case?

2 A. Yes, I was the on-call detective.

3 Q. On the evening of September 1st, 2016, did you respond
4 out to the victim's residence on Weber Road in the Robynwyn
5 subdivision?

6 A. I did.

7 Q. And was Ms. Pitts still at the scene when you got out
8 there that night?

9 A. No. She was already taken into M.U.S.C.

10 Q. And are you -- let me just ask you. Are you familiar
11 with that area, with that neighborhood, Robynwyn neighborhood?

12 A. I am.

13 Q. And, ultimately, that night, had you become aware of
14 kind of the brief description that Ms. Pitts had provided to
15 various law enforcement officers, either at the scene or at the
16 hospital?

17 A. I was aware of a general description, yes.

18 Q. And were you aware that a steak knife had been
19 involved in this?

20 A. I knew a knife was involved. I don't know whether I
21 knew it was particularly a steak knife.

22 Q. You are aware that the blade was located out there at
23 the scene; is that correct?

24 A. The tip of the blade, yes.

25 Q. And let me ask you, from your prior kind of law

1 enforcement involvement out there in that area, were you
2 familiar with anyone who frequented that Robynwyn neighborhood
3 who matched the description that Ms. Pitts gave and who was
4 also known to carry a steak knife on him?

5 A. Yes.

6 Q. Who was that?

7 A. Tyreece Stokes.

8 Q. And as a result of that information, what did you then
9 do?

10 A. I think that night, I immediately obtained a photo
11 lineup, just because I knew the physical description, the steak
12 knife, those kinds of things just all matched up with one
13 person in that area that we had been out with quite a few
14 times. I can't recall being out with anybody else in my couple
15 years of being on patrol that ever had a steak knife. That was
16 just out of the ordinary. So I obtained a photo lineup. And I
17 believe I e-mailed it to Officer Boehler who was down at
18 M.U.S.C.

19 Q. And let me show you State's Exhibit No. 2. Is that
20 the lineup that you ultimately received?

21 A. Yes.

22 Q. And did you actually put that lineup together or is
23 it -- was there a means that you go about getting that lineup?

24 A. We send it to SLED. And from there, they obtain six
25 photographs. You send them the information about the suspect

1 that you want in the lineup. And they pick out five. I think
2 they do it from the DMV database. And that's how they create
3 the six-pack lineup.

4 Q. You got this lineup back. Is this the lineup you
5 received from SLED?

6 A. It is.

7 Q. Do you have any idea who numbers -- first of all,
8 which picture is Mr. Stokes in this lineup?

9 A. Mr. Stokes is No. 3.

10 Q. Do you have any idea who Nos. 1, 2, 4, 5 and 6 are?

11 A. No. In this case, I actually tried to get those
12 people identified. And there was no way to obtain the
13 information for those people.

14 Q. That's from a State database, basically?

15 A. Yes, sir, I contacted SLED to do that.

16 Q. All right. Now, let me ask you. Did you become
17 aware -- at your request, did somebody show that lineup to Ms.
18 Pitts that night at the hospital?

19 A. Yes, Officer Boehler.

20 Q. And you became aware that Ms. Pitts did not identify
21 the defendant; is that correct?

22 A. That's correct.

23 Q. Now, do you have any knowledge about how that lineup
24 was shown, whether it was a piece of paper or on Officer
25 Boehler's phone or tablet, or how that was done?

1 A. I believe it was shown on a phone.

2 Q. And you didn't have an opportunity to interact with
3 Ms. Pitts at all that night at the hospital, did you?

4 A. No.

5 Q. So you have no firsthand knowledge about how she may
6 have been acting or her demeanor or whether she appeared to be
7 with it or anything at that point in time?

8 A. That's correct.

9 Q. Ultimately, on September 6th of 2016, did you become
10 aware that Nikia had been discharged from M.U.S.C.?

11 A. Yes.

12 Q. And did you make contact with her?

13 A. I did.

14 Q. Where was it you made contact with her?

15 A. That was at her apartment.

16 Q. Did she at that point in time provide you an oral
17 statement about what had occurred that night?

18 A. She did.

19 Q. And you heard me question her a few minutes ago about
20 the two knives being crossed. Did she tell you that?

21 A. She did.

22 Q. And that's documented in your investigative notes?

23 A. Yes. I think it's in my report too.

24 Q. All right. Now, at some point in time in your talking
25 to her on September 6th of 2016, did you ask her whether she

1 remembered talking to any law enforcement officers at M.U.S.C.
2 the night of September 1st?

3 A. I did.

4 Q. And did she indicate to you whether she recalled that
5 occurring?

6 A. She did not have any recollection of that.

7 Q. Any recollection of being shown that photographic
8 lineup, State's Exhibit No. 2?

9 A. No, sir.

10 Q. As a result of that, did you ultimately have an
11 opportunity to show her State's Exhibit No. 2?

12 A. Yes, I showed her.

13 Q. And prior to that, had she made any comments to you
14 about anyone else showing her any photographs, specifically
15 potentially some photographs that were obtained off of
16 Facebook?

17 A. Yeah. I asked her if I could show her the photo
18 lineup after she told me she had blacked out. Before she
19 said yeah, she said she actually was shown a picture from
20 Facebook from a friend, she might have said sister, of the
21 person who committed the crime. At that point, Detective
22 Santana was my supervisor. He didn't want me to look at the
23 photograph before I showed her the photo lineup. So he took
24 the photograph, looked at it, and then I showed her the photo
25 lineup.

1 Q. And you then ultimately showed her State's Exhibit No.
2 2?

3 A. Yeah. First I read her a photo lineup disclaimer form
4 and then I showed her the photo lineup.

5 Q. Showing you what's been marked as State's Exhibit No.
6 3. Is this the disclaimer form that you are talking about?

7 A. Yes, it is.

8 Q. And did you go over that with her?

9 A. I did.

10 Q. If you would go over with the Court how -- what it was
11 that you went over with Ms. Pitts prior to showing her State's
12 Exhibit No. 2?

13 A. Should I read it?

14 Q. However you did it with her. If you read it, then
15 read it.

16 A. It's a short paragraph. We ask her to look at the
17 photographs. The facts that the photographs --

18 (Whereupon, the court reporter asks the witness to
19 slow down.)

20 THE COURT: When people read, they forget.

21 THE WITNESS: Yeah, I forget. Sorry.

22 THE COURT: Just slow down.

23 A. You will be asked to look at a group of photographs.
24 The fact that the photographs are shown to you should not
25 influence your judgment. You should not conclude or guess that

1 the photographs contain the picture of the person who committed
2 the crime. You are not obligated to identify anyone. It is
3 just as important to free innocent persons from suspicion as to
4 identify guilty parties. Please do not discuss this case with
5 other witnesses nor indicate in any way that you have
6 identified someone.

7 And then bottom of this paragraph, there's a place for
8 a signature, the date, the time and the officer that showed the
9 photographic lineup.

10 Q. Okay. And at that point in time, did you show her
11 State's Exhibit No. 2?

12 A. I did.

13 Q. Let me ask you. Did you kind of review this before
14 you showed it to her when you got it from SLED?

15 A. Yes.

16 Q. And do the six photographs, in your experience, appear
17 to be fairly similar?

18 A. Yes, that's -- yeah.

19 Q. There's none of them that jumps out as being
20 significantly different from any of the other photographs, are
21 there?

22 A. No, that's pretty similar.

23 Q. And as a result of showing her State's Exhibit No. 2,
24 was Ms. Pitts able to identify anybody from State's Exhibit No.
25 2?

1 A. Yes. She identified No. 3, which is the defendant.

2 Q. And did she -- if you would, tell the judge, did
3 she -- kind of, what was her reaction when shown that
4 photographic lineup?

5 A. Whenever I showed her the photo lineup, she got
6 emotional. She looked scared. Her breathing increased.
7 Things, from my experience, are pretty common from somebody
8 that's made identification of these lineups and seen the person
9 who committed the crime against them.

10 Q. Did you in any way suggest to her who to pick out?

11 A. No.

12 Q. Let me ask you this. Had you told her anything about
13 the fact that she supposedly had narrowed it down to photos 1
14 and 2 at the hospital, did you talk to her at all about that
15 prior to showing her the lineup?

16 A. No. The only thing that was discussed about the photo
17 lineup was, did she remember -- actually, I don't think it was
18 that. I said, do you remember speaking with officers. And
19 then I asked her if she remembered looking at the photo lineup.
20 And she didn't remember any of it.

21 Q. Ultimately, she circled, initialed and date that
22 lineup? Is that her handwriting on that on State's Exhibit 2?

23 A. Yes. She circled No. 3. It looks like the signature.
24 I can't read it.

25 Q. All right. And, ultimately, sometime after her ID'ing

1 No. 3 in that lineup, did you have an opportunity to actually
2 see the photograph then that she had shown Detective Santana?

3 A. Yeah. After she identified him, we spoke for a brief
4 time and then she gave me that photo that was given to her by
5 her sister.

6 Q. And showing you State's Exhibit No. 4, is that then
7 the photograph that you were provided by Ms. Pitts?

8 A. Yes.

9 Q. And is that, from your knowledge of the defendant,
10 Tyreece Stokes, does that appear to be Mr. Stokes in that
11 photograph?

12 A. That appears to be him.

13 Q. It's not the same photograph that's in the lineup, is
14 it?

15 A. No.

16 Q. Yet again, were you or anybody law enforcement-wise
17 involved at all in showing that single photograph to Ms. Pitts?

18 A. No, not to my knowledge.

19 Q. Now, as a result of that, did you obtain warrants
20 ultimately for Mr. Stokes?

21 A. Yes, I did.

22 Q. And you are aware that he was arrested the following
23 day, September 7th?

24 A. Yes.

25 Q. And that was in Robynwyn subdivision; is that

1 correct?

2 A. Yes, it was.

3 Q. And did he, back then on September the 7th of 2016,
4 match the description that Ms. Pitts not only gave law
5 enforcement back at the time, but also that she testified to,
6 kind of a tall, skinny black male?

7 A. Yes, sir.

8 Q. Deep voice?

9 A. He does have a very deep voice.

10 Q. Little twists in his hair?

11 A. He did.

12 Q. Hair shorter than it is today, back then?

13 A. Yes, much shorter.

14 Q. And were you aware that he was armed with or found
15 with two knives either on him or in the vicinity of where he
16 was arrested?

17 A. Yes, that was brought to my attention that day.

18 Q. She identified No. 3 in that lineup. Did she indicate
19 if she was certain about that?

20 A. Oh, yeah, she was -- yes, she was positive.

21 MR. SORENSON: That would be all I have for this
22 witness.

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. WEHMAN:

1 Q. Now, you testified that at the time you applied for a
2 SLED photographic lineup, all you knew was that a knife was
3 involved and a brief description of the suspect?

4 A. Yes.

5 Q. And that prompted you to do a photographic array?

6 A. Absolutely.

7 Q. Okay. And it's been testified earlier that Nos. 1 and
8 2 were identified; is that correct?

9 A. Yes.

10 Q. And you were made aware of that from the hospital?
11 Officer Boehler called you and let you know?

12 A. That's correct.

13 Q. And the next contact that you had would have been on
14 the 6th when you spoke to Ms. Pitts?

15 A. Yes. That would have been the next contact with Ms.
16 Pitts.

17 Q. Okay.

18 A. Yeah.

19 Q. All right. Now, you testified to a number of things
20 regarding that confrontation where she was shown the second
21 photographic lineup. And maybe I misheard you. Did you
22 testify that she told you about the Facebook picture after she
23 saw the identification or before she sees the lineup that she
24 hands you that photograph or Detective Santana?

25 A. I asked Nikia if she remembers speaking with the

1 officer. She said no. I asked her if she remembered looking
2 at the photographic lineup at the hospital. And Nikia stated
3 she did not remember anything. I advised Nikia I would like to
4 show her the photo lineup again. Before Nikia stated yes, she
5 told me she was shown a picture from Facebook from a friend,
6 who I think was her sister, from a friend person of the person
7 who committed the crime. Detective Santana looked at the
8 picture, but I did not. I provided Nikia with a photo stock
9 disclaimer form, which she signed. And that's when she
10 identified No. 3.

11 Q. So you were at her house and tell her or ask her if
12 she remembered doing a photo lineup at the hospital?

13 A. Yes.

14 Q. And she told you she did not remember doing that; is
15 that correct?

16 A. Yes.

17 Q. Okay. At that point, you tell her you want her to
18 look at a photo lineup and she says -- before saying yes, she
19 says, I have this picture and it's of the person who did this,
20 correct?

21 A. Yes.

22 Q. You testified earlier that Detective Santana did not
23 want you to see that photograph.

24 A. That's correct.

25 Q. Why did he not want you to see that photograph?

1 A. Because, in his opinion, he thought the photo lineup
2 would be tainted at that point if I saw a photograph from
3 her.

4 Q. According to Detective Santana, you seeing that
5 photograph, that picture, would have tainted your lineup?

6 A. Yes, because he thought, in my opinion, it would have
7 favored -- put some opinion in my head about it.

8 Q. Okay. So he saw the photo?

9 A. Correct.

10 Q. And then you gave Nikia Pitts the lineup?

11 A. Yes.

12 Q. And she circles?

13 A. Yes. She was read photographic lineup array and then
14 she was provided photo lineup, that's correct.

15 Q. But he was scared that your seeing, not his seeing,
16 but your seeing would have tainted the lineup, because of that
17 picture?

18 A. Yeah. I don't know why he did it that way.

19 Q. Okay. Now, you have testified a couple of times you
20 did not respond to M.U.S.C. that night, correct?

21 A. Correct.

22 Q. So you were in the courtroom when Ms. Pitts testified,
23 correct?

24 A. Yes.

25 Q. Did you review Officer Boehler's body camera of her

1 interaction with Ms. Pitts?

2 A. I don't remember. If I did, I don't remember anything
3 on there.

4 Q. So you don't specifically recall Ms. Pitts saying that
5 it was her child's father who did this?

6 A. No.

7 Q. You don't remember her saying, I'm unsure of who did
8 this?

9 A. Yeah, I don't know. I guess I didn't get anything out
10 of it that I put in my report.

11 Q. Well, the things that were not helpful, you didn't put
12 in your report, correct, like that she didn't identify or that
13 she didn't see or say that it was her child's father? But the
14 things that do help you, you did put that it was a person from
15 the area who was known or that she had seen before, correct?
16 That's in there?

17 A. Well, yeah, I believe in the preliminary hearing, also
18 I testified to that she identified somebody else.

19 Q. Did you review Officer Gebhardt's body camera? He's
20 the first person on scene?

21 A. I might have. I probably -- like I said, I don't
22 remember. I don't want to say something that I don't know.

23 Q. So you don't remember the exchange that she had with
24 him when he arrives in the home right after this incident?

25 A. No.

1 Q. You testified that you reached out to SLED to try to
2 find out who person No. 2 was?

3 A. Yes. Actually, I asked them if people in these photo
4 lineups, other than the suspect, could be identified, if they
5 would have a way of identifying them.

6 Q. Because at the point that you drew your arrest
7 warrant, right up to the point you saw that second photographic
8 lineup, you had Ms. Pitts, who had circled No. 2, and you had
9 two other people that lived right there that had also
10 identified No. 2 as possibly being someone that could have been
11 involved, correct?

12 A. No. They identified him as someone that they think
13 they've seen walking in the neighborhood.

14 Q. And the identification you got from Ms. Pitts was
15 someone that I've seen walking down in that neighborhood,
16 right?

17 A. When that she identified No. 1 and No. 2?

18 Q. She has said multiples times, she's familiar with the
19 person from the neighborhood, is what she said?

20 A. Right. Okay.

21 Q. So you thought it would be relevant to have them look
22 at the photo lineup to see if the same person would have been
23 the person that they saw walking in the neighborhood?

24 A. Yes, absolutely, tying to that particular area,
25 correct.

1 Q. At that point, finding out who No. 2 is is somewhat
2 important?

3 A. Actually, I think the Solicitor's Office had me do
4 that way later in the investigation.

5 Q. At that point, you didn't try to figure out who No. 2
6 was?

7 A. No.

8 THE COURT: Are we still on *Jackson v. Denno*?

9 MR. WEHMAN: We are, Your Honor. I will get to it.

10 BY MR. WEHMAN:

11 Q. Just to summarize, the night of the incident, you had
12 a photographic array where somebody else was identified other
13 than Mr. Stokes?

14 A. Yes.

15 Q. Five days later, you have a second photographic array
16 with a single photo of Mr. Stokes in jail attire, and
17 Mr. Stokes is selected?

18 A. He was positively identified as THE person who
19 committed the crime, yes, sir.

20 Q. And Detective Santana did not want you to see that
21 photograph, because he thought if you had seen the photograph,
22 the lineup would be tainted, but by you not looking at it, he
23 thought that would cure that?

24 A. I guess. I don't know.

25 MR. WEHMAN: No further questions, Your Honor.

1 THE COURT: All right. You may step down. I think
2 that brings us to the end of this day. What's next?

3 MR. SORENSON: We have potentially two other witnesses
4 on this issue in the morning, potentially.

5 THE COURT: All right.

6 MR. SORENSON: If not, there may be witnesses that
7 they call.

8 THE COURT: Pardon?

9 MR. SORENSON: If we don't call them, I suspect the
10 defense may. So possibly two more witnesses on this issue.

11 THE COURT: All right. We will start at 9:30 tomorrow
12 morning.

13 (Whereupon, a recess transpired.) THE COURT: Good
14 morning. Ready to go?

15 MR. WEHMAN: Yes, Your Honor.

16 MR. SORENSON: Yes, sir.

17 THE COURT: All right.

18 MR. SORENSON: I believe with regards to the *Neil v.*
19 *Biggers* issue, that's all the State would have, Your Honor.

20 THE COURT: All right. Anything further?

21 MR. WEHMAN: Judge, I would have witnesses that I
22 would call.

23 THE COURT: Okay.

24 MR. WEHMAN: First witness would be Officer Gebhardt.
25

1 RICHARD H. GEBHARDT,

2 having been duly sworn, testifies as follows:

3 DIRECT EXAMINATION

4 BY MR. WEHMAN:

5 Q. Officer Gebhardt, how are you?

6 A. Doing well.

7 Q. Where are you employed presently?

8 A. Summerville Police Department.

9 Q. Were you employed there on September 1st, 2016?

10 A. Yes, sir, I was.

11 Q. Did you have the opportunity to respond in the case
12 involving Nikia Pitts to the scene?

13 A. Yes.

14 Q. When you responded to the scene, isn't it accurate
15 That you were kind of the chief investigating officer on the
16 ground at that time?

17 A. Yes, sir.

18 Q. You were the highest ranked person that was there?

19 A. Yes, sir.

20 Q. And when you entered into the house, you were able to
21 encounter Ms. Pitts sitting on the couch?

22 A. Correct.

23 Q. You didn't have a long time to interview her or get
24 much information; is that right?

25 A. Correct.

1 Q. But you were able to ask her one question before EMS
2 got in. You were able to ask her, do you know who did this to
3 you; is that correct?

4 A. Yes, sir.

5 Q. And at the time you were able to ask her that, isn't
6 it correct that she told you, I don't know, some black young
7 male, he just said, come and give me everything you got, and
8 then he stabbed me; is that accurate?

9 A. Yes, sir.

10 Q. And throughout the course of the rest of your time on
11 scene, you weren't able to gather any more identification
12 information from her?

13 A. Not from her.

14 Q. By the time you finished your duties, EMS had taken
15 her on to M.U.S.C.?

16 A. Correct.

17 MR. WEHMAN: Judge, I wouldn't have any other
18 questions for this witness.

19 THE COURT: From the State.

20 CROSS-EXAMINATION

21 BY MR. TEMPLETON:

22 Q. Lieutenant Gebhardt, at that point, did you have
23 opportunity to do a full interview of the victim in this case?

24 A. No, sir.

25 Q. Was it probably less than a minute conversation?

1 A. Well less than a minute.

2 Q. Well less than a minute?

3 A. Yes, sir.

4 Q. Did you have the opportunity -- did you receive any
5 additional information on anything that any other officers had
6 been provided by the victim at the scene?

7 A. I received some information from other officers
8 throughout the entire time we were out there, yes, sir.

9 Q. Officer Jones was on scene before you arrived?

10 A. Yes, sir.

11 Q. Did he put out, basically, information on the radio on
12 what -- any identifying information that they were looking
13 for?

14 A. Yes, sir.

15 Q. Could you provide that to us?

16 A. Yes, sir. We were advised that the suspect was a
17 young, black male with twists or dreads in his hair, wearing a
18 white shirt.

19 MR. TEMPLETON: That would be all I have, Your Honor.

20 MR. WEHMAN: I have a brief redirect, Your Honor.

21 THE COURT: All right.

22 REDIRECT EXAMINATION

23 BY MR. WEHMAN:

24 Q. Officer, you mentioned the description that was put
25 out was a short or young, black male with small twists in his

1 hair?

2 A. Twists or dreadlocks.

3 Q. And when you went and talked to Ms. Pitts inside, she
4 kind of had a similar rendition to you; is that right?

5 A. Yes.

6 Q. She didn't know who it was, but young, black male
7 small dreadlocks?

8 A. Correct, well, just dreadlocks.

9 Q. When you spoke to her, she was able to answer your
10 questions, correct?

11 A. Correct.

12 Q. She, though visibly upset, seemed to be coherent in
13 knowing what was going on around her?

14 A. I was not in her mind. I can't say if she was
15 completely coherent or not.

16 Q. But she was able to answer your questions?

17 A. To an extent..

18 Q. And she was conscious?

19 A. Correct.

20 Q. And she provided EMS with a number of other pieces of
21 information?

22 A. I don't know what she provided to EMS.

23 Q. Okay. Officer, you had a body camera on at the time
24 of the incident; is that correct?

25 A. Yes, sir.

1 Q. And you had an opportunity to review that camera
2 footage?

3 A. Yes, sir.

4 (Dft. Exh. 2, Body camera CD, was marked for
5 identification.)

6 BY MR. WEHMAN:

7 Q. Is this the disk we reviewed earlier?

8 A. Yes.

9 Q. That is a copy of the body-worn camera that you were
10 wearing that night?

11 A. Correct.

12 MR. WEHMAN: Judge, I would like to publish a portion
13 of this for the purpose of this hearing.

14 THE COURT: Is this redirect?

15 MR. WEHMAN: Yes, Your Honor.

16 THE COURT: All right.

17 (Video playing.)

18 BY MR. WEHMAN:

19 Q. That was the extent of your conversation with her?

20 A. Yes, sir.

21 Q. And that was the way that she was answering your
22 questions, was able to pull information and provide it to you?

23 A. Yes, sir.

24 MR. WEHMAN: No further questions, Your Honor.

25 RE CROSS-EXAMINATION

1 BY MR. TEMPLETON:

2 Q. Again, that was less than a minute?

3 A. Yes.

4 Q. You didn't do a full interview?

5 A. No, sir.

6 MR. TEMPLETON: Thank you.

7 THE COURT: You may step down.

8 MR. WEHMAN: Defense would call Dr. Norcross from
9 M.U.S.C.

10 EDWARD NORCROSS,

11 having been duly sworn, testifies as follows:

12 The CLERK: State and spell your name for the record.

13 THE WITNESS: Edward Douglas Norcross,

14 N-o-r-c-r-o-s-s.

15 DIRECT EXAMINATION

16 BY MR. WEHMAN:

17 Q. Dr. Norcross, how are you this morning?

18 A. I'm good. Thank you.

19 Q. Now, where are you employed currently?

20 A. Medical University of South Carolina.

21 Q. Were you employed there on September 1st, 2016?

22 A. Yes.

23 Q. And did you have the opportunity to be involved in a
24 case involving Nikia Pitts?

25 A. Yes.

1 Q. And what was your involvement in that?

2 A. I was the attending surgeon during her
3 hospitalization.

4 Q. As the attending surgeon, does that mean you were
5 aware of what was going on in her case?

6 A. Yes.

7 Q. And you have access to all the medical records and
8 reviewed those?

9 A. I reviewed the ones I thought were significant.

10 Q. Okay. Now, when Ms. Pitts arrived at the Medical
11 University, isn't it common that she is put through a number of
12 tests?

13 A. Correct. We have a routine we go through with just
14 about any injured patient.

15 Q. What kind of a routine would that be?

16 A. We assessed her airway. It was fine. We assessed her
17 breathing. It was fine. Make sure she's not bleeding and in
18 shock. They were fine. We checked Glasgow Coma score, which
19 is kind of a rough level of consciousness assessment. And then
20 we basically, based on that, we examine the patient head to
21 toe, and based on that, decide what tests we need.

22 Q. Okay. Specifically with that Glasgow Coma test that
23 you said that you run, what is that designed to measure?

24 A. It looks at three things. It looks at whether the
25 patient's eyes are open spontaneously to pain, to voice or not

1 at all. Hers were open spontaneously, which is the best score
2 you could get on that. We look at verbal response. Does the
3 patient answer questions? Are they confused? Do they use
4 strange words? Do they use no words or say nothing? She
5 answered questions appropriately. So that was the highest
6 level of that.

7 And then as far as movement goes, will she obey
8 commands on down the line? She obeyed commands, which is the
9 highest level there. So she scored the best you could score on
10 that, which is basically what anybody in this courtroom would
11 be today, with a Glasgow 15.

12 Q. Meaning she was able to answer questions and have a
13 basic understanding of what was going on around her?

14 A. Correct. Understand, the questions we ask pretty
15 basic: Where are you? Who are you? And what's the date?

16 Q. Now, would it also be common for doctors who might be
17 on the floor at that time to pay attention to her story to see
18 if it's consistent, to see if that sets off any red flags
19 whether or not she's having trouble understanding what's going
20 on?

21 A. Yes. We would listen to the story. And if it didn't
22 make any sense, might send up a red flag.

23 Q. And what specifically would concern you if the story
24 was confusing or if she wasn't able to answer basic questions?

25 A. If she said she was shot and there were no bullet

1 holes or, you know, anything that just didn't consists with
2 what we saw in examining patient.

3 Q. Also, when a patient comes in to the hospital, they
4 are put through a number of laboratory tests; is that
5 correct?

6 A. Correct.

7 Q. One of those would be an alcohol test?

8 A. Correct.

9 MR. TEMPLETON: I have an objection to this testimony,
10 but I understand what you are showing him at this point. Your
11 Honor, basically, I mean, he's not indicating that he's using
12 this information for any kind of -- to determine any kind of --
13 or, one, he hasn't been qualified as an expert yet. But, two,
14 he hasn't indicated that he's used this information to form any
15 kind of opinion. If he's not forming an opinion based on this
16 testimony, I don't believe it's admissible at this point or in
17 the trial in the case in chief.

18 MR. WEHMAN: Judge, I can qualify him as an expert, if
19 you wish. For the purpose of the pretrial hearing, I was
20 simply identifying him as the chief medical officer who was in
21 charge of Mr. Pitts's care at the time at the Medical
22 University. This is a common test that is run so that the
23 medical professionals have an idea of what they need to
24 treat.

25 THE COURT: You don't -- you are telling me all about

1 it. You don't need to ask him anybody. You are the expert?

2 MR. WEHMAN: I am not, Judge. He did testify he was
3 the chief attending and this is a common test they run
4 throughout the course of their treatment to figure out what
5 they have onboard. And I was simply going to show him this
6 result and ask him to explain it.

7 THE COURT: And he objected to two grounds, one
8 regarding the qualification as an expert, and second, some
9 other vague objection.

10 MR. WEHMAN: I would agree, Judge. I am not clear as
11 to the --

12 MR. TEMPLETON: Your Honor, at the end of the day, I
13 am not saying Dr. Norcross is not going to be qualified as an
14 expert. Hadn't happened at this point. But regarding tests
15 that were done at the hospital, I don't think that he can
16 testify to those unless he ultimately used those to form an
17 opinion in this case pursuant to the rules.

18 THE COURT: All right. Let me hear the question again.

19 BY MR. WEHMAN:

20 Q. Doctor, throughout the course of what you do when
21 patient comes in, you run a number of tests for the purpose of
22 diagnosing a patient, correct?

23 A. Yes.

24 Q. One of those tests you run, and you as chief attending
25 would have ordered, would have been a test for alcohol content,

1 correct?

2 A. Just to clarify, it's part of a protocol we draw on
3 all patients. I didn't necessarily order it. I ordered the
4 protocol of which test that is run.

5 Q. So that's part of your protocol you run for everyone
6 that comes in?

7 A. That's trauma A, which would be what she would have
8 been, being a high-level injury.

9 Q. Okay. And so you received a result from that test,
10 correct?

11 A. Correct.

12 Q. Is that a copy of the result of the test in this case?

13 A. That would be consistent with what M.U.S.C.'s medical
14 records look like in reporting a test, so, yeah.

15 Q. What is the alcohol level that is reported on that
16 test?

17 MR. TEMPLETON: Your Honor, this would be the portion
18 I would be objecting to.

19 THE COURT: Now, we had yesterday, I think, a police
20 officer, I believe either he was testifying or counsel was
21 providing the information about blood alcohol content being
22 a .12.

23 MR. WEHMAN: Yes, Your Honor.

24 THE COURT: Was that your testimony or some witness
25 yesterday?

1 MR. WEHMAN: I asked the officer --

2 THE COURT: That was unobjected to. Now we have a
3 doctor being asked the same question, in effect. Recognizing
4 he's not a toxicologist, I think he can still answer that
5 question.

6 MR. WEHMAN: Thank you, Judge. What is the result
7 that is on that report?

8 A. Alcohol level of 120 milligrams per deciliter, which
9 depending where you put the decimal point, .12, .120.

10 Q. For blood alcohol consent we might be familiar with,
11 that would be equivalent of .12?

12 A. Yes.

13 Q. And there is an H that is next to that result,
14 correct?

15 A. Correct.

16 Q. What does that stand for?

17 A. High.

18 Q. So it was flagged by --

19 A. Anything above 0 is going to be listed as high on this
20 test.

21 Q. When would that test have been run?

22 A. In the emergency room upon her arrival. It would be
23 done within the first five minutes of her arrival. When we put
24 in an IV, we draw the bloods for the lab.

25 Q. So at the time of her arrival, she would have been a

1 .12?

2 A. Correct.

3 Q. The doctors, throughout the course of her treatment,
4 would have continued to do tests on her to make sure that she's
5 not losing consciousness and still responding correctly; is
6 that right?

7 A. "Neuro checks" we call that, correct.

8 Q. There's nothing in the medical records that would
9 support the fact that she suffered a dramatic loss of
10 consciousness or was suffering some sort of neurological
11 downgrade in what she reported to the hospital with; is that
12 true?

13 A. I will be careful how I answer this one.

14 Q. Okay.

15 A. We did not do deep neuropsychiatric testing. We are
16 looking for gross stuff, can she move her legs, move her arms,
17 can she answer the who, what, when, where questions. And in
18 that case, she was stable and had no change in status.

19 Q. She remained stable throughout?

20 A. She remained stable throughout.

21 Q. And you testified that there was no further follow-up
22 on advanced neurological problems that she might have been
23 suffering?

24 A. Not as far as I'm aware of. She had -- she was
25 followed with neurosurgery. What they did beyond

1 hospitalization, I can't answer.

2 MR. WEHMAN: I don't have any further questions, Your
3 Honor.

4 MR. TEMPLETON: Just a couple of questions.

5 CROSS-EXAMINATION

6 BY MR. TEMPLETON:

7 Q. You indicated that she basically did a couple of tests
8 that would kind of test her cognitive ability. But that's just
9 kind of surface, just kind of surface level cognitive
10 abilities; is that correct?

11 A. Right. There are other neuropsychiatric testing that
12 looks for short-term memory, long-term memory, things like that
13 that we don't assess.

14 Q. And you wouldn't be able to testify to any of that in
15 this case?

16 A. Or any case.

17 Q. Regarding her actual injuries in this case, there
18 is -- my understanding of the medical records is there's a stab
19 to the left breast and then a stab wound also through the eye
20 into the brain; is that correct?

21 A. Correct. She had a stab wound to her left breast and
22 one under her left eye on the medial side, towards the nose
23 side, that went fairly deep into her brain.

24 Q. Are you able to testify whether that would have at
25 that point or -- whether that would have affected her memory or

1 not? Do you have any way to actually testify to that, to form
2 an opinion on that basis?

3 A. No.

4 Q. You also said you did some basic neuro checks,
5 basically the who, what, when, where she is, those kinds of
6 questions. Beyond that, is there any additional testing that
7 you did that can tell -- that you can tell the judge basically
8 where she was at that particular time as far as her cognitive
9 ability and those kinds of things?

10 A. Just the basic things we check, which is, who are you,
11 where are you, what day is it, move all this stuff. And she
12 could obey all the commands we asked her to do.

13 Q. Finally, were you able to review the medical records
14 regarding what medications she was provided on the way to the
15 hospital and once she was at the hospital?

16 A. As well as you can do that in current electronic
17 medical records environment, yes, which is very difficult.

18 Q. Got you. Are you able to, at this point, able to
19 tell the judge what kind of medications she received on the way
20 to the hospital?

21 A. I don't know what she received on the way to the
22 hospital. I would need EMS to run a report to know that.

23 Q. And I can show you in the medical records what EMS
24 indicated she was given here, page 31. And I'm going to
25 approach with a page out of the medical records. See if you

1 are able to determine the amount of drugs that were provided to
2 her on the way to the hospital.

3 A. According to this, she was given 100 micrograms of
4 Fentanyl en route.

5 Q. Do you know what kind of time period that Fentanyl
6 would affect her?

7 A. Usual course action for IV Fentanyl is anywhere from
8 up to about an hour.

9 Q. And do you know if she was provided with any
10 additional Fentanyl at the hospital?

11 A. She did, she got some more Fentanyl in the hospital,
12 in the ER.

13 Q. In the ER?

14 A. Uh-huh.

15 Q. If you would, just briefly, what is Fentanyl?

16 A. It's a narcotic pain reliever, pain medication.

17 Q. And how does that affect a person's -- or how does
18 that affect a person?

19 A. Depends how much you give and how they react to it.
20 Can be anywhere from the effect of not much to putting them in
21 a coma.

22 Q. In those amounts?

23 A. 100 micrograms probably wouldn't put anybody in a
24 coma, but it would make you a little sleepy.

25 Q. And the 50 micrograms that she received later would

1 that have similar effect?

2 A. Similar effect?

3 MR. TEMPLETON: That's all the questions I have for
4 you, Dr. Norcross.

5 REDIRECT EXAMINATION

6 BY MR. WEHMAN:

7 Q. With respect to the Fentanyl you just testified to,
8 you testified -- or the solicitor provided you with information
9 that was given to her in the ambulance on the way to the
10 hospital.

11 A. Correct.

12 Q. And that you mention that it would make you sleepy and
13 it could put you in a coma if you had too much.

14 A. Correct.

15 Q. And that Glasgow Coma Score you gave was after she had
16 already received the Fentanyl, if it was given to her in the
17 ambulance, correct?

18 A. It would have been after the Fentanyl she received in
19 the ambulance; probably not after the Fentanyl she got in the
20 ER. Glasgow Coma Scale is usually on arrival.

21 Q. So at least as to the ambulance-given Fentanyl, she
22 still scored a 15. And she was not affected in her ability to
23 answer the basic questions that you would have asked?

24 A. That is correct. Significantly, her eyes were -- in
25 order to get a Glasgow Coma Score of 15, her eye were open

1 spontaneously. We didn't have to say, open your eyes. So she
2 was certainly awake.

3 Q. Does Fentanyl have any type of hallucination effect or
4 make someone's memory distorted, other than maybe becoming
5 sleepy?

6 A. Not that I'm aware of.

7 Q. And the solicitor mentioned that you didn't know what
8 type of brain injury she had in the hospital that day; is that
9 correct? You don't know the extent of it, of the brain injury
10 other than it was a blade to the brain? I will rephrase that.

11 The severity of the brain injury that she suffered and
12 what effects it might have had on her ability to remember, you
13 are not aware of what that might have been at the hospital; is
14 that correct?

15 A. I did not personally assess short- or long-term memory
16 to come up with an answer to that question. I will say that
17 our conversations were reasonable. I didn't have any reason to
18 suspect any major issues, but we did not do any kind of major
19 psychiatric testing to look for that.

20 Q. Likewise, there was no major psychiatric testing done
21 that you are aware of upon her discharge?

22 A. Not that I'm aware of.

23 MR. WEHMAN: I have no further questions, Judge.

24 MR. TEMPLETON: Nothing further from the State.

25 MR. WEHMAN: Our final witness would be Officer

1 Boehler, Summerville Police Department.

2 LETA BOEHLER,

3 having been duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. WEHMAN:

6 Q. Officer Boehler, how are you?

7 A. Good.

8 Q. Tell the Court where you work currently.

9 A. Summerville Police Department.

10 Q. And were you employed there September 1st of 2016?

11 A. Yes, I was.

12 Q. And what were your duties at that time?

13 A. Assigned to the patrol division, night shift.

14 Q. As part of that assignment, did you respond to Weber
15 Road in response to be an incident involving Nikia Pitts?

16 A. I did.

17 Q. And upon arrival, you were rerouted to the Medical
18 University of South Carolina?

19 A. Yes.

20 Q. And that was for the basis of investigating whether
21 you could get any further statements from Ms. Pitts to develop
22 suspects or anything like that, correct?

23 A. Yes, and to see her injuries and put it in the form.

24 Q. And when you arrived at the hospital and throughout
25 your time there, I believe you were there for about two and a

1 half, three hours?

2 A. Yes.

3 Q. You were able to speak to her a number of times; is
4 that correct?

5 A. Yes.

6 Q. And when speaking to her, she gave you a number of
7 different pieces of information as to who she believed the
8 suspect would be; is that right?

9 A. Yes.

10 Q. Do you remember her specifically telling you, after
11 you asked her, is there anything else that you could tell or
12 she could tell you about the incident, that she said that, he
13 was the father of my son?

14 A. At one point she did say that. I later found out more
15 information who that was and the reasoning behind that possible
16 information.

17 Q. Okay. So she told that you that she thinks it could
18 have been the father of her son. And you said you found out
19 his name, which is Carl Washington; is that correct?

20 A. Yes, if that's his name, yes.

21 Q. And she said that she didn't know if it was him
22 because it all happened so quick; is that right?

23 A. Yes. And I later found out that she was speaking to
24 him on the phone during the incident.

25 Q. She was speaking to Carl Washington or she was

1 speaking to Clinton Wright?

2 A. I think it might have been Carl Washington. She was
3 speaking to someone on the phone.

4 Q. She was speaking to the father of her child; is that
5 correct?

6 A. Yes.

7 Q. You are not --

8 A. Specific name, I don't know. I know that she was
9 speaking to someone on the phone.

10 Q. You are not aware. She has three children. You are
11 not aware if they have different fathers?

12 A. No, I don't know.

13 Q. And you asked why she thought it might be him? Is
14 that something you would have asked?

15 A. Uh-huh.

16 Q. And she said, it's her son's father, but they are not
17 really that close? They are not really that close; is that
18 right?

19 A. Yes.

20 Q. And at a different point, you are ask her, where did
21 she usually see the person? Around the neighborhood; is that
22 correct?

23 A. Yes.

24 Q. And at one point she says, I haven't seen him before.
25 Would that be accurate?

1 A. I believe she did state that. I asked her several
2 times. Just due to the incident, sometimes they might not
3 remember something. And if you ask them a few times, they may
4 remember it then. We see what information is the same, what
5 information is different.

6 Q. But certainly as to the identification, that was
7 different throughout your stay there?

8 A. Yeah.

9 Q. Okay. And you also had the opportunity, which I have
10 been able to see through your body camera, to kind of be in the
11 room during the medical tests and questions that were being
12 asked; is that correct?

13 A. By the doctors?

14 Q. By doctors.

15 A. Yes.

16 Q. And Ms. Pitts was asked a number of questions by you
17 and by doctors and nurses while you were there; is that
18 correct?

19 A. Yes.

20 Q. And she seemed to be able to answer those questions;
21 is that right?

22 A. Yes.

23 Q. She was able to give you her phone number?

24 A. Yes.

25 Q. She was able to tell you what kind of car she

1 drives?

2 A. Yes.

3 Q. She was able to give you a basic outlay of what had
4 happened right up until the point that she was stabbed?

5 A. Yes.

6 Q. She repeated multiple times that she was sitting in
7 her car and a person asked for her purse; is that right?

8 A. Yes.

9 Q. And then she was stabbed. And I think she told you
10 for a couple of times that she was pistol whipped; is that
11 right?

12 A. Yes.

13 Q. The difference, though, would be the different people
14 who she said it was that did that? Would that be accurate?

15 A. She had given the name the one time. And then the
16 other time she had said someone in the neighborhood.

17 Q. And then another time said, I've never seen him
18 before?

19 A. Yes.

20 Q. Now, eventually, you were able to get on the phone
21 with Detective Weaver; is that right?

22 A. Yes.

23 Q. And he indicated to you that he would like to do a
24 photographic lineup?

25 A. Yes.

1 Q. And you asked Ms. Pitts if she would be able to
2 identify the person if she saw him again; is that right?

3 A. Yes.

4 Q. And she indicated to you that she would?

5 A. Yes.

6 Q. While you were also on the phone with Detective
7 Weaver, he asked you to ask Ms. Pitts whether or not she
8 recognized anything about the attacker's voice; is that right?

9 A. Yes.

10 Q. And you asked Ms. Pitts if there was anything
11 distinctive about the voice and whether or not it was deep; is
12 that accurate?

13 A. Yes.

14 Q. And she said no?

15 A. That's what she said, yeah.

16 Q. Is that what she said?

17 A. I believe that's what she said. Yes, she said no.

18 Q. And then Detective Weaver informed you that he would
19 like for you to do a six-pack photo lineup, and he would send
20 it to your phone; is that right?

21 A. Yes.

22 Q. And before you do a photographic lineup, do you
23 customarily go through a speech with the person who is about to
24 identify somebody?

25 A. Yeah. You tell them what you need them to do and

1 stuff.

2 (Defendant's Exh. 3, Photographic lineup
3 acknowledgement form, was marked for identification.)

4 Q. I'm going to show you what's Defendant's Exh. 3 for
5 the purpose of this hearing. Does that form look familiar to
6 you?

7 A. Yes.

8 Q. And would that have been, at the top, what you would
9 have read to Ms. Pitts before she was asked to make a selection
10 in the photographic lineup?

11 A. Yes.

12 Q. Would you read to the Court what it is that you told
13 her?

14 A. Says, you will be asked to look at a group of
15 photographs. The fact that the photographs are shown to you
16 should not influence your judgment. You should not -- does
17 that say conclude or guess, that the photographs contain the
18 picture of the person who committed the crime. You are not
19 obligated to identify anyone. It is just as important to free
20 innocent persons from suspicion as to identify guilty parties.
21 Please do not discuss the case with other witnesses nor
22 indicate if in any way that you have identified someone.

23 Q. Okay. And at that point, having read her that, you
24 had been with her at the hospital for some time?

25 A. Uh-huh.

1 Q. You had asked her if she could identify the person,
2 correct?

3 A. Yes.

4 Q. And you believed that she would have the ability,
5 based on her responses to questions and what the doctors were
6 telling you, you believed she would have the ability to pick
7 that person out if she saw them in a lineup?

8 A. She said that she could.

9 Q. You weren't able to get a signature on that based on
10 her current state at the hospital, correct?

11 A. Correct.

12 Q. So you wrote "unable to sign" on that document. And
13 you weren't able to print out the photographic lineup, were
14 you?

15 A. No.

16 Q. You showed it to her on your phone?

17 A. Yeah.

18 Q. And when you showed it to her on your phone, you
19 showed her all the options that were available in the lineup,
20 correct?

21 A. Yes.

22 Q. Showing you Defendant's Exhibit 1. This would have
23 been what you had on your phone, this photographic array,
24 correct?

25 A. Yes.

1 Q. And you printed this out after the fact, would that be
2 right?

3 A. Yes.

4 Q. Those circles there were done by you?

5 A. Yes.

6 Q. Okay.

7 A. On the ones that she identified as the suspect to me.

8 Q. And after having an opportunity to go through all the
9 photographs on your phone, what did she tell you about who she
10 was identifying? Who did she pick?

11 A. She said that it was one or two.

12 Q. And that would be -- Mr. Stokes in this lineup would
13 have been No. 3; is that correct?

14 A. I have never seen it. I don't know myself.

15 Q. But you reported Detective Weaver that she selected
16 No. 1 and No. 2?

17 A. Yes, yes.

18 Q. And at that point, you left the hospital; is that
19 correct?

20 A. Yes.

21 Q. Now, earlier when you were speaking to her, when you
22 asked her whether or not she would be able to identify the
23 person in a photographic lineup, isn't it true that you also
24 told her that the detectives have a good idea of who this
25 person is?

1 A. I may have. I don't know.

2 Q. So --

3 A. I may have.

4 Q. Just to be clear, after she indicated that she could
5 look at the photo lineup, you don't remember whether you said,
6 because he thinks he might know who it is; he has a good
7 idea?

8 A. I may have said that, yes.

9 THE COURT: I couldn't understand what you said.

10 THE WITNESS: I said I may have said that, yes.

11 THE COURT: You may have said that?

12 THE WITNESS: That's what I'm trying to -- yes.

13 BY MR. WEHMAN:

14 Q. And I have one more question for you. Do you have a
15 copy of your report? I have one for you. Is that a copy of
16 your report that you wrote?

17 A. Yes.

18 Q. And does it indicate who Ms. Pitts was speaking to on
19 the phone, or who she told you she was speaking to on the
20 phone?

21 A. It says that she was on the phone with Clinton Wright.

22 Q. And you testified earlier that in the hospital, she
23 said that the attacker was Carl Washington; is that correct?

24 A. I believe, yes.

25 MR. WEHMAN: I don't have any further questions for

1 this witness. May I have a moment, Your Honor?

2 THE COURT: Have a moment?

3 MR. WEHMAN: To speak to the solicitor. He had a
4 question.

5 THE COURT: All right.

6 (Off-the-record conference.)

7 MR. WEHMAN: May I approach, Your Honor?

8 THE COURT: Yes.

9 (Whereupon, a bench conference takes place off the
10 record.)

11 CROSS-EXAMINATION

12 BY MR. TEMPLETON:

13 Q. Officer Boehler, how are you doing?

14 A. Good.

15 Q. So you just testified, originally you responded to the
16 scene, correct?

17 A. Yes.

18 Q. Originally, you were kind of just on perimeter, just
19 kind of watching over the scene to begin with; is that correct?

20 A. Yes.

21 Q. Ultimately, were you asked to follow the ambulance
22 down to M.U.S.C.?

23 A. Yes.

24 Q. When you get down to M.U.S.C., ultimately, where is
25 Ms. Pitts taken?

1 A. The emergency room.

2 Q. Just into kind of a trauma bed?

3 A. Yes.

4 Q. The first time you get to talk to Ms. Pitts, if you
5 would, is she -- does she seem sleepy to you?

6 A. She's -- she seemed a little out of it. But given the
7 circumstances, I assumed that she was on some sort of
8 medication.

9 Q. Somewhat lethargic?

10 A. A little, yes.

11 Q. Did she take her time to answer your questions?

12 A. Yes.

13 Q. Ultimately, she gives you a couple of -- there's a
14 couple of times you talk to her where she gives you a
15 description of this person that did this to her; is that
16 correct?

17 A. Yes.

18 Q. A couple of times she says, young, black male,
19 correct?

20 A. Yes.

21 Q. Small dreads or twists, correct?

22 A. Yes.

23 Q. Wearing a wife beater?

24 A. Yes.

25 Q. Seen in the neighborhood before?

1 A. Yes.

2 Q. And walks around her house before?

3 A. Yes.

4 Q. And at least on one occasion, that he had two knives;
5 is that correct?

6 A. At one time, she did state that to me, that he had two
7 knives.

8 Q. Only times she ever makes this other person, father of
9 her son, is one time during this entire set of events,
10 correct?

11 A. Yes.

12 Q. And every other time, she's talking about this young,
13 black male, correct?

14 A. Yes.

15 Q. Regarding kind of her voice when this was going on,
16 did she seem, I guess, seem kind of out of it to a certain
17 extent?

18 A. Yes. I would assume from the medications, what they
19 have given her.

20 Q. They had provided her with some medication?

21 A. Yes.

22 Q. You ultimately took some pictures of her injuries; is
23 that correct?

24 A. Yes.

25 Q. Her left eye, what did it look like?

1 A. It was swollen shut. It was completely swollen around
2 her eye.

3 Q. She couldn't see out of her left eye at all, correct?
4 And her right eye she could see out of, but were her eyes
5 closed a good bit?

6 A. They were closed a good bit.

7 Q. She would respond when you said something to her, but
8 the range of time, did it seem like she was laying there
9 sleeping?

10 A. She kept her eyes closed, because I assumed it was
11 easier to keep both of them closed instead of having one
12 open.

13 Q. Ultimately, you do show her a lineup; is that
14 correct?

15 A. Yes.

16 Q. And you got that in front of you?

17 A. Yes.

18 Q. In fact, though, it wasn't on a sheet of paper like
19 that, correct?

20 A. No.

21 Q. It was on a cell phone, probably little bit smaller
22 than mine, right?

23 A. Yes.

24 Q. And you had to zoom in to each individual picture?

25 A. Yes.

1 Q. And they would actually still be smaller than the
2 photos in front of you that you would normally show to a victim
3 in a case?

4 A. Yes.

5 Q. She's not definitive in who she picks out?

6 A. No.

7 Q. She's not real sure about it; is that correct?

8 A. She said that she thought it was one or two, but she
9 wasn't completely sure.

10 Q. When you read her the photo lineup, do you remember --
11 you asked her whether she understands it, do you remember her
12 just responding, my chest hurts?

13 A. I know that she did say that after. She had said
14 that.

15 Q. And about the time you are showing her this video,
16 there's some other people coming into the room, correct?

17 A. Her brother and family.

18 Q. There's nurses in the room trying to talk to her at
19 the same time?

20 A. Yes.

21 Q. You actually have to try to get them to stop talking
22 to her during the middle of this identification so that you can
23 continue, correct?

24 A. I believe so, yes.

25 Q. And she says during that same period of time, quite a

1 few times, she's in pain, right?

2 A. Yes.

3 (State's Exh. 15, body cam footage, was marked for
4 identification.)

5 Q. I'm going to show you -- I'm going to mark for
6 identification as State's Exhibit 15. Is that the case number
7 in this case?

8 A. Yes.

9 Q. Is that your body cam from that event?

10 A. Yes.

11 MR. TEMPLETON: Your Honor, I would like to show just
12 a small portion of this video for Your Honor.

13 (Video playing.)

14 BY MR. TEMPLETON:

15 Q. Where is this in particular?

16 A. This is upstairs in the room she was put in.

17 Q. At this point, you are about to show her the
18 identification on your phone?

19 A. Yes.

20 (Video playing.)

21 BY MR. TEMPLETON:

22 MR. TEMPLETON: That's all the questions I have for
23 Officer Boehler.

24 THE COURT: Anything further?

25 MR. WEHMAN: No, Judge. That would be the last

1 witness that we would have. Burden is on me, so if you are
2 prepared, I would like to argue.

3 THE COURT: Okay.

4 MR. WEHMAN: Our case law tell us that an
5 unnecessarily suggestive identification procedure that causes
6 irreparable mistaken identification deprives a criminal
7 defendant of due process of law. Where an out-of-court
8 identification procedure creates a substantial likelihood of
9 irreparable misidentification, a subsequent in-court
10 identification is, therefore, inadmissible.

11 There are a number of factors that we look at in
12 determining the reliability of an identification and whether
13 that suppressed out-of-court ID can stay as an in-court
14 identification. But first I think the Court has to look at
15 whether this out-of-court identification is impermissibly
16 suggestive. And the identification I'm speaking of is the
17 September 6th photographic lineup, where Nikia Pitts presents a
18 single photograph of my client in jail attire to a detective.

19 THE COURT: We haven't heard any testimony about that
20 lineup.

21 MR. WEHMAN: About the September 6th lineup?

22 THE COURT: Your picture.

23 MR. WEHMAN: That was testified to yesterday, I
24 believe, by Detective Weaver, who -- pursuant to this hearing,
25 I mean, it was the first bit of testimony.

1 THE COURT: He said that her -- y'all have identified
2 various relatives as pulling something off of Facebook and --

3 MR. WEHMAN: Handing it to her.

4 THE COURT: Handing it to her. Is that the lineup or
5 what?

6 MR. WEHMAN: That is this photograph.

7 THE COURT: I understand it's the photograph, but what
8 lineup are you talking about?

9 MR. WEHMAN: I'm talking about the lineup that she did
10 with Detective Weaver that same day.

11 THE COURT: So -- all right. Go ahead. I thought you
12 called the photograph that someone else showed her a lineup.

13 MR. WEHMAN: No, Judge. If I did, I misspoke. My
14 argument is not that this is a lineup. My argument is that
15 this photograph handed to law enforcement before they asked her
16 to do a second photographic lineup, is what makes this lineup
17 impermissibly suggestive.

18 THE COURT: The officer testified to that. He said
19 that he wasn't shown that. The officer who performed the
20 lineup specifically said that his supervisor didn't want him to
21 see that for the exact reason you are commenting on.

22 MR. WEHMAN: That's right, Your Honor. He didn't want
23 him to see it. But I don't believe that an officer just
24 ignoring the fact that the witness has this in her possession
25 moments before she's about to pick out his photograph in

1 lineup, I don't think him ignoring the photograph cures him of
2 being responsible for what's in this photograph. *State v.*
3 *Tisdale* is one of our cases that is cited a lot in these
4 *Biggers* hearings. And in that case, there were witnesses who
5 saw pictures on the news and in media representations of the
6 defendant as a suspect or having been arrested.

7 She went to law enforcement and told them that she
8 could identify him, that she had seen him on TV or in the
9 newspaper, I believe. There were three witnesses that each
10 said they had seen him. And law enforcement in that case
11 declined to do a photographic lineup. They found that that
12 lineup would be futile. I believe that they did because they
13 knew would be tainted. The exact reason that Detective Weaver
14 wasn't shown this is because he thought, if I don't see it, I
15 am not responsible or on the hook for what this is.

16 But he was made aware that there was a photograph.
17 And his supervisor thought that if he just took it and looked
18 at it and then said okay, give her the lineup, that would cure
19 it. And I don't believe that it does. It is still a
20 suggestive identification procedure. Also, because it is
21 improper bolstering of her ability to identify.

22 There's a case *State v. Prioleau*, which is a South
23 Carolina case, where a witness was asked to go on the witness
24 stand and produce a photographic lineup in court with the
25 defendant sitting right in front of her. And in that case, the

1 Court commented that that would be improper bolstering and that
2 there's very little chance --

3 THE COURT: Obviously, if you showed -- if the
4 defendant is here on trial and you show them a lineup in court,
5 that's improper. That one is pretty easy.

6 MR. WEHMAN: It is, Your Honor. But I believe that
7 the theory is the same, in that she is produced a photograph of
8 my client, a prejudicial photograph at that, him in jail
9 attire, and then is being asked to identify him. I don't think
10 there's any chance she would pick anyone else.

11 THE COURT: How do we know that's jail attire?

12 MR. WEHMAN: I believe that the --

13 THE COURT: I haven't seen it. You've shown it to
14 witnesses.

15 MR. WEHMAN: May I approach?

16 THE COURT: Yes, sir.

17 MR. WEHMAN: And I believe Detective Weaver also
18 testified that it appeared to be a jail uniform.

19 THE COURT: The fact that it's in evidence doesn't
20 mean I've seen it if you've shown it to witnesses.

21 MR. WEHMAN: Yes, Your Honor. And I've provided a
22 copy of it in the memorandum that I filed.

23 THE COURT: Well, you have photo, black and white
24 photo, I believe. I don't know how you -- conclude that this
25 is jail attire. This is what you handed to me.

1 MR. WEHMAN: Yes, Your Honor.

2 THE COURT: What am I looking at? There's a guy on
3 the phone, telephone, a red shirt, and appears to be
4 black-and-gray shirt. How do we know this is jail attire?

5 MR. WEHMAN: I believe Detective Weaver testified,
6 based on his view, it appeared to be jail attire or prison
7 attire, one of the two, I believe, is what he said.

8 THE COURT: Appeared to you and to the officer. How
9 about the witness?

10 MR. WEHMAN: Well, in addition to having that, which I
11 believe is suggestive to be jail attire, she also was provided
12 with information that he was a bad guy from the area, which
13 would further suggest that this is the person who did this.
14 And I think that, not only the identification, but also the
15 facts of this case, gives the Court reason to pause when
16 admitting this identification. This incident happens September
17 1st.

18 THE COURT: We spent four hours or so listening to
19 various people talk about this. So we certainly paused.

20 MR. WEHMAN: I appreciate that, Judge.

21 And on September 1st, Ms. Pitts is unquestionably
22 attacked. There's no question there. She gives an
23 identification on scene that she does not know who the person
24 is, all she knows is it's a young, black male.

25 THE COURT: We heard the testimony. And you are

1 pulling out strands of it. And the solicitor is pulling out
2 strands of it. I've heard all of the witnesses. So for you to
3 say that she did not know who did it, we heard she gave
4 conflicting information over the course of several hours
5 concerning it all.

6 MR. WEHMAN: That's correct, Judge. And I believe
7 that, being shown that photograph, presenting it to law
8 enforcement, and then having her immediately do a photo lineup
9 with that same person in it, I think that identification
10 procedure is suggestive.

11 THE COURT: How much time elapsed?

12 MR. WEHMAN: Between the event and her --

13 THE COURT: Between her seeing this photograph and
14 being given the last six-pack lineup she was given?

15 MR. WEHMAN: She testified that she couldn't remember
16 when she was given the photograph. But what was testified to
17 was that she handed that photograph -- she looked at, handed
18 it, and was immediately given the six-pack photo lineup. So
19 however long she had it, we do know she had it immediately
20 before she saw that photographic lineup, moments before seeing
21 it --

22 THE COURT: Immediately, moments? We don't know how
23 long. It was the same day, same setting, same --

24 MR. WEHMAN: Detective Weaver testified that he asked
25 her to do a photographic lineup. She said, before I do that, I

1 was shown a picture of the person by someone who knows him, or
2 by a friend of mine, or then became a sister, of a bad person
3 in the area. He doesn't want to take it. Detective Santana
4 takes it. He gives her the photographic lineup. I believe
5 that is the sequence of events. So I would say moments.

6 She presents him with that. He gives her the
7 photographic lineup. He doesn't want to look at it, because he
8 thinks if he doesn't look at it, it doesn't taint the lineup
9 procedure, which I argue it does. He's on the hook for what
10 that represents. Because she's seen it, and she's the one now
11 picking him out.

12 I believe that's clearly suggestive. And I think at
13 that point, the Court has to look to the reliability. And the
14 Court already pointed out one of the five factors of
15 reliability, with the amount of time. This is five days after
16 the incident. I don't think that's an unreasonable amount of
17 time. But all the other factors that the Court looks at in
18 situations like this, I believe, cut against allowing this
19 identification. We are supposed to --

20 THE COURT: What cuts in favor of allowing the
21 identification?

22 MR. WEHMAN: I believe the amount of time that was
23 given.

24 THE COURT: What cuts in favor of it?

25 MR. WEHMAN: Of allowing the identification in?

1 THE COURT: Yes.

2 MR. WEHMAN: I believe the amount of time. I believe
3 it is a permissible amount of time for an out-of-court
4 identification from when she witnesses this incident to the
5 time that she does that second photographic lineup. Other than
6 that, I don't think there's anything that cuts in the favor of
7 allowing it. As to the opportunity of the witness to view the
8 suspect, we have testimony of her after being interviewed by
9 doctors, given these coma scores, answering questions, that she
10 said: It all happened so fast, it could have been my child's
11 father.

12 I don't think that this is consistent with an
13 opportunity to view that would strengthen her reliability.
14 She's even unsure at the hospital. At the house she says, I
15 don't know who did this, and can give a brief description.

16 The witness's degree of attention, she testified that
17 there was a weapon involved, a handgun. I believe also that
18 the doctor testified that she was inebriated at the hospital.
19 An hour later, she's at .12. Her ability to pay attention is
20 obviously compromised if she sees a pistol --

21 THE COURT: I don't think I heard him use that word
22 inebriated.

23 MR. WEHMAN: That was my word, Judge. I believe she
24 was a .12. Obviously, could not drive a vehicle at that point.
25 I would say that --

1 THE COURT: How do you know that?

2 MR. WEHMAN: I believe that an officer that pulled her
3 over with a .2 would arrest her. She had consumed alcohol to
4 the point her blood alcohol level was a .12. This cuts against
5 her degree of attention. And it's demonstrated by the
6 inconsistencies of what she says. The accuracy of the
7 witness's prior description, she gives numerous prior
8 descriptions. The only thing consistent is young, black male,
9 small dreads. She says, it could have been my child's father.
10 She says, I don't know who it was, somebody from the
11 neighborhood who I've seen before. These are not consistent
12 identifications. And the Court already pointed out there are
13 inconsistencies in that identification.

14 THE COURT: Well, is that the test? Is that the test
15 for admissibility, whether the witness's information that led
16 up to the identification included identification consistent?

17 MR. WEHMAN: It is not the sole test, but it factors
18 into the Court's determination of whether or not that
19 identification is reliability. It's one of the five factors
20 that, I believe, is set out in the *Biggers* and *Brathwaite*
21 *Brathwaite* case law. The level of certainty demonstrated when
22 we have two photographic identifications or two photographic
23 lineups that are presented and a grand total of three different
24 people selected, I don't think that cuts in favor either. She
25 says at the hospital, I don't know who did this.

1 I think that the photograph that was shown taints that
2 second photographic lineup. It's bolstering of that. And as
3 such, it should be excluded. And then the Court has the
4 ability to look at her reliable her identification is. And I
5 believe that the testimony presented does not support admitting
6 that in-court identification.

7 THE COURT: All right.

8 MR. SORENSON: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 MR. SORENSON: As I'm sure the Court is aware, Your
11 Honor, obviously, under *Neil v. Biggers*, the Court has laid out
12 kind of the two-prong test, with the first prong that the Court
13 would have to find -- would be making a determination that the
14 ID in this case resulted from unnecessarily suggestive police
15 procedures. And the burden is on the defense to prove that.

16 If Your Honor finds that there were not unnecessary
17 and unduly suggestive police procedures used in this case, the
18 inquire ends at that point in time. And that's kind of
19 where -- that's where the State feels we are.

20 They have referenced, and I believe Your Honor has
21 that single photograph. Looking at the *Tisdale* case that
22 Mr. Wehman cited in his memorandum and mentioned to you this
23 morning, that specifically deals with nongovernmental sources
24 of the suggestiveness. That's what we have here. And the
25 Court in *Tisdale* specifically says that in those situations,

1 that the *Neil v. Biggers* analysis is inapplicable where there's
2 a nongovernmental identification source.

3 THE COURT: Well, he says the cousin (sic) is a
4 governmental agent, the cousin (sic) that was working in tandem
5 with the police, and suggesting the jailhouse photograph
6 bootstrapped the six-pack identification.

7 MR. SORENSON: Well, my argument, Your Honor, there's
8 absolutely no evidence of that. Detective Weaver testified
9 that he had no knowledge of that photograph prior to that date,
10 hadn't instructed anybody to show that photograph, that lone
11 photograph to Ms. Pitts prior to this. And, specifically, took
12 care to make sure that he didn't look at it so that it could no
13 way, shape and form influence him showing the lineup to Ms.
14 Pitts by having seen that and possibly reacted to that. If he
15 looked at that, reacted like, oh, that's him, that that would
16 potentially then influence showing her this lineup.

17 They tried to make a big deal crossing him, like there
18 was something improper with him not looking at that photograph,
19 when I think it was the prudent course they took, was him not
20 looking at it so he didn't know if it was Tyreece Stokes in
21 that sole photograph. But needless to say, that is not law
22 enforcement's doing.

23 Just like in *Tisdale*, in *Tisdale*, I think it is a
24 whole lot worse than we have here. They ultimately found that
25 the identification was okay in *Tisdale*. In *Tisdale* you had

1 multiple bank tellers, one of them the night before, seeing the
2 defendant at his bond hearing for that charge. So, I mean,
3 knowing that he's been arrested and charged, seeing him there.
4 The next one and another one actually seeing his picture then
5 in the newspaper that morning, that he was charged with that
6 robbery. I mean, I think that's even so much worse than this
7 situation.

8 Obviously, they are all suggestive, but, ultimately,
9 what the Court in *Tisdale* points out is that the purpose of
10 barring evidence of unnecessarily suggestive confrontations is
11 to deter police from using a less reliable procedure when a
12 more reliable one would be available.

13 Just like in *Tisdale*, I mean, law enforcement had no
14 control over what's on the news or in the newspaper. In this
15 case, this is a sister showing her this photograph beforehand.
16 So I think law enforcement was perfectly in their rights to
17 then show her State's Exhibit No. 2.

18 May I approach?

19 THE COURT: Yes, sir.

20 MR. SORENSON: I think in looking at State's Exhibit
21 No. 2, Your Honor, you can clearly see there's nothing unduly
22 suggestive about that lineup on its face. The photographs are
23 all fairly consistent with each other. The defendant is, we've
24 heard testimony, is No. 3. And that, ultimately, there's
25 nothing that jumps out that would make somebody choose No. 3

1 just looking at that lineup.

2 So I think my initial argument that I started with is
3 that the defense has not met its burden that there was
4 unnecessarily suggestive police procedures used or unnecessary
5 and unduly suggestive lineup procedure, identification
6 procedure used in this case.

7 If you find that there is, then we would go on to the
8 second prong, which would then be determining whether the ID
9 was, nevertheless, so reliable that no substantial likelihood
10 of misidentification existed.

11 And if I could just briefly touch on that. You've
12 heard and, obviously, you had an opportunity to observe Ms.
13 Pitts on the witness stand and judge her credibility. But I
14 submit she testified that she had an opportunity to observe her
15 assailant that night, that her porch light was on, that he was
16 standing right in front of her vehicle. She had to look at his
17 face initially, had to look at his face, obviously, when he
18 came up and was face-to-face with her, stabbing her in the
19 chest and face, and as he fled the scene, turning back and
20 looking at her, that she was paying attention.

21 The second factor, her degree of attention. I think
22 our courts have ruled over and over again that a person in
23 fear, as she would testify she was, because of her kids inside,
24 that that would heighten your degree of attention. The
25 accuracy of the description, you heard, you know, the initial

1 description very briefly to the responding officer that there
2 was a young, black male, small twists in his hair, consistent
3 with the defendant's description. Obviously, gave multiple
4 descriptions at the hospital. I will address that in a second.
5 But then, ultimately, the description that she gave when she's
6 out of the hospital, off of the pain medication, thinking
7 clearly, yet again, matches the defendant, young, black male,
8 tall, skinny, small twists in his hair, a deep voice.

9 Level of certainty at the confrontation, you heard her
10 testimony and Detective Weaver's testimony that she started
11 shaking, visibly upset when she saw State's Exhibit No. 2 and
12 identified the defendant. You heard her testimony that she was
13 absolutely positive that that was the person who had robbed and
14 assaulted her.

15 And then, lastly, the time between the crime and the
16 confrontation, in this case, we have less than five days, so
17 fairly small amount of time in between the two of them.

18 So I think if you look at all of that, that we would
19 cover our burden of proving by clear and convincing evidence
20 that there is no substantial likelihood of misidentification.

21 THE COURT: Is that the test, clear and convincing
22 evidence?

23 MR. SORENSON: I believe I read that in one of the
24 cases, yes, Your Honor.

25 THE COURT: That you would have to show by clear and

1 convincing evidence that what?

2 MR. SORENSON: That the identification was so reliable
3 that no substantial likelihood of misidentification existed.
4 And, ultimately, the main thing that the defense turns upon is
5 the statements from Ms. Pitts at the hospital. And you've
6 heard the testimony. You had an opportunity to observe that
7 actual lineup procedure on Officer Boehler's body cam. She's
8 got an eye swollen shut. She's on heavy medication. She's got
9 traumatic brain injury.

10 THE COURT: I think you have transposed totality of
11 circumstances with clear and convincing.

12 MR. SORENSON: Okay. That could be. I'm sorry. I
13 had that in here also under totality. I was going to kind of
14 finish with that. Didn't mean to potentially increase my
15 burden.

16 But, you know, ultimately, if you look at, Your Honor,
17 imagine if you would just for a second, if Ms. Pitts had
18 identified in the hospital to Officer Boehler No. 3 in that
19 lineup, if she had pointed at No. 3 on that phone. I mean, I'm
20 so glad, quite frankly, that didn't happen, because there would
21 have been no reason for law enforcement to go back and show her
22 another lineup. But then can you imagine how this *Biggers*
23 hearing would be going at that point in time. They want you to
24 believe that because she identified one or two that, therefore,
25 this whole identification now is improper and she's wrong about

1 it. But the argument, had she identified No. 3, and that's all
2 we had, obviously would have been, you know, she's got one eye
3 swollen shut, she's on -- been given several doses of Fentanyl,
4 you could hardly understand her, there's other people that are
5 interacting with her during the course of this lineup
6 procedure. The fact that it's shown on a little phone, they
7 are small pictures. Even the officer testified they weren't
8 bright enough initially. She's in pain. She's telling the
9 officer, when the officer reads the disclaimer to her, her
10 response is not that I understand, is my chest hurts.

11 She tells her brother immediately afterwards when he
12 asks her, how are you feeling, bad. And mumbling through all
13 of that.

14 You know, they put in their motion this memorandum
15 that they filed. They describe this at the top of page 2.
16 Also, there's a video of Pitts's alert and coherent demeanor at
17 the time of the September 1, 2006 identification. I mean, I
18 don't know what they were looking at, but that would be the
19 exact opposite of alert and coherent.

20 And then, ultimately, the fact that she then testifies
21 that she has no memory of any of that even occurring in the
22 hospital. I mean, if she had picked No. 3 out, I mean, I
23 suspect we would be done, because there's no way that
24 identification would be coming in. But they want you to, on
25 one hand, find that those inconsistent statements under the

1 medication, the injury that she suffered, are somehow reliable
2 and are important. But at the same time, she's also
3 inebricated. It kind of cuts both ways. And I think when you
4 look at it under the totality of the circumstances, it's not
5 unreasonable that she has no recollection of anything that
6 occurred in the hospital. It's not unreasonable for law
7 enforcement to have wanted to go back and to show her that
8 lineup again.

9 I submit it would have been potentially unduly
10 suggestive if they had shown her a different lineup with
11 Tyreece Stokes in it so she's now seeing two different lineups
12 and he's the only common denominator. It's the same lineup.

13 And, lastly, just a couple other things just to kind
14 of point out with as far as their memorandum that I have some
15 issue with. They talk about on the top of page 2 also, right
16 after that comment regarding the alert and coherent demeanor
17 during -- at the hospital. They also then talking about -- and
18 they crossed her on this also, on her describing about the two
19 knives being involved. They put in here: Furthermore,
20 immediately after the incident, Pitts advised police that the
21 perpetrator could have been the father. All right. After the
22 defendant's arrest and subsequent information that he was found
23 near or with two knives, Pitts amended her story again and no
24 longer mentioned the use of a gun.

25 See, that's wrong. She talked and you heard her

1 testimony. You heard Detective Weaver's testimony. The day
2 before he's arrested on September 6th, she tells Detective
3 Weaver the fact that he had two knives. See, they crossed her
4 on the statement because it's not in there about him crossing
5 the knives. But she told him that the day before. So they are
6 trying to argue that, yet again, that she's amending her story
7 now that she's obviously trying to argue that because she's
8 learned that he was caught with two knives. That's not
9 inaccurate -- that's inaccurate and not what the testimony bore
10 out.

11 And, lastly, there's one other thing I had in here.
12 There's not page numbers here, but they have a conclusion in
13 their memorandum. No. 3 is, the victim stating that the
14 picture is how she identified the defendant.

15 I mean, they asked her and Detective Weaver. And
16 nobody ever said that. I don't know where that -- it was their
17 question, but it was not answered in the affirmative by either
18 witness. Detective Weaver, I believe, read right from his
19 report what he had noted about that Facebook picture. And you
20 heard her testimony that she identified the defendant because
21 she will never forget that face, that being the person that
22 robbed her and assaulted her.

23 So, ultimately, Your Honor, I believe at the end of
24 the day, my argument is kind of two-fold. Number one, as I
25 said, that they have not met their burden that there was an

1 unnecessarily suggestive lineup procedure done in this case.
2 And even if you would find that somehow her having seen that
3 single photograph by a nongovernmental agent, that under the
4 totality of the circumstances, looking at the factors laid out
5 in *Neil v. Biggers*, that the State has proven that there is no
6 substantial likelihood of misidentification and that her
7 identification is reliable.

8 Arguments, clearly, they can cross-examine her. I
9 submit to you, ultimately, the lineup, the lineup
10 identification, her in-court identification of Mr. Stokes, are
11 admissible. And any argument that they may have that they put
12 forth goes towards the weight and not the admissibility of that
13 identification.

14 Beg the Court's indulgence. That would be all I have,
15 Your Honor.

16 MR. WEHMAN: I would like to briefly respond.

17 THE COURT: I note the word "brief". Yes, sir.

18 MR. WEHMAN: Judge, I believe that there might be some
19 confusion as to my argument about where the governmental --

20 THE COURT: You mean -- who is confused?

21 MR. WEHMAN: Based on the solicitor's argument.

22 THE COURT: Solicitor is confused as to your argument?

23 MR. WEHMAN: I believe, based on what he told you. He
24 said with respect to the governmental involvement, where the
25 government involves themselves in this case, he mention *Tisdale*

1 again. And the difference in *Tisdale*, is that police did not
2 show these people a photographic lineup once they provided that
3 they knew the person and how they came up with that
4 information. They had seen these images on TV. They refused
5 to show them a photo lineup. The governmental involvement, the
6 solicitor would suggest, is that I'm saying that this sister,
7 cousin, whoever, is working in tandem with law enforcement, and
8 that is the governmental involvement. That's not my argument.

9 My argument is that the governmental involvement is
10 showing her a photographic lineup, which is the identification
11 procedure that they are trying to uphold, once they have not
12 only knowledge that she's seen a photograph, but also is
13 presented with that photograph. They are on the hook for that
14 photograph when they involve themselves and he show them the
15 photographic lineup. That September 6th photographic lineup is
16 the only identification procedure I'm challenging. It is the
17 procedure that I'm saying was unduly suggestive. The State --

18 THE COURT: Because the cousin (sic) had done some
19 police work and --

20 MR. WEHMAN: Cousin, sister, done police work, not
21 only police work, showed her two photographs, one of which
22 you've seen. I don't want to repeat myself. But, yes, she had
23 that and handed it to law enforcement and said, this is the
24 person. They don't want to look -- Detective Weaver doesn't
25 want to look at it. Instead, he wants to show her the

1 photographic lineup. He inserted himself.

2 THE COURT: He's in an impossible situation. It's
3 impossible for him to do anything, any police work.

4 MR. WEHMAN: No --

5 THE COURT: He should have gone back home.

6 MR. WEHMAN: That's not what I'm saying. What I'm
7 saying is, in *Tisdale*, the officers took that identification
8 and went forward. Also, what I think the State is forgetting
9 is the September 1st identification. This isn't the first time
10 she's been confronted with an identification.

11 THE COURT: He just talked about it.

12 MR. WEHMAN: He mentioned all the reasons why that
13 identification was unreliable and what he felt the testimony
14 bore out. However, that identification did happen. Officer
15 Boehler met with the victim in the hospital. She had the
16 opportunity to observe her demeanor and answer questions. She
17 felt that she would be able to accurately pick out this person
18 and was coherent enough to look at the photographic lineup.

19 The doctor testified that she was put through a number
20 of tests and that her response, she was opening her eyes on
21 command, had the ability to answer questions. Officer Boehler
22 felt comfortable enough to show her that photographic lineup.
23 She looked at it and was able to make two selections. That
24 happened.

25 This is distinct from *Tisdale* in that these witnesses

1 had not seen a photographic lineup, picked someone else, and
2 then seen this person on the news and come to them. If that
3 had happened, that *Tisdale* case would have been completely
4 different. It's distinct. And I believe that the governmental
5 involvement in showing her that lineup with that picture in
6 hand is suggestive. There's a very low likelihood, according
7 to *Prioleau*, a very low likelihood that she would pick anybody
8 else out.

9 And the reliability factors, the fact that she
10 previously misidentified him, I believe is unreliable in and of
11 itself. She's given different statements. And the things that
12 she mentions on the witness stand, these -- I believe the
13 solicitor mentioned the fact that -- the crossed knives, that
14 does change. That is not in the initial statement. The facts,
15 I think he brought something up in the memorandum, with two
16 knives. That certainly wasn't the initial story. I don't
17 believe that she testified -- it did show up in her written
18 statement. I don't know what he was suggesting with Detective
19 Weaver.

20 Her story is changing. And I believe that that
21 indicates that her reliability is called into question.

22 THE COURT: And that's why we are here for a jury
23 trial.

24 MR. WEHMAN: Well, Judge, I believe that --

25 THE COURT: Well, I know what you believe. And you

1 filed a motion. And we spent all this time hearing it out. So
2 I need you to conclude your arguments so that we can press on.

3 MR. WEHMAN: Yes, Judge. In conclusion, I would say
4 that I believe that the suggestive nature of that photo lineup
5 should make that inadmissible. I believe that the reliability
6 factors in *Biggers*, *Brathwaite* and its progeny, I believe that
7 that cuts against admitting it. I believe that her
8 identification was unreliable and that the in-court
9 identification should be excluded.

10 THE COURT: All of these cases and events that
11 happened that result in people being charged with crimes and
12 coming into court and having a hearing such as this to ensure
13 that the due process rights of the parties are protected, they
14 are certainly adhering to that in this procedure. And,
15 clearly, where the defendant -- where there's an identification
16 procedure, and procedure is unduly suggestive and conducive to
17 irreparable and mistaken identity, then the Court should not
18 allow that procedure.

19 In this case, it is very hard to imagine a reliable
20 identification procedure where a person is seemingly on the
21 operating table and the police officer is mixing in with the
22 doctors, and she's being asked to identify whether she can make
23 an identification on a cell phone, while heavily medicated and
24 seemingly delirious over the events of having been stabbed in
25 the chest and stabbed in the eye. It's almost as if at one

1 point she asked the police officer for medication or at least
2 she complained of needing something based on her condition.

3 We have the facts as we have them in this case. And
4 the fact of friends and relatives trying to assist in finding
5 who committed this offense and showing her a photograph,
6 questions whether that constitutes police action to taint the
7 identification. The cases hold that it doesn't, that nonpolice
8 action does not make an identification procedure unduly
9 suggestive.

10 And in this case, as I've stated, we haven't heard
11 from these nonpolice actors, cousins, sisters, whomever might
12 have shown the person a photograph, the victim a photograph.

13 So there's no way I can find that this is an unduly
14 suggestive lineup procedure based on her being sent -- shown a
15 photograph by someone else. So as to the first prong, the
16 defense fails, because I do not find an unduly suggestive
17 process. Even if this process, however, was suggestive, the
18 victim testified as to her prior contact with this defendant,
19 that she is certain as to his identification based on her
20 encounter with him on the night of this offense, her level of
21 certainty as to this defendant being the person who robbed and
22 stabbed her.

23 The jury in a trial must be convinced beyond a
24 reasonable doubt as to identification prior to being able to
25 convict a defendant of the crimes. I have no basis to suppress

1 the identification by the victim in this case, no reasonable
2 basis.

3 We have what appears to be a rather unique set of
4 circumstances. But every case has its unique features, and
5 this one certainly does.

6 I deny the motion to suppress the identification by
7 the victim.

8 MR. WEHMAN: That's denial to both in-court and
9 out-of-court identifications, Judge?

10 THE COURT: Yes.

11 MR. WEHMAN: Thank you, Your Honor.

12 THE COURT: All right. We will take a few moments. I
13 have to rule on some of these other things we talked about
14 yesterday. And we have a jury coming in at 11:30. We will
15 take about five minutes.

16 (Whereupon, a recess transpired.)

17 THE COURT: Well, with the various things or issues
18 that y'all tasked me with reviewing overnight and yesterday,
19 the motion to dismiss for lack of probable cause or for
20 incomplete information given to the magistrates, et cetera, I
21 deny that motion as stated. The case is in court based on an
22 indictment returned by the Grand Jury. And this Court has no
23 authority to dismiss this indictment, which is presumed valid
24 on its face and is properly before the Court.

25 So all of the flaws that might have existed

1 notwithstanding, I do not have authority to dismiss the case.
2 And I deny that motion.

3 I guess there's a motion to suppress all of these
4 prior instances with the defendant having knives prior to the
5 date of this offense. All lumped together under the prior bad
6 acts, all of this is prior to the alleged offenses, I agree
7 with the defense, that's improper testimony that doesn't meet
8 the test of admissibility considering the -- that pretty much
9 would be a propensity evidence, which would improperly lead a
10 jury to conclude that because he carries a knife, he must have
11 committed this crime. So I grant the motion to not allow that
12 evidence by the State in its case in chief.

13 The only thing that remains, I believe, is the two
14 knives found on the defendant after or at the time of his
15 arrest. And y'all gave me -- cited a rule and said, okay,
16 based on this rule, you need to -- Rule 403, 404, which one is
17 it, 403?

18 MR. WEHMAN: Yes, Your Honor.

19 THE COURT: That I should admit it or exclude it based
20 on that rule. And I need a little bit more from learned
21 counsel on that.

22 MR. WEHMAN: Well, Judge, my argument under 403 would
23 be that that evidence would be more -- clearly more prejudicial
24 than probative based on the reasons that I told you
25 yesterday.

1 THE COURT: Let's start from the perspective of is it
2 relevant?

3 MR. WEHMAN: I would argue that it is not based on the
4 inability of the State to link either one of those to the
5 crime. So I would argue that it is not relevant. And would
6 make kind of a similar argument to my Lyle argument, that they
7 would tend to use the subsequent bad act of carrying knives as
8 propensity evidence as well.

9 THE COURT: From the State?

10 MR. SORENSON: Your Honor, as to that first question
11 you had, it's our position that this evidence is relevant.
12 You've heard now from Ms. Pitts. I suspect she's going to
13 testify similarly to the jury that -- describing her assailant
14 as having two knives, a steak knife that she was stabbed with
15 and a butcher knife. The steak knife is located -- the blade
16 is located at the scene of the crime.

17 The fact that he is found with a butcher-style knife
18 five days later, six days later, I mean, I think it's clearly
19 relevant.

20 And the fact that the second knife is basically
21 another steak knife, type knife, which our argument would be,
22 he basically replaced the knife that was broken and left behind
23 at the scene of the crime.

24 If you want, I've got photographs of all the knives in
25 question, if that would help, to see kind of what we are

1 talking about.

2 THE COURT: All right.

3 MR. SORENSON: May I approach? That would be the two
4 knives that were recovered either off of or near the defendant
5 at the time of his arrest. That would be the blade, basically,
6 that was basically recovered from the crime scene.

7 THE COURT: So who plans to testify as to what
8 regarding a link, if any, between these two, between all these
9 things in the photographs?

10 MR. SORENSON: I believe the victim, description
11 initially of the weapons that were involved, a butcher-type
12 knife and steak knife. We have two to three officers that are
13 involved in the arrest of the defendant that would testify that
14 those are the items that then are recovered off of him six
15 days, less than six days later, which I submit is consistent
16 with a butcher-style knife. I think that makes it relevant.

17 THE COURT: There are a few cases that speak to these
18 general issues, this general issue. *State v. McConnell* -- I'm
19 actually looking at *State v. Holman*, that's a PCR case where a
20 guy was convicted of shooting some folks in Bamberg County at
21 Voorhees College. And a week following the shooting, they
22 searched the accused's residence and found a pistol. And in
23 the opinion, it says, the handgun seized from petitioner's
24 residence was in no manner connected to the shooting incident
25 at Voorhees College. And we are troubled by the State's effort

1 to admit the unrelated firearm in evidence., More troubling is
2 petitioner's counsel's failure to object to the admission of
3 the unrelated pistol.

4 So the defense counsel didn't object. He was
5 convicted. And part of his PCR defense was trial strategy.
6 And the appellate court did not buy that. And they granted the
7 PCR based on that evidence being admitted.

8 Then *State v. McConnell* -- we have *State v. Clayton* as
9 well, which is an unreported opinion. So we won't talk about
10 that one. But it dealt with similar issues in this case,
11 identification and some knives. Maybe it's a report -- it is a
12 Reporter opinion. Okay.

13 So, in *Clayton*, he was convicted. And the appeal
14 centers around the admission and the evidence regarding knives
15 found in the defendant's trunk as they were not connected to
16 the crime. And appellant asserts that the evidence was
17 prejudicial and raise spurious instances of prior bad acts.
18 And pursuant to *State v. McConnell*, the evidence concerning the
19 knives were inadmissible. And during the direct examination of
20 the detectives, solicitor asked, what, if anything, was found
21 in the consensual search of the defendant's van. And the
22 officer says, only thing we found was that footlocker that had
23 numerous knives. Defense counsel says, Your Honor, I'm going
24 to object. The Court, your objection. Defense counsel, unless
25 you can show some nexus between what they are now talking about

1 and this crime, it is not relevant. The judge overruled the
2 objection and testified that when the defendant was arrested,
3 he had these numerous knives.

4 And on appeal, in this case and many others, then the
5 question becomes whether or not this is harmless error.
6 Ultimately, they decide that -- they cited in this case, the
7 Court of Appeals, I believe they ultimately concluded that we
8 are dealing with harmless error.

9 I think *State v. Elder*, another case, and I think in
10 *Elder*, they get into whether or not this property is being
11 introduced, whether it had some evidentiary value or nexus with
12 the crime.

13 So what is it that we have here that would make this
14 admissible?

15 MR. SORENSON: Your Honor, I believe, and I guess
16 maybe if I can kind of take them separately also. So there are
17 two knives that we are trying to get into, but I think it's
18 slightly a different argument as to both of them.

19 As to the butcher knife, I think the nexus is the
20 victim, the fact that she describes her assailant as having a
21 steak knife, which she gets stabbed with, and a butcher-style
22 knife.

23 THE COURT: Which matches the description?

24 MR. SORENSON: Yes, of the knife that is then
25 recovered.

1 THE COURT: I mean, I don't know what her testimony
2 will be. I'm just asking.

3 MR. SORENSON: Well, she described it as a
4 butcher-style knife. And maybe we need to wait and see if
5 she's able to, in looking at that, say that's consistent or
6 inconsistent with the second knife.

7 THE COURT: Because in the pretrial hearing, we were
8 hearing, well, no forensics, no connection.

9 MR. SORENSON: There's also no evidence that she was
10 stabbed with that knife. So what forensics are there going to
11 be on it? I mean, I'm not sure what. The knife is recovered
12 from the defendant. I mean, so it's connected to defendant.
13 That's the nexus to the defendant. And I'm not sure what
14 forensics you are going to have in that situation.

15 THE COURT: I don't know. I'm just repeating what
16 y'all were talking about.

17 MR. SORENSON: Well, that's what they said. My
18 argument, I'm not sure what forensics we are supposed to have
19 with regards to either of these knives to connect them to the
20 scene. She's stabbed with a knife that is left in her chest.

21 THE COURT: Tell me again what your theory of
22 relevance of these two things again.

23 MR. SORENSON: Of the butcher knife is the fact that I
24 think it's consistent, is going to be consistent with an item
25 that the victim described. If she had described him having a

1 New York Yankees baseball hat on and he's found six days later
2 with a New York Yankees baseball hat, I think that's
3 admissible. I think it's relevant. The nexus is it goes to
4 helping identify him. That's as to the butcher knife.

5 Now the steak knife, my argument is that, basically,
6 he has replaced the knife that has broken off in her chest.

7 THE COURT: With a similar knife?

8 MR. SORENSON: With a similar knife, it's a steak
9 knife. He's now armed, just as she testified her assailant is
10 armed with a butcher knife and a steak knife, six days later,
11 he's armed with a butcher-style knife and a steak knife.

12 THE COURT: How do you distinguish these cases, *Elder*,
13 *McConnell*.

14 MR. SORENSON: *McConnell*, I got Mr. Templeton looking
15 at these as we are speaking. I believe *McConnell*, they recover
16 a gun in *McConnell*, it's a different caliber gun than the
17 murder weapon. So, clearly, it's not the murder weapon.

18 I mean, when you are dealing with a firearm,
19 obviously, if you have a victim that's killed with a .40
20 caliber gun and you find a .22 on the defendant six days later,
21 I'm not sure -- I would concur that would be pretty hard for us
22 to prove that that's relevant and some nexus, just without, you
23 know, some other facts. So as to that -- Mr. Templeton was
24 trying to find -- I believe *Clayton* is the one with several
25 knives located. We are having trouble finding that case.

1 Beg the Court's indulgence. I'm not sure if that was
2 the case where there were knives that were used as to the
3 weapons in the case, or if it's just the fact that there were
4 knives found.

5 THE COURT: I think the person was stabbed. And then
6 *Elder, State v. Elders*, this seems to be a bigger case on the
7 issue. In *Elders*, they found four knives in his belongings
8 when he was arrested. And the defendant claims the knives were
9 calculated to arouse sympathy or prejudice of the jury in that
10 they were irrelevant, given that none of them were used during
11 the crimes in question.

12 And court says: Here, there is considerable evidence
13 in the record demonstrating that the knives were not used in
14 the commission of the crimes. Additionally, none of the
15 witnesses specifically testified that the knives were similar
16 to the knife used to commit the crimes. Evidence that the
17 knives were found in Elders's belongings two days after the
18 crimes occurred tended to prove not that Elders committed the
19 crimes in question, but rather that he was the sort of person
20 who might commit such crimes. Accordingly, in light of the
21 negligible probative value of the knives, as well as the danger
22 of unfair prejudice created by their admission, we hold that
23 the knives should have been excluded.

24 Then, once again, they found harmless error.

25 MR. SORENSON: I think that would be that -- how we

1 would distinguish that is the fact that in that situation Your
2 Honor just read, no witnesses identified any of those knives as
3 being similar to what was used in the crime. I think we have
4 the opposite of that. That's how we distinguish that case. We
5 have our victim who is going to describe a butcher-style knife,
6 and has described that. She's testified already before Your
7 Honor and described that.

8 THE COURT: All right. Yes, sir.

9 MR. WEHMAN: She also testified that it was a handgun.
10 I mean, that's not what, I would say, consistent description.

11 THE COURT: She testified to it or others did?

12 MR. WEHMAN: Others testified that her initial
13 description was that of a handgun.

14 THE COURT: So others, others did.

15 MR. WEHMAN: She claimed that she doesn't remember
16 that time.

17 THE COURT: She doesn't remember. Okay.

18 MR. WEHMAN: But, nonetheless, it is an inconsistent
19 identification of this knife. And I think at the end of the
20 case you just read, the purpose for introducing these things is
21 to arouse the passions of the jury. And there's also to show
22 that he's the type of person that carries knives. Neither one
23 of these knives can be linked. The witness didn't identify the
24 knife.

25 THE COURT: Well, if they are similar, is that a

1 sufficient link?

2 MR. WEHMAN: I don't believe --

3 THE COURT: That's what they specifically addressed in
4 that case, there's no -- that the -- none of the witnesses
5 specifically testified that the knives were similar to the
6 knife used to commit the crimes.

7 MR. WEHMAN: Well, that's correct. And we haven't had
8 testimony presented that the knife was similar in this case
9 either.

10 THE COURT: Y'all dropped the issue on me and then
11 cited a rule. But there are cases that -- these are just three
12 or four that I discovered. That's what we need to sort of
13 analyze here. It's obviously a pretty important issue. From
14 the defense's perspective, the State shouldn't be allowed to
15 give the jury any evidence. Everything is objectionable. You
16 know, what can the State offer? What is relevant? If someone
17 commits a crime with a baseball bat and they are spotted two or
18 three days later with a baseball bat, can you introduce the
19 baseball bat, or you must prove that the baseball bat was used
20 in the crime?

21 MR. WEHMAN: I think, Judge, in that instance, there
22 would need to be some sort of corroboration of that; whereas,
23 it could be a distinct marking on the baseball bat that would
24 tend to prove that was the bat used. But simply saying a
25 baseball bat was used and he was walking down the street with a

1 baseball bat, I think is what that case addresses. There's no
2 specific tie of that weapon to the crime. Certainly, one
3 couldn't have been used. So there's no tie to that one. And
4 the second one, there's -- there was no testimony given that
5 that is the knife or that is a similar knife. All we have is a
6 vague butcher-style knife and a characterization that this is a
7 butcher-style knife. I don't think there's any specific tie
8 that would give this -- make this relevant.

9 THE COURT: All right. What else?

10 MR. SORENSON: To beat a dead horse, our position is
11 that it is similar.

12 THE COURT: What was your motion, motion in limine or
13 motion to suppress on this issue?

14 MR. WEHMAN: Motion to suppress, Judge.

15 THE COURT: Motion to suppress the knife that was --
16 so you have the burden of showing that it's irrelevant, unduly
17 prejudicial, that there's no nexus between it and the crime?
18 What's your burden?

19 MR. WEHMAN: Judge, I believe I have the burden to --
20 first is the relevancy issue. I don't believe that it's
21 relevant. I think there's no nexus. There's been no testimony
22 that links these two specific knives to this crime. There's
23 been no identification of the knife by any witness that said,
24 that's the one that was used. And, certainly, even if it meets
25 that burden to become relevant, there's still the secondary

1 issue of whether or not it's overly prejudicial, even though it
2 is relevant. And I think that based on the testimony given,
3 there's very limited relevant value to this, other than he's
4 the type of person that carries knives. And it should be
5 suppressed on that basis as well.

6 THE COURT: This gets into the dilemma of having the
7 trial before the trial. Solicitors, in effect, is being asked
8 to screen all of the evidence in advance of the jury hearing
9 the evidence by way of a motion to suppress all of the
10 evidence.

11 MR. WEHMAN: As to the timeliness of it and when it
12 was filed, we are about to open in front of a jury. And the
13 concern would be that it would be mentioned in the opening
14 statement by the State. And that bell would not be able to be
15 unrung at a later time. I believe that's why we picked this
16 time to do it. And the Court would make a correct point, I do
17 believe this is all the evidence.

18 THE COURT: I think that the case -- this case is
19 distinguished by the fact of -- from *Elders*, by the fact that
20 at least the anticipated testimony and what's presented through
21 the photographic exhibits that would be offered, that the
22 knives confiscated from the defendant were similar to the knife
23 used to commit the crimes.

24 I've excluded all of the propensity evidence which
25 consists of one, two, three, four, five, five, at least five

1 instances of the defendant carrying similar knives based on
2 propensity. I find that the probative value of the defendant
3 being arrested having knives similar to those that the
4 defendant -- that the victim contends were used in the assault
5 outweighed the prejudicial effect.

6 And where the court in *Elder* says it has negligible
7 probative value based on there's no testimony of any
8 similarity, I find that this probative value here is not
9 negligible, but relevant evidence that the jury should be able
10 to consider. So I deny that motion.

11 All right. Are we ready for the jury?

12 MR. SORENSON: The State is ready.

13 MR. WEHMAN: Yes, Your Honor.

14 THE COURT: All right. Need two minutes to get some
15 water or take a deep breath?

16 MR. WEHMAN: If I can have a moment, Your Honor.

17 (Whereupon, recess transpired.)

18 THE COURT: I granted the suppression motion,
19 excluding all witnesses. It's up to counsel to identify and to
20 not have their witnesses in court until after their testimony.

21 MR. SORENSON: Yes, sir.

22 THE COURT: All right. Ready for the jury?

23 MR. TEMPLETON: We are, Your Honor.

24 THE COURT: Let's bring them on.

25 Regarding the final charge to the jury, after all the

1 evidence is in, do you all like the judge to charge the jury
2 before or after argument?

3 MR. SORENSON: I'm not sure I've ever had anybody do
4 it before argument.

5 MR. WEHMAN: We would ask for before argument, Judge.

6 THE COURT: Before argument? What do you think about
7 that?

8 MR. SORENSON: I don't think I have any objection to
9 that. I just have never had it done that way.

10 THE COURT: That's supposed to be the new way. We did
11 that in Horry County about three weeks ago. It was a civil
12 case. We will let y'all think about it now, because when you
13 give the opening, I don't know what you will tell the jury
14 about that, or if you will. I'm just bringing it up as a
15 thought. Mr. Wehman has thought about it already. Do you need
16 to think about it more?

17 MR. WEHMAN: I thought about it. I think it will help
18 with the closing arguments.

19 THE COURT: We will think about it some more and see.
20 May help with the closing arguments.

21 (Whereupon, the jury returns to open court at 12:02
22 p.m.)

23 THE COURT: Good morning. Welcome back, ladies and
24 gentlemen. If y'all will stand now to be sworn.

25 (Whereupon, the jury is sworn.)

1 THE COURT: Well, ladies and gentlemen, I guess y'all
2 received the juror summons probably three, four weeks ago, two
3 or three weeks. How long ago?

4 A JUROR: Probably a month ago.

5 THE COURT: About a month ago, you got a juror summons
6 requiring you to come here for jury duty. You responded to
7 that summons by coming yesterday, went through a jury
8 qualification process to ensure that you were qualified to
9 serve on jury duty. As I stated to the jury yesterday, a
10 person qualified to serve on jury duty has a constitutional
11 right to serve on jury duty. And that person cannot be
12 discriminated against in their jury service.

13 After going through the jury qualifications process,
14 we went through the jury selection process. And y'all were
15 selected to be the jury in the trial of this case, 14 of you
16 were selected. Then you just took an oath, the oath to well
17 and duly try this case and render a true verdict according to
18 the evidence and according to the law, so help you God.

19 And now, if you hold true to that oath, then in the
20 end, no one will have any basis to criticize any verdict that
21 you render. And out of all the folks who live here in this
22 vast county, Dorchester County, of all the folks who live in
23 the state of South Carolina, the United States, the world, only
24 the twelve of you who will deliberate in the end can decide
25 this case. And you will be asked to decide whether the

1 defendant, Tyreece Raheem Stokes, is guilty or not guilty of
2 armed robbery and whether or not he is guilty or not guilty of
3 attempted murder.

4 This case comes into court as a result of an
5 indictment returned by the Grand Jury of this county charging
6 Mr. Stokes with these two crimes. He has pled not guilty to
7 these two crimes. He is presumed to be not guilty of these
8 crimes. He cannot be found guilty unless the State, through
9 the Solicitor's Office, unless the State presents evidence
10 which convinces each and every one of you who deliberates of
11 his guilt beyond a reasonable doubt. Should the State present
12 evidence which convinces you of guilt beyond a reasonable
13 doubt, then you must find him guilty. Should the State fail in
14 that burden, then you must find him not guilty of the
15 particular charge.

16 I will do all that I can through this process to keep
17 the case moving, to not have any unnecessary or unreasonable
18 delays. You will be asked to decide these important questions
19 based on your consideration of the evidence that is presented.
20 So it's important that you stay focused and pay attention to
21 the evidence as it is presented so that at the end of the
22 process, you will be in a position to deliberate with each
23 other in an effort to reach a verdict.

24 Now, the role of the jury is to deliberate the facts
25 of the case. Only you can decide the facts of the case out of

1 all the folks who were summoned and all the folks who live in
2 this county. As the presiding judge, I'm the sole judge of the
3 law of this case. And you must accept as correct the law as I
4 state it to you now during the trial and in greater detail at
5 the end of the trial.

6 It is important, and I mentioned it to you yesterday,
7 that you not discuss the case with each other while the case is
8 being presented, that you not discuss it with anyone else who
9 is not on the jury, and that you not engage in any form of
10 outside research or try to seek any information through outside
11 sources, because under your oath, you are to decide the case
12 based on the evidence presented during the course of the trial
13 and based on the law as I give it to you.

14 Now, later in the process, I will appoint one of you
15 to serve as the foreperson of the jury. And that person will
16 have the responsibility of being the spokesperson of the jury.
17 And that person will have the responsibility of presiding over
18 the jury deliberations. In just a moment, you will hear from
19 the lawyers. And they will explain to you what they believe
20 the case is about and what the evidence will show. That might
21 take us to lunchtime, I don't know. But then after that, we
22 will begin taking testimony in the case.

23 I look forward to working with you on this case and
24 pressing on with our case at this time.

25 Opening statements.

1 MR. TEMPLETON: May it please the Court, Your Honor.

2 THE COURT: Mr. Templeton.

3 MR. TEMPLETON: Good afternoon. My name is Ryan
4 Templeton. I'm an assistant solicitor here in Dorchester
5 County. Myself, along with First Assistant Solicitor Don
6 Sorenson, represent the State of South Carolina in this matter.
7 What I'm going to tell you today is that most of the facts in
8 this case really aren't in question. I bet you Mr. Wehman
9 would agree with me that a large majority of the facts, what
10 happened that day, is not in question. Only thing you have to
11 determine is that that man right here, Tyreece Stokes,
12 committed this crime.

13 These events occurred on September 1st, 2016, at [REDACTED]
14 [REDACTED], which is in the Robynwyn section of Summerville.
15 It's a neighborhood in the city of Summerville. On that day,
16 Nikia Pitts, the victim in this case, which you will get to
17 hear from her, she's sitting in the second row, you will get to
18 hear from her in just a little while, went back, was at her
19 home. She went outside to smoke a cigarette, sit in her car.
20 At that point, a black male, she will describe with twists in
21 his hair, small dreads, approaches her and tries to rob her.
22 Does rob her. Takes her purse at knifepoint. And then, even
23 after taking her purse, stabs her multiple times, one time
24 through the eye into her brain and the second time into the
25 breast.

1 Ladies and gentlemen, that's basically all undisputed.
2 We know all that happened. What we have to convince you beyond
3 a reasonable doubt -- and beyond a reasonable doubt simply
4 means that we give you evidence that leaves you firmly
5 convinced of the defendant's guilt -- is that he is the one
6 that committed that crime, two crimes, armed robbery. I think
7 we all kind of know what that means. You know, our law
8 specifically defines it. But it's taking a property from
9 another person while armed with a deadly weapon. A knife is a
10 deadly weapon. In this case, it could have very well been a
11 deadly weapon.

12 Attempted murder, the assault on Nikia Pitts, the
13 intending to kill her with malice aforethought. Malice meaning
14 ill will in his mind at the time that he did it; aforethought,
15 in his mind at the time that the stabbing occurred.

16 Ladies and gentlemen, you are going to hear from a lot
17 of other people, but at the end of the day, most of this
18 evidence, most of what you are going to hear is the
19 identification of Tyreece Stokes, a person that Nikia says
20 she's seen around the neighborhood multiple times, that he
21 walks by her house fairly regularly, and came up to her that
22 night, robbed her of her phone and her pocketbook, and stabbed
23 her multiple times.

24 Ladies and gentlemen, at the end of this case, we are
25 going to get back up here in front of you and ask you to return

1 a verdict of guilty. And that will be a just verdict in this
2 case. Thank you.

3 THE COURT: By the defense.

4 MS. WILLIAMS: May it please the Court.

5 THE COURT: Yes.

6 MS. WILLIAMS: The judge just told you, ladies and
7 gentlemen, the name of this case is State v. Tyreece Stokes.
8 This is Tyreece Stokes. And while he sits here waiting on your
9 verdict, waiting on the decision from the Court, it's really
10 not what we are all here today for. We are all here today for
11 the first part of that caption, the State. The State is the
12 Solicitor's Office. It's the police officers involved in this
13 case. And the reason why I say that we are here for them is
14 because they are the ones that brought you here. They are the
15 ones that brought me here. They are the ones that brought
16 Tyreece Stokes and even the judge here today, because they
17 called this case.

18 And they called this case because, as the judge told
19 you, they have a burden. They are the only ones in this entire
20 court that have a burden. That means that they have the burden
21 to prove to you beyond a reasonable doubt that Tyreece Stokes
22 committed these terrible crimes. And they want to tell you
23 that that means you have to be firmly convinced that he
24 committed these crimes.

25 I'm going to tell you what the judge is going to tell

1 you at the end of this case, that we have two different types
2 of trials that we hold in this court. And some of you heard it
3 during jury selection. We have civil and criminal trials. In
4 a civil trial, the burden of proof is by a preponderance of the
5 evidence. And I think some of you might have said that you sat
6 on a civil trial, and that you had to find by a preponderance
7 of the evidence. That's a slight tipping of the scales in
8 favor of one party or another.

9 But that's not what we have here today. What we have
10 is proof beyond a reasonable doubt. The State has to bring
11 enough evidence in to you, enough consistent evidence in to you
12 to prove to you beyond a reasonable doubt that Tyreece Stokes
13 committed these horrible crimes. And what that means is that
14 we put you on this jury. We asked you a ton of questions. We
15 invaded your personal life. We put you on this jury because we
16 believe you to be reasonable people.

17 If after you listen to everything that the police
18 officers tell you and the State wants to tell you, you have a
19 doubt, then what the judge is going to tell you is that as a
20 reasonable person with a reasonable doubt, you cannot find
21 Tyreece Stokes guilty of these crimes. And that's where this
22 case starts. It starts right here at square one with that
23 burden resting on the State.

24 And the purpose of the opening statement, the purpose
25 of why we get up to talk to you is not to give you evidence,

1 not to try to convince you or argue. The purpose of what we
2 are trying to do in getting up in front of you is to give you
3 an outline for what you are going to see over today, perhaps
4 over tomorrow. We are supposed to give you an outline of what
5 the facts are going to be.

6 On september 1st, 2016, Nikia Pitts was a victim,
7 uncontested. She was stabbed in the eye. She was stabbed in
8 the chest. She went to the hospital. At the hospital, she
9 spoke to police officers. She spoke to doctors. She described
10 the person who committed this crime. She gave some pretty
11 inconsistent statements. And you are going to hear about
12 those. But, ultimately, she was given a photo lineup with six
13 photos. And she picked out two of them. The evidence is going
14 to show you Tyreece Stokes was in that photo lineup. He was
15 picture No. 3. She picked out pictures No. 1 and No. 2 on the
16 day of the crime.

17 She then was released from the hospital and went home.
18 And a family member or friend who had done some investigation
19 of their own, approached her with two pictures, told her that
20 these are bad people in the area. And she looked at them and
21 said, oh, now I'm clear, that's the person who committed the
22 crime. She then went back to the police, handed them that same
23 photo. They gave her the same photo lineup that they had given
24 her at the hospital. And then after staring probably for days
25 at the photo that her friend had given her, she then picks out

1 photo No. 3, Tyreece Stokes.

2 And that's all the evidence you are going to get over
3 the next two days. There are no fingerprints. There are no
4 other eyewitnesses. There's no DNA. There's no confessions.
5 There's no Matlock moments. At the end of this trial, what you
6 have is a young man charged with two of the worst crimes you
7 can be charged with in the state of South Carolina, attempted
8 murder and armed robbery.

9 And you have the State coming to you with an
10 identification that not only is faulty -- we all know how
11 faulty our eyes can be, how hard it is to determine when you
12 are under the stress of an incident who committed that incident
13 or what actually happened. And then you add to that our memory
14 and the way our memory can play tricks on us, especially when
15 we are handed a photo from a friend that says, this is a bad
16 guy in the community, is this who actually did it?

17 And if that's all you have, if there's no
18 fingerprints, if there's no DNA, if there's no other
19 eyewitness, no confessions, no other statements, no cell phone
20 towers, nothing, at the end of the day, the question is going
21 to be whether or not it's proof beyond a reasonable doubt, or
22 do you have a doubt? Because you will. And at the end of the
23 day, we are asking you to find him not guilty. Thank you.

24 THE COURT: First witness.

25 MR. SORENSON: The State calls Nikia Pitts.

1 NIKIA PITTS,
2 having been duly sworn, testifies as follows:

3 DIRECT EXAMINATION

4 BY MR. SORENSON:

5 Q. Good afternoon. I need you to make sure you keep your
6 voice up nice and loud for us.

7 Will you tell the jury how old you are?

8 A. 30.

9 Q. How many children do you have?

10 A. I have four kids.

11 Q. How old are your children?

12 A. I have a 12-year-old whose birthday is about to be in
13 [REDACTED]. She's about to be 13. I have a 10-year-old, a
14 9-year-old and a 4-year-old.

15 Q. And I want to turn your attention back to September of
16 2016. Do you remember where you were working at that time?

17 A. Yes.

18 Q. Where were you working?

19 A. At T-Mobile.

20 Q. How about where were you living back in September of
21 2016?

22 A. [REDACTED].

23 Q. And is that a townhome or an apartment?

24 A. That's at a townhome.

25 Q. And where is that located at?

1 A. That is near the Robynwyn area.

2 Q. Is that in town of Summerville?

3 A. Summerville, yes.

4 Q. It's in Dorchester County?

5 A. Yes.

6 Q. And the Robynwyn subdivision, what main road is that
7 subdivision off of?

8 A. The main road is -- we have Weber Road. Basically,
9 Robynwyn is in the back in where my townhome was. I have a
10 townhome right here. Like, we had a townhome that was a dead
11 end. And then we have trees that were behind us that went off
12 into a wooded area. If you go down that road, Robynwyn is down
13 to the back.

14 Q. What is the main road in Summerville that's kind of
15 set off of, highway number? I mean, do you know where Highway
16 78 is?

17 A. Yes, yes, Highway 78.

18 Q. All right. And how long -- so back on September 1st
19 of 2016, Nikia, how long had you been living in that home at
20 that time?

21 A. We had just moved there for about two months.

22 Q. Okay. And you lived there with your children?

23 A. Yes.

24 Q. Now, I want to turn -- you said that you were working
25 at that time at T-Mobile; is that right?

1 A. Yes.

2 Q. And I want to turn your attention back to the evening
3 of September 1st of 2016. Do you recall that evening?

4 A. Yes.

5 Q. And do you know kind of what time you got home that
6 evening?

7 A. I can't remember the actual time that I got home.

8 Q. About what time? What had you done? Did you work
9 that day?

10 A. I went to work. And then after work, I went to
11 daycare, picked up my kids. I went to the store. And then I
12 came home.

13 Q. Okay. And at that point in time, were you at home for
14 the evening after all of that?

15 A. Yes.

16 Q. At some point that evening, had you had something to
17 drink?

18 A. Yes.

19 Q. Alcoholic? Where was that at?

20 A. I was drinking at home, inside my house.

21 Q. Did there come a time that you left your home, went
22 outside?

23 A. Yes.

24 Q. Tell the jury kind of why, how that came about.

25 A. Well, [REDACTED] is whenever my daughter's birthday

1 party is. Me and her father were on the phone trying to do a
2 surprise birthday party for her. I had just gotten home. My
3 kids were inside of the house. So I didn't want my daughter to
4 hear me talk about her surprise party, being her dad was on the
5 phone. I then stepped out of the house, outside into my car,
6 and sat down in the driver's side. So that way we can be able
7 to plan her birthday party, because it was going to be a
8 surprise party for her.

9 Q. Where was your car parked at?

10 A. In front of -- right directly in front of my
11 townhome.

12 Q. Nikia, let me show you what's been marked as State's
13 Exhibit 5. Whose front door is that?

14 A. That's mine.

15 Q. And I see there's a porch light on. Was that light on
16 that evening?

17 A. Yes.

18 Q. Does that accurately depict the way it looked back
19 that evening when you went outside?

20 A. Yes.

21 Q. I show you State's Exhibit 7. What's in State's
22 Exhibit 7?

23 A. That's my car.

24 Q. Where is your car parked at in relation to your front
25 door?

1 A. Directly right in front of it.

2 Q. Does that accurately reflect your car that evening?

3 A. Yes.

4 Q. At this time, we would offer State's 5 and 7 into
5 evidence.

6 MR. WEHMAN: No objection, Your Honor.

7 THE COURT: They are admitted without objection.

8 (State's Exh. 5, Photograph, is moved in evidence.)

9 (State's Exh. 7, Photograph, is moved into
10 evidence.)

11 BY MR. SORENSON:

12 Q. So, that would be your front door, Nikia?

13 A. Yes.

14 Q. You said you went out and were seated in the front
15 seat of your vehicle in your car?

16 A. Yes.

17 Q. What were you doing out there?

18 A. I was planning my daughter's birthday party. I do
19 smoke cigarettes. So at that time, I don't smoke around my
20 kids or smoke around the house, so I stepped outside to talk
21 about planning her birthday party. And I was having a
22 cigarette while having him on speaker phone.

23 Q. And, Nikia, I'm going to kind of -- kind of little
24 later on in my questioning of you, kind of go through what
25 injuries you suffered that night. Let me just ask you this.

1 Do you today have a clear recollection of what happened that
2 night outside of your home?

3 A. Yes.

4 Q. Tell the jury then. So you are outside. You are on
5 the phone with your daughter's father?

6 A. Yes.

7 Q. Tell the jury then kind of what happened out there as
8 you are seated in your car.

9 A. As I was seated in my car, like I said, I was just
10 focusing on, you know, talking to her dad about the party and
11 smoking a cigarette. While I was sitting in my car, I saw --
12 like I described, there was a black male that came up. I've
13 seen him before inside of the actual neighborhood a lot of
14 times. So I've known his face. He's walked up and down that
15 main street as far as just walking around.

16 For me, I'm just a person that would automatically, if
17 I see someone, I always look up and, you know, have a gesture,
18 like, hi, how are you doing, just let that person know I'm
19 here. I've seen him walk before. And I looked up and he would
20 never -- he would just be walking but he would never say
21 anything. So I'm thinking that this is just like a young guy
22 around the neighborhood. Sometimes he had his earphones on,
23 listening to music, just walking around.

24 That particular night while sitting in my car, that
25 person, who I have learned now his name, doing the faces,

1 Mr. Tyreece, he walked in front -- directly in front of my
2 townhome. What alarmed me that night is he had normally walked
3 around that neighborhood before, which I've seen him, but his
4 normal routine was -- I have my parking lot is here. And we
5 have a townhome and, like I said, the main street that was
6 there, and then we have the woods back here. Normally, he
7 would walk around the cars and walk into a path in the woods.
8 But this in particular night, which kind of caught me off
9 guard, is because that particular night, he walked in front of
10 my -- in front of my townhome, right directly.

11 And so whenever he walked in front, it alarmed me.
12 And I was like, I wonder why he walked -- why he walked so
13 close to the house. Normally he walks around, around the cars.
14 At that moment, he then turned and looked at me. And it was
15 kind of odd to me. But I am not thinking anything as far as
16 someone is going to hurt me or anything like this. I'm just
17 kind of alarmed that was strange and different for him to walk
18 so close to the houses. But I didn't see direct eye contact
19 with him.

20 At that moment, then he then walked around, which I
21 figured that was weird, but I didn't think anything about it.
22 And he walked around. I would say maybe, like, a minute later,
23 he comes back around to the driver's side of my door. And he
24 has two knives crossed in his hand. One which was a thick
25 butcher knife that came to a point. And then another that was

1 a steak knife that you would see like in a restaurant or
2 something like that. It was a steak knife. He had them
3 crossed.

4 And I heard his voice. And his voice was, hand over
5 your purse, or, you know, come up off your purse, hand me your
6 purse. And at that time, what I did was I reached over. And
7 I -- first thing I told him, whenever he said, hand over your
8 purse, is I put my hands up and said, please, don't hurt me, I
9 have kids, you could have it, just don't hurt me, I have kids.
10 Because I was shocked at that moment what was going on. And he
11 clearly stated to me -- and I remember his voice being so deep.
12 He clearly stated, I don't give an F about your kids, but not
13 saying the F word, like, not saying F, the actual curse word, I
14 don't give an F about your kids.

15 And that's when I reached over and grabbed my purse.
16 And I gave him my purse. And I said, I don't have anything,
17 but, here. I gave him my purse. And at that time, he took my
18 purse. And I'm not sure because I looked up at him and I saw
19 his face, if that's what triggered him to start stabbing me
20 after he got my purse.

21 And at that time, like I said, I was on the phone with
22 her dad. And I had my phone in my lap, on my thigh. He then
23 reached in, after he got my purse, and grabbed the phone off of
24 my actual lap. And I had him on speaker phone. And then
25 because I looked at him and saw his face, he just started

1 stabbing at me.

2 I had initially just thought that he had punched me
3 really hard. At that point, I didn't realize. I saw the
4 knife, but I didn't realize that he had just actually literally
5 just stabbed me in my face and my chest when he reached in.
6 And at that point, like, I just went into shock. I didn't know
7 what to do. And he already had everything.

8 Right after that of stabbing me, at that moment, I
9 couldn't blow my horn or I couldn't scream or anything, because
10 I didn't want my kids to come outside and hear me scream and
11 crying. I'm sorry.

12 Q. It's all right. Take your time.

13 A. I didn't want my kids to hear me scream or cry. So I
14 waited until he got farther down. And he turned around, right
15 before he went to the woods, and looked back at me again. And
16 I saw his face. And then he went off into the woods.

17 I didn't want to -- I didn't want to scare my kids,
18 because I knew me going back inside of the house was going to
19 scare them. I had young kids. So I knew if Mommy comes in
20 with -- and the knife that he stabbed me in the chest, the
21 blade was hanging out, because he broke off the handle. He
22 stabbed me so hard in my chest. The knife was still hanging
23 out of my chest. And that was the steak knife.

24 And at that point, I just looked down. And I was
25 still in shock, but I knew that I didn't want to go back inside

1 of my home and having a steak knife hanging out of my side. So
2 I took the steak knife out. And I threw it on the ground. And
3 then I just covered my face going back into the house.

4 And that's when my kids, as soon as I came in, they
5 started screaming and crying and saying, what's wrong, mommy,
6 what's wrong? And I just remember, like, me trying to calm
7 them down and telling them, mommy's okay, mommy's okay, just
8 calm down. And my daughter was freaking. She was crying. She
9 was screaming really loud.

10 And I remember going into -- I locked the door. I had
11 to make sure I locked the door. And I kept telling them, just
12 calm down, mommy has you, mommy has you, mommy's okay, just
13 calm down. And I told my daughter, call the police, go ahead
14 and call the police.

15 And when she called the police, call your dad also,
16 let him know that something bad happened, that he needs to get
17 down here. And so she was -- she said, mommy, I don't have --
18 my phone is dead. And I said, okay, charge your phone, when it
19 comes charged, just go ahead and call the police for mommy.
20 And she's crying.

21 I went to the back room of my townhome. And I looked
22 in the mirror. And I saw the gash on my face that was really
23 deep. And I was just trying to get -- you know, trying to get
24 something to rinse the blood off my face so that way it would
25 stop bleeding. At that time, I was so in shock I didn't

1 believe it was deeper than what it actually was going to be.
2 But I tried to get the blood and everything off my face. And
3 after that, I blacked out. I can't remember anything else.

4 My daughter, I don't know, I told her before blacking
5 out to call the cops. But after that, I completely blacked
6 out. The next time that I actually woken up that evening was
7 that same night was just vaguely whenever I was on the
8 stretcher. And I just remember opening my eyes and I saw the
9 blue lights, and then I went back down again.

10 Q. Okay. I'm going to talk to you about that a minute,
11 Nikia. Let's go back kind of. So the person that you see
12 outside, can you describe him for the jury?

13 A. The person that I saw outside was a tall, black guy.
14 He had dreads, little dreads inside of his hair, very slim,
15 very slim. And, like I said, he was tall. And his face looked
16 young, but his voice was so deep that I was, like -- he had a
17 deep voice. But he definitely did have the dreads, small body,
18 but very tall.

19 Q. And you described him as having seen him, this person
20 in your neighborhood?

21 A. Yes.

22 Q. About how many times do you think you had seen this
23 person around?

24 MR. WEHMAN: Objection, Your Honor.

25 THE COURT: Objection is overruled.

1 MR. SORENSON: Thank you.

2 THE WITNESS: I would say about six times before.

3 BY MR. SORENSON:

4 Q. And that would be in the two months or so that you had
5 lived in that area?

6 A. Yes.

7 Q. And you had described him as having two knives, a
8 steak knife. And is that the knife that you removed from your
9 chest?

10 A. Yes.

11 Q. And then the other knife you described as being more
12 of a butcher-type, longer --

13 A. It was a butcher knife.

14 MR. SORENSON: May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MR. SORENSON:

17 Q. I will show you this. Is that knife consistent with
18 the other knife?

19 A. Yes, big butcher knife, yes.

20 MR. WEHMAN: Judge, I would object to this based on my
21 pretrial motions.

22 THE COURT: Objection is overruled.

23 MR. SORENSON: If I can mark this for ID right now.

24 So we know what was shown to her. That's 17 for ID.

25 (State's Exh. 17, Butcher knife, was marked for

1. identification.)

2 BY MR. SORENSON:

3 Q. When you saw this individual out, initially you said
4 he kind of walked, to make sure I'm understanding this,
5 inbetween the front of your car and the door?

6 A. Yes.

7 Q. So anything obstructing your view of this person's
8 face at that point?

9 A. No, no, I saw him.

10 Q. And as we saw in State's No. 5, that light was on out
11 there at that time?

12 A. That's correct.

13 Q. Was there any doubt in your mind at the time that that
14 was the person you had seen in your neighborhood before?

15 A. No. That was definitely him.

16 Q. Now, you had talked kind of where I had cut you off
17 and backtracked there, that you basically just kind of remember
18 sort of blacking out in your home?

19 A. Yes.

20 Q. And coming to briefly and seeing police lights there?

21 A. Yes.

22 Q. Do you recall the ride in the ambulance to the
23 hospital?

24 A. No.

25 Q. Do you remember arriving at the hospital?

1 A. No, sir.

2 Q. Let me ask you. Do you have any recollection or any
3 memory of talking to any police officers at your home?

4 A. No.

5 Q. Before going to the hospital, so that night? No?

6 A. No.

7 Q. How about -- and you ended up going to M.U.S.C.? Is
8 that where you ultimately learned that you were at?

9 A. Yes.

10 Q. Do you remember speaking with any police officers at
11 the Medical University of South Carolina that night, September
12 1st, 2016?

13 A. No, sir.

14 Q. Do you remember a female police officer showing you
15 any photographs that night at the hospital?

16 A. No, sir.

17 Q. Any recollection at all of that?

18 A. No, sir.

19 Q. Let me ask you this. Earlier we had a hearing where
20 part of that video from the hospital was shown. And you were
21 in here to watch that, right?

22 A. Yes.

23 Q. Do you have any recollection of any of that, even
24 having seen it on the screen?

25 A. No.

1 Q. So what is the last thing, yet again, that you
2 remember, that you have any recollection of that night?

3 A. The last thing that I remember is just me being right
4 in front of the -- going inside of the bathroom trying to wash
5 my face and stop the blood, and that's it. The next thing that
6 I remember is being on the stretcher and opening my eyes and
7 just seeing blue, the police lights. And then I went back down
8 immediately.

9 Q. And what is, after that, the next thing that you
10 remember now?

11 A. The next thing that I remember is waking up about two
12 or three days after that and being in the hospital. I remember
13 when I woke up, I was in shock, because I didn't know what was
14 going on. And I was like -- the first thing I asked, where is
15 my kids? And everyone was like, it's okay, calm down, they are
16 safe. But that was my --

17 Q. Do you remember any of your family showing up at the
18 hospital that night --

19 A. The night of the incident, no.

20 Q. -- the night of the incident? Did you ultimately kind
21 of learn from talking to the doctors, I mean, kind of what
22 injuries you had suffered?

23 A. Yes.

24 Q. What was that?

25 MR. WEHMAN: Objection, Your Honor. This would be

1 hearsay at this point.

2 THE COURT: Objection is overruled.

3 THE WITNESS: Eventually, I learned that I had a stab
4 wound in my chest and also that I had been stabbed in the eye,
5 which the blade went down into my brain and caused bleeding of
6 the brain, brain damage.

7 MR. SORENSON: Can I have her just stand up, Your
8 Honor?

9 THE COURT: Yes.

10 BY MR. SORENSON:

11 Q. Can you stand up, Nikia. Point out -- move your
12 sweater off to the side and kind of point out to the jury where
13 it was that you got stabbed in the chest.

14 A. I got stabbed here.

15 Q. Right below your left breast?

16 A. Yes.

17 Q. Your eye was where?

18 A. My eye was here.

19 Q. Right below your eye, basically?

20 A. Yes.

21 Q. Okay. We can see it. All right. Do you remember how
22 long you were in the hospital?

23 A. I don't remember. I remember, like I said I don't
24 remember how long I was in there. I know the time that I woke
25 up, it felt like it was about two or three days later.

1 Q. That you got out?

2 A. Yes.

3 Q. And specifically, so about four and a half, five days
4 later, on September 6th then of 2016, do you recall a detective
5 with the Summerville Police Department coming out to your home?

6 A. Yes.

7 Q. And that was Investigator Weaver?

8 A. Yes.

9 Q. And did you have an opportunity at that time to
10 tell -- to go through with Investigator Weaver what had
11 happened that night?

12 A. Yes.

13 Q. When you were talking to him out at your home then on
14 September 6th, did you have a clear recollection of what had
15 occurred out in -- outside of your home in that parking lot?

16 A. Yes, I did.

17 Q. Is that the first police officer that you recall
18 talking to about what had happened?

19 A. Yes, yes.

20 Q. Now, at some point in time, do you recall Investigator
21 Weaver asking you if you remembered being shown any photographs
22 in the hospital?

23 A. Yes.

24 Q. What did you tell him?

25 A. I don't remember.

1 Q. And at some point in time then, did he tell you that
2 he wanted to show you some photographs out there at your home
3 that day on September 6th?

4 A. Yes.

5 Q. Now, let me ask you this. Prior to that, just listen
6 to my question, prior to that had anyone shown you any
7 photographs?

8 A. Yes.

9 Q. Who was that that had shown you some photographs?

10 A. My sister.

11 Q. And do you recall how many photographs she had shown
12 you?

13 A. I believe it was two.

14 Q. And, ultimately, did you recognize anybody in those
15 photographs?

16 A. Yes.

17 Q. Why did you recognize somebody in one of those
18 photographs?

19 A. Because one of the photographs was the man over there
20 that stabbed me.

21 Q. Why was it -- did you know that person prior to that
22 night?

23 A. No, I never seen him before.

24 Q. Well, had never seen him or known him?

25 A. I never known him. I seen him before. Never known

1 him before.

2 Q. Didn't know -- prior to September 1st, did you know
3 his name?

4 A. No.

5 Q. How about on September 6th even, did you know his
6 name?

7 A. No.

8 Q. Did you tell the detectives about the fact that you
9 had this photograph?

10 A. Yes.

11 Q. Did they ultimately show you a photographic lineup?

12 A. Yes.

13 Q. Nikia, let me show you State's Exhibit No. 2. Do you
14 recognize that?

15 MR. WEHMAN: I object, Your Honor, pursuant to my
16 pretrial motions.

17 THE COURT: Overruled.

18 MR. SORENSON: Thank you, Your Honor.

19 BY MR. SORENSON:

20 Q. Do you recognize that document?

21 A. Yes.

22 Q. Is that the lineup that Detective Weaver showed you at
23 your home on September 6th?

24 A. That's correct.

25 Q. And did he at any point in time tell you who to pick

1 out of this lineup?

2 A. No.

3 Q. Any point in time tell you that you had to pick
4 somebody out?

5 A. No, sir.

6 Q. In any way suggest to you who to pick out?

7 A. No.

8 MR. WEHMAN: Objection, Your Honor. This is
9 leading.

10 THE COURT: Objection is overruled.

11 MR. SORENSON: Thank you.

12 BY MR. SORENSON:

13 Q. Let me ask you this. When he showed you this lineup
14 on September 6th of 2016, at your home, do you recall ever
15 seeing any of these specific photos before?

16 A. No.

17 Q. And, ultimately, did you identify somebody from this
18 lineup?

19 A. Yes.

20 Q. What number did you identify?

21 A. No. 3.

22 Q. And did you circle that?

23 A. Yes.

24 Q. Is that your initials?

25 A. Yes.

1 Q. The date?

2 A. Yes.

3 Q. September 6th, 2016, 1:15 in the afternoon?

4 A. Yes.

5 Q. Why is it that you picked out No. 3?

6 A. Because I know that face. And I know that's the guy
7 from -- from stabbing me that night.

8 Q. Any doubt in your mind about that, Nikia?

9 A. No. I would never forget that face ever, ever.

10 MR. SORENSON: At this time, we would offer State's
11 Exhibit No. 2 into evidence.

12 THE COURT: Any additional objection?

13 MR. WEHMAN: No, Judge.

14 THE COURT: All right. It's admitted.

15 (State's 2, Photograph of Tyreece Stokes, is moved
16 into evidence.)

17 BY MR. SORENSON:

18 Q. The picture that your sister -- that you had
19 identified that your sister had shown you, is it the same
20 picture as that?

21 A. No.

22 Q. Now, Nikia, the person that robbed you that night,
23 that took your purse, took your cell phone, stabbed you in the
24 face, stabbed you in the chest, do you see, is he in the
25 courtroom here today? Will you point him out to the jury?

1 MR. WEHMAN: Objection, pursuant to my pretrial
2 motions.

3 THE COURT: Overruled.

4 THE WITNESS: That is him. (Indicating).

5 BY MR. SORENSON:

6 Q. White shirt seated at the defense table?

7 A. Yes, it's the white shirt.

8 Q. Any doubt in your mind?

9 A. There's no doubt.

10 Q. Just got a couple more questions, Nikia. The stab
11 wound to your chest, did you have any kind of lasting effects
12 from that wound there?

13 A. No. I just had to get stitches.

14 Q. How about the wound to your eye?

15 A. The wound to my eye, yes, I still currently get
16 headaches. And I still have dry eyes, extremely dry eyes, to
17 the point that my eye gets blurry and I can't see. I still
18 have been having to go to the doctors repeatedly since this
19 incident happened to check on my eyes, because they are
20 still -- they get blurry. I can't see. They are really dry.
21 And then I still have headaches as well.

22 MR. SORENSON: Beg the Court's indulgence. Nikia,
23 thank you very much. Please answer any questions that Mr.
24 Wehman has for you. Okay?

25 THE WITNESS: Okay.

1 THE COURT: Yes, sir.

2 MR. WEHMAN: Judge, may it please the Court.

3 THE COURT: Yes.

4 CROSS-EXAMINATION

5 BY MR. WEHMAN:

6 Q. Ms. Pitts, how are you?

7 A. Okay.

8 Q. Okay. So you testified a little bit about your day on
9 September 1st before getting home; is that correct?

10 A. Yes.

11 Q. You testified that you were at work?

12 A. I went to work, yes.

13 Q. What time did you get off of work?

14 A. I can't remember.

15 Q. You don't remember what time you got off of work?

16 A. I don't remember.

17 Q. All right.

18 A. My job every six months, we have to change. We have
19 to change schedules as far as times. So I can't remember what
20 my schedule was at that time.

21 Q. Okay. But after getting off of work, you went
22 straight to pick up your children?

23 A. Yes.

24 Q. Do you know what time you would typically pick up your
25 children, or does that vary based on your work schedule?

1 A. That varies based off of my work schedule.

2 Q. Then after that, you went straight to the store; is
3 that right?

4 A. Yes.

5 Q. With your children?

6 A. Yes.

7 Q. Then you came home?

8 A. Yes.

9 Q. And that's when you started drinking?

10 A. Yes.

11 Q. Do you remember how much you had to drink that night?

12 A. I don't remember.

13 Q. Do you remember what you were drinking?

14 A. I don't -- I know that it was maybe some liquor, for
15 sure.

16 Q. Some liquor, for sure?

17 A. Yes.

18 Q. But as to the amount, you are not --

19 A. I don't remember.

20 Q. Would you be surprised to find out that you were
21 drinking a lot that day?

22 A. Yes.

23 Q. Would you be surprised to find out at the hospital you
24 had a .12 blood alcohol content?

25 A. Yes.

1 Q. That would surprise you?

2 A. Yes.

3 Q. And you testified that, I guess, after making your
4 drunk -- did you drink the whole drink?

5 A. I can't remember how much I was drinking.

6 Q. At some point after drinking, you went outside to plan
7 a birthday party for your child?

8 A. That's correct.

9 Q. And you went to go sit in your car, correct?

10 A. Yes.

11 Q. And today, you testified that somebody came right in
12 front of your car and looked you in the eye; is that right?

13 A. That's correct.

14 Q. Do you ever remember saying that before other than
15 today?

16 A. Yes.

17 Q. Okay. Do you remember telling that to law enforcement
18 on September 1st?

19 A. I can't remember.

20 Q. Okay. Do you remember telling that to law enforcement
21 that you made eye contact on September 6th?

22 A. I can't remember.

23 Q. You don't remember that day either?

24 A. I do remember that day. I can't remember if I
25 actually told them -- I did let them know that he walked in

1 front of my -- he walked in front of my car.

2 Q. Did you include that fact in your written statement
3 that you gave on September 19th?

4 A. That he looked me in my face?

5 Q. Yes.

6 A. No.

7 Q. You did not?

8 A. No, I don't believe so.

9 Q. That's a very distinct moment, wouldn't you say?

10 A. No.

11 Q. That's not a distinct moment, making eye contact with
12 someone that just attacked you?

13 A. Yes, it is distinct, it is.

14 Q. But this is the first time that that's come up?

15 A. It's not my first time today, but, yes.

16 Q. It's not your first time today? Are you referring to
17 yesterday?

18 A. It wasn't my first time actually seeing him, me
19 acknowledging that I saw him face-to-face.

20 Q. This is the first time you acknowledged that?

21 A. This isn't the first time.

22 Q. Okay. Yesterday was the first time you acknowledged
23 that? Is that what you are saying?

24 A. I don't know if it was yesterday. I can't remember
25 when. I can't remember.

1 Q. You don't remember? Okay. And you were testifying
2 that -- you said a number of times, a tall, black guy and that
3 he was very tall; is that correct?

4 A. Tall, black guy, yes.

5 Q. You said very tall also. Is that accurate or not
6 accurate?

7 A. He's very -- he was just a tall, black guy. I know
8 that he was very tall. Yes, I would say he was very tall.

9 Q. Over six feet, would you say?

10 A. I wouldn't know. I just know that he was a tall -- he
11 was very tall to me. He was very tall.

12 Q. Okay. And you testified that he presented two knives;
13 is that right?

14 A. That's correct.

15 Q. And you said that he crossed them like this
16 (indicating)?

17 A. Yes.

18 Q. Do you remember telling that to law enforcement that
19 day or -- you said you don't remember anything about that day;
20 is that correct?

21 A. Not that day, not after the incident.

22 Q. Did that make it into your written statement on
23 September 19th?

24 A. I can't remember if it was on that statement, but I
25 did let the cops know.

1 Q. When?

2 A. I can't remember the date.

3 Q. You don't remember the date?

4 A. No.

5 Q. Would it surprise you to find out it wasn't in your
6 written statement?

7 A. No, it wouldn't surprise me. There is a time that I
8 actually did tell the cops that it was -- his hands were
9 crossed.

10 Q. Now, that's a very distinct moment as well, wouldn't
11 you say, that stands out to you?

12 A. No.

13 Q. And you said that you made eye contact again at the
14 car; is that right?

15 A. Yes.

16 Q. And you also testified today that as he went away, he
17 turned around and made eye contact with you a third time; is
18 that right?

19 A. That's correct.

20 Q. Do you remember putting that in your written statement
21 that you gave on September 19th?

22 A. No, I don't remember.

23 Q. You don't remember or you did not?

24 A. I don't remember if I did or not. I don't believe
25 so.

1 Q. Would you care to take a look?

2 A. I can. I don't believe so.

3 Q. Is that a copy of the written statement you provided
4 to police on September 19th?

5 A. Yes.

6 Q. Take a moment, review that, and see if that refreshes
7 your recollection?

8 A. No, it's not in here.

9 Q. So having taken a look at that statement, nowhere in
10 there do you mention the eye contact; is that right?

11 A. Nowhere, no.

12 Q. Nowhere do you mention that the knives are crossed?

13 A. Not in this statement, no.

14 Q. I think you testified earlier that it was a very thick
15 knife.

16 A. It was a butcher knife.

17 Q. Very thick though?

18 A. Yes.

19 Q. Is that in there?

20 A. I just said he had two knives.

21 Q. But the detail, the very thick knife, that's not --

22 A. It wasn't -- not in this report. But I did let the
23 detectives know.

24 Q. You told the detective that it was a thick knife?

25 A. I let them know the type of knives that they were.

1 Q. I understand you told them it was a butcher knife.
2 Did you tell them it was a thick knife, however? You don't
3 remember?

4 A. I just know that it was a butcher knife. It was a big
5 butcher knife and it was a steak knife.

6 Q. Okay. And nowhere in there does it mention the
7 drinking, right?

8 A. No, it doesn't. It's just the incident.

9 Q. And you've, after this incident happened, you ran
10 inside; is that right?

11 A. That's correct.

12 Q. And so you do not remember speaking to Officer
13 Gebhardt at your home?

14 A. No.

15 Q. And you do not remember, or do you remember Officer
16 Gebhardt asking you who did this?

17 A. No.

18 Q. And do you remember saying, I don't know, 'some young,
19 black male, he just came up and said, give me everything you
20 got, and then he stabbed me?

21 A. I don't remember that night. I don't remember
22 anything that night.

23 Q. So you don't remember telling him that you don't know
24 who the person was?

25 A. I don't remember anything from after the incident that

1 night.

2 Q. And at the hospital, you don't remember telling
3 Officer Boehler, when she asked you if you have seen him around
4 the neighborhood before, you said that you hadn't seen him
5 before at one point? You don't remember telling her that?

6 A. I don't remember.

7 Q. Would that surprise you?

8 A. That would surprise me.

9 Q. Do you remember at the hospital telling Officer
10 Boehler when she asked, is there anything else you can tell me
11 about your attacker, anything else you know about him, that you
12 would have said, he's the father of my son?

13 A. No, I do not remember.

14 Q. Would that surprise you?

15 A. That would surprise me.

16 Q. You don't remember saying the name Carl Washington, I
17 don't know if it was him or not, it all happened so quickly?

18 A. No.

19 Q. And you don't remember telling Officer Boehler, after
20 she asked you why you thought it might be him, that you don't
21 know, that's my son's father, but we are really not that cool?
22 You don't remember that?

23 A. No.

24 Q. Okay. Now, you also don't remember, you testified,
25 the photo lineup you did with Officer Boehler at the hospital;

1 is that correct?

2 A. That's correct.

3 Q. So you have no memory of picking either option No. 1
4 or option No. 2 on that photographic lineup?

5 A. I have no memory of anything that happened that
6 night.

7 Q. But you do have a memory -- that's State's 2 -- of
8 seeing this lineup?

9 A. On --

10 Q. This would be the one from September the 6th.

11 A. Yes.

12 Q. And selecting No. 3?

13 A. Yes.

14 Q. Okay. But you don't remember picking 1 and 2 on
15 September 1st?

16 A. I do not.

17 Q. Now, let's talk about your interview with law
18 enforcement on September 6th. When you met with them, they
19 asked you to do a photographic lineup that we just looked at,
20 correct?

21 A. Yes.

22 Q. But before they did that, you let them know that you
23 already know who this person is, correct?

24 A. I let them know that I have a picture of the person
25 who did it.

1 Q. And you told them that your sister is the one who gave
2 you that picture, correct?

3 A. That's correct.

4 Q. And you testified earlier that she sent two
5 photographs?

6 A. Yes.

7 Q. Because she was trying to, I believe you said in your
8 statement, look up people from the area that she knew had a rep
9 for doing bad things?

10 A. That's correct.

11 Q. And she showed that to you?

12 A. Yes.

13 Q. And so with that information in mind, you took that
14 photograph and you presented it to Detective Weaver and said,
15 this is my guy?

16 A. I let him know that I did have a picture. Detective
17 Weaver never saw the picture before.

18 Q. So he didn't want to look at it. He gave it to a
19 different detective?

20 A. That's correct.

21 Q. Nonetheless, you had that photograph, you were
22 presented the photographic lineup, and you selected No. 3?

23 A. Yes.

24 Q. You testified, I would never forget that face; is that
25 right?

1 A. That's correct.

2 Q. So it would be surprising to you that you picked out
3 two different people?

4 A. Yes, it would be surprising. I had just got stabbed
5 in my face.

6 Q. It would be surprising that you mentioned the name
7 Carl Washington as possibly being involved?

8 A. Yes.

9 Q. You testified that you told Detective Weaver that his
10 voice was very deep; is that right?

11 A. That's correct.

12 Q. Do you remember being asked about his voice in the
13 hospital and saying, no, it wasn't a deep voice?

14 A. No, I don't.

15 Q. You testified that you had a purse and two cell phones
16 stolen, correct?

17 A. Yes.

18 Q. One of which was in your lap and one was in your
19 purse; is that right?

20 A. Yes.

21 Q. Would you be surprised to learn that one of those cell
22 phone SIM cards was still pinging a month after the incident?

23 A. Yes.

24 Q. No one informed you of that?

25 A. Later on closer to the trial, whenever I asked about

1 the phones, I was advised that the phones -- I can't remember.
2 The phones didn't ping. I can't remember the actual -- what he
3 actually said. But there was no pinging of the phones.

4 Q. There was no specific mention of the SIM card,
5 however, that you are aware of?

6 A. No.

7 Q. And you mentioned Mr. Stokes by the name Mr. Tyreece;
8 is that right? You said that earlier.

9 A. Yes.

10 Q. And, in fact, yesterday, I think is the first time
11 I've ever heard that term from you. Is that accurate as well?
12 You've never said that in any of your statements? You don't
13 know Tyreece Stokes?

14 A. No. I know his name because of the case now.

15 Q. Did you attend the initial bond hearing once he was
16 arrested?

17 A. No.

18 Q. You were made aware that he was arrested?

19 A. Yes.

20 Q. You've been to this courtroom numerous times for court
21 proceedings?

22 A. I have been one time.

23 Q. But, certainly, you have seen him associated with this
24 case multiple times?

25 A. I have seen him one time at a bond, where he asked for

1 his bond to be reduced. And I seen him at that time. And then
2 I seen him yesterday and today.

3 Q. Okay. So you've become very familiar with this name
4 as a result of this court proceeding?

5 A. Yes, I know of his name.

6 Q. Did you also attend the preliminary hearing in this
7 case?

8 A. What is -- no. What is that?

9 Q. Did you attend the hearing in Summerville Municipal
10 Court in October of 2016?

11 A. No.

12 Q. You did not attend that hearing?

13 A. No.

14 MR. WEHMAN: I have no further questions.

15 THE COURT: Redirect?

16 MR. SORENSON: Just a couple of things, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. SORENSON:

19 Q. Nikia, Mr. Wehman asked you some questions about --
20 and I think -- did he give you your statement that you gave?

21 A. Yes.

22 Q. So you have that up there?

23 A. Yes.

24 Q. Asked you about putting some things in that statement.
25 Do you recall that kind of line of questioning?

1 A. Yes.

2 Q. And let me ask you this. You just kind of wrote that
3 statement, right?

4 A. Yes.

5 Q. Did your best -- did you do your best to kind of tell
6 the police in that statement what had happened that night?

7 A. Yes, yes.

8 Q. Did you put every single possible detail in that
9 statement?

10 A. Not everything.

11 Q. Had you also, though, talked to them two weeks prior
12 when they showed you State's Exhibit No. 2? Did you talk to
13 them that day also?

14 A. Did I -- I'm sorry?

15 Q. Did you talk to the police the day that they showed
16 you this lineup, September 6th?

17 A. Yes, yes.

18 Q. And you provided them with information that time
19 also?

20 A. That's correct.

21 Q. Do you remember telling them on September 6th about
22 the fact that he had the knives crossed sticking in your face?

23 A. Yes.

24 MR. WEHMAN: Objection, Your Honor. That's leading at
25 this point.

1 THE COURT: Don't lead the witness. ✓

2 BY MR. SORENSON:

3 Q. The information that Mr. Wehman asked you about not
4 putting in your written statement, have you told the police
5 about that before?

6 A. Not in the written initial one.

7 Q. When you talked to them two weeks prior?

8 A. Yes.

9 Q. Did you describe the knives for Detective Weaver?

10 A. Yes.

11 Q. When you are observing him as this incident is
12 occurring, when you got stabbed, were you standing outside your
13 vehicle or seated in your vehicle?

14 A. Seated down.

15 Q. It's your testimony from earlier, Nikia, that when you
16 came in, you remember telling your daughter to call 911?

17 A. Yes.

18 Q. But then other than coming to and remembering seeing
19 blue lights, you don't remember what else happened inside your
20 apartment while waiting for the police?

21 A. No, no, sir.

22 Q. Waiting for the ambulance?

23 A. No, sir.

24 Q. Mr. Wehman had asked you; you didn't remember talking
25 to any of the officers that were there at your home?

1 A. No, sir.

2 Q. Any idea what you may have been doing while you were
3 seated waiting for all of that to happen?

4 A. I don't know. I was just in the bathroom. That's the
5 only thing that I remember. I was in the bathroom trying to
6 clean my face, and I blacked out.

7 MR. SORENSON: That would be all I have, Your Honor.

8 THE COURT: Further questions?

9 MR. WEHMAN: Briefly, Your Honor.

10 THE COURT: Yes.

11 RECROSS-EXAMINATION

12 BY MR. WEHMAN:

13 Q. You just testified with Mr. Sorenson again about the
14 knives situation, correct?

15 A. Yes.

16 Q. The butcher knife that you are saying that you saw, do
17 you remember describing that as being a handgun at any time?

18 MR. SORENSON: I'm going to object, Your Honor. I
19 think this is outside the scope of my redirect.

20 MR. WEHMAN: Judge, he redirected about the knives in
21 the situation.

22 MR. SORENSON: I'm just clearing up the fact that he
23 had suggested that she had not described that to Detective
24 Weaver.

25 THE COURT: Objection is overruled. Counsel, argue

1 objection only when requested by the Court.

2 MR. WEHMAN: Thank you, Your Honor.

3 BY MR. WEHMAN:

4 Q. Do you remember describing that knife that you say you
5 distinctly remembered crossed as being a handgun, a black
6 handgun?

7 A. I believe -- I believe I remember seeing -- it felt
8 like I was punched in the face. I saw the knife, but I didn't
9 really understand it at that point, that he had stabbed me.
10 But it felt like I was punched in the face.

11 Q. Let me ask you again. Do you remember saying that you
12 were hit with a handgun?

13 A. I can't remember.

14 Q. And this knife that you say you saw crossed, the
15 butcher one specifically, describe that for me, the blade
16 itself?

17 A. The blade? The blade that was crossed, the butcher
18 knife was just like a regular, like, a thick kitchen, I think
19 kitchen knife, butcher knife and it had like a steel. The
20 steak knife was like a knife that you would see in, like, an
21 Outback Restaurant. That's a knife as if, you know, had the
22 knife with the ridges in them that has the handle.

23 Q. I understand that. And that one was actually
24 recovered on scene. Is that your understanding?

25 A. Yes, well, the knife was. The handle he took.

1 Q. The butcher knife, though, as to the shape of the
2 blade, would you say that it was your typical butcher knife
3 with a rounded edge?

4 A. Rounded edge? No, it had like a sharp tip.

5 Q. Sharp pointed tip?

6 A. Kind of like a point. Yeah, like a pointed tip at the
7 actual -- with the knife, it had a pointed tip. And it was a
8 butcher knife.

9 Q. All right.

10 MR. WEHMAN: No further questions, Your Honor.

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

12 And we will break for lunch now. And we will
13 reconvene at 2:30. Please do not discuss the case. And we
14 will start back at 2:30.

15 (Whereupon, the jury leaves open court at 1:08 p.m.)

16 THE COURT: All right.

17 MS. WILLIAMS: We are in receipt of an e-mail from
18 your clerk asking for requested charge. And I had met with the
19 solicitor and asked if there was any way to see what your
20 standard charges are regarding reasonable doubt and the normal
21 charges that you would give to the jury. So that we can either
22 supplement or request them. I tried to look them up on the
23 website. If you go by the standard, what the suggested jury
24 charges are, I tried to look them up on the judicial website,
25 but the Supreme Court took them off there for some reason.

1 THE COURT: With all the cases, the *State v. Belcher*,
2 *State v. Beaty*, this case, that case, reversing everything
3 that's in the standard charges, I think they just decided to
4 pull them and not have suggested charges. We can give you a
5 rough of what we have, just for your benefit. She has your
6 e-mail address she can send it?

7 MS. WILLIAMS: That would be great.

8 THE COURT: After I take a look at what she sends.

9 All right. Let's bring them on.

10 THE COURT: Let's see now, with attempted murder,
11 latest case is specific intent to kill, is that an element of
12 attempted murder? That's the new -- newest iteration of that.
13 So the standard charge saying it's not an element of, it goes
14 out with the new most recent case. So that changes.

15 (Whereupon, the jury returns to open court at 3:01
16 p.m.)

17 THE COURT: All right. Welcome back.

18 Next witness.

19 MR. TEMPLETON: The State calls Dr. Douglas
20 Norcross.

21 DOUGLAS NORCROSS,

22 having been duly sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. TEMPLETON:

25 Q. Good afternoon, Dr. Norcross.

1 A. Good afternoon.

2 Q. If you would, please tell the jury where you are
3 currently employed?

4 A. Medical University of South Carolina.

5 Q. And how long have you been employed by the Medical
6 University?

7 A. It will be 29 years right about now, as a matter of
8 fact.

9 Q. If you would, tell them a little bit about your
10 educational background.

11 A. I went to Rutgers University after finishing high
12 school, Rutgers University in New Brunswick, New Jersey. I
13 majored in biology and ecology. Went directly from college to
14 the University of Medicine and Dentistry at Rutgers Medical
15 School in Piscataway, New Jersey, where I received my MD degree
16 in 1983. Then did my internship and residency at the
17 University of Medicine and Dentistry of New Jersey, Rutgers
18 Medical School at Camden's Cooper Hospital Medical Center.
19 Completed that in 1988. Then did a fellowship in trauma and
20 surgical critical care at the same long-named institution.
21 Finishing in 1989 and from there went to M.U.S.C.

22 Q. Okay. So straight after that fellowship, you went to
23 M.U.S.C.?

24 A. Correct, sir. I was hired as the medical director of
25 the trauma center in M.U.S.C. and held that position 21 years.

1 Q. Do you hold a license in the state of South Carolina?

2 A. Yes.

3 Q. And that's a medical license?

4 A. Correct.

5 Q. And do you hold any board certifications?

6 A. I have board certifications in general surgery and
7 also in surgical critical care.

8 Q. Have you testified in court before?

9 A. Many times.

10 Q. Have you been qualified as an expert?

11 A. Many times.

12 MR. TEMPLETON: Your Honor, at this point, the State
13 would offer Dr. Norcross as an expert in trauma surgery as well
14 as surgical critical care.

15 THE COURT: What says the defense?

16 MR. WEHMAN: No objection, Your Honor.

17 THE COURT: All right. He is so qualified. And,
18 ladies and gentlemen, an expert witness is a person who, by
19 training and experience or education, may become an expert in a
20 field. And they are in a position to offer opinions where lay
21 witnesses cannot.

22 MR. TEMPLETON: Thank you, Your Honor.

23 BY MR. TEMPLETON:

24 Q. Dr. Norcross, did you have an opportunity to see Ms.
25 Pitts in relation to this case?

1 A. I did.

2 Q. Was that back on September 1st of 2016?

3 A. Correct.

4 Q. And did you continue to see her for a period of time
5 after that?

6 A. I was responsible for her care. We have a group of
7 nine of us. We rotated rounds, but I was ultimately
8 responsible for her care for that whole period of time.

9 Q. If you would, kind of explain to the jury the injuries
10 that you were able to determine that Ms. Pitts had when she
11 originally arrived at the emergency room?

12 A. She had two -- she had a stab wound in her left breast
13 underneath, just on the middle, on the medial side toward the
14 center on the left breast. That turned out to be not too
15 terribly deep, fortunately. And then the more significant
16 wound is what we originally thought was just bruising around
17 her left eye, it was actually a little laceration underneath.
18 We had a CAT scan that actually showed that we believed that a
19 knife -- that was actually a knife wound, that laceration
20 midway through her brain.

21 Q. How big was that knife laceration?

22 A. It was small, maybe half an inch, something like that.

23 Q. Would it -- would you be able to determine whether
24 that's more consistent with a, like, smaller, say, steak knife
25 or more like a butcher knife?

1 A. More like a steak knife, fillet knife, that kind of
2 thing.

3 Q. I'm going to show you State's Exhibit Nos. 16 and 18.
4 If you would, what is State's Exhibit No. 16?

5 A. Hard to describe. That is -- when you get a CAT scan,
6 first thing is put the patient through the machine to get kind
7 of an overall X-ray to determine where they are going to
8 actually slice the page off the CAT scan. So this would be a
9 scan gram. That's what that is.

10 Q. Is that of Ms. Pitts back in September of 2016?

11 A. Based on the medical record number and the name on it,
12 yes, I would have to say it is.

13 Q. I'm going to show you State's Exhibit No. 18. Are you
14 able to determine what those two photographs are on that sheet
15 of paper?

16 A. Those are her injuries probably within 24 hours of her
17 arrival.

18 Q. Would those be a fair and accurate representation of
19 what happened or what she looked like at that point in time?

20 A. Correct.

21 MR. TEMPLETON: Your Honor, at this time, the State
22 would offer State's 16 and State's 18 into evidence.

23 THE COURT: What says the defense?

24 MR. WEHMAN: No objection, Your Honor.

25 THE COURT: They are admitted.

1 (State's Exh. 16, Photograph, was received in
2 evidence.)

3 (State's Exh. 18, Photograph, was received in
4 evidence.)

5 BY MR. TEMPLETON:

6 Q. I'm going to publish State's 18 first to the jury.
7 This is the first paragraph on State's Exhibit No. 18. If you
8 could, kind of explain to the jury what they are seeing there.

9 A. This is looking at the patient's eyes, both of them.
10 You can see on the left eye the bruising, the swelling. It's
11 really hard to see on this view but -- can I point?

12 Q. Absolutely. If you draw on the screen, it will show
13 up.

14 A. Right in that area is where the laceration was that
15 ultimately went under her eye into the brain. This blood down
16 here is probably just run down. It wasn't actually part of the
17 injury. It was running out of that wound.

18 Q. Kind of after the wound?

19 A. As a result of the wound.

20 Q. As a result of the wound. And you also indicated
21 there was at a CT scan?

22 A. Correct.

23 Q. State's 16 is prior to that CT scan?

24 A. It would have been the first -- it would have been
25 part of doing that CT scan.

1 Q. I'm actually going to back up for just a second. Go
2 to the second photograph on State's Exhibit No. 18. Is this
3 another photograph of Ms. Pitts?

4 A. Sideways, but, yes.

5 Q. Let me see if I can get it shown a little bit easier
6 for the jury.

7 A. That's better.

8 Q. Are you able to see the laceration a little bit better
9 in that picture?

10 A. Yeah. It would be right in there, that area.
11 (Indicating).

12 Q. So that's what we are talking about with the small
13 laceration?

14 A. Maybe extended over a little this way, yeah.

15 Q. That would be the small laceration that you are
16 talking about?

17 A. Correct.

18 Q. That would be penetrating into her brain?

19 A. Through the -- under the eye, through the orbit,
20 meaning the bony socket the eye sits in, through the bone and
21 then into the brain, halfway through the brain, roughly.

22 Q. I'm going to show you State's 16, which is in
23 evidence. Can you kind of show the jury approximately how far
24 into the brain we are talking about that this knife would have
25 went?

1 A. It would have gone something like -- let's see where
2 it would be here. Something like that, maybe a little further.
3 (Witness indicates.)

4 Q. Somewhere in the --

5 A. Right smack in the center, right.

6 Q. Somewhere around four to five inches?

7 A. Something like that.

8 Q. Three to four inches possibly? All right. As a
9 result of the injuries that Ms. Pitts sustained, was there some
10 kind of classification that you put on her regarding just a
11 classification for her at the hospital?

12 A. Well, I'm assuming you are talking about whether she
13 would be critical or stable. Anybody with injury in the brain
14 and there's bleeding along that track, we would call critical
15 and put in the intensive care unit to monitor.

16 Q. Okay. Would you have assigned a likelihood of
17 complications or likelihood of mortality in this case?

18 A. That would have been considered high.

19 Q. In this case? All right. Do you recall going through
20 the medical records in this case?

21 A. Correct, I did.

22 Q. Were there certain medications that were administered
23 to Ms. Pitts on the way to the hospital, to your knowledge?

24 A. She was given some drugs by EMS coming in. In review,
25 it was Fentanyl.

1 Q. Do you know how much Fentanyl was provided to her en
2 route to the hospital?

3 A. 100 micrograms, I believe it was.

4 Q. If you could, how does Fentanyl or what is Fentanyl to
5 begin with?

6 A. Fentanyl is a very strong narcotic, basically morphine
7 analog, much stronger than morphine. So, in other words,
8 smaller doses will accomplish the same thing.

9 Q. Okay. And what kind of -- basically, that's given for
10 pain?

11 A. It's given for pain, correct.

12 Q. What effect does that have on the body; just to numb
13 that pain?

14 A. I wouldn't say it numbs it. It's more of making your
15 brain not quite care that you have it, or kind of blocks the
16 receptors in the brain that are making you believe you have
17 pain.

18 Q. So it's affecting the brain?

19 A. It's affecting the brain, correct.

20 Q. Approximately how long, if you know, would that amount
21 of Fentanyl affect Ms. Pitts in this case?

22 A. So, generally speaking, Fentanyl's half-life is
23 somewhere between 30 and 60 minutes. We usually consider three
24 half lives the point where medication is no longer active. So
25 you are talking anywhere from an hour and a half to three

1 hours, somewhere in that range.

2 Q. And do you know --

3 A. Although the affects would diminish as time went by,
4 as the medication was metabolized.

5 Q. So it would start off being more stronger, more
6 effect, and then it would slowly over time reduce that effect?

7 A. Correct, correct.

8 Q. Do you know if Ms. Pitts was also provided with
9 additional medication at the hospital? Was she provided more
10 Fentanyl?

11 A. She got another 15 micrograms of Fentanyl in the
12 emergency department.

13 Q. Do you remember what time that would have been?

14 A. Not off the top of my head.

15 Q. I can provide you with the medical records. Give me
16 just a moment.

17 A. I believe it was either 10:44 or 11:44, something like
18 that.

19 Q. I'm just going to approach with the medical record.
20 It's page 28. And I will show that to you. Is that the
21 medical records in this case or a sheet out of the medical
22 records in this case?

23 A. This is a sheet out of the medical records, correct.

24 Q. And at the bottom of there, does it indicate when she
25 was administered additional Fentanyl?

1 A. 21:44, so 10:44, 16 minutes before 11 at night.

2 Q. Got you. So pretty late in the evening at that
3 point?

4 A. Correct.

5 Q. You also indicated there was a fracture in, I believe,
6 in the wall --

7 A. Inferior wall, or meaning the bony socket the eye sits
8 in, basically where the knife passed through.

9 Q. Basically, is it like a puncture-type wound or --

10 A. Bones don't puncture like soft tissue. They kind of
11 shatter a little bit when something goes through it, like a
12 little slit, but it wasn't a huge, gigantic, complex fracture.

13 Q. That would have been also a result of this knife wound
14 going into her brain?

15 A. Correct, or the force of violence, you know, the
16 kinetic injury being hit by holding a knife and striking her.

17 MR. TEMPLETON: Okay. Beg the Court's indulgence for
18 just a moment. Please answer any questions that Mr. Wehman may
19 have.

20 CROSS-EXAMINATION

21 BY MR. WEHMAN:

22 Q. Doctor, how are you?

23 A. Good. Thank you.

24 Q. Good. Okay. So you testified that EMS would have
25 given Ms. Pitts Fentanyl in the ambulance; is that right?

1 A. Correct.

2 Q. And you spoke a little bit about the effect of
3 Fentanyl, that it's a painkiller?

4 A. Right.

5 Q. And you mentioned that what it essentially does is
6 blocks your brain from feeling the -- from realizing the pain
7 that you are actually feeling; is that right?

8 A. That's a rough description.

9 Q. Okay.

10 A. Blocks endorphin receptors, but, yeah.

11 Q. And would that same drug have any affect on, normally
12 speaking, on someone's ability to know what's going on or
13 change their reality of what it is they are hearing or seeing?

14 A. No. Basically, you are stoned. But it's -- it will
15 alter your attentiveness, your alertness, all the way from
16 minor effects of low doses to deep coma at high doses. It
17 depends on the dosage. And everybody reacts a little
18 differently. But, yes, has effects on alertness,
19 attentiveness, to the point it can put you to sleep.

20 Q. But it will not, generally speaking, cause you to
21 misremember something or --

22 A. It has no -- you won't remember the effects, depending
23 how much you get, but you are not going to remember what
24 happened during the time you were under the influence of the
25 drug. But it wouldn't affect your memory prior to the drug

1 once the drug is -- once you are able to communicate.

2 Q. Okay. All right. And you said that you were the,
3 basically, primary doctor in charge of Ms. Pitts?

4 A. I was attending surgeon on call for the trauma center
5 and responded to the emergency room when she arrived.

6 Q. Whenever someone is admitted to the hospital as part
7 of the normal course of what the medical university protocol
8 is, they are given a number of tests, correct?

9 A. Correct.

10 Q. Not specifically ordered by you, but as a matter of
11 course?

12 A. It's a standard protocol. So we don't have to order
13 specific tests, correct.

14 Q. One of those tests that is ordered is an ethanol or
15 alcohol test; is that correct?

16 A. Correct.

17 Q. And was that done in this case?

18 A. It was.

19 Q. And I'm showing you page No. 155 from the medical
20 records, is that a copy of the results of that test?

21 A. That would be a copy of the results of that test,
22 correct.

23 Q. And what was the amount indicated under that test?

24 A. 120.5 milligrams per deciliter.

25 Q. And there is a letter off to the side of that,

1 correct?

2 A. Correct.

3 Q. What is that litter?

4 A. H, means high.

5 Q. Means high. And around what area does that H appear?
6 What does that mean?

7 A. Anything -- in this case, anything above 0.

8 Q. So that would flag --

9 A. Meaning you have alcohol onboard.

10 Q. And you said the number again was 120.5?

11 A. 120.5.

12 Q. And in numbers that we might understand, would that
13 equate to a .12 blood alcohol concentration?

14 A. The numbers that are used in legalese would be a .12.

15 Q. All right. And that test would have been taken
16 shortly after her arrival at the hospital?

17 A. Within minutes. The first thing is put an IV and draw
18 the blood, so within minutes of arrival.

19 Q. Now, whenever someone responds to the hospital,
20 especially in a situation like this, doctors will ask a number
21 of questions in order to gauge responsiveness of that person,
22 is that correct?

23 A. Correct.

24 Q. In fact, you develop a score?

25 A. Yes.

1 Q. I believe it's a GCS stand?

2 A. Stands for Glasgow Coma Score, developed in Glasgow,
3 Scotland.

4 Q. Would you explain to the jury what that means?

5 A. It's a score that ranges anywhere from 3 to 15. Why
6 they pick 3 as the low number, I don't know, but that's what it
7 is. 15 being anybody awake, talking. It's based on three
8 things. It's based on your eye opening. So if -- you also
9 take the best response. As long as you open your eyes
10 spontaneously at some point, you get four points for eyes. And
11 that's what you want. That's what she got.

12 It's based on your verbal response. So if you are
13 answering questions appropriately, you get five points for
14 that, which she did. But, understand, the questions are:
15 What's your name? What's the date? You know, where are you?
16 That's about the extent of the questioning.

17 And the last component is if you can obey commands,
18 you get 6 points, which is what she scored. Anything below 8
19 we consider a coma. But she was a 15, which was given the high
20 end of that score.

21 Q. Based on the limited testing you do in this situation,
22 she was, I guess, about as alert and responsive as you could
23 gauge from these tests you have to do?

24 A. Based on those gross tests, yes, that's correct.

25 Q. And that test would be repeated throughout her stay to

1 make sure she wasn't deteriorating?

2 A. Correct, that and also examines if she's moving
3 everything and any other complaints.

4 Q. There's nothing in these medical records that would
5 indicate that number deteriorated during her time there?

6 A. That's correct.

7 MR. WEHMAN: That would be all the questions I have
8 for you, Doctor.

9 THE COURT: Any redirect?

10 MR. TEMPLETON: Just one or two questions, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. TEMPLETON:

13 Q. Mr. Wehman was just talking about the Glasgow Coma
14 Score. And just to clarify, it's simply, she responds -- like,
15 when you speak to her, she opens her eyes?

16 A. She opens her eyes spontaneously. We don't have on
17 talk to her to make her open her eyes.

18 Q. She verbally responds to very simple questions?

19 A. Correct.

20 Q. And if you tell her to move, obey commands, is that
21 like moving a body part you want her to move?

22 A. What she usually say is, wiggle your toes, because we
23 also get a spinal cord assessment at that time.

24 Q. That's all that's testing?

25 A. That's basically it.

1 MR. TEMPLETON: That's all the questions I have for
2 you. Thank you, Dr. Norcross.

3 THE COURT: Anything further?

4 MR. WEHMAN: No, Your Honor.

5 THE COURT: Thank you, sir.

6 MR. TEMPLETON: He's free from our subpoena?

7 MR. WEHMAN: He's free.

8 (Whereupon the witness is excused.)

9 MR. TEMPLETON: The State calls Lieutenant Rick
10 Gebhardt.

11 RICHARD H. GEBHARDT JR.,

12 having been duly sworn, testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. TEMPLETON:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. Lieutenant Gebhardt, if you will tell the jury where
18 are you employed?

19 A. I'm employed with the Summerville Police Department.

20 Q. How long have you been employed at the Summerville
21 Police Department?

22 A. Been there 11 years.

23 Q. If you would just briefly go through your educational
24 background and including any law enforcement training.

25 A. Yes. I am a high school graduate. Currently enrolled

1 in college with 107 credit hours. And I'm a graduate of South
2 Carolina Criminal Justice Academy back in 2001.

3 Q. Do you recall working back on September 1st, 2016?

4 A. Yes, sir.

5 Q. And where were you dispatched in reference to this
6 case?

7 A. I was dispatched to [REDACTED].

8 Q. And what neighborhood is that near?

9 A. That is near the Robynwyn Subdivision.

10 Q. Is that in Dorchester County?

11 A. Yes, sir.

12 Q. If you would, kind of just briefly explain to the jury
13 what you saw when you first arrived on scene?

14 A. I arrived on scene. I believe I was the second unit
15 to arrive. EMS was arriving at the same time. I went up to
16 the front door of [REDACTED] and knocked. And it was answered by
17 another patrol officer that was already present. He opened the
18 door. I entered in. And there was blood droplets on the floor
19 leading to where the victim was seated on the couch. She had a
20 towel on her head covering one of her eyes. I believe it was
21 her left eye. She had blood on her shirt. And there were
22 blood droplets leading to the back room where children were
23 exiting when I arrived.

24 Q. I'm going to show you State's Exhibit No. 6. If you
25 could tell the jury what is State's Exhibit No. 6.

1 A. This is the view when you open the door to [REDACTED] into
2 the living room of her residence.

3 Q. And is it a fair and accurate representation of what
4 it looked like that night?

5 A. Yes, sir.

6 MR. TEMPLETON: At this time, the State would offer
7 State's Exhibit 6 into evidence.

8 MR. WEHMAN: No objection, Your Honor.

9 (State's Exh. 6, Photograph, is moved into
10 evidence.)

11 BY MR. TEMPLETON:

12 Q. You are saying this is the basically living room?

13 A. Yes, sir.

14 Q. Where was the victim sitting in that particular living
15 room?

16 A. The victim was seated on the couch facing the door all
17 the way over to the left, I believe. That chair, yes, sir.

18 Q. She's just kind of sitting there in the chair when you
19 arrive on scene?

20 A. Yes, sir.

21 Q. I'm going to show you State's Exhibit No. 5, which is
22 already in evidence. Is that -- what is that?

23 A. That is the front door to the victim's residence.

24 Q. That's what -- that's the location we are talking
25 about here?

1 A. Yes, sir.

2 Q. And I'm also going to show you State's Exhibit 7,
3 which is already in evidence as well. Can you tell us what
4 State's Exhibit 7 is?

5 A. That is the victim's vehicle that was just outside the
6 residence.

7 Q. When you say just outside, was it in front of the
8 front door? Was it one or two spots over? Do you remember?

9 A. It was in the area of the front door.

10 Q. Basically right out in front of the --

11 A. Yes, sir.

12 Q. -- in front of the unit? All right. When you arrived
13 on scene, did anyone else arrive -- or, sorry, was there anyone
14 else there when you arrived?

15 A. Patrolman Jones was there when I arrived. And there
16 was a Dorchester County EMS captain that was there as well.

17 Q. Did you all kind of arrive close in time?

18 A. Very close, yes.

19 Q. Ultimately, was Ms. Pitts transported from the
20 scene?

21 A. Yes, sir.

22 Q. And where was she transported to?

23 A. She was transported to the Medical University of South
24 Carolina.

25 Q. You were kind of the person in charge there that day,

1 correct?

2 A. Yes.

3 Q. You were the lieutenant on patrol that day?

4 A. Yes, sir.

5 Q. Were you kind of leading the troops, telling them --
6 figure out what people were going to do?

7 A. Yes, sir.

8 Q. Ultimately, did you call some other officers over to
9 process the scene?

10 A. I did, yes, sir.

11 Q. Who did you call over to process the scene?

12 A. I called then-Patrolman First-Class Leonard Vella, who
13 is now a sergeant. And I called Austin Tanner, who is a
14 patrolman.

15 Q. What did you ask them to do?

16 A. I asked them to process the victim's vehicle for any
17 type of evidence they might be able to find. And there was
18 also a knife blade on the ground outside the vehicle. And I
19 asked for them to collect it.

20 Q. And take photographs of it?

21 A. Yes, sir, process the scene.

22 Q. I'm going to show you State's Exhibit No., I believe,
23 1. Do you know what State's Exhibit 1 is?

24 A. Yes, sir, I do.

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

1 A. It is an aerial photograph of the Robynwyn area in
2 Summerville.

3 Q. Does it include the location on Weber Road?

4 A. Yes, sir, it does.

5 Q. Is it a fair and accurate representation of that
6 area?

7 A. Yes, sir.

8 MR. TEMPLETON: At this time, the State would offer
9 State's Exhibit 1 into evidence.

10 MR. WEHMAN: No objection, Your Honor.

11 THE COURT: It's admitted.

12 (State's Exh. 1 is moved into evidence.)

13 MR. TEMPLETON: Your Honor, may I ask the witness to
14 step down for just a moment?

15 THE COURT: Yes.

16 BY MR. TEMPLETON:

17 Q. Show the jury where we are talking about all these
18 events occurred.

19 A. Right here is the parking lot of [REDACTED]. And this right
20 here is about where the victim's residence is, right out here
21 in the parking lot. (Indicating.)

22 Q. Kind of put a circle around that area where this event
23 occurred.

24 A. (Indicating).

25 Q. You can sit back down. I will show the jury that real

1 quick. Once Ms. Pitts was transported from the scene and
2 Officer Vella and Officer Tanner were on scene, did you do
3 anything else there that day?

4 A. Yes, sir. I tried to keep the children calm, spoke
5 with the children. I also made notifications to my superiors
6 and the criminal investigations division to advise them of the
7 incident so this could be investigated.

8 Q. Did you look around the surrounding area at all?

9 A. Yes, sir. I canvassed the area, attempting to locate
10 maybe any other evidence or witnesses that could be found.

11 Q. Did you ultimately find any additional evidence out
12 there that day?

13 A. No, sir.

14 MR. TEMPLETON: Beg the Court's indulgence. That's
15 all the questions I have. Please answer anything Mr. Wehman or
16 Ms. Williams may have.

17 THE WITNESS: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. WEHMAN:

20 Q. How are you?

21 A. Doing well. How are you?

22 Q. I'm well. Okay. So you testified that when you
23 responded on scene, you were the man in charge, correct?

24 A. Yes, sir.

25 Q. Okay. And, initially, it took you a little while to

1 find out where the house was, is that right?

2 A. It did.

3 Q. There was confusion maybe where you were supposed to
4 go?

5 A. Yes, sir.

6 Q. And that tends to happen from time to time?

7 A. Yes, sir.

8 Q. So when you finally made it inside, you encountered
9 Ms. Pitts who was sitting on that chair --

10 A. Yes.

11 Q. -- that you saw in State's Exhibit 6?

12 A. Correct.

13 Q. And you didn't have much of a time to interact with
14 her at all, did you?

15 A. Not much, no, sir.

16 Q. But you did have the opportunity to ask her one
17 question, who did this; is that right?

18 A. That was one of the questions, yes, sir.

19 Q. And she told you that --

20 MR. TEMPLETON: Objection, Your Honor. This is going
21 to be hearsay.

22 THE COURT: You are going to ask a question? Are you
23 asking a question?

24 MR. WEHMAN: I'm asking him the response to the
25 question that was earlier testified to that was not

1 remembered.

2 THE COURT: All right. Ladies and gentlemen, I will
3 have counsel approach for a moment at this time.

4 Just stand for a moment, everyone.

5 (Whereupon, the following bench conference takes
6 place.):

7 MR. TEMPLETON: He's about to give the testimony of
8 what the victim said. She said she couldn't remember.

9 THE COURT: This is cross-examination. He can ask
10 that.

11 MR. WEHMAN: Thank you, Judge.

12 (Whereupon, bench conference ends.)

13 THE COURT: All right. I overrule the objection.

14 BY MR. WEHMAN:

15 Q. Back to where we left off. You asked Ms. Pitts who
16 did this, is that right?

17 A. Yes, it is.

18 Q. And she told you, I don't know, some young, black
19 male; is that right?

20 A. Correct.

21 Q. She told you, he just came up and said, give me
22 everything you got, and then he stabbed me. And that's what
23 she told you?

24 A. Something like that. If those aren't the exact words,
25 it was close.

1 Q. Okay. She didn't mention to you that she had
2 recognized him from the area?

3 A. I don't recall that being mentioned.

4 Q. Okay. And after that conversation, you said that you
5 were pulled away and went to deal with the children that were
6 in the house, correct?

7 A. Correct.

8 Q. But, eventually, you were able to step back outside
9 and participate in the investigation again; is that right?

10 A. Yes, it is.

11 Q. And you had a number of officers that were out on
12 perimeter; is that right?

13 A. Correct.

14 Q. It's important to set up a perimeter in a case,
15 specifically like this, in case someone is on foot; is that
16 right?

17 A. Correct.

18 Q. You could be able to have officers around who could
19 stop them and potentially take them into custody if they
20 matched your suspect?

21 A. Correct.

22 Q. And in this case, you also called in Officer Loff; is
23 that right?

24 A. Correct.

25 Q. And he is -- or no longer employed with Summerville

1 Police Department, but at the time, he was a canine officer; is
2 that right?

3 A. Yes.

4 Q. You wanted to see if you could get a track of this
5 individual?

6 A. Correct.

7 Q. Because the information you had at the time was that
8 the suspect fled on foot; is that right?

9 A. Correct.

10 Q. And showing you again State's Exhibit No. 1, there's a
11 cut behind that apartment complex or that townhome building; is
12 that right?

13 A. I've been told there is, yes, sir.

14 Q. Did you not walk that cut that night?

15 A. I did not walk that cut because canine tracked through
16 the cut.

17 Q. But your understanding would be that cut would lead --
18 there's what appears to be an area not with trees of dirt right
19 there. Does that seem fair?

20 A. Yes, sir.

21 Q. Okay. And you deployed Officer Loff and his canine.
22 And his canine actually took a turn into that cut and down
23 towards, I believe, Palmetto; is that right?

24 A. According to his report, yes.

25 Q. And I believe also his dog stopped at what would have

1 been an abandoned car that was down there. Does that sound
2 familiar?

3 A. I would have to review the report.

4 Q. Okay.

5 A. Do you mind?

6 Q. I don't mind.

7 A. According to that report, said he lost the track in
8 the roadway.

9 Q. In the roadway or near the roadway?

10 A. On the roadway.

11 Q. Okay. And Officer Loff came back and spoke to you; is
12 that correct?

13 A. Correct.

14 Q. After he did that? And all of that interaction with
15 him is on body camera?

16 A. Yes, sir.

17 Q. Which you submitted as evidence in this case?

18 A. Yes, sir.

19 Q. And so you had Officer Loff do a track that seemed to
20 indicate that that individual went towards the cut and out
21 towards Palmetto, right?

22 A. According to Officer Loff, that's correct.

23 Q. And you also had, you testified, Officer Vella trying
24 to collect physical evidence on scene; is that right?

25 A. Correct.

1 Q. You had him try to identify and lift fingerprints?

2 A. I had him process the scene for any evidence that
3 could be recovered.

4 Q. Including fingerprints, he also, at your direction,
5 took DNA swabs; is that right?

6 A. Yes, sir.

7 Q. He recovered the knife blade; is that right?

8 A. Correct.

9 Q. And, obviously, he was very careful so as not to
10 remove any type of fingerprint or DNA evidence that might have
11 been on that knife blade as well; is that right?

12 A. I would hope, yes, sir.

13 Q. That's part of what you would have instructed him to
14 do on scene; is that right?

15 A. Yes, sir.

16 Q. And all of those pieces of evidence, the fingerprints,
17 the DNA from the car, any evidence from the knife blade, would
18 you have any involvement with that going forward, or would it
19 go somewhere else?

20 A. No, it would go someplace else.

21 Q. In the end, what officer would be in charge of all the
22 evidence collected?

23 A. In the end, once it's placed into evidence, it would
24 be the evidence -- the department's evidence custodian.

25 Q. So maybe Officer Rollins might have knowledge of what

1 happened after that point?

2 A. Yes, sir.

3 Q. While you were on scene, it became known to you that
4 there was a possibility that the suspect was armed with a gun;
5 is that right?

6 A. We were told that the victim was possibly pistol
7 whipped.

8 Q. So hit with a weapon in the face?

9 A. Yes.

10 MR. WEHMAN: No further questions.

11 THE COURT: Anything further?

12 MR. TEMPLETON: Nothing from the State, Your Honor.

13 THE COURT: Thank you, sir.

14 THE WITNESS: Thank you, sir. Thank you.

15 THE COURT: Next witness.

16 MR. TEMPLETON: The State calls Officer Austin Tanner.

17 AUSTIN TANNER,

18 having been duly sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. TEMPLETON:

21 Q. Officer Tanner, where are you currently employed?

22 A. Moncks Corner Police Department.

23 Q. Back in September of 2016, where were you employed?

24 A. Moncks Corner Police Department -- or, correction,
25 Summerville Police Department.

1 Q. If you would, please go through just your basic
2 educational background and including any law enforcement
3 training.

4 A. Graduated from Goose Creek High School in 2012. 2015
5 I went to police academy.

6 Q. And do you recall being dispatched out to [REDACTED] Weber
7 Road in reference to this case?

8 A. I did.

9 Q. When you originally arrived on scene, what were you
10 instructed to do?

11 A. Upon arrival, I was instructed by my then-supervisor
12 Gebhardt that there was a broken knife blade next to a vehicle,
13 and to go ahead and process the vehicle in the area for any
14 evidence.

15 Q. Originally when you arrived on scene, were you just
16 kind of on the perimeter?

17 A. We initially started off on the perimeter. We ran
18 track with our canine unit. And didn't get anything from our
19 canine track.

20 Q. Then afterwards came to process the scene?

21 A. Yes, sir.

22 Q. And were you there with another officer at that point?

23 A. Upon my arrival, I was in FTO training then with then
24 PST Vella.

25 Q. When you were asked to process the scene, if you

1 would, just kind of briefly go through what you did immediately
2 when you first arrived to process the scene?

3 A. After being notified of the knife blade, I
4 photographed that with the forensic ruler next to it. There
5 was blood on the ground that we swabbed to get DNA evidence
6 from that. We fingerprinted the car in multiple spots to try
7 to get latent print from that. And I believe we collected a
8 cigarette butt or cigar butt.

9 Q. All right. I'm going to show you State's Exhibit No.
10 8, 9, 10 and 11. If you would take a look at those.

11 Q. Do you recognize those photos?

12 A. I do.

13 Q. What are those photos of?

14 A. The knife blade on the ground. One of them showed the
15 cigarette or cigar butt under the car. And the car -- took all
16 the latent prints and marked them.

17 Q. At this time -- are those fair and accurate
18 representations of that location at that time?

19 A. They are.

20 MR. TEMPLETON: At this time, the State would offer 8,
21 9, 10 and 11 into evidence.

22 THE COURT: Any objection?

23 MR. WEHMAN: No objection, Your Honor.

24 THE COURT: They are admitted.

25 (State's Exh. 8, Photograph, is moved into evidence.)

1 (State's Exh. 9, Photograph, is moved into
2 evidence.)

3 (State's Exh. 10, Photograph, is moved into
4 evidence.)

5 (State's Exhibit 11, Photograph, is moved into
6 evidence.)

7 BY MR. TEMPLETON:

8 Q. I'm going to start by showing you State's Exh. 8.
9 Briefly describe to the jury what they are seeing there.

10 A. That shows the vehicle that was parked in front of the
11 victim's residence. There's the cigar butt that's under the
12 vehicle, just before the front driver wheel, and the broken
13 knife blade.

14 Q. And I'm going to zoom in just a little bit so you
15 can -- is that the knife blade we are talking about?

16 A. Yes, just above that white line.

17 Q. Next I'm going to show you State's Exhibit No. 9. Is
18 that just a close-up of the same?

19 A. Yes, that's with the forensic ruler as well.

20 Q. And here's one more that may be the lighting is a
21 little bit better on. Is that the same thing?

22 A. Yes, sir.

23 Q. You also indicated that you processed the car. What
24 did you do to process the car?

25 A. We processed the vehicle, outside of the vehicle for

1 fingerprint dust, to attempt to get fingerprints. And I
2 believe we actually tried to get DNA off one of the spots as
3 well.

4 Q. Ultimately, were you able to lift some remnants of
5 fingerprints?

6 A. We got a total of nine latent print cards that we put
7 into evidence.

8 Q. Is that what we are showing you on State's Exhibit No.
9 11?

10 A. Yes, sir.

11 Q. The location of those possible print marks?

12 A. Yes, sir.

13 Q. Once you took those prints, though, you didn't have
14 any additional involvement with the fingerprints in this case?

15 A. We entered them into evidence. And after that, they
16 go to the evidence technician.

17 Q. And I just showed you a picture of the car a minute
18 ago. When you originally arrived on scene, could you please
19 tell me what condition the car was in? Was it on, off,
20 anything like that?

21 A. The car was turned off. The doors were unlocked. And
22 it had a dome light on inside the vehicle.

23 Q. So the light just kind of up inside the front of the
24 vehicle was on?

25 A. Yes, the light usually sits between the front and

1 driver's -- or passenger seat and the driver's seat.

2 Q. All right. I'm going to show you State's Exhibit No.
3 19. If you would, what is State's Exhibit 19?

4 A. Appears to be the knife blade from the scene.

5 Q. That would be the knife blade you collected?

6 A. Yes, sir.

7 Q. And that was located -- where was that located?

8 A. On the ground by the driver's side door of the
9 vehicle.

10 MR. TEMPLETON: At this time, the State would offer
11 State's Exhibit 19 into evidence.

12 MR. WEHMAN: No objection, Your Honor.

13 THE COURT: It's admitted.

14 (State's Exh. 19, Knife blade, was received in
15 evidence.)

16 BY MR. TEMPLETON:

17 Q. Did you collect any additional evidence at the scene?

18 A. We collected DNA evidence from top of the driver's
19 side door, top of the driver's door handle, the driver's side
20 rear, passenger, and from the driver's side door handle bay
21 post.

22 Q. And, ultimately, at that point, what happened with all
23 of this evidence? Did it just get taken back to the station?

24 A. The DNA was placed in a separate card boxes, placed
25 into in evidence locker.

1 Q. At Summerville Police Department?

2 A. Yes, sir.

3 MR. TEMPLETON: Please answer any questions Mr. Wehman
4 may have.

5 CROSS-EXAMINATION

6 BY MR. WEHMAN:

7 Q. How are you?

8 A. Good.

9 Q. Just to clarify for me, how many total print cards did
10 you pull?

11 A. I believe it was 9 -- excuse me, 10, actually.

12 Q. 10 print cards. And those were sent off for testing?

13 A. They were entered into our evidence locker at
14 Summerville PD. And I believe the technician sent them off.

15 Q. You don't have anything to do with that?

16 A. I don't. Once we enter into evidence, our evidence
17 technician handles those.

18 Q. So you just collected the 10 prints?

19 A. Yes, sir.

20 Q. How many DNA swabs did you end up taking off the car?

21 A. Four of them.

22 Q. In different locations?

23 A. Yes, sir.

24 Q. Because you had information that the suspect might
25 have grabbed the door to open it; is that correct?

1 A. That I do not.

2 Q. But you were told to swab those areas and you did?

3 A. Yes, sir.

4 Q. And you submitted -- you collected and sent the knife
5 in for testing as well, correct?

6 A. I submitted it to an evidence locker as well.

7 Q. So anything involving that, you won't have had
8 anything to do with?

9 A. I didn't have anything to do with testing of the knife
10 blade.

11 MR. WEHMAN: No further questions.

12 MR. TEMPLETON: No redirect.

13 THE COURT: Thank you, sir.

14 THE COURT: Yes, sir, next witness.

15 MR. TEMPLETON: The State calls Detective Edward
16 Fleming.

17 THE COURT: It looks like we need a break for a few
18 minutes. We will have you go to the jury room for about five
19 minutes.

20 (Whereupon, the jury leaves open court at 3:47 p.m.)

21 THE COURT: We will take about five minutes.

22 (Whereupon, recess transpired.)

23 THE COURT: All right. Let's bring them on.

24 (Whereupon, the jury returns to open court at 4:07
25 p.m.)

1 THE COURT: Okay. Jury is back.

2 Next witness.

3 MR. TEMPLETON: The State calls Detective Edward
4 Fleming.

5 EDWARD FLEMING,

6 having been duly sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. TEMPLETON:

9 Q. Good afternoon, Detective Fleming.

10 A. Good afternoon.

11 Q. If you would, please tell the jury where you are
12 employed.

13 A. I work at Summerville Police Department.

14 Q. In what capacity?

15 A. I'm in the criminal investigations division as a
16 detective.

17 Q. If you would briefly go into your law enforcement
18 training as well as educational history.

19 A. I started with highway patrol, three years there;
20 police Department for a year; then Summerville PD for nearly
21 five years.

22 Q. Do you recall working on September 7th, 2016?

23 A. I do.

24 Q. Were you a detective at that point?

25 A. No, sir, at that time I was with the traffic division.

1 Q. And were you dispatched in reference to this case on
2 September 7th, 2016?

3 A. I was -- Detective Hirsch asked for some patrol units
4 to help service of a warrant.

5 Q. And where were you dispatched in reference to?

6 A. Robynwyn, neighborhood of Robynwyn. I think we met a
7 few roads down from [REDACTED] where the suspect was
8 supposed to be, where the warrant service would occur. And we
9 met around the corner before we went to serve the warrant.

10 Q. Cherry Place, is that in Dorchester County as well?

11 A. Yes, sir.

12 Q. I'm going to show you what's marked as State's Exhibit
13 No. 12. Can you tell what State's Exhibit 12 is?

14 A. Yes, sir. That's the in-car camera footage from my
15 vehicle from that day.

16 Q. Is it also your body-worn camera?

17 A. Yes.

18 Q. Is that a fair and accurate representation of what
19 happened on that particular occasion?

20 A. Yes, sir.

21 MR. TEMPLETON: The State would offer State's 12 into
22 evidence.

23 THE COURT: What says the defense?

24 MR. WEHMAN: Judge, at this point, I would object due
25 to hearsay concerns.

1 THE COURT: Response?

2 MR. TEMPLETON: Your Honor, if there are any hearsay
3 concerns, I think they can be remedied by not playing the audio
4 on it. And I don't have a problem with that. I just want to
5 show what actually occurred. So I don't think that would be
6 hearsay.

7 THE COURT: Anything further?

8 MR. WEHMAN: I would say playing of the video would be
9 duplicative of any testimony, but no objection other than
10 that.

11 THE COURT: And what is it again, Officer? What is
12 that?

13 THE WITNESS: That is the -- my body cam footage from
14 this incident on [REDACTED] and also the in-car camera
15 footage from my vehicle.

16 THE COURT: Is anyone talking on it other than you?

17 THE WITNESS: You can hear the other officers I'm
18 around.

19 THE COURT: All right. The objection is overruled.

20 MR. TEMPLETON: Admitted?

21 THE COURT: Yes, sir.

22 MR. TEMPLETON: Thank you, Your Honor.

23 (State's Exh. 12, Body cam footage, was received in
24 evidence.)

25 BY MR. TEMPLETON:

1 Q. I'm going to play that for you, but I'm first going to
2 ask you a few more questions while we are getting that queued
3 up. When you first arrived at [REDACTED], what were you
4 originally doing?

5 A. I was asked to hold perimeter in the backyard. So I
6 was -- if you walk to the backyard, I was on the right rear of
7 the house against the chain-link fence, just keeping an eye on
8 basically the back door.

9 Q. I'm going to show you State's Exhibit No. 1, which is
10 already in evidence.

11 MR. TEMPLETON: May the witness step down for just a
12 second, Your Honor?

13 BY MR. TEMPLETON:

14 Q. Can you point out -- and if you step back to make sure
15 the jury can see completely. Can you point out where the house
16 that y'all were responding to is located?

17 A. Cherry Place, [REDACTED] would be right there.

18 Q. That house right there?

19 A. Yes, sir.

20 Q. If you would just kind of circle that house.

21 A. (Witness complies.)

22 Q. Ultimately, once you arrived at that location, did you
23 ultimately detain anyone?

24 A. We did. After they attempted to serve the warrant at
25 the front door, I believe they were told he wasn't home. We

1 had officers from the SET team approach through these woods
2 back here and located the subject. Ultimately, we found to be
3 the suspect laying in the wood line against a ditch behind the
4 trees, right in this area.

5 Q. If you would just kind of put maybe a star in the
6 general area where he was ultimately detained.

7 A. (Witness complies.)

8 Q. You can sit back down now.

9 THE COURT: That's admitted without audio.

10 MR. SORENSON: Yes, Your Honor, I have it muted.

11 BY MR. TEMPLETON:

12 Q. You indicated that he was laying on the ground?

13 A. Yes, sir.

14 Q. When you approached, were you able to see him at that
15 point?

16 A. I was -- I had to go across a ditch. And, initially,
17 I looked at where the other officers were looking and pointing.
18 When I got to the other side of the ditch, I could see him
19 laying down. I believe he may have been against the tree
20 before I saw him, according to other reports, but when I saw
21 him, he was laying down.

22 Q. And was he laying down on his stomach, on his back?

23 A. He was on his stomach, yes, sir.

24 Q. Do you know, were ultimately some knives located on
25 him or near him?

1 MR. WEHMAN: Objection, Your Honor. Pursuant to my
2 pretrial motion.

3 THE COURT: Objection is overruled.

4 BY MR. TEMPLETON:

5 Q. You can answer the question.

6 A. There were two knives found. One was found on his
7 person, near his waistband, I believe, and the other one was on
8 the ground near him.

9 Q. I'm going to show you State's Exhibit No. 17 and
10 State's Exhibit No. 20. Do you recognize these two items?

11 A. Those appear to be the knives that we found.

12 Q. Okay. Did you ultimately submit those into evidence?

13 A. I did, yes, sir.

14 Q. Are those the two knives that you submitted into
15 evidence?

16 A. Yes?

17 MR. TEMPLETON: At this time, the State would offer
18 State's Exhibit 20 and State's Exh. 17 into evidence.

19 MR. WEHMAN: I will renew my prior objection, Your
20 Honor.

21 THE COURT: They are admitted over objection.

22 (State's Exh. 20, Knife, was received in evidence.)

23 (State's Exh. 17, Knife, was received in evidence.)

24 BY MR. TEMPLETON:

25 Q. I'm going to again show you State's Exh. 17. Can you

1 pull that out of the cardboard it's in. Okay. Is that the
2 knife that you ultimately recovered at the scene?

3 A. Yes, sir.

4 Q. I'm also going to show you State's Exhibit No. 20.
5 That will come out a little bit easier. If you can also show
6 that one to the jury.

7 A. Yes, sir.

8 Q. That's the other knife that you ultimately recovered
9 at the scene?

10 A. It is, yes, sir.

11 Q. At this time, I'm going to publish State's Exhibit No.
12 12 to the jury. If you could just briefly, where are you
13 standing at this point?

14 A. This is in the right rear corner of the yard. So the
15 house would be back this way. The shed was in the corner. So
16 I was positioned where I could see the back door and have
17 somewhat of concealment behind the shed.

18 Q. All right.

19 A. That's the yard to the right of us.

20 (Video playing.)

21 A. Do you want me to explain? There's set patrol units,
22 that's our SET team walking up behind me, kind of who I was
23 motioning out through the wood line. Eventually, Officer Owens
24 comes over the radio and says he sees --

25 MR. WEHMAN: Objection, Your Honor. That would be

1 hearsay.

2 BY MR. TEMPLETON:

3 Q. Don't say anything anyone else said, but you can
4 explain what's happening.

5 A. I'm alerted to somebody laying beside a ditch behind
6 the fence. There's a ditch right behind this fence. And I see
7 them pointing that way, the other officers. So I start that
8 way. About this point here, I can see a white T-shirt.

9 Q. Are you giving him any instructions?

10 A. I am. I'm telling him, let me see your hands, stay on
11 the ground. And he's complying with everything. We handcuff
12 him, searching him for any weapons. Officer Souder finds the
13 knife while he's searching. One knife was on his person at the
14 time; that one. At this time, there's another knife found, not
15 on his person but in arm's reach.

16 (Video playing.)

17 Q. At this point, are you basically searching him for any
18 other --

19 A. Yes, sir, just doing a thorough search before we
20 transport him in a police vehicle.

21 Q. And do you know who this person is that you are
22 searching at this point?

23 A. We know it's the defendant. We were shown a picture
24 by Detective Hirsch, I believe.

25 Q. Actually, his ID is in that little packet, I believe?

1 A. Probably so. There's like a Social Security card
2 also. There's the other officers back at the wood line.

3 Q. We will stop it right there. If you would, refer back
4 to your report about five or six lines down. Does it indicate
5 whether he has any identification on him?

6 A. It does, says South Carolina ID was located in his
7 left front pocket.

8 Q. Beyond the knives that have been entered into
9 evidence, was there any other weapons found on Mr. Stokes?

10 A. No, sir.

11 Q. I'm going to show you State's Exhibit No. 13 and 14.
12 Do you know what those are?

13 A. That looks like still shots from my body cam.

14 Q. Are those an accurate representation of what
15 Mr. Stokes looked like when you arrested him?

16 A. Yes, sir.

17 MR. TEMPLETON: Your Honor, at this time, the State
18 would offer State's Exhibit 13 and 14 into evidence.

19 THE COURT: Any objection?

20 MR. WEHMAN: No.

21 THE COURT: They are admitted.

22 (State's Exh. 13, Photograph, was received in
23 evidence.)

24 (State's Exh. 14, Photograph, was received in
25 evidence.)

1 MR. TEMPLETON: I'm going to publish those for the
2 jury.

3 BY MR. TEMPLETON:

4 Q. Primarily, what kind of hair does Mr. Stokes have at
5 that point in time?

6 A. Appears to be dreadlocks, medium length, I guess you
7 would call it, dreadlocks.

8 Q. I'm going to show you another photo, just so you can
9 see as well. This is State's 14. Again, if you could just
10 describe his hair to the jury.

11 A. Medium-length dreadlocks.

12 MR. TEMPLETON: Please answer any questions Mr. Wehman
13 may have.

14 CROSS-EXAMINATION

15 BY MR. WEHMAN:

16 Q. Detective Fleming, how are you?

17 A. Good, sir. How are you?

18 Q. Good. Couple of things. When you responded to [REDACTED]
19 [REDACTED], what day was that?

20 A. That was the -- you want the day of the week?

21 Q. Was it September 7th?

22 A. Yes. Sorry.

23 Q. You are fine. The date of the incident in this case
24 would have been September 1st; is that accurate?

25 A. I believe so, yes, sir.

1 Q. All right. So we are talking about six days later?

2 A. Yes, sir.

3 Q. And you said something about these knives. You said
4 they were recovered at the scene. What you meant is they were
5 recovered at [REDACTED] or behind [REDACTED],
6 correct?

7 A. Correct. They were recovered behind the fence line of
8 [REDACTED].

9 Q. At the scene of the arrest, correct? Okay. And we
10 saw the body camera footage of his arrest. You mentioned
11 before he was cooperative; is that right?

12 A. He was.

13 Q. Obeyed all commands?

14 A. He did.

15 Q. Didn't run?

16 A. No, sir. No, sir.

17 Q. And we saw the search. Was a cell phone recovered
18 during that search?

19 A. I don't have it listed in my report. It may have. If
20 one was recovered, I don't think I -- I know I didn't turn it
21 in to evidence. I didn't see it in the video.

22 Q. But you do list in your report that two large knives
23 were located on the scene; is that right?

24 A. Yes, sir.

25 Q. And you mentioned in your report that they were

1 located beside Mr. Stokes on the ground.

2 A. Yes, sir. At one point, I believe they were on the
3 ground before we escorted him. After reviewing the video, you
4 can hear Officer Souder say --

5 MR. WEHMAN: I would object to that portion, Your
6 Honor.

7 THE COURT: What portion?

8 MR. WEHMAN: The hearsay portion.

9 THE COURT: Restate the question.

10 BY MR. WEHMAN:

11 Q. The question was: In your report, you note that two
12 large knives or two knives were located on the ground besides
13 Mr. Stokes; is that right?

14 A. Yes, sir.

15 Q. Okay.

16 A. Officer Souder informed me where it was located.

17 Q. Those knives were taken into evidence. Did you have
18 any involvement with those knives after that?

19 A. I transported them back to the station and turned them
20 in to evidence, but not after that.

21 Q. At that point, any further testing on the knives would
22 have been done by somebody other than you?

23 A. That's right.

24 MR. WEHMAN: That would be all I have for this
25 witness, Your Honor.

1 MR. TEMPLETON: Just one question.

2 DIRECT EXAMINATION

3 BY MR. TEMPLETON:

4 Q. I think Mr. Wehman indicated he was cooperative once
5 you found him; is that correct?

6 A. Yes.

7 Q. But he wasn't coming out looking for y'all, right?

8 A. No, sir. Obviously, he was evading us or attempting
9 to evade us.

10 MR. TEMPLETON: That's all the questions I have, Your
11 Honor.

12 THE COURT: Anything else?

13 MR. WEHMAN: No, Your Honor.

14 THE COURT: Thank you, sir.

15 Next witness.

16 MR. TEMPLETON: The State calls Detective Souder.

17 DOROTHY SOUDER,

18 having been duly sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. TEMPLETON:

21 Q. Good afternoon, Detective Souder. If you would,
22 please tell the jury where you are employed.

23 A. Summerville Police Department.

24 Q. Were you also employed there back on September 7th of
25 2016?

1 A. I was.

2 Q. What is your current position at the Summerville
3 Police Department?

4 A. Detective.

5 Q. And back in September of 2016, what were you doing at
6 the Summerville Police Department?

7 A. I was assigned to the special enforcement team that
8 worked closely with patrol.

9 Q. Do you recall being dispatched in reference to this
10 case?

11 A. I do.

12 Q. Was that on September 7th, 2016?

13 A. Yes.

14 Q. Okay. Where were you dispatched to?

15 A. I was dispatched to Cherry Place, I think [REDACTED] -- [REDACTED]

16 [REDACTED]. I'm sorry.

17 Q. When you were responding to [REDACTED], did you
18 actually go to, like, the front door, or where were you coming
19 from?

20 A. I drove up north Maple, which is -- there's some area
21 that -- it's woods between Cherry Place.

22 Q. I'm going to cut you off for just a second. If you
23 would step down for just a second so you can kind of explain
24 with the map where you were coming from.

25 A. I was up here on North Maple. (Indicating).

1 Q. Up here?

2 A. Yes.

3 Q. You were coming up this way?

4 A. I was. And I parked -- there was some construction
5 there. I parked off the side of the woods. Then I walked
6 behind Cherry Place.

7 Q. What were you trying to do there?

8 A. We were sweeping the area to make sure the suspect
9 didn't run into the woods and hide.

10 Q. You can sit back down. Ultimately, was someone
11 spotted in the woods?

12 A. Yes.

13 Q. Who was spotted in the woods?

14 A. Tyreece Stokes.

15 Q. Did you participate in taking him into custody?

16 A. I did.

17 Q. When you made contact with Mr. Stokes, what did you do
18 first?

19 A. While we were walking through the woods, my partner,
20 Officer Owens, came over the radio and said, hey.....

21 MR. WEHMAN: Objection, hearsay.

22 Q. You just can't say --

23 A. I was told this.

24 Q. Anything someone else says, you can't go into. But
25 you can tell us what happened.

1 A. I looked to the left. I saw someone with a white
2 shirt, a black male laying into the woods. We approached this
3 black male pretty quickly. We were running. While we were
4 running, the person looked up at us. I recognized him as
5 Tyreece Stokes. And we proceeded to put him in custody and in
6 handcuffs. He put his hands up. And we put his hands behind
7 his back to put him in handcuffs.

8 Q. At that point, did you search Mr. Stokes?

9 A. I did.

10 Q. Did you find anything on Mr. Stokes?

11 A. I found a very large bladed knife in his right
12 pocket.

13 Q. I'm going to show you State's Exhibit 17, which is
14 already in evidence. Is that the knife that you found in his
15 pocket?

16 A. Yes.

17 Q. Anything else that you found on his person at that
18 point?

19 A. Near him was a smaller bladed knife in his vicinity,
20 as if he had it in his hand and he dropped it when we started
21 walking up to him. We took both of them in custody at that
22 point.

23 Q. This is State's Exhibit 20. Is that the knife, the
24 second knife that you are talking about?

25 A. Yes.

1 Q. Once he was in custody, what did you all do next?

2 A. We escorted him to Detective Fleming's patrol vehicle,
3 which was the closest vehicle to that residence. We assisted
4 him over, like, a small hill through the backyard to the
5 vehicle.

6 Q. Okay. And, ultimately, he was taken to the police
7 department?

8 A. Yes.

9 Q. Are you sure that that was Tyreece Stokes?

10 A. Yes.

11 MR. TEMPLETON: Just a moment. Please answer any
12 questions Mr. Wehman may have.

13 CROSS-EXAMINATION

14 BY MR. WEHMAN:

15 Q. Detective Souder, how are you?

16 A. Great.

17 Q. So you testified that you were part of the arrest of
18 Mr. Stokes; is that right?

19 A. Yes.

20 Q. And you testified that you saw him in the woods?

21 A. I did.

22 Q. And I assume made yourself known at some point?

23 A. Yes.

24 Q. And you said he put his hands up and you took him into
25 custody?

1 A. Correct.

2 Q. Didn't take off on you? Didn't run?

3 A. No.

4 Q. He was taken into custody. Now, during your search or
5 during the officer's search, isn't it true that a cell phone
6 was located on his person?

7 A. There may have been. I don't recall.

8 Q. You didn't recover that cell phone?

9 A. I was the one that searched him, as well as Detective
10 Fleming. If he did have other articles, that was a
11 possibility. I'm not sure.

12 MR. WEHMAN: Okay. Nothing further, Your Honor.

13 MR. TEMPLETON: We don't have anything further of this
14 witness, Your Honor.

15 THE COURT: Thank you.

16 THE WITNESS: Thank you.

17 THE COURT: Yes, sir. Do you have another witness
18 today?

19 MR. TEMPLETON: Yes, one more, Your Honor. The State
20 calls Detective Wade Rollins.

21

22

23

24

25

1 WADE ROLLINS,

2 having been duly sworn, testifies as follows:

3 DIRECT EXAMINATION

4 BY MR. TEMPLETON:

5 Q. Good afternoon, Detective Rollins.

6 A. Good afternoon, sir.

7 Q. If you would, please tell the jury where you are
8 employed.

9 A. Summerville Police Department.

10 Q. What capacity are you employed by the Summerville
11 Police Department?

12 A. I'm the head crimes scene investigator.

13 Q. As part of your position as a head crime scene
14 investigator, do you do certain tests on evidence?

15 A. Yes, sir.

16 Q. Do you review latent prints in cases?

17 A. Yes, I do.

18 Q. Have you been qualified as an expert in latent print
19 analysis?

20 A. I'm not qualified, but I did graduate from the academy
21 for a latent print recognition and comparison class December
22 12th, 2014.

23 Q. Have you received any other training as a law
24 enforcement officer?

25 A. In regards to fingerprints?

1 Q. Uh-huh.

2 A. No, sir.

3 Q. Did you compare the fingerprints that were collected
4 in this case?

5 A. Yes, sir.

6 Q. Were any of those fingerprints able to be compared?

7 A. No, sir.

8 Q. If you would, kind of explain to the jury what it
9 means that they weren't able to be compared?

10 A. Fingerprints have ridge detail and minutiae points.
11 And SLED, to put it in the system to actually try to get a
12 match with someone, needs at least 10 to 15 points of minutiae.
13 And these prints that were turned in had maybe 5 or 6 at the
14 most.

15 Q. So they were not able to be tested against known
16 prints?

17 A. That's correct, sir.

18 Q. Did you also test the knives that were submitted into
19 evidence in this case?

20 A. Yes, I did.

21 Q. What kind of testing did you do to the knives?

22 A. I used what's called a hexagon OBTI. It's a
23 hemoglobin test kit. And you basically take a little swab of
24 what stain you think is blood and you put it into a solution
25 and then shake the solution. You put three drops into an --

1 almost looks like a pregnancy test kit. Within five minutes,
2 if you have two pink lines, then it's positive for human
3 hemoglobin.

4 Q. Did you do that testing on these knives?

5 A. Yes, I did.

6 Q. And you weren't able to -- what were your findings?

7 A. Negative.

8 Q. So there's no blood on these two particular knives?

9 A. Yes, sir.

10 MR. TEMPLETON: That's all the questions I have,
11 please answer anything Mr. Wehman may have.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. WEHMAN:

15 Q. Detective Rollins, how are you?

16 A. Good.

17 Q. So you were in charge of taking all the evidence that
18 was collected and kind of processing all of it; is that
19 right?

20 A. Yes, sir.

21 Q. To start with, you testified you were presented with
22 10 latent print cards; is that accurate?

23 A. I believe it was 10.

24 Q. And you testified that --

25 A. All my report says, I received latent print cards.

1 Doesn't actually give me a number.

2 Q. But all the prints that would have been collected on
3 scene by, I believe, Officer Owens, would have come to you; is
4 that right?

5 A. Yes.

6 Q. And those would have been the prints you would have
7 compared?

8 A. Yes, sir.

9 Q. And you testified that none of those prints were able
10 to effectuate an identification?

11 A. That's correct.

12 Q. You also were provided with DNA, I believe touch DNA
13 for analysis or to be sent off to SLED; is that right?

14 A. The DNA swabs Detective Weaver had requested they be
15 sent.

16 Q. And I believe one of the officers earlier testified
17 that on scene from the car, touch DNA swabs were also
18 collected. Would those have been sent as well?

19 A. If the detective requested they be sent, then yes,
20 sir.

21 Q. So that would have been up to the detective?

22 A. Yes, sir.

23 Q. Tell the jury briefly what touch DNA would be.

24 A. Touch DNA is sweat, skin cells on your fingers, your
25 hand, your face, your foot or whatever. If I placed my hand

1 here on the Bible when I first came in, my DNA is on that Bible
2 because the skin cells and sweat comes off, basically a
3 fingerprint, and your DNA is there.

4 Q. So, for instance, if I do this (indicating), there's a
5 chance that my touch DNA has been transferred to this piece of
6 wood?

7 A. Yes, there's a chance.

8 Q. Specifically, if somebody is opening maybe a car door,
9 there's a chance that touch DNA would be transferred to that
10 car door?

11 A. There's a chance, yes, sir.

12 Q. And we collect that, because that would be a source of
13 identifying the person that opened that car door, correct?

14 A. Yes.

15 Q. Do you have any results from SLED indicating any type
16 of a DNA match?

17 A. For DNA match, no, sir.

18 Q. So no DNA has come back in this case?

19 A. No, sir. The only thing, a buccal swab, which is a
20 known standard swab from the suspect as well as the victim, was
21 sent up along with a shirt, a white T-shirt that had stains on
22 it. And the only thing from SLED says that the presumptive
23 testing for blood on the shirt was negative.. Those items were
24 sent to the DNA section, as well as hair found on the shirt was
25 sent to the DNA section along with the two known standards.

1 Q. No results came back from any of that?

2 A. No.

3 Q. So there's no DNA evidence in this case?

4 A. Not that I have, no, sir.

5 Q. As to the knives that were found on September the
6 6th -- or September the 7th, I'm sorry, you said that neither
7 of those knives had blood on them?

8 A. That's correct.

9 Q. So no further testing was done once you identified
10 that there's no blood?

11 A. Actually, what I did, after I did the hemoglobin test,
12 I did what's called luminol. It's a chemical compound and
13 chemical fluorescence if blood has been on the surface. So if
14 you have blood in your kitchen sink, you clean it, you can
15 spray this chemical on there, it lights up. And it actually
16 lights blue if blood had been there had been cleaned up. I
17 used that as well and negative results as well.

18 Q. So you were able to determine that, more likely than
19 not, no blood has ever been on these knives?

20 A. On those two knives, yes, sir.

21 Q. Were you able to do any testing on the knife blade
22 that was found on September 1st on the scene?

23 A. The knife blade itself, no, sir. Again, Detective
24 Weaver didn't request anything.

25 Q. He did not request that knife blade be tested for

1 fingerprints or DNA?

2 A. No, sir, not according to my reports, no, sir.

3 Q. So any touch DNA that might have been on that blade,
4 we don't have any knowledge what that would have been?

5 A. No, sir.

6 Q. Showing you what's been marked as State's Exhibit 19,
7 have you ever seen that before?

8 A. Yes, sir, I did package this.

9 Q. But that knife wasn't presented to you for any
10 testing?

11 A. No, sir, not the blade, no, sir.

12 Q. Detective Weaver didn't want any testing done on that
13 blade?

14 A. Not to my knowledge, no, sir.

15 Q. Showing you what's been entered into evidence as
16 State's 10, do you recognize that?

17 A. That's the same knife blade I believe you just showed
18 me.

19 Q. Does it appear that there's blood on that blade?

20 A. There is a red stain. I couldn't tell you if it's
21 blood or not because of the photograph.

22 Q. You certainly didn't do any testing on that knife, you
23 said?

24 A. No, sir.

25 MR. WEHMAN: I don't have any further questions, Your

1 Honor.

2 MR. TEMPLETON: Just one question, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. TEMPLETON:

5 Q. You had testified the print cards didn't have
6 sufficient ridge detail. So they couldn't effectuate a
7 comparison, correct?

8 A. That's correct.

9 Q. That's to ID someone or basically exclude someone,
10 correct?

11 A. Yes, sir.

12 MR. TEMPLETON: That's all the questions I have.

13 THE COURT: Anything further?

14 MR. WEHMAN: No, Your Honor.

15 THE COURT: All right. Thank you, sir.

16 Anything further from the State?

17 MR. SORENSON: I believe that's all we have for this
18 afternoon.

19 THE COURT: All right. Ladies and gentlemen, that
20 will be it for today. When you come back tomorrow, Ms. Cuomo,
21 I'm going to appoint you to serve as the foreperson of the
22 jury. You can serve now as the spokesperson for the jury,
23 preside over the jury deliberations, and complete the verdict
24 form for the jury.

25 And where is the special foreperson seat here in Saint

1 George?

2 THE CLERK: In that seat.

3 THE COURT: Closest to the witness, the foreperson's
4 seat. All right. Y'all have a good evening and we will see
5 y'all tomorrow morning at 9:30. 9:30 tomorrow morning.

6 (Whereupon, the jury leaves open court at 4:45 p.m.)

7 THE COURT: All right. Anything else for this day?

8 MR. SORENSON: Not from the State, Your Honor.

9 MS. WILLIAMS: Judge, if I may quickly put on the
10 record, at this point, the State would renew our pretrial
11 motion regarding the exclusion of these knives that were found
12 on Mr. Stokes on his arrest. Detective Rollins has now gotten
13 on the witness stand and specifically excluded these knives as
14 being used in this incident. He has said that he tested them
15 for blood. The specific tests that he did says there was never
16 blood on these knives, that they couldn't have just been wiped
17 off. And I think that gives even more credence to our argument
18 that there really is just no nexus between these knives found
19 on this gentleman on September 7th and this incident on
20 September 1st. And we would just renew our pretrial motion at
21 this time.

22 In addition, the victim has now testified fully and
23 completely. Her only description of this one butcher knife --
24 the steak knife is just completely -- we know the steak knife
25 wasn't used, because the steak knife that was used was left at

1 the scene and apparently just was never tested, which is a side
2 note and befuddles me. But then we get to the butcher knife.
3 And she describes it as a thick kitchen-like knife. Nothing
4 about the handle, nothing about the color of it, nothing about
5 really how long it was. And, certainly, nothing that would
6 lend any credence to the State's assertion that there was a
7 nexus between what happened on September 1st and the weapons
8 that were used and what was found on him on September 7th. And
9 we would just renew our objections at this point.

10 THE COURT: What says the State?

11 MR. SORENSON: I'm sure the argument isn't any
12 different than it was earlier today. State's Exhibit 17, the
13 butcher knife, we have never alleged was one of the weapons
14 that stabbed the victim. So I'm not sure -- I mean, never
15 argued to the Court or said to anybody that we were expecting
16 to find the victim's blood on that knife.

17 You heard the doctor's testimony that the serrated
18 steak knife was most consistent to the wound to the head and
19 the chest.

20 The nexus is the fact that the victim, when showed
21 that item, identified it and said it was consistent with the
22 butcher-type knife that she saw the suspect holding. That's
23 why I showed her that, marked it for ID purposes and showed it
24 to her. And I think she provides that nexus.

25 THE COURT: All right. The motion is denied based on

1 the Court's earlier ruling.

2 MS. WILLIAMS: Thank you, Judge.

3 THE COURT: Anything else today? How many more
4 witnesses are we anticipating in this case?

5 MR. SORENSON: I believe we should just have one in
6 the morning.

7 THE COURT: All right.

8 MR. SORENSON: At most, it would be probably two.

9 THE COURT: And then the defense anticipates some as
10 well?

11 MR. WEHMAN: I would anticipate somewhere between one
12 and three, Your Honor.

13 THE COURT: All right. Okay. We will reconvene at
14 9:30.

15 (Whereupon, a recess transpired.) THE COURT: Ready?

16 MR. SORENSON: Yes, sir.

17 MR. WEHMAN: Yes, Your Honor.

18 THE COURT: All right. Bring them on.

19 (Whereupon, the jury returns to open court at 9:42
20 a.m.)

21 THE COURT: Good morning. Welcome back to day number
22 three. Madam Forelady, how is the jury doing?

23 THE FOREPERSON: Doing well.

24 THE COURT: Good. Thank you.

25 Your next witness.

1 MR. SORENSON: May it please the Court, Your Honor.
2 The State calls Mike Weaver.

3 MICHAEL WEAVER,
4 having been duly sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. SORENSON:

7 Q. Good morning, Mr. Weaver. How are you this morning?

8 A. Good.

9 Q. If you would, please the jury where you are currently
10 employed?

11 A. I'm currently employed for Nucor Steel in Berkeley
12 County.

13 Q. And prior to going to work for Nucor, where did you
14 work prior to that?

15 A. I worked for the Summerville Police Department for
16 about eight years.

17 Q. And what were your duties with the Summerville Police
18 Department when you left that agency?

19 A. When I left the agency, I was lieutenant over
20 investigations. I was responsible for assigning cases to
21 detectives in the office, overseeing crime scene patrol units
22 whenever we were called out to a serious incident, things of
23 that nature.

24 Q. How long had you been employed as an investigator or
25 in the investigative division at Summerville?

1 A. I think I was in investigations for little over six
2 years, six years, give or take.

3 Q. And specifically back in September of 2016, in what
4 capacity were you employed at that time with Summerville?

5 A. I was either detective corporal or detective sergeant.
6 I was the on-call detective for the week when this incident
7 took place.

8 Q. So you ultimately became assigned as the lead
9 investigator in this matter?

10 A. That's correct.

11 Q. And did you have an opportunity -- if I turn your
12 attention back to the evening of September 1st of 2016, did you
13 have an opportunity to respond out to Ms. Pitts's residence on
14 Weber Road?

15 A. I did.

16 Q. And was she still there when you got out there?

17 A. No. At that point, she was down at M.U.S.C. receiving
18 treatment for her injuries.

19 Q. Okay. And let me ask you this. Were you familiar
20 with where her residence is located, that area?

21 A. Yes. That area it was pretty common when I worked
22 patrol, the years I was on patrol, I was in that neighborhood
23 semi-regularly, I would say.

24 Q. And this is the Robynwyn neighborhood area of
25 Summerville; is that correct?

1 A. Yes, sir, that's correct.

2 Q. And is that located in Dorchester County where you
3 responded out to that night?

4 A. It is.

5 Q. Let me ask you. Did you become aware that evening of
6 kind of the brief description that had been obtained from Ms.
7 Pitts by other officers that had responded to the scene and
8 then to the hospital?

9 A. Yes.

10 Q. As a result of that description and the information
11 that you were provided, did you ultimately -- were you familiar
12 with somebody that frequented that Robynwyn neighborhood that
13 matched that physical description?

14 A. I was.

15 Q. And who was that person?

16 A. It's the defendant, Mr. Tyreece Stokes.

17 Q. And as a result of that, did you then do anything with
18 that information then that evening?

19 A. Yeah. Yes, I did.

20 Q. What was that that you did?

21 A. Based on the information that was obtained, the
22 description we had, I went back to the police department after
23 I responded out to the incident location, and I immediately
24 obtained a SLED photographic lineup for the suspect.

25 Q. Okay. And if I could show you what's in evidence,

1 it's State's Exhibit No. 2, is that the photographic lineup
2 that you obtained that evening?

3 A. Yes, it is.

4 Q. And is Mr. Stokes in that lineup?

5 A. Yes.

6 Q. And what photograph is Mr. Stokes?

7 A. He's No. 3.

8 Q. Okay. Now, the other five individuals, do you know
9 who those people are?

10 A. No. I actually tried to find out who they were. I
11 contacted SLED, but it's a random database they are pulling
12 from the DMV. They have no way of identifying who those other
13 five subjects were.

14 Q. They were five similar-looking people throughout the
15 State of South Carolina?

16 A. That's correct.

17 Q. Let me ask you. Did you become aware then that
18 evening that an officer showed that lineup to Ms. Pitts at the
19 Medical University of South Carolina?

20 A. Yes, I was.

21 Q. Were you aware that she did not identify that night
22 Mr. Stokes? Are you aware of that?

23 A. Yes, she did not identify him that night.

24 Q. Now, did you have an occasion then, ultimately, to
25 learn that Ms. Pitts had been discharged from the hospital?

1 A. I found out she was discharged at a later date, yes.

2 Q. Did you have an opportunity at that point in time to
3 go make contact with her?

4 A. Yes, I did.

5 Q. And when was that that you made contact with Ms.
6 Pitts?

7 A. I believe the date was September 6th, approximately
8 five days later.

9 Q. And where was that that you made contact with her?

10 A. That was at her residence on Weber Road.

11 Q. And at that point in time, did you have an
12 opportunity -- let me back up. Was that your first opportunity
13 to speak with her about this matter?

14 A. Yes. That was my first face-to-face interaction with
15 her.

16 Q. And did she at that point in time give you a written
17 statement at that point in time?

18 A. That day she gave me a verbal statement.

19 Q. So talked to you. Did she tell you about what had
20 happened, what she recalled happening the night of September
21 1st, 2016?

22 A. She did.

23 Q. Her description, did she appear to have a clear
24 recollection of what had occurred outside of her home the
25 evening of September 1st, 2016?

1 A. Yes, she was very clear in her description.

2 Q. Specifically, on September 6th of 2016, did she
3 provide you information that her assailant had two knives on
4 him.

5 MR. WEHMAN: Objection, leading.

6 THE COURT: Don't lead the witness.

7 BY MR. SORENSON:

8 Q. What information did she provide to you on September
9 6th of 2016 regarding what weapons the assailant had on him?

10 A. She said that two knives were crossed just outside of
11 her windshield, inside her windshield, in that area. She said
12 one looked like a butcher knife and one looked just like a
13 steak knife.

14 Q. Now, through the course of your talking to her at her
15 residence on September 6th, did you inquire from her whether
16 she recalled speaking to anybody at the hospital the night of
17 September 1st?

18 A. I did.

19 Q. And what did she indicate to you about whether she
20 recalled that or didn't recall that?

21 A. I was speaking to the victim -- I'm going to read from
22 my report here. She said once she got back inside her house
23 after the incident took place, she blacked out, and she did not
24 remember anything until approximately two days later. And that
25 was Saturday, September 3rd. I asked her if she remembered

1 speaking with officers at M.U.S.C. She stated no.

2 Q. Did you ask her about whether she recalled anybody
3 showing her any photographs at the hospital?

4 A. She just said she didn't remember anything.

5 Q. All right. And as a result of that, did you then have
6 an opportunity to attempt to show her State's Exhibit No. 2 at
7 her residence?

8 A. I did.

9 Q. Let me ask you, prior to that happening, did she
10 indicate to you whether she had -- whether somebody had shown
11 her any other photographs, kind of in the interim there in
12 those five days in between?

13 A. She said her sister located some photographs of some
14 people.

15 Q. So her sister had?

16 A. Yes.

17 Q. And did she at that point in time attempt to show you
18 a photograph?

19 A. She attempted, yes.

20 Q. Did you look at that photograph at that time?

21 A. No, I did not.

22 Q. What -- did anybody look at that photograph at that
23 time?

24 A. My supervisor, Detective Santana was with me at the
25 time. He took the photograph. He thought it would be a good

1 idea if I did not look at the photograph before I showed her
2 the photographic lineup with the defendant inside of it.

3 Q. Because you were familiar with Mr. Stokes. So you
4 knew -- I mean, knew who he was in the lineup; is that
5 correct?

6 A. That's correct.

7 Q. And at that time, did you ultimately show Ms. Pitts
8 State's Exhibit No. 2?

9 A. I did.

10 Q. And tell the jury how would you go about doing that.
11 Is there anything you said to her beforehand?

12 A. Before we give anybody a photo lineup, there's a
13 disclaimer form we read them. It's about a paragraph long. We
14 read it to them, have them sign, date and initial it before
15 they look at the photographic lineup. It's just as important
16 freeing persons from suspicion, don't discuss the case with any
17 other witnesses, things of that nature before we show them the
18 lineup.

19 Q. And you go over that with her?

20 A. Yes, I did.

21 Q. And she appeared to understand what you were going
22 over with her?

23 A. Yes.

24 Q. And at that point in time, did you show her State's
25 Exhibit No. 2?

1 A. I did.

2 Q. And was she able to identify anybody in State's
3 Exhibit No. 2?

4 A. She did.

5 Q. What photo did she identify?

6 A. She circled No. 3, which is the defendant, Tyreece
7 Stokes.

8 Q. The circle that's around Photo No. 3, who put that
9 there?

10 A. That was the victim.

11 Q. And did she, in the writing up in the top right-hand
12 corner there --

13 A. That's her signature, along with the time and date.

14 Q. September 6th, 2016, 1:15 in the afternoon?

15 A. That's correct.

16 Q. Now, did you in any way, shape or form suggest to her
17 who to pick out?

18 A. No, I did not.

19 Q. Did you tell her she had to pick somebody out?

20 A. No.

21 Q. I asked you this earlier. You were aware of the fact
22 that at the hospital she had eluded to photographs one and two
23 as being possibilities. Do you recall that?

24 A. That's correct, she did.

25 Q. Did you at any point in time tell her that, you know,

1 the suspect wasn't photograph 1 or 2?

2 A. No, I did not.

3 Q. Tell the jury, when she looked at the -- at that
4 lineup, State's Exhibit No. 2, what was her reaction?

5 A. When I showed her the photo lineup, she got emotional
6 and noticeably scared. Her breathing increased. And she just
7 stated that was him. It's pretty common when we show people
8 photo lineups. From a serious crime, those are common emotions
9 to see.

10 Q. All right. Ultimately, after seeing that lineup, did
11 you then take a look at the photograph that she had there?

12 A. I did.

13 Q. And who was that photograph of?

14 A. It was a photograph of the defendant, Tyreece
15 Stokes.

16 Q. Is it the same photograph that's in the photographic
17 lineup, State's Exhibit No. 2?

18 A. No, it was a different photograph.

19 Q. Now, ultimately, as a result of all of that occurring
20 on September 6th, did you obtain arrest warrants for
21 Mr. Stokes?

22 A. I did.

23 Q. And you testified earlier, are you familiar with him
24 frequently that Robynwyn neighborhood?

25 A. I am.

1 Q. As a result of that, did you make any attempts that
2 following day, September 7th of 2016, to attempt to locate
3 Mr. Stokes?

4 A. I did, as well as September 6th also.

5 Q. Okay. And ultimately, did you locate him?

6 A. I did.

7 Q. And tell the jury kind of how that came about.

8 A. Myself and another detective, we had an unmarked
9 patrol car, Dodge Charger. We drove around the neighborhood.
10 We were going behind an area where I was familiar with him
11 frequenting or hanging out. We drove by his residence and
12 observed several subjects outside. And we noticed one to be
13 the defendant. From there, we pulled around the corner,
14 because we didn't want to approach the house. We called more
15 units in to try to apprehend him.

16 Q. Where was that? What residence was that?

17 A. That was [REDACTED] in Robynwyn.

18 Q. Showing you State's Exhibit 1. Are you familiar with
19 kind of that map area? Take a look at it real quick.

20 A. Yeah, that's Robynwyn.

21 Q. We had an officer testify yesterday, circled that area
22 up there. Is that Cherry Place?

23 A. That's [REDACTED].

24 Q. Incident location on Weber Road we are talking five is
25 blocks away or so?

1 A. That's correct.

2 Q. And when those other officers got to the scene, did
3 you then have an opportunity to go up to that residence?

4 A. I did.

5 Q. And was Mr. Stokes still on the front porch where you
6 had seen him initially?

7 A. No, he was not.

8 Q. Was he located inside that residence?

9 A. No, he was not.

10 Q. Did you become aware of the fact that he was
11 apprehended in the woods behind the residence by other officers
12 that had responded?

13 A. I was.

14 Q. And did you have an opportunity then that day just to
15 interact with, to observe and obviously serve the warrants on
16 Mr. Stokes?

17 A. I did.

18 Q. And if you will tell the jury kind of what, -- back on
19 September 7th of 2016, what was Mr. Stokes's kind of physical
20 build?

21 A. He was tall. He had short twists in his hair. He had
22 a very deep voice, things that were consistent with what the
23 victim told me.

24 Q. How about his physical build, was he heavy-set,
25 skinny, in between?

1 A. Actually, skinny build.

2 Q. Ultimately, throughout -- obviously, he was arrested,
3 charged, booked on these charges at that time?

4 A. That's correct.

5 Q. As a result of that, did he provide an address also
6 throughout that procedure?

7 A. Yes, he did.

8 Q. Do you remember what that address was?

9 A. I believe it was Gardenia Street, which is also --
10 it's in Robynwyn. I'm not sure of the exact address.

11 Q. If I showed you that, would that help refresh your
12 memory?

13 A. Yes, sir, [REDACTED].

14 Q. Going back to State's Exhibit No. 1, is that Gardenia
15 Street right there?

16 A. Uh-huh.

17 Q. Basically, between the incident location and where
18 he's apprehended?

19 A. Yeah. And I believe [REDACTED] is actually in this area.

20 MR. TEMPLETON: Beg the Court's indulgence. That's
21 all I have, Your Honor.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. WEHMAN:

25 Q. Good morning.

1 A. Good morning.

2 Q. Is it all right if I call you Detective Weaver? I
3 know the solicitor did not.

4 A. That's fine.

5 Q. Now, you testified earlier that you are the chief
6 investigating officer in this case, correct?

7 A. Yes, sir, I was assigned this investigation.

8 Q. And so in the course of that job, you were able to
9 review all the reports and you had all the body camera footage
10 at your disposal?

11 A. Yes, sir, that would be correct.

12 Q. All the evidence comes through you at some point or
13 another?

14 A. Yes, that's correct.

15 Q. And at times, you were able to determine what
16 follow-up investigation needs to be done to develop leads and
17 potentially a suspect?

18 A. That's accurate.

19 Q. Now, you said that on September 1st, you were the
20 on-call detective?

21 A. Yes, sir.

22 Q. And you testified that you responded out to Weber
23 Road, [REDACTED]. But that wasn't right at first; is that
24 correct?

25 A. Do you mean like right when the incident happened?

1 Q. When you got the call, did you respond straight to the
2 scene?

3 A. I might have gone home. I'm not sure. It's shortly
4 thereafter.

5 Q. Okay. Isn't it true that you had an officer on scene
6 that was giving you information while you were at the police
7 department, though?

8 A. Maybe.

9 Q. Officer Gebhardt maybe on scene?

10 A. I don't think I was at the police department yet,
11 though. Yeah, whenever we were on call, officers that are on
12 scene, they call us and kind of give us an update, kind of what
13 happened, what's going on. And we make a determination on if
14 we are going to send detectives out or if we are going to
15 respond directly to the scene.

16 Q. And you also had an officer that responded to
17 M.U.S.C., correct?

18 A. That's correct.

19 Q. And that was to give you updates on what was going on
20 there?

21 A. Yes.

22 Q. Injuries and prognosis?

23 A. Injuries, giving us updates what the doctors and
24 nurses are telling them.

25 Q. Also to see if you could get any more identification

1 information from that witness?

2 A. Yes.

3 Q. And that would have been Officer Boehler?

4 A. Yes, Officer Boehler was one of the officers that
5 responded there.

6 Q. Because it's important for you when you get a call to
7 gather as much information as quickly as possible; is that
8 fair?

9 A. That's correct.

10 Q. And when you are able to identify witnesses, ideally,
11 you get a statement from them that night?

12 A. Sometimes we would. Sometimes we wouldn't. It kind
13 of would depend on the situation.

14 Q. But you would agree that people's memories don't
15 generally get better as time passes inbetween an incident when
16 you get to talk to them, right?

17 A. No, not all the time. Sometimes incidents where
18 people -- what I've been told in my training, if they have a
19 serious trauma incident, like officer-involved shootings
20 perhaps, I'm no expert, from what I've been told, that people's
21 memory can actually improve days later.

22 Q. But you don't know that? You are not an expert on
23 that?

24 A. No, I'm no expert on that.

25 Q. But you did hear from Lieutenant Gebhardt that night

1 from the scene?

2 A. That's correct.

3 Q. And he advised you that the suspect information he had
4 was a young, black male, early 20s, small dreads; is that
5 correct?

6 A. Yes.

7 Q. Okay. And he also advised you what the injuries were
8 that were complained of on scene?

9 A. Yes.

10 Q. He said that there was a stab wound to the chest?

11 A. Yes.

12 Q. And at that time, you had information that there was a
13 pistol-whip incident to the face?

14 A. Yes.

15 Q. And you were also able to maintain communication with
16 Officer Boehler, you testified to; is that right?

17 A. That's correct. I spoke to her some time after the
18 incident happened.

19 Q. You were able to make calls with her on her cell
20 phone?

21 A. That's accurate, yes.

22 Q. And Officer Boehler was able to update you on certain
23 things about what the victim was saying at that time?

24 A. Yes.

25 Q. And you at times would also advise Officer Boehler on

1 questions that you would like the victim to answer; is that
2 fair?

3 A. That I don't remember. I don't remember if I did or
4 not.

5 Q. Do you specifically remember asking Officer Boehler to
6 ask the victim whether or not her assailant had a deep voice?

7 A. No.

8 Q. Don't remember that?

9 A. No, I do not.

10 Q. And you did have access to her body camera to review
11 after this incident?

12 A. That's correct.

13 Q. You are aware at some point after this incident, Ms.
14 Pitts said it was her child's father, Carl Washington, who
15 committed this act?

16 A. I didn't know that until you brought it to my
17 attention the other day. She did say that, yes.

18 Q. She did say it was Carl Washington at some point in
19 the hospital?

20 A. I think that's what the body cam showed, yes.

21 Q. And at another point during her interaction at the
22 hospital, she made --

23 MR. SORENSON: Your Honor, I'm going to object to this
24 line. Hearsay.

25 THE COURT: Response?

1 MR. WEHMAN: This is just to impeach the officer's
2 investigation.

3 THE COURT: Impeach his investigation? I sustain the
4 objection.

5 BY MR. WEHMAN:

6 Q. But you were aware that there was potentially a
7 handgun involved at that time, right?

8 A. I was told that -- I think the victim said that she
9 was pistol whipped. So we thought that a handgun was
10 involved.

11 Q. And you testified earlier that you generated a
12 photographic lineup rather rapidly?

13 A. Almost immediately, yes.

14 Q. And you made the decision to send that photographic
15 lineup to the hospital, based on the information you were
16 getting; is that right?

17 A. That's correct.

18 Q. That she would be able to identify the suspect if she
19 saw him?

20 A. Yeah, that's why we do a photo lineup, yes.

21 Q. And that photographic lineup, how would that have
22 gotten to the hospital?

23 A. I believe I e-mailed it to the officer that was
24 there.

25 Q. I'm going to show you what's been marked as

1 Defendant's Exhibit 1 for identification. Do you recognize
2 just this photographic lineup?

3 A. Yes.

4 Q. And would that have been the photographic lineup that
5 you would have sent to Officer Boehler?

6 A. That's right.

7 Q. Now, you didn't administer this photographic lineup?

8 A. No, that's correct, I did not.

9 Q. So you weren't present for any type of -- for her
10 advisement of what you testified earlier to, you shouldn't make
11 a selection if you don't -- if you are not sure, or it is just
12 as important to free innocent people as to identify suspects;
13 you weren't present for any of that?

14 A. No, I was not at the hospital at all.

15 Q. You were aware of the identification made?

16 A. Yes.

17 Q. And you testified earlier No. 1 and No. 2 were both
18 selected?

19 A. Yes, she circled No. 1 and No. 2.

20 Q. And No. 3 would have been Mr. Stokes?

21 A. Yes, No. 3 is the defendant, Tyreece Stokes.

22 Q. And you said that you responded on scene that night at
23 some point?

24 A. That's correct.

25 Q. And at some point, you showed a photographic lineup to

1 Mr. William Dodd; is that right?

2 A. That's correct. He was --

3 MR. SORENSON: I object, Your Honor. This is hearsay
4 also.

5 THE COURT: Ladies and gentlemen, I'm going to have
6 you go to the jury room. Please do not discuss the case.

7 (Whereupon, the jury leaves open court at 10:06 a.m.)

8 THE COURT: Yes, sir.

9 MR. SORENSON: Hearsay, Your Honor. The fact that
10 he's showing the lineup to another witness that is not an
11 eyewitness, I mean, I think the next question is obviously
12 going to be, who did he ID in that lineup. And that's hearsay,
13 not relevant. It's hearsay.

14 THE COURT: All right. Yes, sir.

15 MR. WEHMAN: Your Honor, asking the detective during
16 the course of his investigation if he showed anyone else a
17 lineup isn't hearsay. And it's not being offered for the truth
18 of the matter asserted. It's being offered -- his selection,
19 if that is admitted, would be offered to show where his
20 investigation led. I mean, it's highly relevant for the jury
21 to know what the investigation revealed. But asking the
22 officer if he showed this individual a lineup is not hearsay.
23 It's not an out-of-court statement.

24 MR. SORENSON: I think it's more relevance, Your
25 Honor. I think the follow-up question he would have asked

1 would be the hearsay question. Relevance would be my
2 objection.

3 THE COURT: So assume that his answer is yes. He
4 showed it to someone else. We will concede if he answers yes,
5 he showed the lineup to someone else, then what?

6 MR. WEHMAN: May I proffer the testimony, Your Honor?

7 THE COURT: You are responding to an objection now.

8 MR. WEHMAN: Judge, the answer would be that he picked
9 Photograph No. 2. We have a prior misidentification in the
10 hospital when No. 2 is selected. I think it's highly
11 relevant.

12 THE COURT: It's identification by a person who is not
13 a witness in the case or a person expected to testify?

14 MR. WEHMAN: He's under subpoena, Judge. I don't know
15 if he will be here or not, but we tried to serve him with a
16 subpoena.

17 THE COURT: Have you served him with a subpoena?

18 MR. WEHMAN: I have not personally served him, no.

19 THE COURT: You are an officer of the court. So is he
20 a witness or not?

21 MR. WEHMAN: To my knowledge, my investigator has not
22 been able to locate him to serve. I think any follow-up as to
23 why he was shown the photo lineup, solicitor could ask him.
24 But the investigation led to the point where he thought that it
25 was relevant to show it to him. So I think it is relevant for

1 the jury to hear.

2 THE COURT: All right. Solicitor?

3 MR. SORENSON: I still don't see how that's relevant.
4 I mean, there's no evidence that this person witnessed the
5 crime, is an eyewitness to the crime. The fact that they
6 showed a lineup to this person and he said it might look like
7 No. 2, somebody that he's seen in the area before, I mean, how
8 is that relevant?

9 THE COURT: All right.

10 MR. WEHMAN: Judge, I would point out the reason that
11 Detective Weaver is showing him this lineup, this information
12 came to him that night that this person who is two doors down
13 from the victim in this case, lives two doors down, has seen a
14 suspicious individual matching the general description given
15 hanging outside in front of those houses that entire week.
16 Detective Weaver goes and shows him the lineup and says, do you
17 recognize the person that you've seen in the area? And they
18 show picture No. 2. If the State wants to go into the
19 reasoning as to why and whether or not he was an eyewitness,
20 they can. But I think the fact that he goes and shows this
21 lineup, if he thought it was relevant to go show him the
22 lineup, I knew that the jury is entitled to hear that he showed
23 it to him and also what the selection was and any other
24 follow-up the State is entitled to make.

25 MR. SORENSON: How is that not hearsay? I mean, if he

1 picked No. 3, the defendant, I mean, we wouldn't be able to get
2 into that with him. I wouldn't be able to ask him that without
3 calling that witness. I don't understand. If there's some
4 relevance to this witness's testimony, they need to call
5 Mr. Dodd. That's the witness that we are talking about as a
6 witness.

7 THE COURT: You said you wanted to proffer some
8 testimony?

9 MR. WEHMAN: Yes, Your Honor.

10 THE COURT: All right.

11 BY MR. WEHMAN:

12 Q. We are now on September 2nd. That would be the day
13 after this incident. You were able to show a photo lineup to
14 somebody else in this case; is that correct?

15 A. That's correct.

16 Q. And you showed it to William Dodd?

17 A. Yes.

18 Q. Okay.

19 A. September 2nd or September 1st? I just want to be
20 sure.

21 Q. I'm show you State's Exhibit No. 3. And this would
22 have been signed by everyone who saw the photo lineup?

23 A. Yes. It was 12:30. That's fine. September 2nd,
24 that's correct, is the timing.

25 Q. So September 2nd you showed him that photographic

1 lineup?

2 A. That's correct.

3 Q. And you have the time marked as 12:34. That would be
4 a.m.?

5 A. A.m.

6 Q. So I was thinking that you would have marked it as
7 0:34 if it was a.m.?

8 A. Oh, no.

9 Q. So you showed him this photographic lineup?

10 A. Yes.

11 Q. And did he tell you a selection?

12 A. Yes, he circled somebody.

13 Q. What number did he circle?

14 A. He thought the subject resembled No. 2 from the
15 lineup, but he could not say for sure.

16 Q. Now, your information that you had that led to you
17 Mr. Dodd wasn't that he had seen the attack, was it?

18 A. No, he did not see the attack, to my knowledge.

19 Q. In fact, you went to go speak to him because you had
20 information that he might have seen somebody matching the
21 description of someone in the area at the time of the incident?

22 A. Yes, I was making contact with anybody that was
23 outside or who answered their door.

24 MR. WEHMAN: Judge, I think we might be able to knock
25 two birds off with one stone if I can proffer some other

1 photographs shown.

2 THE COURT: All right.

3 BY MR. WEHMAN:

4 Q. On that same day, you had opportunity to speak to
5 Malaya Collier; is that right?

6 A. That's the victim's daughter, yes.

7 Q. Yes, sir. And you showed her the same photographic
8 lineup?

9 A. Yes.

10 Q. And did she make a selection?

11 A. She did. She said she thinks No. 2 is the subject
12 that would walk up and down the road.

13 Q. Again, you didn't have information that she had seen
14 the attack?

15 A. That's correct, she did not see the attack, to my
16 knowledge.

17 Q. But you did have information that she had seen
18 somebody matching the description walking up and down that road
19 in the days prior to this incident?

20 A. I don't know if she knew somebody that matched that
21 description, or if I just wanted to show her to see if she had
22 seen anybody that looked like that in that area. I'm not sure
23 how I worded it to her.

24 Q. But she did pick No. 2?

25 A. Right, she did.

1 MR. WEHMAN: Judge, that would be the proposed
2 testimony.

3 THE COURT: All right. Anything further?

4 MR. SORENSON: Couple follow-ups real quick.

5 BY MR. SORENSON:

6 Q. Detective Weaver, neither one of them indicated to you
7 that they had seen the assault on Ms. Pitts; is that correct?

8 A. That's correct.

9 Q. Neither one of them indicated they had seen somebody
10 out there right immediately prior to the assault of Mr. Pitts?

11 A. Correct.

12 Q. Or immediately after the assault of Ms. Pitts?

13 A. Correct.

14 Q. And Mr. Dodds -- Mr. Dodd, actually you had read part
15 of what you have in your report, stated he thought the subject
16 resembled No. 2 from the lineup, but could not say for sure.
17 And then afterwards you put, he thought they all looked alike;
18 is that correct?

19 A. Correct, that's what he said.

20 MR. SORENSON: That would be all I have.

21 THE COURT: Yes, sir.

22 MR. WEHMAN: Judge, already into evidence would be
23 State's Exhibit No. 3.

24 MR. SORENSON: It's not in evidence.

25 MR. WEHMAN: It's not in evidence?

1 MR. SORENSON: For that very reason, that I don't
2 think it's relevant what's on there.

3 MR. WEHMAN: Nonetheless, Judge, we've had an
4 identification made by the victim in this case.

5 THE COURT: You are through with questions? You are
6 back into argument mode?

7 MR. WEHMAN: Yes, sir. I'm sorry. I have no
8 follow-up questions.

9 THE COURT: All right.

10 MR. WEHMAN: But we have an identification made by the
11 victim in this case that starts off with a very vague
12 description of a young, black male she had seen in the area.
13 That identification is followed up by law enforcement who is
14 given information that other people have seen somebody that
15 matched that description. Now, the point of bringing in these
16 identifications is not for the truth of the matter asserted or
17 hearsay, it's the information the detective had at the time and
18 that he based his investigation on or failed to base his
19 investigation on. These are consistent with the
20 misidentification that was earlier made and it wasn't followed
21 up by law enforcement.

22 THE COURT: Is this a claim of third-party guilt of
23 some sort?

24 MR. WEHMAN: No, Judge. This is the investigation of
25 the State. They had latched on to one suspect, despite at the

1 beginning of this investigation at least evidence that tended
2 to point maybe somewhere else. The officer already testified
3 he didn't know who No. 2 was.

4 THE COURT: Well, does he -- do you know? Does anyone
5 know?

6 MR. WEHMAN: Nobody knows, Judge. The point, though,
7 is not that it's No. 2. The point is that the investigation
8 had all these leads that were followed up on but not developed.
9 And that is what the point of this is, is to show that the
10 investigation was incomplete, not that it was person No. 2.

11 THE COURT: All right. Any response?

12 MR. SORENSON: Nothing additional, Your Honor, no.

13 THE COURT: I sustain the objection as to hearsay and
14 relevance regarding what other people who are not witnesses did
15 or said. He can testify as to what he did.

16 MR. WEHMAN: So, specifically, he can testify that he
17 showed a photo lineup to two other people?

18 THE COURT: Yes.

19 MR. WEHMAN: But their responses are not admissible?

20 THE COURT: Right.

21 MR. WEHMAN: Thank you, Judge.

22 THE COURT: All right. We will now take a couple of
23 minutes and then we will press on.

24 (Whereupon, a recess transpired.)

25 MS. WILLIAMS: Through the course of Mr. Weaver's

1 testimony, there was testimony about the knives that were
2 confiscated during the arrest and also about the
3 identification. At this point, defense would just like to
4 again for the record renew our pretrial objections just to
5 preserve any issue for appeal, understanding the Court's
6 continuing denial of those.

7 THE COURT: Well, how many times do you think you have
8 to do that, to preserve the issue for appeal? There's a
9 written motion with a six-page brief. We spent portion of two
10 days talking about it. You renewed it yesterday. How many
11 times do you have to renew it to preserve it for appeal?

12 MS. WILLIAMS: My reading of the case law is the
13 defense needs to renew it every time it's brought into evidence
14 in front of the jury. We failed to do it during his direct
15 testimony. And at this point, I would like to put it on the
16 record that he have a continuing objection to it.

17 THE COURT: All right.

18 MS. WILLIAMS: Thank you, Judge.

19 THE COURT: Sure. Let's bring them on.

20 (Whereupon, the jury returns to open court at 10:23
21 a.m.)

22 THE COURT: You may proceed.

23 MR. WEHMAN: Thank you, Judge.

24 BY MR. WEHMAN:

25 Q. Detective Weaver, you did have the opportunity to show

1 your photographic lineup to William Dodd; is that correct?

2 A. That's correct.

3 Q. And where did you show that lineup to him?

4 A. That was -- I think it was two apartments down from
5 where the victim lived.

6 Q. Okay. You also had the opportunity to show a
7 photographic lineup to Malaya Collier; is that correct?

8 A. That's correct.

9 Q. That is the daughter of Ms. Pitts?

10 A. That is the victim's daughter.

11 Q. Where did you have the opportunity to show her that
12 photo lineup?

13 A. That was inside the victim's apartment.

14 Q. At the incident location?

15 A. Yes.

16 Q. And in the end, you showed this photographic lineup
17 three times. And at some point you decided to contact SLED to
18 find out who person No. 2 was; is that correct?

19 A. That's correct.

20 Q. Were you able to do that?

21 A. Contact --

22 Q. Were you able to identify who No. 2 was?

23 A. Oh, no. There was no way of identifying who No. 2 was
24 in the photographic lineup.

25 Q. They didn't have the ability to put that photo in

1 their database and pull it back up?

2 A. No, they do not have that capability.

3 Q. So after September 2nd -- well, did you have an
4 opportunity to go walk the area behind the incident location?
5 I believe there was a cutback there. Did you have an
6 opportunity to walk that area?

7 A. Yes. Me and some other detectives, we walked
8 extensively through the neighborhood, just because some of the
9 items that were stolen during this incident, we figured maybe
10 they would discard them. There's a park in the neighborhood
11 also with a lot of trash cans. We went through the trash cans,
12 trying to find anything we could related to this incident.

13 Q. I'm showing you State's Exhibit 1. Is this the
14 incident location there?

15 A. Is that Weber Road?

16 Q. This would be Weber Road.

17 A. Yes, sir, that looks like the incident location.

18 Q. Is this a cut-through that goes back this way towards
19 North Palmetto?

20 A. Yes. There's, like I said, woods and a ditch that
21 runs through it, and path on the other side of it. I think
22 people use it as a common cut-through to get through other
23 neighborhoods quicker.

24 Q. You walked that area for evidence; is that correct?

25 A. That's correct.

1 Q. Did you find anything?

2 A. We did not find anything.

3 Q. Now, on September 1st, you had information that a cell
4 phone was -- at least one cell phone was taken from Ms. Pitts;
5 is that right?

6 A. That's correct.

7 Q. And you, in fact, obtained a search warrant from
8 T-Mobile for that phone; is that accurate as well?

9 A. Yes.

10 Q. And what were the results of that search warrant?
11 What information did you find out?

12 A. In a case like this when phones are taken --

13 MR. SORENSON: Objection, Your Honor, hearsay.

14 THE COURT: Response?

15 MR. WEHMAN: I'm asking what the results of the search
16 warrant were.

17 THE COURT: That's the objection to what you asked.
18 The objection is based on hearsay. What is your response?

19 MR. WEHMAN: I'm asking him what evidence he received
20 personally.

21 THE COURT: What's your response to the objection?

22 MR. WEHMAN: As to why it's not hearsay, yes, Judge.

23 THE COURT: All right. ladies and gentlemen, let's
24 have you step out once again.

25 (Whereupon, the jury leaves open court at jury returns

1 to open court at 10:28 a.m.)

2 THE COURT: Do you have a legal argument in response
3 to the objection?

4 MR. WEHMAN: Judge, I don't understand the objection
5 as to how it's hearsay, I think is my problem.

6 THE COURT: All right. Yes, sir.

7 MR. SORENSON: Question was, did you obtain or were
8 you aware a cell phone was taken? Did you obtain a search
9 warrant? What was the results of that? I mean, that's
10 hearsay. I mean, there's been no -- otherwise, we just call
11 Detective Weaver and let him just testify to everything, I
12 guess. I mean, he's not the cell phone provider. I mean, he's
13 not, you know -- any records, if we were trying to get cell
14 phone records in, we would have to bring a records custodian to
15 authenticate those records. He's going to now try to get into
16 the results that were provided of this with absolutely no --
17 he's just not the proper witness. It's hearsay. That's my
18 objection.

19 THE COURT: Yes, sir.

20 MR. WEHMAN: The witness is going to testify that he
21 learned that the cell phone was off and that there were no
22 records. I don't know how that's hearsay. I am not trying to
23 get Sprint records in.

24 THE COURT: All right. I don't know. I have no clue
25 what the response might be. He might say it was pinging from

1 tower to tower throughout South Carolina. I don't know either.
2 I mean, there's an objection that it's hearsay. In response to
3 the objection, you continually stated your question. So now
4 that you know the objection, what is your legal response to
5 the -- your legal argument in response to a recognized
6 objection, which is hearsay?

7 MR. WEHMAN: That I am not eliciting hearsay
8 testimony.

9 THE COURT: What are you eliciting?

10 MR. WEHMAN: I'm eliciting this detective and his
11 investigation, what he learned and what evidence he obtained.
12 I am not asking about cell phone towers or anything technical
13 that would require --

14 THE COURT: Okay. All right.

15 What did you find out?

16 THE WITNESS: I was told by a T-Mobile representative
17 the phone was off for 289 minutes, which was two hours before
18 this incident happened.

19 THE COURT: Phone was what?

20 THE WITNESS: The T-Mobile representative told me the
21 phone was off for 289 minutes.

22 THE COURT: It was off for 289 minutes. All right.
23 So hearsay is what he was told by the T-Mobile representative.
24 And that's the objection?

25 MR. SORENSON: Yes, sir.

1 THE COURT: Any further argument regarding that?

2 MR. WEHMAN: Yes, Your Honor. I was not eliciting
3 that information from the detective, because that is his
4 response.

5 THE COURT: All right. Bring the jury back.

6 (Whereupon, the jury returns to open court at 10:32
7 a.m.)

8 THE COURT: The objection is sustained.

9 BY MR. WEHMAN:

10 Q. Now, did you also obtain a search warrant for the
11 other phone that was taken in this case?

12 A. The phone from the victim.

13 Q. Correct?

14 A. My understanding is that that phone was off. No
15 search warrant was obtained for that phone, I don't think.

16 Q. So you obtained only one search warrant for the two
17 phones that were taken?

18 A. Excuse me. I have to find it. I don't recall
19 another search warrant. If I did, nothing of evidentiary value
20 came of it, if I did

21 Q. Okay. So you don't have any cell phone evidence in
22 this case?

23 A. No, sir, that's correct.

24 Q. Okay. And you did testify at the preliminary hearing
25 in October that the SIM card from her phone was still being

1 used as of October 1st; isn't that correct?

2 A. As of when?

3 Q. October 1st.

4 A. I'm not sure. I don't know if the SIM card was being
5 used or not.

6 Q. Do you recall coming to the preliminary hearing in
7 October?

8 A. I did do a preliminary hearing in this case, yes.

9 Q. And you do not recall testifying that you had been
10 investigating the fact that the SIM card was being used as of
11 October 1st?

12 A. I might have. But, once again, if it was being used,
13 nothing of any evidentiary value came of it.

14 Q. Okay.

15 A. I don't remember.

16 Q. You don't remember seeing it or you don't remember the
17 results?

18 A. Just the SIM card, I don't remember any -- I just
19 don't remember about the SIM card.

20 Q. Now, would it refresh your recollection about the SIM
21 card if you saw a transcript of that preliminary hearing?

22 A. Maybe, yeah, please. Where is that?

23 Q. Specifically.

24 A. All right. That information in the prelim about the
25 SIM card, whenever we get cell phones, we have a special

1 detective that downloads cell phones and things of that nature.

2 And if he told me that -- obviously, he did, because I said
3 it -- but nothing ever came of it.

4 Q. Okay. So October 1st would have been 24 days after
5 the arrest of Mr. Stokes; is that right?

6 A. Yes, approximately.

7 Q. Okay. And you've never recovered any of the phones
8 that were taken?

9 A. No, none of the phones were ever recovered.

10 Q. You never recovered the purse that was taken?

11 A. Nope.

12 Q. None of the identification cards that were taken?

13 A. No. We didn't recover anything that was taken.

14 Q. Were any credit cards used that were taken?

15 A. To my knowledge, no.

16 Q. Now, on September 1st, you testified that you were in
17 contact with officers on the scene while you were kind of
18 directing the troops; is that right?

19 A. That were at the incident location?

20 Q. Correct.

21 A. Yes, that's correct.

22 Q. You were aware that 10 print cards were taken off of
23 Ms. Pitts's vehicle?

24 A. Yes, they fingerprinted her vehicle, from what I
25 remember.

1 Q. And you are aware that the results of those were
2 inconclusive, correct?

3 A. Correct, nothing of evidentiary value came.

4 Q. You were not able to effectuate an identification
5 based on those print cards?

6 A. No, nothing from that was probable cause for this
7 case.

8 Q. But it was important to you that you get those print
9 cards, because at some point, there was an allegation that the
10 door was opened; is that right?

11 A. Yes, of course, something like that, we would have,
12 yes.

13 Q. Officer Tanner also collected four DNA samples from
14 the vehicle as well; is that right?

15 A. I am not exactly sure which officer did it, but I'm
16 pretty sure some DNA samples were taken.

17 Q. For touch DNA; is that right?

18 A. Yes, sir.

19 Q. And are you aware of what touch DNA is?

20 A. I don't know if it was touch DNA or what kind of DNA
21 it was. I am not entirely sure.

22 Q. But DNA swabs were taken from the vehicle?

23 A. Yes.

24 Q. Okay. Were those sent off to SLED?

25 A. Whenever officers take DNA or we will take DNA samples

1 and things like that, what we do is submit them into evidence.
2 Any time it's DNA, our crime scene tech, they will take it up
3 to SLED once a week. They will take drugs up there, take
4 things for DNA testing and things of that nature.

5 Q. Would you be surprised to find out that they were
6 never sent to SLED?

7 A. The DNA samples?

8 Q. From the vehicle?

9 A. I don't know if our crime scene guy deemed that they
10 didn't need to be sent to SLED, I guess no.

11 Q. Would you be surprised that Detective Rollins
12 testified that that would have been your call?

13 A. I don't -- I don't know. I haven't worked for
14 Summerville for two and a half months. I don't know if
15 something changed or, I don't know, but whenever we submit
16 stuff in evidence, like DNA or rape kits, whenever they come
17 back, our crime scene guy they will spray some type of a
18 luminol on it to see if blood DNA is present or any kind of
19 DNA. And if not, it won't get sent. I won't say that's
20 uncommon.

21 Q. You said that the spray can be used to detect blood?

22 A. Yes.

23 Q. You are saying there's a spray that can detect DNA?

24 A. I am not an expert on it. To my knowledge, that's how
25 it goes, though.

1 Q. Do you have any results from SLED as to the DNA
2 swabs?

3 A. No, I don't think there's any DNA present in this
4 case, no.

5 Q. And you are not even sure that they were sent?

6 A. I am not -- I am not 100 percent sure, no.

7 Q. Also on scene, they recovered a knife. This is
8 State's 19. Does that look familiar?

9 A. The tip of the knife blade she pulled out of her
10 chest.

11 Q. Now, was this ever tested for DNA?

12 A. I am not -- I'm not sure. I guess, our crime scene
13 techs, they handle a lot of that stuff. If it would come back
14 conclusive that something was on it matching the defendant,
15 they would have notified me.

16 Q. So you don't take any participation in forensic
17 evidence?

18 A. As far as -- no.

19 Q. You don't check up to see if it was done?

20 A. Sure, I will check up.

21 Q. Did you check up to see if that was done?

22 A. I might have. But, like I said, if nothing came back,
23 I wouldn't have put it in my report.

24 Q. Do you know if fingerprints were ever looked for on
25 this knife?

1 A. I am not -- not 100 percent sure. Like I said, our
2 crime scene guys, they handle a lot of that, all of that stuff,
3 because that's their specialty. That's what they do.

4 Q. So no fingerprints on this knife, no touch DNA,
5 nothing, not even blood test on this knife, that you know of?

6 A. No.

7 Q. Okay. And we already talked about the number of
8 people you showed this photographic lineup to. Nothing really
9 of note happens in this case until September 6th; is that
10 accurate?

11 A. Nothing of any -- sorry. I didn't hear.

12 Q. Nothing of any note in the investigation from
13 September 2nd happens until September 6th? There's kind of a
14 gap in what happens; is that fair?

15 A. Right. From that time frame, it's trying to follow up
16 with what we can. And nothing of really any value happened in
17 that time frame..

18 Q. That's when you went to Ms. Pitts's house and
19 discussed the incident with her?

20 A. Yes. Face-to-face interaction several days after the
21 incident. So, like I said, sometimes people can collect their
22 thoughts days later. Just depends on the person.

23 Q. And she told you at that time she had gone to the
24 store, brought her kids back, and then went outside to smoke a
25 cigarette, correct?

1 A. Yes, that's correct.

2 Q. Did at any point she tell you she had been drinking?

3 A. No, she did not.

4 Q. Did at any point on the 19th when you took a written
5 statement from her, did she tell you she had been drinking?

6 A. No, she didn't say she was drinking. She never told
7 me that.

8 Q. So Dr. Norcross testified that she had a a .12 blood
9 alcohol content at the hospital. Had you ever been informed
10 about that until trial this week?

11 A. I was not. I was not aware of that.

12 Q. What would you consider a .12 if you had to label it,
13 elevated?

14 A. I mean, you are --

15 MR. SORENSON: I'm going to object, Your Honor. I'm
16 not sure he established any basis for him to -- that would be
17 an expert opinion, I guess, he's asking for of this witness.

18 THE COURT: Objection is basically lack of foundation.
19 It's sustained.

20 BY MR. WEHMAN:

21 Q. Now, on September 6th, that is the verbal statement
22 that you took from her; is that right?

23 A. That's correct, yes.

24 Q. And at that time, she mentioned to you that the
25 suspect approached the passenger window of her car; is that

1 right?

2 A. Let me find what she said. Yes. She said she noticed
3 the subject walked up to her passenger side window and quickly
4 walked away.

5 Q. So at that point, she doesn't mention seeing the
6 suspect walk right in front of her car? That doesn't occur in
7 that statement?

8 A. No, sir, not in that statement.

9 Q. She did tell you that the suspect had two knives,
10 though, correct?

11 A. Yes, she said he had knives that were crossed, is what
12 she said.

13 Q. So the knives were crossed like this? (Indicating)

14 A. Yeah, she said a butcher knife and a steak knife
15 crossed, crossed her window or entered her door.

16 Q. And then she told you that she tried to lock her door.
17 Door was shut, she tried to lock it, but he opened the door
18 first?

19 A. Yes, she tried to fight off best she could.

20 Q. But we don't have any of those DNA swabs from the door
21 that were taken?

22 A. No, nothing of -- like I said, nothing of any
23 evidentiary value came from that.

24 Q. You don't even know if they were tested?

25 A. Like I said, I'm not sure, crime scene...

1 Q. And she mentions a struggle on September 6th, is that
2 right, that she struggled with her attacker?

3 A. Yes, she said she remembers a struggle and feeling
4 pain in her chest.

5 Q. Now, was any attempt made to get any type of DNA under
6 her fingernails at the hospital?

7 A. Not to my knowledge. They put her in critical
8 condition. In something like that, we don't have access to
9 people. It would be hard to do.

10 Q. Well, you obviously had access to her at the hospital,
11 isn't that right? I mean, Officer Boehler was talking to her
12 and taking photographs of her.

13 A. Yes, that's correct.

14 Q. And on September 6th, you made the decision to show
15 her that same photographic lineup that you had already sent to
16 be shown to her at the hospital?

17 A. That's correct.

18 Q. But before you did that, she stopped you; is that
19 right?

20 A. That's correct. Well, she didn't stop me. It was
21 kind of -- she said something and I stopped to hear what she
22 had to say.

23 Q. So you wanted to show her the lineup. And before you
24 did, she told you something?

25 A. Yes.

1 Q. And she told you that she had been shown a photograph
2 by her sister; is that right?

3 A. Yes. Her sister showed her photographs of people from
4 the neighborhood that had bad reputations of the same age, same
5 description that she gave.

6 Q. Specifically, she was shown two photographs, right?

7 A. Two -- yeah, might have been two. She had a couple of
8 photographs.

9 Q. Okay. And you didn't want to take hold of that
10 photograph, so you let Detective Santana take it?

11 A. Detective Santana stopped me. At the time, he was my
12 supervisor. He wanted to take the photographs so I didn't look
13 at the photograph and then give her the photo lineup. I'm not
14 sure why he did that, but he did.

15 Q. Okay. So you said you saw the photograph after the
16 fact; is that right?

17 A. Right. After she identified the defendant, I looked
18 at the photograph and observed it and it was the defendant.

19 Q. So she handed you a photograph of the defendant or
20 Detective Santana a photograph of the defendant. You hand her
21 the photographic lineup. And she picks out the defendant?

22 A. I read her the photographic array that, like I said,
23 the paragraph form. She signed and dated it. And then she
24 identified him.

25 Q. And based on that, you obtained your arrest warrants?

1 A. That was one piece of why I obtained arrest warrants
2 after that.

3 Q. Okay. Now, on September 7th, Mr. Stokes was taken
4 into custody?

5 A. That's correct.

6 Q. And two knives were seized when he was arrested; is
7 that right?

8 A. That's correct. He had a butcher knife and a steak
9 knife.

10 Q. And you knew that the steak knife couldn't have
11 possibly been used because that was found on scene; is that
12 right?

13 A. Right, couldn't have been the same steak knife.

14 Q. But the butcher knife, you wanted to get tested as
15 well for blood and potential DNA on there; is that right?

16 A. Yes. Our crime scene tech, he sprayed it for blood
17 evidence. And he said there was no blood evidence that he
18 observed.

19 Q. And one of the reasons that you wanted to get it
20 tested was because earlier you had been informed that there
21 might be blood on the assailant; is that right? Did you obtain
22 a search warrant for his clothes in this case?

23 A. Right, I did obtain a search warrant for his clothes,
24 yes, sir.

25 Q. You sent all of his clothes to SLED for testing?

1 A. Yes, all of his clothes were tested.

2 Q. That was because there was information there might be
3 blood on them, or whoever was there might have blood on them;
4 is that right?

5 A. In theory, the knives, after the attack, would have
6 blood on at least the steak knife, I would think. And if he
7 put it in his pocket, perhaps, we would get lucky and get a
8 match to the victim to one of the knives located in his pocket.

9 Q. Also, you had information, she told you that both the
10 knives were out and crossed in her face; is that right?

11 A. That's correct.

12 Q. So, theoretically, that other knife would have been
13 out when this incident happened?

14 A. Both knives. Well, sorry?

15 Q. Theoretically, both knives would have been out when
16 this incident happened, the actual stabbing, if he had both
17 knives in his hands?

18 A. Yes, that's correct.

19 Q. If there's blood splatter, that blood could have ended
20 up on this knife?

21 A. If there was blood splatter, possibly, yes.

22 Q. But through the testing of that knife, you determined
23 that not only was there no blood located, but no blood had ever
24 been on that knife, correct?

25 A. I don't know if any blood -- I'm not sure. You are

1 talking about something I'm not ...

2 Q. That would have been Detective Rollins's department?

3 A. Crime scene, yes. That's what they are trained in.

4 Q. So you sent all of Mr. Stokes's clothes [-G/] to SLED?

5 A. I think Detective Rollins had the clothes [-G/] taken
6 to SLED.

7 Q. Did you issue the search warrant?

8 A. I did the search warrant, yes, sir. That's correct.

9 Any time we get clothes from the jail, when anybody is inside
10 for a charge, we have to do a search warrant to the jail to get
11 the clothes out to remove them. And once we take them, we put
12 them into evidence. And then from there it's taken to our
13 crime scene techs.

14 Q. And results were negative for that, correct?

15 A. Right, nothing of any evidentiary value came from his
16 clothes [-G/].

17 Q. And at the time of his arrest, a cell phone was also
18 located on Mr. Stokes?

19 A. Yes, he had a cell phone on his person.

20 Q. And that wasn't one of the ones that were taken in
21 this incident, though?

22 A. No, it did not match the cell phones that were taken.

23 Q. I'm going to show you a page from a report in this
24 case. Now, that area that's been marked, that would identify
25 that blood was located on the scene in multiple places; is that

1 right?

2 A. Yeah, blood from the pavement, the top of the driver's
3 door frame, the driver's side door frame, door handle, driver's
4 side rear window, and the driver's side gate post. This isn't
5 my report.

6 Q. It's a report that -- this is your case and it was
7 submitted to you?

8 A. Right. I'm just saying that this isn't -- I'm just
9 reading from somebody else's report.

10 Q. So that could indicate to you that there was, in fact,
11 blood splatter blood found in all these different locations?
12 It's a possibility?

13 A. Oh, sure, it's possible.

14 Q. Now, September 19th, you met with Ms. Pitts again and
15 you obtained a written statement from her?

16 A. Yes, that's correct.

17 Q. And on this occasion when you talked to her, she
18 mentions that she had seen this person a couple of times in the
19 area before, right?

20 A. Yes, I think it was approximately four.

21 Q. Well, I believe that she tells you "a couple", and
22 then maybe in a written statement she says "four"; does that
23 sound right?

24 A. Yeah, yeah, I've heard a couple different, two, three,
25 four or something. She had seen him before.

1 Q. So just changes, but she's seen him before. The
2 number changes, but she's seen him before?

3 A. Right, she's seen him before.

4 Q. And in this statement, she doesn't mention that the
5 person goes past her passenger side window, but, instead, she
6 mention the person coming in front of her car, in front of her
7 windshield; is that right?

8 A. I'm trying to find the statement. Yeah. She said, he
9 walked by the door in front of my car, and I thought that was
10 odd because he never walked so close to the house before.

11 Q. She was parked in the driveway?

12 A. Yes. There's -- yeah. The apartment complex, it's
13 like a normal apartment complex. There's a parking lot and
14 it's all spaced out.

15 Q. And there's a sidewalk in between where the cars were
16 parked and the houses; is that accurate?

17 A. Yes, there is.

18 Q. At this time, she's saying he was on the sidewalk
19 close to the houses walking in front of her car?

20 A. She said, yeah, he walked by, walked by the door and
21 in front of her car.

22 Q. Does she mention making eye contact with him?

23 A. I don't think she said anything about making eye
24 contact with him.

25 Q. Did she ever mention anywhere in your statements that

1 you've taken that she made eye contact with him at the time of
2 the robbery and that's why she was stabbed?

3 A. No, no.

4 Q. Did she ever mention when he was running away that he
5 turned and locked eyes with her?

6 A. No.

7 Q. And in your report from the 19th, isn't it true that
8 you note that Ms. Pitts informed you that the picture that was
9 given to her is how she identified Tyreece Stokes?

10 A. Where is that at? Is that in her statement?

11 Q. Is that your report, your entry from the 19th?

12 A. Yeah, that's my report. Yeah, from the picture,
13 that's how she knew the person that attacked her, the picture
14 that her sister gave her.

15 Q. Picture is how she was able to identify him,
16 correct?

17 A. Right, that's how.

18 Q. Just to clarify, we have no DNA evidence in this case?

19 A. No, there's no DNA evidence at all.

20 Q. No fingerprint evidence in this case?

21 A. Nope, no fingerprint evidence.

22 Q. No independent witness evidence in this case?

23 A. No.

24 Q. No cell phone evidence in this case?

25 A. No cell phone evidence.

1 Q. Outside of the identification of Ms. Pitts, there's
2 nothing that links Tyreece Stokes to that driveway on September
3 1st; is that correct?

4 A. Other than what happened that night?

5 Q. Other than her identification, correct, there's
6 nothing that links him?

7 A. I mean, her seeing him in the area.

8 Q. Other than her identification, there's nothing that
9 links him being in that driveway on September 1st?

10 A. Oh, that exact night? No, not that exact night.

11 Q. Is this the arrest warrant that you took out in this
12 case?

13 A. Yes, it is.

14 Q. What's the address listed on that arrest warrant?

15 A. The address listed here is [REDACTED] in North
16 Charleston.

17 Q. And that would be the address for Mr. Stokes?

18 A. I'm not sure if it's the exact address. In our
19 database, whenever we do warrants for somebody, we take the
20 last known address they have. Oftentimes, it's outdated, but
21 this is the address we had for Mr. Stokes at the time I issued
22 these warrants.

23 MR. WEHMAN: No further questions.

24 THE COURT: Any redirect?

25

REDIRECT EXAMINATION

1
2 BY MR. SORENSON:

3 Q. Very briefly, Your Honor. Of course, as I asked you
4 on direct, when he was actually arrested and booked on these
5 charges, he gave you an address in Robynwyn; is that correct?

6 A. That's correct.

7 MR. WEHMAN: Objection, leading.

8 BY MR. SORENSON:

9 Q. What address did he give you when he was booked?

10 A. [REDACTED].

11 Q. Mr. Wehman asked you about if you were able to go back
12 and find out who photograph No. 2 was?

13 A. He did.

14 Q. Were you able to figure out who any of the other
15 photographs in this SLED-generated photo lineup was?

16 A. I asked them if they could identify anybody from that
17 lineup, and they couldn't. Like I said, whenever they do these
18 photo lineups, my understanding is they go to DMV website and
19 they pull people that match a similar description. And that's
20 how they get these photographic lineups. The suspect is the
21 only person they can give us information on, because that's who
22 we are requesting information about.

23 Q. To your knowledge, were there any other -- besides Ms.
24 Pitts, were there any other eyewitnesses to the assault of her?

25 A. There were no other eyewitnesses in this case.

1 Q. And when Ms. Pitts -- before you showed her the photo
2 lineup, when she showed you that single picture that her sister
3 had shown her, did she indicate to you that -- did she identify
4 that person in that picture as being her attacker also?

5 A. Before I showed her the lineup?

6 Q. At some point in time, did she indicate to you that
7 the person in that photograph that she showed you, that that
8 was the person that attacked her?

9 A. Yes. Yes. She said she was shown a picture from
10 Facebook of the person who committed the crime.

11 Q. And that she identified that person in that
12 photograph?

13 A. She did, after I showed her the photo lineup.

14 MR. SORENSON: I believe that's all I have, Your
15 Honor. Thank you.

16 THE COURT: Anything further?

17 RE CROSS-EXAMINATION

18 BY MR. WEHMAN:

19 Q. I'm going to show you an advisement of rights form.

20 A. Okay.

21 Q. What address is listed there for Mr. Stokes?

22 A. There is no address listed. Before we interview
23 somebody, we always give them an advisement of rights,
24 especially when they are a suspect in a crime. We get things
25 like other name, address, you have the right to remain silent,

1 things of that nature. And they initial it. They will sign it
2 and things of that nature. But there is no address. Address
3 is blank. Employment is blank. No phone numbers or driver's
4 license numbers.

5 Q. Okay. And you said there were no eyewitnesses to the
6 crime; is that right?

7 A. That's correct.

8 Q. But you did have witnesses that said that they had
9 seen people that matched that description in the area?

10 MR. SORENSON: Objection, Your Honor.

11 THE COURT: Objection sustained.

12 MR. SORENSON: Thank you.

13 MR. WEHMAN: I don't have any further questions, Your
14 Honor.

15 THE COURT: You may step down.

16 THE COURT: Next witness.

17 MR. SORENSON: May it please the Court. Your Honor,
18 at this time, the State rests.

19 THE COURT: Ladies and gentlemen, that is the State's
20 case. I need to take up matters outside of your presence. So
21 please go to the jury room. Please do not discuss the case.

22 (Whereupon, the jury leaves open court at 11:01 a.m.)

23 THE COURT: Any matters of law?

24 MS. WILLIAMS: Judge, at this point, the defense would
25 have a motion for directed verdict.

1 THE COURT: All right.

2 MS. WILLIAMS: The State's case to this point, what
3 they've presented, absent what we will present to this Court,
4 is that on September 6th, 2016, there was an identification of
5 Mr. Stokes by Nikia Pitts.

6 The other part of their case is that when he was
7 arrested on September 7th, 2016, Mr. Stokes had two knives.

8 The third part of their case, I'm assuming from the
9 map that they keep showing to the jury, is that Mr. Stokes
10 lives in the area.

11 That is the entirety of the State's case at this
12 point. In dealing with the direct and the circumstantial
13 evidence that they have in this case, the direct evidence that
14 they would present to Your Honor for the purpose of directed
15 verdict is the September 6th, 2016, identification of
16 Mr. Stokes by Nikia Pitts by at that point Officer Weaver.
17 That identification, Your Honor, has been argued extensively
18 pretrial. And Your Honor heard all of the evidence on that.

19 And I will quickly go into, on September 1st, 2016,
20 Ms. Pitts had already made an identification, much to the
21 State's dismay. They tried to keep that away from you and the
22 jury. But, nonetheless, it's came out that she did make an
23 identification that was not Mr. Stokes.

24 In addition, as we've argued pretrial, the
25 identification that was done on September 6th, 2016, was

1 degraded, or should I say, almost rendered null and void by a
2 suggestive intervention of a photograph that we just heard
3 Detective Weaver to say that Ms. Pitts told him, the only
4 reason I identified Tyreece Stokes was because I saw a picture
5 of him that my sister gave me. And she just testified to that.
6 She identified him because of a picture that was given to her
7 by her sister when she was told, this is a bad person in the
8 community.

9 And that is the only direct evidence the State has
10 given to you, the September 6th identification. They then want
11 to bolster that with circumstantial evidence that Mr. Stokes
12 was arrested with two knives on him. And we've argued that
13 extensively pre-trial also. The first knife that was found,
14 the steak knife, cannot in any way, shape or form, pursuant to
15 the State's own acquiescence, be linked to this crime, because
16 the steak knife that was involved in this crime was left at the
17 scene. It was never tested. It was never looked at for
18 evidence despite the fact even today it is available for
19 testing. Even to this very second, it can be sent away for
20 DNA, fingerprints, but haven't done that.

21 The other knife, the butcher knife, by the State's own
22 witnesses, could not be in any way, shape or form linked to
23 this crime because the doctor testified that the laceration to
24 the eye was only a half-inch. And the knife's been admitted
25 into evidence, Judge. As you can see for yourself, there's no

1 way that this butcher knife caused a half-inch laceration.

2 And so in order to bolster their unreliable direct
3 evidence, they are trying to bring in circumstantial evidence
4 that by no means is substantial in any way, shape or form.
5 They then want to say because Mr. Stokes lived in the area --
6 and I guess that's the only other part of their circumstantial
7 evidence they have -- that because Mr. Stokes lived in the
8 area, he must be the guy who committed this crime.

9 They tried to suppress evidence that there are two
10 other witnesses that can say, hey, we've seen a person in the
11 community that is suspicious that matches the description given
12 by the victim. We've been able to elicit information that
13 those two IDs were done. Your Honor did not allow us to bring
14 in the evidence that was proffered that those IDs were made of
15 a completely different person than Mr. Stokes.

16 The courts tell us -- and I'm talking about attempted
17 murder also. Your Honor already brought this to the attention
18 of both parties and Your Honor has already specifically
19 addressed the new case law in South Carolina. I'm referring to
20 *State v. King*, which shows that the State is required to prove
21 specific intent to kill with malice aforethought. It can't be
22 implied malice. It's got to be expressed malice. And *State v.*
23 *King* tells us that, goes into that, that attempted murder,
24 because it's an attempt, you've got to have expressed malice
25 aforethought in a specific intent to kill. And at this point,

1 there's been no evidence by the State to show expressed malice
2 or a specific intent to kill, which is required to meet even
3 the scintilla of evidence at the directed verdict stage.

4 Our courts tell us, Judge, a variety of different
5 things regarding directed verdict. But I'm going to quote to
6 you *State v. Hepburn* and I'm going to quote to you *State v.*
7 *Lawless* and I'm also going to quote to you *State v. Mitchell*.

8 *State v. Mitchell* tells us the court should grant a
9 directed verdict when the evidence merely raises a suspicion
10 that the accused is guilty. A suspicion is just a belief or
11 opinion, such as the opinion by Nikia Pitts, which does not
12 amount to proof.

13 Based on that, Judge, we are asking you to grant a
14 directed verdict, on my arguments to the Court, the evidence
15 that's been presented by the State, and the evidence that's
16 been presented in pretrial motions. Thank you

17 THE COURT: Response by the State?

18 MR. SORENSON: Yes, Your Honor, may it please the
19 Court.

20 Obviously, as Your Honor knows, I mean, the standard
21 at this point on a directed verdict motion is looking at things
22 in the evidence most favorable to the State. Obviously, in
23 this situation Your Honor has heard and jury has heard from the
24 young lady who testified, that I believe gave a very credible,
25 and this jury to find very credible description of what

1 occurred to her that evening. She described her assailant.
2 Indicated that she had seen him in this area on numerous
3 occasions in the past. Testified to this jury that she would
4 never forget his face. Testified that when shown a photo of
5 my, a sole photo by her sister, that she identified him. Was
6 shown a photographic lineup by Detective Weaver. Identified
7 him out of that lineup without -- and is absolutely certain of
8 it. And identified him here in court.

9 I think when you look at the factors under *Biggers*,
10 that her testimony, again, when looked at the evidence most
11 favorable to the State, she had an opportunity to observe him
12 that night, was familiar with him that night, gave an accurate
13 description of him to law enforcement. Ultimately, picked him
14 out of a lineup five days later and was very certain about that
15 ID. So I think that is direct evidence that is enough to
16 submit this case to a jury.

17 And you couple that with the circumstantial evidence
18 and the fact that she describes to law enforcement the fact
19 that the individual had two knives, one of which was a butcher
20 knife, and lo and behold -- and the fact that she's seen him in
21 the area, as I mentioned before, on numerous occasions, and lo
22 and behold we know now from Detective Weaver that he is
23 basically -- basically was providing an address in that area,
24 was found five days later in that area, was found -- not only
25 just found in the area, but found hiding in the woods from law

1 enforcement in that area. He matched the physical description
2 that she had given to law enforcement. And lo and behold, has
3 a butcher knife in his pocket.

4 I mean, I clearly think that, taken all of that in the
5 light most favorable to the State, there's clearly enough
6 evidence to submit this case to the jury.

7 As to the attempted murder, Your Honor, obviously,
8 short of a person saying, I'm going to kill you, you know, you
9 have to look at the facts and circumstances to determine
10 whether there is evidence that the person was trying to kill
11 the victim. And I can't imagine, short of putting a gun to
12 somebody's head and pulling the trigger, I mean, how you can
13 have any more strong evidence than literally sticking a steak
14 knife through somebody's eye into their brain and stabbing them
15 again in the chest and having that knife break off in their
16 chest. That is clearly evidence that the jury could find that
17 he intended to kill Ms. Pitts on the evening of September 1st.

18 THE COURT: Yes.

19 MS. WILLIAMS: Judge, in response briefly to the last
20 point made by the solicitor, I'm going to read from your
21 charge. And our case law says that. I can't change the fact
22 that our case law has now said that attempted murder requires
23 malice aforethought. And because it's attempt, it's got to be
24 expressed. It can't be implied. It can't be inferred, which
25 is what the State is trying to argue.

1 Your charge says, expressed malice is shown when a
2 person speaks words, which the solicitor is referring to, which
3 expresses hatred or ill will for another or when the person
4 prepared beforehand to do the act which was later accomplished,
5 for example, lying in wait for a person, or any other acts of
6 preparation.

7 When a person gets stabbed, oftentimes, there's plenty
8 of reasons that expressed malice wouldn't be there,
9 self-defense, struggle to get away, attempt to do something
10 completely different, even accident.

11 So, therefore, we are asking for you to grant a
12 directed verdict on that charge also. And I will complete my
13 arguments with that.

14 THE COURT: Rule 19 of the Rules of Criminal Procedure
15 states that, on motion of the defendant or its own motion, the
16 Court shall direct a verdict in the defendant's favor on any
17 offense charged in the indictment. After the evidence on
18 either side is closed, if there's a failure of competent
19 evidence tending to prove the charge in the indictment and
20 ruling on the motion, the trial judge shall consider only the
21 existence or nonexistence of the evidence and not its weight.

22 The cases have interpreted it further to be that, in
23 ruling on a motion for directed verdict, the trial court is
24 concerned with the existence of evidence rather than its
25 weight. And evidence is viewed in the light most favorable to

1 the State to determine whether there is any evidence, either
2 direct or circumstantial, which reasonably tends to prove the
3 guilt of the accused, or from which guilt may fairly and
4 logically be deduced.

5 In this case, the victim has identified the defendant
6 as the assailant who robbed her and who stabbed her in the
7 face. So there exists evidence from which a jury can conclude
8 that the defendant is guilty or that the defendant is the
9 assailant.

10 On the question of whether or not implied -- whether
11 or not malice can be implied, in order for there to be a
12 conviction of attempted murder, that's certainly gives me some
13 pause. You know, this is a case of State v. Tyreece Raheem
14 Stokes. And the case that we are governed by now is *State v.*
15 *Raheem King*. And in that case, the Supreme Court says that a
16 specific intent to kill is a necessary element of attempted
17 murder. And in a sense, the legislature modified this statute.
18 We've all been -- and the courts have been grappling in dealing
19 with what is attempted murder. And so they settled on this
20 specific intent to kill because it's codified in the statute
21 that, therefore, that's a necessary element in order for one to
22 be guilty of attempted murder.

23 The law had been with regard to murder or malice being
24 inferred through the use of a deadly weapon; then *State v.*
25 *Belcher* came out saying, well, it cannot be inferred through

1 the use of a deadly weapon where the defendant claims
2 self-defense. And that's not an issue in this case, I don't
3 think, certainly not at this point.

4 So I'm kind of taken aback by counsel's argument that
5 in order for there to be a conviction of attempted murder and
6 because there's specific intent to kill, that malice cannot be
7 inferred. If the jury is to believe a victim's testimony, this
8 defendant stabbed her in the face and stabbed her in the chest.
9 Had she died, the offense would be murder.

10 I believe that evidence exists for which a jury can
11 conclude that he attempted to murder her. And that's what
12 attempted murder is.

13 With regard to counsel citing my charge. I sent y'all
14 a rough draft of the charge. It's not a final charge. You
15 know, I usually loathe to send lawyers things I'm working on,
16 because they end up being quoted to me and then quoted to the
17 jury. And that may or may not be the charge. But if y'all
18 have objections to it, but if you do, we will talk about it.
19 But the jury charge has no bearing on the ruling on this issue
20 for directed verdict.

21 There's evidence from which the jury can find that the
22 defendant attempted to murder the victim and that the defendant
23 robbed the victim. Evidence exists. The question is whether
24 the jury will believe it. And, therefore, I deny the motion.

25 What else at this time?

1 MR. SORENSON: Nothing more from the State at this
2 time.

3 MR. WEHMAN: Judge, defense would request a ten-minute
4 recess to discuss trial strategy with our client.

5 THE COURT: All right. We will take a break for ten
6 minutes. Do you want me to go through the colloquy with him
7 before the break regarding his right to testify or not testify
8 or after the break?

9 MR. WEHMAN: After the break, Your Honor. That's what
10 we are going to talk to him about.

11 THE COURT: Very good.

12 (Whereupon, a recess transpired.)

13 THE COURT: The State has rested. It's defense's
14 turn. Counsel requested a break to confer with client.

15 Yes, sir, Mr. Wehman.

16 MR. WEHMAN: Yes, Your Honor. After conferring with
17 my client, he does not wish to testify.

18 THE COURT: All right. Mr. Stokes, I'm going to swear
19 you in. And I'm going to talk with you for a moment. Can you
20 come up here.

21 (Whereupon, the defendant is sworn.)

22 THE CLERK: State your name for the record.

23 THE DEFENDANT: Tyreece Raheam Stokes.

24 THE COURT: Mr. Stokes, at this time, I'm going to
25 explain to you certain of your rights. If you do not

1 understand anything that I say, please let me know and I will
2 be happy to explain it to you in more detail. Do you
3 understand?

4 THE DEFENDANT: Yes.

5 THE COURT: We've now reached the stage of the trial
6 where you may present your defense. You have the right to
7 claim the protections given to you by the Fifth Amendment to
8 the Constitution of the United States. The Fifth Amendment to
9 the Constitution of the United States says in part that no
10 person shall be compelled in any criminal case to be a witness
11 against himself. And what that means is that you cannot be
12 required to testify in this case.

13 You do, however, have the right to testify on your own
14 behalf if you want to. However, no one can make you testify.
15 Whether or not you testify or not testify is a personal right.
16 And no one can waive this right except you.

17 Now, if you decide to testify, you will be subject to
18 the same rules that govern other witnesses. And you may be
19 examined and cross-examined on any relevant issue in this case.
20 In addition, if you have any convictions involving dishonesty,
21 false statements, or if you've been convicted of crimes
22 punishable by imprisonment for more than one year, and I
23 determine that the probative value of admitting this evidence
24 outweighs its prejudicial effect to you, the solicitor then
25 will be able to introduce your record to attack your

1 credibility.

2 If you decide to testify, this decision on your part
3 must be a free, voluntarily and intelligently made decision,
4 with knowledge of the protections given to you by the Fifth
5 Amendment and the consequences of your decision to testify.

6 If you decide not to testify, I will instruct the
7 jurors that they cannot give the fact that you did not testify
8 any consideration whatsoever and that there is to be absolutely
9 no prejudice to you because you did not testify. It's left
10 entirely up to you whether or not you testify. You may talk
11 with your lawyers some more, family, friends, anyone else. But
12 the final decision about whether or not you testify must be
13 your decision. Do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, you've talked with your lawyers about
16 whether or not you should testify?

17 THE DEFENDANT: Yes, I did.

18 THE COURT: You did?

19 THE DEFENDANT: I did.

20 THE COURT: Do you need to talk to them any more about
21 that?

22 THE DEFENDANT: No.

23 THE COURT: Have you made up your decision?

24 THE DEFENDANT: Yes.

25 THE COURT: And what's your decision?

1 THE DEFENDANT: I am not testifying.

2 THE COURT: You are not testifying? Are you sure
3 about that?

4 THE DEFENDANT: I'm positive.

5 THE COURT: Positive? All right. Thank you, sir.

6 MR. WEHMAN: Thank you, Your Honor.

7 THE COURT: All right. So when the jury comes out,
8 you are going to rest?

9 MR. WEHMAN: Yes, Judge.

10 THE COURT: So then we are going to let them go to two
11 o'clock. And then we will talk about anything else in the
12 interim that we need to talk about to be ready for closing
13 arguments at two o'clock. So if you will bring them in.

14 (Whereupon, the jury returns to open court at 12:11
15 p.m.)

16 THE COURT: Jury is back. The State has rested. It's
17 now the defense's turn.

18 Counselor.

19 MR. WEHMAN: Your Honor, the defense rests.

20 THE COURT: All right. Ladies and gentlemen, the
21 defense has rested. That means that you have heard all of the
22 testimony and received all of the evidence in the case. Next
23 up would be closing arguments, jury charge and your
24 deliberations.

25 There are some matters that we have to take up in

1 preparation for all of that. So we are going to let you go and
2 to come back at two o'clock. That will give you a little lunch
3 break here today. We need you back in the jury room at two
4 o'clock. Please do not discuss the case or allow anyone to
5 talk to you about it.

6 (Whereupon, the jury leaves open court at 12:12 p.m.)

7 THE COURT: All right. Any matters of law at this
8 time, the State or the defense?

9 MR. SORENSON: No, sir.

10 MS. WILLIAMS: At this time, the defense would just
11 renew all prior motions, including our directed verdict
12 motion.

13 THE COURT: All right. And the rulings of the Court
14 are the same on all, as to all motions made. Duly noted.

15 So we have talk to about jury charges, and what else?
16 Jury charges, order of charge? All right. What says the
17 State?

18 MR. SORENSON: May it please the Court, Your Honor.
19 I'm sorry, I didn't catch, just anything --

20 THE COURT: Jury charges, lesser-included, anything
21 else you have on your mind.

22 MR. SORENSON: I guess a couple of things. We would
23 request on the attempted murder indictment for the Court to
24 charge the lesser-included offense of assault and battery of a
25 high and aggravated nature. I think there is evidence that a

1 jury in this case could find -- it could be a jury issue as to
2 the specific intent to kill on the attempted murder indictment
3 where they could find still that the State has proven the
4 elements of assault and battery of a high and aggravated
5 nature, and that that would be an unlawful injury to Ms. Pitts
6 and either great bodily injury, in this case it would be the
7 injury causing the substantial risk of death or protracted loss
8 or impairment of an organ, being her left eye, or that the act
9 was accomplished with means likely to produce death or great
10 bodily injury. I think the jury has heard evidence that would
11 support the lesser charge of assault and battery of a high and
12 aggravated nature. So we would respectfully ask Your Honor to
13 charge that lesser-included.

14 As to -- I know we've had some conversation about kind
15 of the order of things. And it would be the State's preference
16 just to kind of do things how we've done them all along, and
17 have, in this case, it would be the State closing, defense
18 closing, and Your Honor charging the jury after that.

19 And the only other thing is I know we've had some
20 conversation back in chambers about the attempted murder
21 charge. And I would -- I don't want to speak out of turn, but
22 I think agreeing with the defense's argument that we need to
23 tinker with that charge also. I don't know if you want me to
24 go through what I would propose changing in the initial charge.

25 THE COURT: Can you print stuff here?

1 THE CLERK: Sure.

2 MR. SORENSON: I don't have a problem handing up --
3 I've kind of marked out what I think should be marked out. And
4 put a little asterisk where I think some of the language needs
5 to be -- *State v. King* be put in there. And I can show that to
6 defense.

7 THE COURT: Okay. That's good.

8 MR. SORENSON: May I approach, Your Honor, and show
9 you what we talked about?

10 (Whereupon, a bench conference takes place off the
11 record.)

12 MR. SORENSON: I think that's all the State had with
13 regards to jury charges.

14 THE COURT: Let me ask you this. As I understand it,
15 the defense opposes charging a lesser-included offense; is that
16 right?

17 MS. WILLIAMS: That's correct, Your Honor.

18 THE COURT: I will hear what the defense has to say in
19 a minute. Let me hearing from the State. What gives you the
20 right to request a charge on a lesser-included offense?

21 MR. SORENSON: Well, I think the fact that it's a
22 lesser-included; I mean, it is a part of the greater offense.
23 So I think, ultimately, if there's potentially, as the evidence
24 is presented, if there is a jury issue as to an element,
25 whereas, the defendant would still be guilty of the lesser

1 offense, I think it's appropriate to present that to the jury.
2 And in this case, I mean, the element in question, I mean, this
3 has kind of all come up in a case that was -- you know, I think
4 rehearing was finally denied on it three months ago. So I
5 mean --

6 THE COURT: The *King* case?

7 MR. SORENSON: Yes, *King* case. I believe rehearing
8 was denied on that I believe in March of this year. So -- but
9 I think the evidence in this case, I think, does support a
10 lesser charge.

11 THE COURT: So where the evidence supports a lesser
12 charge, depending on what the jury finds, does the State have
13 the right to a charge -- to a lesser charge, or is that solely
14 the prerogative of the defendant?

15 MR. SORENSON: I mean, I believe it's solely the
16 prerogative of the Court, I believe, ultimately. But I think
17 you should charge the jury based on the facts that are
18 presented. And I think there's arguably a jury issue as to the
19 specific intent to kill; whereas, if they were to find that we
20 have not proven beyond a reasonable doubt that specific intent
21 to kill, Mr. Stokes still could be proven beyond a reasonable
22 doubt to be guilty of the lesser-included offense. That's the
23 whole reason -- I believe that there are lesser-included
24 offenses. What is the purpose of even indicating in case law
25 and even in some statute, including in this statute, that ABHAN

1 is a lesser-included offense of attempted murder if that is not
2 something that is contemplated that a jury could convict
3 somebody of a lesser-included offense if an element, a greater
4 element that made it the greater offense, if they have a
5 reasonable doubt as to that element.

6 THE COURT: Do you have any case authority on the
7 rights of the State to request a lesser charge? Because in
8 most instances, I guess -- I don't want to say nine times out
9 of ten, but it's typically the defendant seeking a request on a
10 charge of a lesser offense and not the State. So what gives
11 the State the right -- the same right as the defense to request
12 a lesser offense? Is there a case authority that you are
13 familiar with?

14 MR. SORENSON: I am not familiar with something that
15 gives that right specifically to the State and/or the defense,
16 other than just having had it done number of times over the
17 years.

18 THE COURT: I'm speaking to Mr. Templeton.

19 MR. TEMPLETON: I'm working on it, Your Honor.

20 MR. SORENSON: He's checking right now, Your Honor.

21 THE COURT: Okay. I got you.

22 Yes, from the defense.

23 MS. WILLIAMS: Thank you, Judge. May it please the
24 Court. I'm going to go ahead and answer your question on
25 behalf of the State, because I think I'm ethically obligated

1 to. *State v. Wiggins*, 330 S.C. 538 is the only case on point.
2 Wiggins, W-i-g-g-i-n-s. It was decided in 1998. And
3 in that case, the court -- it doesn't give the State the
4 ability to ask for a lesser-included. It gives the court the
5 ability to charge a lesser-included if it finds that the
6 evidence meets that. In *Wiggins*, the court directed a verdict
7 on murder, and then charged the lesser-included, and the
8 defense objected.

9 Our Supreme Court up on appeal passed on that issue.
10 And, therefore, affirming the Supreme Court or the trial
11 court's decision to charge the lesser-included. And that was
12 decided in 1998. And I think that's what the Court might be
13 ability to do it.

14 I would say that more recent case law -- and we had a
15 brief conference in chambers. And we talked about -- I had
16 brought up some PCR cases. And I'm going to cite *Abney v.*
17 *State*. *Abney v. State* was decided by the South Carolina Court
18 of Appeals on March 19th, 2014. The case cite on *Abney v.*
19 *State* is 408 S.C. 41. It's been cited favorably. It is still
20 good law. *Abney v. State* was a PCR opinion in which the
21 defense, just like we are doing here, did not request a
22 lesser-included. It was a trial strategy, as it is here, as I
23 advised both Your Honor and opposing counsel in chambers.

24 We are requesting that no lesser-included be charged
25 here. Our defense has been very clear from the very beginning,

1 it was not Mr. Stokes, not accident, not defense, not he
2 missed. It just wasn't him. It's just a misidentification
3 case.

4 And so pursuant to our trial strategy and in order to
5 present a concise defense, and in conference with Mr. Stokes,
6 we have asked that a lesser-included not be given to the jury
7 in this case so that they can't split the baby, because that's
8 not our defense.

9 THE COURT: All right. Mr. Stokes, you are still
10 under oath. Is that right?

11 THE DEFENDANT: I don't know. I don't want no
12 lesser-included offense.

13 THE COURT: You've talked to your lawyers. You do not
14 want the Court to charge a lesser-included?

15 THE DEFENDANT: No.

16 THE COURT: As a matter of trial strategy?

17 THE DEFENDANT: Yes. I talked to them and I don't
18 want that.

19 THE COURT: All right. Thank you.

20 MS. WILLIAMS: And the unique thing about Abney,
21 Judge, it's a PCR case, but the unique thing about Abney, is
22 it's a split decision. Judge Konduros wrote for the majority.
23 And what Judge Konduros wrote was that she held that our state
24 should join Alabama, Georgia and Utah in recognizing it is a
25 very valid trial strategy, the all or nothing strategy. And

1 Judge Pieper concurred. He wrote that it is a strategy. It's
2 a strategic decision to be made "ultimately by trial counsel
3 after consultation with the defendant" to not ask for a
4 lesser-included.

5 We then have Judge Few. He dissented. But he would
6 have held that -- he would have granted the PCR, because he
7 thought the lawyers didn't understand the law, which is not the
8 case here in any manner. But what Abney suggests is not only
9 that the State can't ask for a lesser-included because,
10 ultimately, let's just face it, they are in complete control
11 why we are here. They are going to charge him. They have to
12 stick with what they charged him with. At this point, it's not
13 fair for them to say, well, it might be this or it might be
14 that.

15 But what Abney suggests also is that the trial court
16 is powerless to intervene when it is a trial strategy. And,
17 therefore, we are asking you to not include the lesser-included
18 offense in this case.

19 Abney is still good law, Judge. And I think I gave
20 you that cite. Again, it's 408 S.C. 41, decided in 2014.

21 THE COURT: All right. Yes, sir.

22 MR. SORENSON: May I just read? In looking at Abney,
23 Your Honor, what I'm reading here it says, the trial court is
24 required to charge a jury on a lesser-included offense if there
25 is any evidence from which it could be inferred the lesser

1 rather than the greater offense was committed. However, the
2 trial court should refuse to charge on a lesser-included
3 offense when there is no evidence that the defendant committed
4 the lesser rather than the greater offense.

5 I think that's -- I would argue that that language
6 right there would support Your Honor charging in this case the
7 lesser offense of ABHAN.

8 THE COURT: Well, the PCR case that was referred to,
9 *State v. Abney*, I've seen it many times as a PCR judge where a
10 defendant who has been convicted of a greater offense and the
11 lawyer has requested a charge on the lesser offense then
12 complains about the conduct of a lawyer, and the lawyer comes
13 out and says, well, it's trial strategy. And, you know, courts
14 tend to scrutinize those explanations or PCR contentions by
15 lawyers about trial strategy. Many times it's, well, I didn't
16 cross-examine this witness because of trial strategy, I didn't
17 object to this piece of evidence because of trial strategy.
18 And so the court did a thorough job in analyzing that issue in
19 *State v. Abney*.

20 And Justice Few, you know, seemed to have believed a
21 little more critical analysis is required. And he now sits on
22 the Supreme Court. So who knows where that will be? But it's
23 been addressed in other cases where the notion that trial
24 strategy caused the lawyer to act one way or another, and then
25 rejected and post-conviction relief granted, so when I'm in a

1 trial listening to objections and various requests, it's -- and
2 where PCR cases are cited, I really have to consider what the
3 court is considering in PCR versus reviewing what might have
4 occurred during a trial as we are in now.

5 *State v. Austin* says that the trial judge must charge
6 a lesser-included offense if there is any evidence which it can
7 be inferred that the defendant committed the lesser-included
8 offense of the crime charged.

9 Now, what we are now seeing with these various
10 attempted murder charges, many times someone is charged with
11 attempted murder where there's no actual injury. Someone
12 shoots at a fleeing car or shoots into a house. You know, I
13 think we have more attempted murder charges on the docket now
14 than any other charge. And when they come to trial, the jury
15 ends up being charged the full range of assaults, because
16 trying to -- giving the jury the options based on the evidence
17 as to what the offender intended.

18 So the question here is whether or not it's the sole
19 province of the defendant to choose jury charges or whether the
20 State and the Court has a role in that. And I know the
21 arguments and commentary being pushed by many on the defense
22 side, but since the State has opted to charge someone with a
23 particular crime, the State is locked into that charge and that
24 charge only. But where there is evidence in which the jury
25 could conclude the defendant is guilty of a lesser offense,

1 then the trial judge must charge it, regardless to who requests
2 it, in my view.

3 So I'm going to charge the applicable lesser offense
4 in this case, ABHAN.

5 MR. SORENSON: Thank you.

6 THE COURT: All right. That's that issue.

7 MS. WILLIAMS: In regards to what the State handed up,
8 regarding attempted murder, we are in agreement with what they
9 handed to the Court and to your clerk.

10 THE COURT: All right. Any time there's an agreement,
11 then you will find me agreeing. So that makes my job a little
12 easier. Page 1 and page 2? You looked at all of what the
13 solicitor proposed on this attempted murder charge? He crossed
14 out some stuff on the second page as well.

15 MS. WILLIAMS: The charge that we have under attempted
16 murder is: The defendant Tyreece Stokes is charged with
17 attempted murder. In order to prove this crime, the State must
18 prove the defendant had the specific intent to kill Nikia Pitts
19 with malice aforethought.

20 And it goes into: Malice is hatred, ill will or
21 hostility to another person. It is the intentional doing of a
22 wrongful act without just cause or excuse, and with the intent
23 to inflict any injury.

24 The next paragraph: Malice aforethought does not
25 require that malice exists for any particular time before the

1 act is committed, but malice must exist in the mind of the
2 defendant just before and at the time the act is committed.
3 Therefore, there must be a combination of a previous evil
4 intent and the act.

5 Then it moves down to halfway through the next
6 paragraph: Expressed malice is shown when a person speaks
7 words which express hatred or ill will or when a person
8 prepared beforehand to do the act which was later accomplished,
9 for example, lying in wait, or a person or any other acts of
10 preparation going to show that the deed was within the
11 defendant's mind would be expressed malice.

12 Then skips everything else on the second page, except:
13 A specific attempt includes an intent to do a particular
14 criminal act along with an act falling short of the act
15 intended. The State must show more than mere preparation and
16 intent. There must be some overt act committed in the effort
17 to commit the crime.

18 THE COURT: And the part that says insert from *King* --

19 MR. SORENSON: Yeah, that would be the highlighted
20 part I showed you.

21 MS. WILLIAMS: That's right. I had forgotten that
22 part.

23 THE COURT: I'm good with that. I will do that. Of
24 course -- not of course, but I had someone just send me this
25 charge from a trial they recently did. And so that is a true

1 charge that was given within the last couple of months. So we
2 will see what happens with that case, because there was a
3 conviction. So we will wait and see as years go by. But I'm
4 good with changing according to what y'all requested.

5 MS. WILLIAMS: Thank you, Judge. And in regards to
6 when Your Honor charges the jury, you had suggested at some
7 point during the trial this idea that charging the jury prior
8 to closing arguments, we would just ask that you -- that we do
9 that. It makes more sense from our perspective. And that way
10 we can't misstate the law when we are arguing to the jury.
11 You've already given it to them. We can't misstate it. We
12 can't confuse them.

13 And also, you know, it goes in line with the new line
14 of cases that shows that when defense doesn't present any
15 evidence, they get the last argument. They get the last word
16 to the jury. And we would just ask that you give the charge to
17 the jury prior to closing arguments.

18 THE COURT: From the State?

19 MR. SORENSON: I would just ask that we do it the way
20 we've always done it. I mean, for lack of a better of
21 explaining it, I mean, we know what your charge is. So,
22 hopefully, neither one of us is going to misstate the law to
23 the jury. We have your charge now ahead of time.

24 THE COURT: Here's an ABA article on this subject.
25 How Courts Work, Steps in a Trial: The judge instructs the

1 jury about the relevant laws that should guide its
2 deliberations. In some jurisdictions, the court may instruct
3 the jury at any time after the close of evidence. This
4 sometimes occurs before closing arguments. The judge reads the
5 instructions to the jury. This is commonly referred to as --
6 so there's sort of a new wave. I guess it's a new wave. Some
7 judges have been doing it for a long time.

8 I think Judge Russo has been on the bench over 10
9 years now. And that's the way he does it, at least in
10 Florence. Judge Griffin is the chief judge now in 10th
11 Circuit, Lexington, et cetera, and he's doing it. And I did
12 it, charged the jury first.

13 In the end, it should not matter. I know from the
14 defense's perspective, again, on the trial strategy end of
15 things, defendant sometimes says, well, we don't want to offer
16 any evidence, exhibits, because we want to get the last word to
17 the jury. And so where the defendant doesn't offer evidence,
18 as in this case, the defense gets the last argument.

19 Actually, I have a PCR pending now where the basis for
20 the PCR is that the strategy was that the defense lawyer didn't
21 present any evidence because he wanted the last word. And then
22 the jury had a question and the jury wanted to hear some
23 argument. And the judge replayed the argument in absence of
24 the defendant. So he didn't get the last word. And last word
25 they wanted to hear was the State's playback of the State's

1 witness. So they didn't get the last argument. And that's his
2 PCR contention. So that's how it goes.

3 But I'm going to charge the jury first and then we
4 will do closing.

5 MS. WILLIAMS: Thank you, Judge.

6 THE COURT: What else do we have to talk about? I
7 think we covered everything.

8 MS. WILLIAMS: Nothing further from the defense.

9 MR. SORENSON: Nothing from the State either.

10 THE COURT: All right. Be ready to go at two o'clock.
11 Who is arguing for the State?

12 MR. SORENSON: I am.

13 THE COURT: And for the defense?

14 MR. WEHMAN: I am, Judge.

15 THE COURT: Very good. Be back in place at 2.

16 (Whereupon, a recess transpired.)

17 THE COURT: Are you ready for them?

18 MR. SORENSON: Yes, sir.

19 MR. WEHMAN: Yes, Judge.

20 THE COURT: Bring them in.

21 (Whereupon, the jury returns to open court at 2:08
22 p.m.)

23 THE COURT: Madam Forelady, members of the jury,
24 you've heard the testimony, received all the evidence and you
25 will soon hear the arguments of the State and the defendant. I

1 will now explain to you the law that applies for this case.

2 Under the Constitution and laws of South Carolina, you
3 are the finders of the facts. I do not have the right to pass
4 upon the facts or to even express any opinion that I might have
5 as to them, because this is a matter solely for you the jury to
6 determine.

7 As jurors then, it is your duty to determine the
8 effect, the value, the weight, and the truth of the evidence
9 presented during this trial. Now, as the trial judge, it is my
10 responsibility to preside over the trial and to rule upon the
11 admissibility of the evidence offered during the trial. You
12 are to consider only the testimony which has been presented
13 from this witness stand, together with any exhibits which have
14 been made a part of the record.

15 I have the additional duty to charge you the law
16 applicable to this case. And as the presiding judge, I am the
17 sole judge of the law of this case. It is your duty as jurors
18 to accept as correct and apply the law as I now state it to
19 you. Then after closing arguments, deliberate to reach your
20 verdict.

21 Finally, I charge you in this regard that you should
22 not be concerned with what you think the law ought to be, but
23 rather, what I charge you that the law is. You are also the
24 judges, the sole judges, of the credibility, that is the
25 believability of the witnesses who have testified and of the

1 evidence which has been presented during this trial.

2 In evaluating credibility, you may take into
3 consideration many things, such as the demeanor or manner of
4 testifying, whether the witness had reason to be bias or
5 prejudiced, or whether the testimony of the witness was
6 contradicted on the one hand or supported and corroborated on
7 the other hand. It becomes your duty as jurors to analyze and
8 to evaluate the evidence and determine that evidence which
9 convinces you of its truth.

10 There are two types of evidence which are generally
11 presented during a trial, direct evidence and circumstantial
12 evidence. Direct evidence is the testimony of a person who
13 asserts or claims to have actual knowledge of a fact, such as
14 an eyewitness.

15 Circumstantial evidence is proof of a chain of facts
16 and circumstances indicating the existence of a fact.

17 The law makes absolutely no distinction between the
18 weight or value to be given either direct or circumstantial
19 evidence, nor is a greater degree of certainty required of
20 circumstantial evidence than of direct evidence. You should
21 weigh all of the evidence in the case. After weighing all of
22 the evidence, if you are not convinced of the guilt of the
23 defendant beyond a reasonable doubt, you must find the
24 defendant not guilty.

25 You should consider any expert opinion given by a

1 witness like any other evidence. Give it the weight you think
2 it deserves. If you decide that an expert witness's opinion is
3 not based on sufficient education and experience, or if you
4 decide the reasons given in support of the opinion are not
5 sound, or that the opinion is outweighed by other evidence,
6 then you may disregard the opinion entirely.

7 Now, I instruct you and emphasize that the fact that
8 the defendant did not testify is not a factor to be considered
9 by you in any way in your deliberations and in your
10 consideration on the question of the guilt or the innocence of
11 the defendant. It must not be considered by you in any manner
12 whatsoever. A defendant has the constitutional right to remain
13 silent and the assertion of this right must not be considered
14 by you in your deliberations. So I repeat, under your oath,
15 you are to draw no conclusion whatsoever from the fact that the
16 defendant in this case did not testify. The fact that the
17 defendant did not testify should not even be discussed in the
18 jury room. The burden of proof, as I have stated to you, is on
19 the State. The defendant is not required to prove his
20 innocence. The burden of proof remains on the State to prove
21 guilt beyond a reasonable doubt.

22 Now, the indictments in this case allege two charges
23 against the defendant. The defendant is charged with attempted
24 murder and armed robbery. Each charge is a separate and
25 distinct offense. You must decide each charge separately on

1 the evidence and the law applicable to it, uninfluenced by your
2 decision as to the other charge. The defendant may be
3 convicted or acquitted on each charge. You will be asked to
4 write a separate verdict for each crime charged.

5 The fact that the defendant, Tyreece Raheam Stokes,
6 was charged and indicted in this case is not evidence in this
7 case and cannot be considered by you as evidence of guilt in
8 this case, nor does it create a presumption or inference of
9 guilt. The indictment is simply the formal written instrument
10 which contains the charges made against the defendant. The
11 indictment is a formal document by which this case is brought
12 in to court.

13 The defendant has pled not guilty to the charges
14 alleged against him. The burden is on the State to prove the
15 defendant guilty. A person charged with committing a criminal
16 offense in South Carolina is never required to prove himself
17 innocent. I charge you that it is an important rule of the law
18 that the defendant in a criminal trial, no matter the
19 seriousness of the charge or charges, will always be presumed
20 to be innocent of the crime for which the indictments were
21 issued unless guilt has been proven by evidence satisfying you
22 of that guilt beyond a reasonable doubt.

23 This presumption of innocence does not end when you
24 begin your deliberations. But it accompanies the defendant
25 throughout the trial until you reach a verdict of guilt based

1 on evidence satisfying you of that guilt beyond a reasonable
2 doubt. The presumption of innocence is like a robe of
3 righteousness placed about the shoulders of the defendant which
4 remains with the defendant until it has been stripped from the
5 defendant by evidence satisfying you of the defendant's guilt
6 beyond a reasonable doubt.

7 The presumption of innocence is not a mere legal
8 theory. It is not just a legal phrase. It is a substantial
9 right to which every defendant is entitled unless you the jury
10 is satisfied from the evidence of the defendant's guilt beyond
11 a reasonable doubt.

12 The State must prove a defendant guilty beyond a
13 reasonable doubt. What is a reasonable doubt in the law? A
14 reasonable doubt is a doubt which makes an honest, sincere,
15 conscious juror in search of the truth to hesitate to act.
16 Proof beyond a reasonable doubt must, therefore, be proof of
17 such a convincing character that a reasonable person would not
18 hesitate to rely and act upon it in the most important of his
19 or her own affairs. Proof beyond a reasonable doubt can also
20 be described as proof that leaves you firmly convinced of the
21 guilt of the defendant.

22 Now, there are very few things in this world that we
23 know with absolute certainty. And in criminal cases, the law
24 does not require proof that overcomes every possible doubt.
25 If, based on your consideration of the evidence, you are firmly

1 convinced that the defendant is guilty of the charges against
2 him, you must find him guilty.

3 If, on the other hand, you think there's a real
4 possibility that he's not guilty, you must then give him the
5 benefit of the doubt and find him not guilty.

6 The defendant is charged with armed robbery. In order
7 to prove this offense, the State must prove beyond a reasonable
8 doubt that the defendant took personal property from the person
9 or presence of another person. Property is in the presence of
10 another person if it is within the person's reach, inspection,
11 observation or control, so that the person could, if not
12 overcome with violence or prevented by fear, keep possession of
13 the property.

14 The State must also prove beyond a reasonable doubt
15 that the defendant carried away property intending to
16 permanently deprive the owner of the property and to keep the
17 property for the defendant's own use. The taking and carrying
18 away of the property must have been done with violence or by
19 putting the owner of the property in fear of violence.

20 Finally, the State must prove beyond a reasonable
21 doubt that the defendant was armed with a deadly weapon during
22 the robbery. The deadly weapon is any article or instrument
23 which is likely to cause death or serious bodily harm.

24 The defendant, Tyreece Raheam Stokes, is charged with
25 attempted murder. In order to prove this crime, the State must

1 prove the defendant had the specific intent to kill Nikia Pitts
2 with malice aforethought. Attempted murder is the attempt to
3 kill a person with expressed malice, or more completely
4 defined, attempted murder is the performance of an act or acts
5 which tend but fail to kill a human being when such acts are
6 done with expressed malice, namely, with the deliberate
7 intention, unlawfully, to kill.

8 Malice is hatred, ill will or hostility toward another
9 person. It is the intentional doing of a wrongful act without
10 just cause or excuse, and with an intent to inflict an injury.
11 Malice aforethought does not require that malice exists for any
12 particular time before the act is committed. But malice must
13 exist in the mind of the defendant just before and at the time
14 the act is committed. Therefore, there must be a combination
15 of the previous evil intent and the act.

16 Expressed malice is shown when a person speaks words
17 which express hatred or ill will toward another person or when
18 the person prepared beforehand to do the act which was later
19 accomplished, for example, lying in wait for a person or any
20 other acts of preparation. Going to show that the deed was
21 within the defendant's mind would be expressed malice.

22 A specific attempt includes an intent to do a
23 particular criminal act along with an act falling short of the
24 act intended. The State must show more than mere preparation
25 and intent. There must be some overt act committed in the

1 effort to commit the crime.

2 If you find that the State has failed to prove beyond
3 a reasonable doubt that the defendant committed attempted
4 murder, you may consider whether the defendant has -- whether
5 the State -- you may consider whether the State has proven
6 beyond a reasonable doubt that the defendant committed assault
7 and battery of a high and aggravated nature. Included within
8 the offense of attempted murder is a lesser-included offense of
9 assault and battery of a high and aggravated nature. To prove
10 assault and battery of a high and aggravated nature, the State
11 must prove beyond a reasonable doubt that the defendant
12 unlawfully injured another person and great bodily injury to
13 another person results or the act was accomplished by means
14 likely to produce death or great bodily injury.

15 Great bodily injury means bodily injury which causes a
16 substantial risk of death or which causes serious permanent
17 disfigurement or protracted loss or impairment of the function
18 of a bodily member or organ.

19 An issue in this case is the identification of the
20 defendant as the person who committed the crimes charged. The
21 State has the burden of proving identity beyond a reasonable
22 doubt. You must be satisfied beyond a reasonable doubt of the
23 accuracy of the identification of the defendant before you can
24 convict the defendant. Identification testimony is an
25 expression of belief or impression by that witness. You must

1 determine the accuracy of the identification of the defendant.
2 You must consider the believability of each identification
3 witness in the same way as any other witness. You may consider
4 whether the witness had an adequate opportunity to observe the
5 offender at the time of the offense. This will be affected by
6 things like how long or short a time was available, how far or
7 close the witness was, the lighting conditions, and whether the
8 witness had the chance to see or know the person in the past.
9 Identification is based on perception through the use of the
10 senses of a witness. Usually a witness identifies an offender
11 by sense of sight, but that is not necessarily so and other
12 senses may be used.

13 You may take into account both the strength of the
14 identification and the circumstances under which the
15 identification was made. If the identification by a witness
16 has been influenced by the circumstances under which the
17 offender was presented to her for identification, you should
18 scrutinize the identification with great care. You may also
19 consider the length of time that elapsed between the occurrence
20 of the crime and the opportunity that a witness had -- and the
21 opportunity a witness had to see the offender as a factor
22 bearing on the reliability of the identification.

23 You may also take into account that an identification
24 made by picking the offender out of a group of similar
25 individuals is generally more reliable than one that results

1 from the presentation of the offender alone to the witness.
2 You may take into account any occasions in which the witness
3 failed to make an identification of the offender or made an
4 identification that was inconsistent with her identification at
5 trial.

6 Finally, you must consider the credibility of each
7 identification witness in the same way as other witnesses,
8 considering whether she's truthful and whether she had an
9 opportunity to make a reliable observation on the matter
10 covered in her testimony. I again emphasize that the burden of
11 proof on the State extends to every element of the crime
12 charged. And this specifically includes the burden of proving
13 beyond a reasonable doubt the identity of the defendant as the
14 perpetrator of the crimes which he stands charged.

15 If after examining the testimony, you have a
16 reasonable doubt as to the accuracy of the identification, you
17 must find the defendant not guilty.

18 Now, while arguments of counsel is a beneficial part
19 of every trial, you should remember that the statements made by
20 counsel are not evidence. In presenting their arguments
21 counsel often refer to "the evidence". However, you should
22 base your verdict on the evidence as you remember it.
23 Therefore, if there are any conflicts between the recollection
24 of counsel about the evidence and your own recollection, you
25 should rely on your own understanding of the evidence.

1 Madam Forelady and members of the jury, I'm required
2 to charge you the law as I've done through these instructions.
3 Now I'm being given to help guide you to a just and lawful
4 verdict. Whether some of these instructions will apply will
5 depend upon what you find to be the facts. The fact that I
6 have instructed you on various subjects on this case must not
7 be considered as indicating an opinion of this Court as to what
8 you should find to be the facts or what your verdict should be.

9 Now, you've been chosen and sworn to give the parties
10 and fair and impartial trial. If you have done so, you would
11 have complied with your oath, and no one will have a right to
12 criticize your verdict. You must not be influenced by opinions
13 or expressions of opinion you may have heard outside of the
14 courtroom. But, rather, should base your verdict solely on the
15 testimony of the sworn witnesses who took the stand, the
16 exhibits received in evidence and any stipulation of counsel
17 and the law which I have stated. You should not be swayed by
18 caprice, passion, prejudice or improper sympathy for or against
19 anyone. You have no friends to reward or enemies to punish.
20 And all parties are entitled to a fair and impartial trial.

21 It is your duty as jurors to consult with one another
22 and to deliberate in an effort to reach an agreement. Each of
23 you must decide this case for yourself, but only after
24 impartial consideration of all the evidence with your fellow
25 jurors. In the course of your deliberations, do not hesitate

1 to re-examine your own views and change your opinion if you
2 become convinced it is erroneous. However, do not surrender
3 your own conviction as to the weight or effect of the evidence
4 solely because of the opinion of your fellow jurors or for the
5 mere purpose of returning a verdict.

6 As I stated earlier, you are the judges, judges of the
7 facts. Your verdict must represent the considered judgment of
8 each juror. In other words, your verdict must be unanimous.

9 Now, you may have noticed that I have read these
10 instructions. I do so to give you the law as accurately as
11 possible. I will give you a copy of these instructions to have
12 in the jury room. You may refer to these instructions to
13 assist you in your deliberations. You must consider the
14 instructions as a whole and may not follow some and ignore
15 others.

16 And, Madam Forelady, it will be your duty to preside
17 over the deliberations of the jury. If during your
18 deliberations, you should desire to communicate with the Court,
19 please reduce your message or question to writing, signed by
20 your foreperson and the foreperson only. And pass the note to
21 the bailiff who will bring it to my attention. I will then
22 respond as promptly as possible, either in writing or by having
23 you return to the courtroom. I caution you, however, with
24 regard to any message or question you might send, that you
25 should never state or specify your numerical division at the

1 time.

2 Now, you've heard the evidence and you have heard the
3 law. And soon, in just a moment, you will hear closing
4 arguments. Whatever your verdict, Madam Forelady, you will
5 indicate it on the verdict form, which is this form that says,
6 we the jury unanimously find the defendant Tyreece Raheam
7 Stokes either guilty of armed robbery or not guilty. Check the
8 appropriate one.

9 We the jury unanimously find the defendant Tyreece
10 Raheam Stokes guilty of attempted murder or guilty of assault
11 and battery of a high and aggravated nature, or not guilty.

12 And certainly, there's no significance to the order
13 through which they are written or stated. And you would date
14 and sign the verdict form after it is completed.

15 Now, even though -- remember that even though and
16 although the foreperson is the only person that writes the
17 verdict, the verdict is not hers alone. The verdict has to be
18 unanimous. And, Madam Forelady, you are not authorized to
19 write the verdict until all of you have agreed on the verdict.

20 So, ladies and gentlemen, after closing arguments, I
21 will send you to the jury room. And when you go back, do not
22 begin discussing the case until you receive a copy of this jury
23 charge, the verdict form and the exhibits. Once you receive
24 these things, that will be your signal to begin your
25 deliberations.

1 Once you begin deliberating, deliberations, you will
2 deliberate until you have reached a verdict, at which time you
3 will knock on the door and advise the bailiff. And we will
4 bring you out to receive your verdict.

5 We are going to take just a couple of minutes to give
6 you a chance to go to the jury room once again. And when you
7 come out, the State will present its closing arguments and then
8 the defense will present its closing arguments.

9 So please go to the jury room. Do not discuss the
10 case.

11 (Whereupon, the jury leaves open court at 2:34 p.m.)

12 THE COURT: Any additions or exceptions to the charge
13 at this time?

14 MR. SORENSON: Not from the State, Your Honor.

15 MR. WEHMAN: None from the defense, Your Honor.

16 THE COURT: All right. I didn't know whether you
17 needed to put something up, exhibits, this or that.

18 MR. SORENSON: I don't believe so. I'm ready, Your
19 Honor.

20 THE COURT: Okay. Good. We will take about two
21 minutes and then we will come back. Do you think they will be
22 ready in two minutes or three or four or five? All right. We
23 will see. All right.

24 (Whereupon, recess transpired.)

25 THE COURT: Bring them on, if they are ready.

1 (Whereupon, the jury returns to open court at 2:39
2 p.m.)

3 THE COURT: Mr. Sorenson.

4 MR. SORENSON: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 MR. SORENSON: Good afternoon, Madam Forelady, ladies
7 and gentlemen of the jury. Back on September 1st of 2016, it's
8 hard to imagine a more malicious, more evil act, that I submit
9 to you that man right there, Tyreece Stokes, committed. It's
10 hard to imagine a more terrifying, horrifying, frightening
11 event than a young mother of four to have somebody come up to
12 her, get in her face with two knives and rob her.

13 To make it even more horrific, though, to have that
14 young mother plead with that man, don't hurt me, I got kids,
15 and that his response to her being, I don't give an F about
16 your kids, before plunging this knife halfway into her brain,
17 through her eye, pulling it out, and breaking it off in her
18 chest. I submit to you, ladies and gentlemen, there is not a
19 doubt that on September 1st of 2016, Nikia Pitts was robbed by
20 a person armed with a deadly weapon, and that that person
21 attempted to kill her, not a doubt about that.

22 Mr. Templeton told you in his opening, the only issue
23 in this case is who did it, is who did it. And I submit to
24 you, ladies and gentlemen, when you look at the credible
25 evidence in this case, the credible evidence, there's not a

1 doubt about that either, that Tyreece Stokes is guilty of armed
2 robbery and guilty of attempted murder.

3 And I want to take a few minutes of your time to kind
4 of break things down into two kind of parts of my argument.
5 Start off talking about Nikia, her testimony, what she told law
6 enforcement back in September of 2016, what she told you from
7 this witness stand yesterday. Then I want to talk to you a
8 little bit about the facts and circumstances surrounding his
9 arrest that I submit to you corroborate her identification of
10 him.

11 I feel like I need to start off by talking a little
12 bit about what happened with Nikia at M.U.S.C. that night, at
13 the hospital that night. See, the defense, I'm sure Mr. Wehman
14 is going to get up here, and they are going to talk about some
15 of these various kind of possible statements that Nikia
16 apparently said that night, all the way to the extreme that she
17 actually blamed this on one of her child's fathers that night,
18 the fact that she apparently narrowed down, when looking at
19 what was e-mailed to an officer, I don't know if it was on a
20 phone, tablet or whatever, photographs, narrowed this down.
21 And I'm going to talk more about this in a few moments, to
22 photos one or two, to some of the inconsistencies in the
23 description.

24 But keep in mind, ladies and gentlemen, when you are
25 thinking about this, Nikia told you she has absolutely no

1 recollection of talking to any police officers that night at
2 the hospital, no recollection whatsoever. What do we know
3 about when she showed up at the hospital that night? From
4 Dr. Norcross, his testimony, she presented with injuries
5 classified as having a high likelihood of complications and
6 mortality. She was in critical condition when she arrived at
7 the hospital that night, her left eye swollen completely shut.
8 And we are going to talk a little more about that injury. Had
9 a four-inch blade -- you will have this back in your jury room,
10 a four-inch blade. It's almost unbelievable listening to this
11 description of what the injury that she suffered to her head, a
12 four-inch blade stuck through her eye socket, fracturing her
13 orbital bone and going halfway through her brain.

14 She's been dosed up with Fentanyl. And we've heard
15 about Fentanyl. Maybe that's something you've probably heard
16 about in the news. It's a painkiller or it's a narcotic more
17 powerful than morphine. She had been given 100 micrograms of
18 that in the ambulance on the way to the hospital and given more
19 of it at the hospital.

20 What does Dr. Norcross tell us about that Fentanyl?
21 Basically, it will act like you are stoned, affect your
22 alertness, your attentiveness, your memory while under its
23 influence. In other words, it's not surprising that she
24 doesn't remember any of that that night, coupled with the
25 traumatic brain injury that she has had. But it wouldn't

1 affect her memory of what happened prior to that. I'm going to
2 talk about that in a minute. Because she told you, as I said,
3 she told Detective Weaver back on September 6th of 2016, she
4 told you yesterday from this witness stand, she has no
5 recollection of what happened that night at the hospital. No
6 recollection of talking to anybody, no recollection of being
7 shown any photographs, ID'ing anybody in a lineup.

8 The last thing she remembers was going back inside,
9 getting her daughter to call 911, going in the bathroom, seeing
10 her face and trying to get her eye and her face to stop
11 bleeding, and then briefly remembering being loaded in an
12 ambulance. She's obviously seated and in that home for a while
13 waiting on police, waiting on EMS, for her daughter, as I
14 believe she testified -- and she had a clear memory of this
15 part, remembered telling her doctor to call 911 and her phone
16 not being charged, and actually taking time to get her phone
17 plugged in to call 911.

18 You know, I'm sure they are going to make a big deal
19 about the blood alcohol level. She testified, she told you she
20 had something to drink that night. Didn't feel like she was
21 intoxicated. Was there some chance that maybe she sat down
22 waiting on them and had to calm herself and to try to numb the
23 pain, something else to drink? Because what I will say is the
24 details that she provides when she testifies, when she talks to
25 law enforcement on September 6th, when she talks to them on

1 September 19th, when she testifies on this witness stand, she
2 has a very clear recollection of everything that happened that
3 night outside of her home in that parking lot. I submit to you
4 not consistent with somebody who is intoxicated.

5 But, ultimately, as I started, when I started talking
6 about this, at the end of the day, I suspect the defense is
7 going to get up here in their closing and want to you take as
8 basically as gospel, as reliable, what she supposedly said at
9 the hospital, the fact that she identified -- apparently looked
10 at these photos and said it could have been one or two, that,
11 therefore, there's no way that it can be Tyreece Stokes. The
12 fact that, you know, she said she was pistol whipped and we
13 know that she wasn't pistol whipped, she was, in fact, stabbed
14 in the face; the fact that she had apparently said at some
15 point in time it was her child's father.

16 Look at how she was in the hospital, what you have
17 heard from the doctor, what you have heard from her, and ask
18 yourself, how is anything that was said by Ms. Pitts, by Nikia
19 that night to anybody in the hospital, how is that reliable,
20 admissible, credible evidence? And I submit to you none of
21 that is. It kind of boils down to common sense. I mean, we
22 probably have all had a family member, maybe even ourselves and
23 were told about it afterwards who have gone in for some sort of
24 procedure in a hospital and have been drugged up, and the
25 things that you've been told afterwards that you may have said

1 while under the influence of these drugs, or that you have
2 witnessed a family member. It's your commonsense, ladies and
3 gentlemen.

4 Imagine you had to flip this story around. Imagine
5 that night, September 1st, 2016, Nikia Pitts gets robbed,
6 stabbed, taken to the hospital, gives all the same narrative
7 that she gives, and they show her that lineup and she picked
8 out No. 3, and she picked out No. 3. As a prosecutor, I am
9 thankful that did not happen. Because this is a lesson,
10 hopefully, to law enforcement that they need to be real careful
11 when they are going to a hospital with a victim like this who
12 has suffered traumatic injury like this, been drugged up the
13 way she has at the hospital, do not be relying on what she may
14 be saying at the hospital. Because imagine if she had picked
15 out No. 3. You know, there wouldn't have been any reason at
16 that point in time for law enforcement to ever show this lineup
17 to her again. You know, they probably would have gone and
18 gotten a warrant for Mr. Stokes that night.

19 Imagine how this would have played out in court this
20 week. Now they are going to get up here and I suspect argue to
21 you how everything she said at the hospital is somehow reliable
22 and admissible and credible to attack her identification.
23 Well, if that was the case, it would be the flip side of it.
24 If she had pointed out No. 3, suddenly then the argument -- and
25 I actually would have to agree with them, I'm not sure how I

1 would even fight this, would be that her identifying him is not
2 reliable because of the fact she's got one eye swollen entirely
3 shut. She suffered, as I said, I mean, a horrific-sounding
4 injury. She's drugged up with one of the most powerful drugs
5 now that's on the market. And to top it all off, she doesn't
6 remember any of it. She doesn't he remember even identifying
7 anybody in that lineup. How would that be admissible and
8 relevant? I submit to you, it wouldn't be, just like
9 everything that happened in this case at the hospital isn't.

10 What do we have to determine and look at? We have to
11 look at the credible, relevant evidence that we do have.

12 Let's talk about Nikia and what she told the police
13 while she wasn't under the influence of Fentanyl, while she
14 wasn't still directly dealing with what happened to her that
15 night. All right? You know, she gets out -- and on September
16 6th, this isn't weeks later. This is literally less than five
17 days later that she's out of the hospital. All right? And
18 you've had an opportunity, and you heard the judge talk about
19 that part of your job, just as his job is he's the judge of the
20 law. He instructs you as he has on the law in this case. The
21 12 of you ultimately are the judges also. You are the judges
22 of the facts. And you ultimately have to determine the
23 credibility or the believability of every witness who's
24 testified, every piece of evidence that's come before you.
25 That's no different with Nikia. You've had a chance to judge

1 her credibility, to look at her demeanor on the witness stand,
2 and determine whether she's telling you the truth about what
3 she testified about.

4 One thing that stuck with me was her comment, I will
5 never forget that face. She identified Tyreece Stokes back on
6 September 6th of 2016 in a photograph shown by her sister. She
7 identified Tyreece Stokes in this lineup shown by Detective
8 Weaver. She got up on that witness stand. She pointed at that
9 man and told you that there's no doubt in her mind that that's
10 the man that came up to her that night, put those knives in her
11 face, told her, I don't give an F about your kids, and stuck
12 that knife, that steak knife, in her head and in her chest, no
13 doubt at all.

14 And look, as I said earlier, about the clear detailed
15 description that she gave to you about what had happened. You
16 know, no indications about her having any issues with
17 remembering what happened out there that night. You know, even
18 to the point of where she is thinking clear enough that
19 night -- because you will have the pictures. I mean, this is
20 found. She says, I pulled it -- she describes it, first of
21 all, as a serrated steak knife, that she pulled it out of her
22 chest, dropped it on the ground right where law enforcement
23 found it.

24 And the reason even behind why she was thinking clear
25 enough to do that was because she didn't want to go in and

1 scare her four children inside having Mommy come in with this
2 sticking out of her chest. Yes, supposedly, she's not thinking
3 clear enough to give an accurate description and ultimately
4 identify this defendant?

5 You know, they attack her -- and I suspect Mr. Wehman
6 will bring out because, you know, she gives a statement to law
7 enforcement. She talks to Detective Weaver on September 6th.
8 And he comes back in a couple weeks later and they get a
9 written statement at that time from her. And they attack her
10 because, you know, she didn't put every single detail in those
11 statements. Unfortunately, nobody sat down with Nikia on
12 September 5th and said, hey, you are getting ready to give a
13 statement to law enforcement, these are the little details that
14 the defense attorney is going to attack you on two years later,
15 you need to make sure you write down every single little detail
16 that you can possibly imagine in that statement every time you
17 give it. Because he got up there on cross-examination and
18 asked her about that written statement. He gave her a copy of
19 it, where did you say in there that he crossed the knives in
20 front of your face? And it's not in the written statement.
21 I'm sure that was meant to imply that she just made that up for
22 now.

23 But what did Detective Weaver tell us? What did she
24 tell us, actually, on redirect, but then Detective Weaver
25 corroborated? She told him that on September 6th in the oral

1 statement she gave.

2 Just commonsense, ladies and gentlemen, is what it
3 kind of boils down to. You know, there are no major
4 inconsistencies in those statements. It's all they got left,
5 trying to pick at the nitty details. You didn't say, you know,
6 that he looked right at me. She did put in the statement that
7 he walked right in front of her car.

8 So now we are talking about her identifying Mr. Stokes
9 in State's Exhibit No. 2. So let's talk a little bit about
10 what you kind of need to look at and judging and weighing that
11 identification.

12 What was her opportunity to observe her assailant on
13 the night of September 1st? You heard her testimony when she
14 told law enforcement that he walked right in front of her car
15 initially, right in between. She's parked right out in front
16 of her home. He walks right in front. Porch light is on. You
17 heard testimony from the first officer on the scene that the
18 dome light inside her vehicle was on. Her testimony was there
19 was nothing covering his face. He didn't have a bandana or
20 mask over his face, that she saw him walk by, that he came
21 right back up to her and got right in her face, that she had
22 seen him before multiple times in the neighborhood. He's right
23 up in her face when he assaults her, when she's pleading with
24 him, when he stabs her repeatedly with that knife.

25 And what was her degree of attention? How much

1 attention was she paying? Was it just something kind of
2 passing going on, or was it something she was focused on?
3 Again, you heard her testimony. It struck her odd initially,
4 so she's paying attention. This person that she's seen
5 wandering in the neighborhood before, she never seen him
6 walking -- seen him walking out in the parking lot in the
7 wooded area, but never passing right in front of their doors
8 before. That kind of raised her senses a little bit.

9 You know, obviously, when he comes up to the vehicle,
10 I mean, he's right in her face now. Now she's scared. She's
11 obviously paying attention. This man is now threatening her,
12 in her face. Yet again, porch light on, dome light on inside
13 the car.

14 What was the accuracy of the description she gave?
15 Describes him as tall. Now, remember, she's seated, sitting
16 down looking up. He's a tall, skinny, young, black male.
17 She's seen him in the neighborhood multiple times. He's got
18 small twist or dreads in his hair and a deep voice, the same
19 description of, guess who, Tyreece Stokes.

20 You heard from Detective Weaver. You saw it on the
21 body cam footage when he was arrested, tall, skinny, young
22 black male with short twists or dreads in his hair, with a deep
23 voice, who we now know from the testimony frequented this
24 neighborhood.

25 You go this map back here. We are not talking about

1 some gigantic subdivision here. We are talking about victim's
2 home. He's arrested -- and I'm going to talk about that in a
3 few minutes -- but five blocks away, and gives an address
4 halfway in between when he's arrested.

5 What's the level of certainty when she IDs him? You
6 heard her, again, as I started off, I will never forget that
7 face. No doubt in her mind back on September 6th when she sees
8 this, and even more importantly, when she's seated before him
9 in this courtroom looking at him, no doubt in her mind
10 whatsoever that's the man that robbed her and stabbed her.

11 You heard Detective Weaver testify this morning about
12 how she became emotional and visibly scared when shown this
13 lineup. I submit to you, the same reaction you saw yesterday
14 up on that witness stand.

15 And lastly, the factor to look at is kind of what's
16 the time frame? This isn't a situation where law enforcement
17 is coming to her weeks later, months later, and showing her a
18 lineup and asking her to ID somebody that committed the crime
19 months prior. Four and a half days later, evening of September
20 1st to 1:15 in the afternoon September 6th, four and a half
21 days later.

22 As I said, I had two kind of topics. Let's talk a
23 little bit about the facts and circumstances around the
24 defendant's arrest. Okay? Yet again, she provided you
25 information that she had seen this individual in the

1 neighborhood before. Lo and behold, five days later, September
2 7th, the day after the arrest warrants, you heard Detective
3 Weaver said that they went and checked that afternoon, the 6th
4 and then back driving around on the 7th. And lo and behold,
5 they find him on a porch over here, as I said, five blocks away
6 in the same neighborhood, same description. Right?

7 You heard him testifying they are driving around, he
8 and another detective, in an unmarked Dodge Charger. It's
9 pretty obvious for someone to realize that's a police car. And
10 at that point in time, he kind of goes down the road and calls
11 in some other marked units to come in to go in, because they've
12 got warrants for him at that point in time. By the time they
13 show up, they go up, no Tyreece Stokes on the porch anymore.
14 No Tyreece Stokes inside the house. Tyreece Stokes is found in
15 the woods, over the ditch, through the backyard, over the
16 ditch, out into the woods, hiding, hiding.

17 You know, I suspect Mr. Wehman is going to get up here
18 and say, based on the questions to Investigator or Detective
19 Fleming and Detective Souder, Tyreece Stokes didn't run from
20 you, did he, didn't resist in any way, shape or form? Where is
21 he going to go? He's already run. He's already attempted to
22 hide. You heard the testimony and saw the body cam from
23 Fleming. The officers are coming through the woods. There are
24 officers coming in off of North Maple through the woods.
25 There's officers coming, like Detective Fleming, through the

1 backyard into the woods. He's got nowhere to go at that point
2 in time.

3 But what's important, though, about what's on him?
4 You know, as I said, he's found hiding. They find a steak
5 knife on him, steak knife that I submit to you, obviously,
6 wasn't involved in our crime. But it's a replacement for the
7 steak knife that he snapped off in Nikia Pitts's chest five
8 days earlier. But more importantly, a butcher knife, a butcher
9 knife just like Nikia Pitts described to law enforcement the
10 day before, described to Detective Weaver. Just like when she
11 was shown this, if you recall, I showed it to her because it
12 wasn't in evidence, I showed it to her still in the bag, that
13 she I.D.'d as being consistent with the second knife that her
14 assailant that crossed in front of her face before stabbing her
15 with that steak knife.

16 And why is that significant? Well, ladies and
17 gentlemen, I imagine, just imagine, all right, you went out
18 today, I went out today, found 10,000 citizens in Dorchester
19 County out on the roads. Every citizen that I came across
20 walking anywhere out and about, stopped them and just went to
21 find out what you got on you. Obviously, a large portion of
22 those people would probably have keys in their pockets,
23 probably have change in their pockets, most would probably, if
24 they are men, probably would have a wallet in their pocket, you
25 know, maybe have nail clippers. You find a smaller percentage

1 that may have pocket knives. People carry pocket knives.
2 That's why they are called pocket knives. Then you find
3 probably a smaller percentage that have handguns on them,
4 whether they are allowed to carry them because they have a
5 concealed weapon permit or they are illegally carrying them. I
6 venture to guess we wouldn't find a single butcher knife. If
7 we went out and stopped every citizen walking around in
8 Dorchester County today, that we would not find a single one of
9 them carrying a dirty, rusty butcher knife.

10 Six days after this offense, after our Nikia Pitts
11 described her assailant threatening her with a butcher knife,
12 Tyreece Stokes, five blocks away with a butcher knife in his
13 pocket.

14 I want to address just a couple short, little things,
15 because once I sit down, I am not going to have an opportunity
16 to come back before you. Mr. Wehman is going to have an
17 opportunity to come up here. And once he's done, y'all will go
18 back in the jury room and start deliberating. I want to talk
19 about just a couple of things that I think you are going to
20 hear from Mr. Wehman.

21 The one thing that I found, you know, in 20-some-odd
22 years of doing this, that real life is not like CSI. It's not
23 a television show. It's not a Patricia Cornwell or James
24 Paterson crime novel. We are not always going to have
25 fingerprints. You heard in this case that they processed this

1 vehicle in a bunch of different spots and tried to get
2 fingerprints off of her vehicle. None of them were
3 identifiable. You are not always going to have DNA evidence.

4 You know, in situations like this, you know, there's
5 no specific spot -- let's just talk about the car initially --
6 no specific spot that we know whoever the assailant was
7 actually touched. So I'm not sure where exactly they are
8 supposed to be. This isn't a situation where it's on video,
9 where you know that the person touched, like Mr. Wehman talked
10 about, touching the Bible or touching this right here, where
11 you know the person touched it. We don't have that. She
12 testified she's sitting in her car when he comes up to her with
13 the knives and gets in her face with the knives. Right?

14 The butcher knife, you know, they made a big deal
15 about why there's no DNA, the fact that there's no blood on
16 this butcher knife so, therefore, I guess it's not relevant at
17 all. Well, we've never at any point in time alleged that Nikia
18 was stabbed with this knife. So why would there be her blood
19 on it? There's no reason to look for his fingerprints on it.
20 It's in his pocket.

21 Then the last thing is about this, you know, why, you
22 am sure you are going to hear, why didn't they test this for
23 DNA? It appears to have a red stain on it. Well, guess what,
24 this stain, as the doctor said, went four inches into her head,
25 into her chest where she pulled it out. So whose blood --

1 whose DNA do we think is going to be on this knife? What is
2 that going to tell us if Nikia Pitts's blood is on this knife,
3 her DNA is on this knife? I submit to you absolutely nothing.

4 I will leave you with just kind of one final kind of
5 thought or question. When you are looking at -- you heard the
6 judge charge you earlier about basically there's two
7 indictments. You have armed robbery and attempted murder. On
8 the attempted murder indictment, you've got two possible --
9 three possible verdicts, guilty of attempted murder, guilty of
10 a lesser charge called assault and battery of a high and
11 aggravated nature and then, obviously, if you feel that we
12 haven't proven to you, we haven't firmly convinced you, proven
13 to you beyond a reasonable doubt his guilt, then he would be
14 not guilty.

15 The difference between the attempted murder and the
16 assault and battery of a high and aggravated nature is whether
17 we proved that he intended to kill her that night. Okay? So I
18 want to leave you, as you get back in your jury room and start
19 thinking about the difference between those two charges, the
20 simple question to ask yourself, why did he stab her that
21 night? Why did Tyreece Stokes stab Nikia Pitts? He had her
22 purse already. Her testimony was she handed him her purse. He
23 snatched the cell phone that we never find again anyway. So
24 it's not like there's argument that that got used for anything.
25 Well, she tells you that she looks up at him. If her assailant

1 is some stranger, some outsider, some person she had never seen
2 before, there's no reason for him to stab her. There's no
3 reason, I submit, for him to try to kill her.

4 I submit he realizes at that point in time when she is
5 pleading with him, realizes that she's going to be able to
6 identify him. She's looking up into my face. He thought he
7 had eliminated that possibility. And I will tell you,
8 listening to some of Dr. Norcross's testimony, it's amazing
9 that he wasn't successful.

10 That young lady back on September 1st, that night,
11 proved to be a survivor. She proved him wrong, that he wasn't
12 able to eliminate her from being able to come in and identify
13 him. And I ask you, ladies and gentlemen, on behalf of the
14 citizens of Dorchester County, to prove her right about that,
15 that he wasn't able to silence her.

16 MR. WEHMAN: Objection, your Honor. Improper burden
17 shifting.

18 THE COURT: I sustain the objection.

19 MR. SORENSON: I ask you, ladies and gentlemen, to go
20 back into your jury room, hold him accountable. Hold him
21 responsible. I submit to you for the actions --

22 MR. WEHMAN: Objection. Improper burden shifting.

23 MR. SORENSON: How is --

24 THE COURT: Objection is overruled.

25 MR. SORENSON: Thank you. And find him guilty. Find

1 him guilty of armed robbery. Find him guilty of trying to kill
2 Nikia on September 1st of 2016. Thank you.

3 THE COURT: Mr. Wehman.

4 MR. WEHMAN: Thank you, Your Honor. May it please the
5 Court.

6 Good afternoon, ladies and gentlemen. Now you've
7 heard all the witnesses in this case. You've seen all the
8 evidence that's been presented. I think one thing is clear,
9 that the main issue in this case is identity. The main issue
10 in this case is whether or not the State can prove beyond each
11 and every reasonable doubt the identity of the person that
12 committed this crime on September 1st, 2016. Because the State
13 has proven one thing to you. They've proven through
14 photographs, they've proven through doctors, they have CT
15 scans, they've proven that this happened. You see the evidence
16 that they have that this event occurred. They've proven that.

17 That's not what your job is today. That's not what
18 you've been tasked to do. The judge has told you what your job
19 is here today. And I would like to read, once again, what
20 you've been told from his jury instructions. Your job here
21 today is to determine the accuracy of the identification made
22 in this case by Ms. Pitts. She's identified Tyreece Stokes.
23 Your job is to challenge and to look with scrutiny at that
24 identification. He's told you that your job is to look and see
25 whether or not a witness has been influenced by circumstances

1 at the time of her identification.

2 The reason that we have this scrutiny on
3 identifications is because our mind is susceptible to
4 alteration and contamination. Our mind over time changes.
5 It's alteration. Our memories change over time. Also, our
6 mind is susceptible to outside forces that come in and are
7 molded and made a part of our memory.

8 I'll give you an example of that. As a child, I was a
9 big baseball fan. My parents took me to Atlanta to a Braves
10 game. For about 10 years of my life, I had the distinct memory
11 of my father leaning over the wall at the stadium and getting a
12 ball signed by Marion Rivera, who is a closer for the New York
13 Yankees. I swore that I could tell from my memory that that
14 happened, up until I saw a photograph at my parents' house of
15 that exact moment, of him leaning over and getting that ball
16 signed. I was convinced that I had remembered that. My memory
17 had been contaminated. This picture that I saw became a part
18 of my memory.

19 That's what this case is about. You looking at the
20 identification made and looking at it critically to see if that
21 identification has been contaminated or was a subject of an
22 altered memory.

23 Now, the State has talked about the identification
24 made by Ms. Pitts on September 1st. They've gone through some
25 of that. And they spent a long time talking about why it

1 shouldn't matter to you and different circumstances which I
2 would be arguing different things. They want to forget that
3 that ever happened. But we can't do that. We have to look at
4 each and every piece of evidence that was presented.

5 And what's clear is that on September 1st, Nikia
6 Pitts, when interacting with law enforcement, not having any of
7 this Fentanyl that the State brings up, was asked, who did this
8 to you? And her response was, I don't know. Lieutenant
9 Gebhardt asked her that question, he told you on the witness
10 stand, I don't know.

11 Now, Dr. Norcross talked to you about Fentanyl. He
12 said that it is a form of painkiller. He didn't, however, say
13 that it would change your memory. He did say you might not
14 remember after the fact. And the State brought that up this is
15 why she can't remember being in the hospital. But he didn't
16 say that when under Fentanyl, you could not remember what had
17 just happened or couldn't pull those things from your memory.
18 He also testified that at the hospital, Ms. Pitts was subject
19 to a number of tests. She was given motor skills test. Can
20 you open your eyes? Can you give me basic information? She
21 passed all those tests. She was aware of what was going on at
22 that time.

23 Now, the State must prove beyond each and every
24 reasonable doubt that Mr. Stokes is the person who committed
25 this crime. They must convince you beyond each and every

1 reasonable doubt the reliability of their eyewitness
2 identification. Does it give you a doubt that Ms. Pitts said,
3 I don't know, when confronted by law enforcement? Does it give
4 you a doubt when she said, the father of my child, Carl
5 Washington? This isn't a name that should come to her mind if
6 she knew all along, if she says, I would never forget that
7 face. She hadn't been given a mind-altering drug. If she
8 would never forget that face, why would she say Carl
9 Washington?

10 Does it give you a doubt that she saw a photographic
11 lineup that law enforcement thought that she would be able
12 to -- was in a position to accurately pick from, does it give
13 you a doubt that she picked No. 1 or 2? Does it give you a
14 doubt that she described a gun and a knife?

15 If you have one of those doubts, you must scrutinize
16 this identification. I submit to you that there's three, four
17 or five of them there.

18 Moving forward, we look at the subsequent statements
19 that Ms. Pitts made. On September 6th, when meeting with
20 Detective Weaver, we hear that the subject walked passed her
21 passenger side door. And then he came up later and the attack
22 happened. However, on September 18th, the subject no longer
23 walks past her passenger side door. Now the subject is walking
24 right in front of her windshield. They lock eyes. And she
25 notes that that's odd. And the solicitor got up and said, she

1 noticed this was odd, that's how you know that she was paying
2 attention.

3 But she said two different things on two different
4 times. One time he comes up to the passenger side door and
5 that's it. Second time, he walks right in front of her car,
6 locks eyes with her, and that's how she's able to identify him,
7 because she locks eyes with him. Where is that on September
8 6th? This is distinct moment that would stick with somebody.

9 We also find out on September 18th that she says when
10 this event happened, she thinks she was stabbed because she
11 locked eyes with him and that's why he did it. We don't hear
12 that before, that the reason that he stabbed me was because I
13 locked eyes with him and he knew that I would be able to
14 identify him.

15 Also on September 18th we find that she says, as he's
16 walking away, leaving the scene, he turns, locks eyes with her
17 again for the third time. Where does this come from? Is this
18 the subject of remembering, or is this a topic of
19 misremembering, of contamination, of altering one's memory.

20 Our memories don't get better over time. Where are
21 these memories coming from? That's what you need to ask
22 yourself in the jury room.

23 Let's talk about some of the evidence that the State
24 has or claims to have. A lot has been talked about about these
25 knives found on Tyreece Stokes. And what's clear is that

1 there's absolutely no link between these knives, forensically,
2 between these knives and the incident.

3 We heard from Detective Rollins that this knife was
4 tested for any type of blood. And the reason they tested it
5 for blood is not because there was any type of allegation this
6 knife was used, because they knew what knife was used. They
7 tested it for blood because they knew that there was a high
8 possibility of blood splatter. They had it tested because at
9 one point Nikia Pitts mentions, these knives are both out
10 there. They also had it tested, more than likely, because at
11 one time, Nikia Pitts says that she was stabbed in the chest
12 and she was pistol whipped. If you are stabbed in the chest
13 and pistol whipped, two different knives are being used. It
14 wasn't this hand. It was this hand, the hand that would have
15 held the pistol. That's why they had it tested. But none of
16 that comes back. None of that is linked to the scene.

17 There's no physical evidence. In fact, I asked
18 Detective Weaver at the end of the trial, the last question I
19 asked him, took a couple of times to get an answer on, is there
20 any physical evidence that links Tyreece Stokes to the scene on
21 September 1st, 2016? The answer to that question is no.

22 They want to talk about Mr. Stokes's apprehension.
23 And, yes, he didn't run. No, he didn't resist. Didn't use any
24 of these knives. This is a case about missed opportunities as
25 well. What did law enforcement do with the leads that they

1 had? And what leads did they just blatantly not look for?

2 DNA, the solicitor points out, this isn't CSI and that
3 DNA isn't everywhere. Why wasn't this tested for DNA, not just
4 for the blood on there? The State points out, it's clearly the
5 victim's blood. There can be other DNA on a knife. Do we know
6 whose DNA is on that knife? We can suspect whose DNA is on
7 that knife. Your job here is not for suspicion and to suspect.
8 Your job here is for proof. The State in the end has to prove
9 to you that Mr. Stokes was at that house on September 1st.
10 What have they given you that proves it?

11 They've given you inconsistent statements. They've
12 given you misidentification. Can they place a physical piece
13 of evidence of his there or anything from there on him? Does
14 he have cell phones that were taken? Does he have a purse? Is
15 there anything that you can tie him to that scene with?

16 The SIM card, Detective Weaver testified that they
17 were looking for the cell phones. You can track cell phones.
18 He testified that a SIM card associated with Ms. Pitts's phones
19 were being used on October 1st. I said, what happened with
20 that? Nothing came from it.

21 DNA testing, we asked Detective Rollins about the DNA
22 from this knife. Well, that would have been up to Detective
23 Weaver. We asked Detective Rollins about the DNA found on the
24 vehicle. It's important. The solicitor says, we do not know
25 what was touched on the car. But we do, if you want to believe

1 one of the statements of Ms. Pitts where she says the car was
2 opened, I tried to lock the door, but he opened the car door.
3 That was swabbed for DNA. I asked Detective Rollins, where did
4 that go? That would have been up to Detective Weaver to send
5 that off for testing.

6 What did Detective Weaver say? That's not my job,
7 that's up to the evidence guy.

8 Send those swabs to SLED. The person whose DNA comes
9 back from those swabs was on that scene.

10 Let's talk about the photographic lineup. The
11 identification procedure, the State doesn't want you to talk
12 about the 1st of September. But they do want you to talk about
13 the 6th of September. That's good.

14 Talked about contamination. Before she was shown that
15 photographic lineup on the 6th of September, what did she have
16 in her hand? She had a picture of Tyreece Stokes. She had
17 spoken to her sister and had found out that this is a bad guy
18 from the area. She told Detective Weaver, I have this picture.
19 Detective Weaver said, I don't want to see that, but I still
20 want to show you this photographic lineup. She hands over the
21 picture of Tyreece Stokes, and guess who she picks? Tyreece
22 Stokes. Talk about contamination.

23 Do you have a doubt about that identification? Are
24 you concerned about the possibility that her identification
25 might have been affected by that?

1 It's clear that Ms. Pitts was a victim. We are not
2 here saying that she's not. We are here for Mr. Stokes. And
3 we are here to hold the State to their burden, to prove that he
4 was there. And when you go back to your jury room, your job is
5 going to be to look at all of this evidence to see whether or
6 not they can even prove that he's there.

7 Tell the State, when you go back, tell the State, send
8 this to SLED. Tell them to send their DNA swabs to SLED.
9 Bring you back something that you can definitively say, yes,
10 he's here. Because that identification that you have, that
11 identification with a picture of my client that's handed over
12 right before she sees a photographic lineup, where before then
13 all we have is, I don't know who it is, it's the father of my
14 child, that doesn't prove anything.

15 I ask when you go back to your jury room, you bring
16 back a verdict of not guilty. Thank you.

17 THE COURT: Ladies and gentlemen, you have heard
18 closing arguments now. It's time for you to retire to the jury
19 room to deliberate. We have selected 14 jurors from the first
20 12 jurors selected. If you cannot continue with deliberations
21 for any reason whatsoever, let me know now. Because we have
22 two alternates, two extra? Everyone is good to go out of the
23 first 12? That means when the first 12 goes back to
24 deliberate, the alternates, last two, will remain here.

25 Do you all have anything in the jury room? Nothing.

1 Okay. Well, y'all will stay with us.

2 Ladies and gentlemen, if you will go to the jury room
3 and wait for the exhibits, copy of the jury charge and verdict
4 form, that will be your signal to start.

5 (Whereupon, the jury leaves open court at 3:25 p.m.)

6 THE COURT: So, ladies and gentlemen, thank you very
7 much for your participation in the trial. We picked 14. We
8 have to have 12. Sometimes something might happen to the first
9 12. In that case, we use the alternate, but we cannot use you.
10 Thank you very much. We are not going to do any other jury
11 trials this week. So this will bring your jury duty to a
12 conclusion. Anything you need to tell them, Madam Clerk?

13 THE CLERK: Only if you need some excuses for work,
14 you can get those downstairs in the clerk's office.

15 THE COURT: Do you need anything for work?

16 ALTERNATE JUROR: No, that's it.

17 THE COURT: You are good to go then. Thank you all
18 very much.

19 (Whereupon the alternates are excused.)

20 THE COURT: And if y'all will confer on the exhibits.

21 (Whereupon, the jury deliberates at 3:27 p.m.)

22 (Whereupon, the defendant is present.)

23 THE COURT: "Juror No. 64 is suffering a great deal of
24 anxiety and has requested an alternate replace her. Is this
25 possible?" That's question No. 1.

1 "The jury would like to know how the victim viewed the
2 police lineup when in the hospital. Did she view it on a cell
3 phone, laptop, or print it black-and-white paper?"

4 What says the State?

5 MR. SORENSON: As to question No. 2, I think they
6 heard all of the evidence. I'm not sure that question was
7 specifically addressed during any of the testimony. Only thing
8 I recalled was Detective Weaver indicating that he e-mailed it
9 to the officer. But beyond that, I don't think that -- I'm not
10 sure the answer to that question is in evidence. Maybe the
11 answer is on the cell phone. That's not in evidence.

12 As to the other question, I am not quite sure what to
13 do. I will leave that up to the Court what we need to do.

14 THE COURT: What says the defense?

15 MR. WEHMAN: As to question No. 2, I will agree with
16 the State, I don't think that was in evidence.

17 As to question one, alternates were released. We
18 watched them leave the courthouse. I believe interns from our
19 office have spoken to them as they were leaving. So I think
20 they are gone.

21 THE COURT: All right. Bring the jury.

22 (Whereupon, the jury returns to open court at 4:14
23 p.m.)

24 THE COURT: Ladies and gentlemen, you have asked two
25 questions. One, "Juror No. 64 is suffering a great deal of

1 anxiety and has requested an alternate replace her, is this
2 possible?"

3 The answer is no, it's not possible. The alternates
4 have been released from jury duty. As I posed the question to
5 you all before releasing the alternate, I asked -- inquired if
6 there's any of you -- if there were any or are any of you who
7 could not continue, and after releasing the -- after no
8 indication, the alternates were released.

9 As to the other question, "The jury would like to know
10 how the victim viewed the police lineup in the hospital. Did
11 she view it on a cell phone, laptop or print it on
12 black-and-white paper."

13 The very first line of the jury charges says, you have
14 heard the testimony, received all of the evidence. So it's not
15 the role of the Court to discuss with the jury the evidence.
16 Your role is to listen to the evidence and to decide the case
17 based on the evidence that's been presented during the course
18 of the trial. But we can't reopen things and put up more
19 witnesses to answer more questions. You've heard all of the
20 evidence. You've received all of the evidence. And the case
21 is now in your hands based on -- another portion of the charge
22 indicates to you that you must decide things based on evidence
23 that you recall it to be or remember it to be.

24 Specifically, it's mentioned in relation to comments
25 of counsel, they may have a recollection of the evidence, but

1 you should rely on your own understanding of the evidence.

2 And with that, I ask that you resume deliberations.

3 (Whereupon, the jury leaves open court at 4:17 p.m.)

4 THE COURT: Any additions, exceptions to the Court's
5 instruction?

6 MR. SORENSON: None from the State, Your Honor.

7 MR. WEHMAN: No, Your Honor.

8 THE COURT: Regarding this question about how does she
9 view the cell phone testimony, during the *Jackson v. Denno*
10 hearing, the police officer said he showed it to her on the
11 cell phone. That same officer trailed me coming in on Highway
12 78 this morning for miles and miles. But she was released
13 without anyone asking her about that in front of -- to talk
14 about it with this jury. So the record is as the record is.
15 All right. Good deal.

16 (Court's Exh. 1, Jury note indicating Juror 64 is
17 suffering anxiety and wants to be replaced, was marked for
18 identification.)

19 (Court's Exh. 2, Jury note asking about format of
20 lineup, was marked for identification.)

21 THE COURT: I understand that there is a verdict. Are
22 you ready to receive the jury?

23 MR. SORENSON: The State is, Your Honor.

24 MR. WEHMAN: Yes, Your Honor.

25 THE COURT: All right. Bring them on.

1 (Whereupon, the jury returns to open court at 8:32
2 p.m.)

3 THE COURT: Madam Forelady, have you reached a
4 verdict?

5 THE FOREPERSON: Yes, sir, we have.

6 THE COURT: Is it unanimous?

7 THE FOREPERSON: Yes, sir, it is.

8 THE COURT: If you will pass it up. You may be
9 seated.

10 If the defendant will rise. And, Madam Clerk, you may
11 publish it.

12 THE CLERK: In the matter of State of South Carolina
13 v. Tyreece Raheam Stokes, Case Nos. 2016A-18-20500787, and
14 2016A-18-20500788, we the jury unanimously find the defendant
15 Tyreece Raheam Stokes guilty of armed robbery.

16 We the jury unanimously find the defendant Tyreece
17 Raheam Stokes guilty of assault and battery of a high and
18 aggravated nature, dated July 25th, 2018, signed by foreperson,
19 Mary Cuomo.

20 THE COURT: All right. Ladies and gentlemen, if that
21 is the verdict of each and every juror, please let it be known
22 by raising your right hands. All right. Thank you very much.

23 Any additional polling required or requested?

24 MR. WEHMAN: Your Honor, I would request
25 individualized polling of the jury.

1 THE COURT: All right. If you will poll the jurors
2 individually.

3 THE CLERK: As I call your juror name and number, if
4 you will stand.

5 Juror No. 38, Andrew Darden, was this your verdict in
6 the jury room?

7 JUROR 38: Yes, ma'am.

8 THE CLERK: Is this still your verdict?

9 JUROR 38: Yes, ma'am.

10 THE CLERK: Thank you.

11 No. 32, Patrick Costello. Was this your verdict in
12 the jury room?

13 JUROR 32: Yes, ma'am.

14 THE CLERK: Is this still your verdict?

15 JUROR 32: Yes, ma'am.

16 THE CLERK: No. 35, Mary Cuomo, was this your verdict
17 in the jury room?

18 JUROR 35: Yes, ma'am.

19 THE CLERK: Is this still your verdict?

20 JUROR 35: Yes, ma'am.

21 THE CLERK: No. 179, Jessica Smith, was this your
22 verdict in the jury room?

23 JUROR 179: Yes, ma'am.

24 THE CLERK: Is this still your verdict?

25 JUROR 179: Yes, ma'am.

1 THE CLERK: No. 141, Jessica Pinner. Was this your
2 verdict in the jury room?

3 JUROR 141: Yes.

4 THE CLERK: Is this still your verdict?

5 JUROR 141: Yes.

6 THE CLERK: 192, Miguel Troncoso, was this your
7 verdict in the jury room?

8 JUROR 192: Yes.

9 THE CLERK: Is this still your verdict?

10 JUROR 192: Yes.

11 THE CLERK: 64, Nancy Ha, was this your verdict in the
12 jury room?

13 JUROR 64: Yes, ma'am.

14 THE CLERK: Is this still your verdict?

15 JUROR 64: Yes, ma'am.

16 THE CLERK: 36, Christopher Daniels, was this your
17 verdict in the jury room?

18 JUROR 36: Yes, ma'am.

19 THE CLERK: Is this still your verdict?

20 JUROR 36: Yes, ma'am.

21 THE CLERK: 134, Belinda Paloblanco-Elmore, was this
22 your verdict in the jury room?

23 JUROR 134: Yes, ma'am.

24 THE CLERK: Is this still your verdict?

25 JUROR 134: Yes.

1 THE CLERK: 150, Cherrie Reaves, was this your verdict
2 in the jury room?

3 JUROR 150: Yes, ma'am.

4 THE CLERK: Is this still your verdict?

5 JUROR 150: Yes.

6 THE CLERK: 140, Jennifer Piercy, was this your
7 verdict in the jury room?

8 JUROR 140: Yes, ma'am.

9 THE CLERK: Is this still your verdict?

10 JUROR 140: Yes.

11 THE CLERK: Thank you. And No. 161, Peter Savarese,
12 was this your verdict in the jury room?

13 JUROR 161: Yes, ma'am.

14 THE CLERK: Is this still your verdict?

15 JUROR 161: Yes, ma'am.

16 THE CLERK: Thank you.

17 THE COURT: The verdict is the unanimous verdict of
18 the jury. And the Court so finds.

19 Any post-trial motions?

20 MS. WILLIAMS: Judge, at this point, we would just
21 renew all prior motions and the directed verdict motion.

22 THE COURT: All right. And those motions are denied
23 based on the same rulings made by the Court during the course
24 of the trial.

25 Ladies and gentlemen, I want to thank you. I can tell

1 that -- we all can tell that you've worked real hard, took this
2 matter very seriously. And you have performed your civic duty
3 in serving and hearing this case and deciding this case. I'm
4 sure when you came in Monday, you did not know what to expect
5 and maybe the task was more difficult for some of you than you
6 anticipated. But you've come to this point and you have
7 decided this case. I want to thank you on behalf of the State
8 and the defense.

9 Where a jury finds a person guilty, then it becomes my
10 duty to impose a sentence. And I always invite the jury to
11 remain for that part of the case. We will see how far we go
12 with that today.

13 Is the State ready to proceed with sentencing?

14 MR. SORENSON: Give me about 30 seconds and I believe
15 we will be, yes, sir.

16 THE COURT: All right. Defense ready?

17 MS. WILLIAMS: We would also request a short break,
18 Judge.

19 THE COURT: All right. We will take a short break.
20 But in the interim, I will tell you that with the offense of
21 attempted murder, the legislature passed a law, I forget how
22 many years ago that was now, five, six years ago --

23 MR. SORENSON: The attempted murder statute, 2010,
24 Your Honor.

25 THE COURT: 2010, okay. The law used to be in South

1 Carolina you had simple assault and then jump -- which was up
2 to 30 days, and then it went from there to assault and battery
3 high and aggravated nature up to 10 years, and then assault
4 with intent to kill, 20 years, and then murder. And attempted
5 murder did not exist as a crime. In 2010, the legislature
6 passed a statute that created this new offense in this state of
7 attempted murder, which carries up to 30 years in prison.

8 Assault and battery of a high and aggravated nature,
9 which used to carry up to 10, now carries up to 20. And they
10 got rid of the assault -- or assault and battery with intent to
11 kill. And it's caused quite a bit of confusion, not only for
12 juries, but for courts and for the legislature as well, because
13 the definition of attempted murder, by definition, the language
14 was put in there requiring a specific intent to kill. And that
15 didn't exist in the law before. So it's caused -- there have
16 been a number of cases addressing that quite controversial --
17 including a case out of Charleston where the court has really
18 been grappling with the meaning of this new law and believing
19 that there's a problem in which the law is written. And,
20 therefore, causes juries problems in deciding whether a person
21 is guilty of attempted murder versus assault and battery of a
22 high and aggravated nature.

23 Of course, any time you have an issue of
24 identification on any case, it's always difficult, because, you
25 know, people are accustomed to forensic evidence and all of

1 that. So when the case is based on identification and other
2 evidence, and not based on forensic evidence in part, it can be
3 anticipated that the jury will have a difficult time in
4 reaching a verdict. But that's the way -- it's supposed to be
5 difficult. It's not supposed to be easy. But once the jury
6 reaches a unanimous verdict and speak as one, then that is the
7 verdict of the jury. That is the truth of the case. And
8 that's what we have asked you to do, find guilt based on the
9 evidence.

10 I support your verdict 100 percent based on the law
11 and based on the evidence. You've come to a verdict that's
12 fully supported by the evidence. And though it may have been
13 difficult for you as a jury, and perhaps more difficult for
14 some jurors than others in dealing with the issues that we have
15 to deal with, nevertheless, you performed the task that you
16 didn't volunteer for, which you responded as you were supposed
17 to. I want to thank you for that.

18 Yes, sir.

19 MR. SORENSON: We are ready whenever the defense is,
20 Your Honor.

21 THE COURT: All right. If the defendant will come
22 forward.

23 MR. SORENSON: May I approach, Your Honor?

24 THE COURT: Yes. Mr. Sorenson

25 MR. SORENSON: May it please the Court.

1 THE COURT: Yes, sir.

2 MR. SORENSON: I want to start off by just kind of
3 addressing -- they got a question.

4 THE COURT: Ma'am, you can leave and go back. Anyone
5 else?

6 THE COURT: Just have her sit out there. Yes, sir.

7 MR. SORENSON: Thank you, Your Honor. May it please
8 the Court.

9 As to Mr. Stokes's prior criminal history, he has,
10 from back in 2014, Your Honor, he was convicted of one count of
11 a harassment in the second degree and an assault on a police
12 officer while resisting arrest charge. He received a five-year
13 sentence suspended to four years active on that. Your Honor
14 probably briefly heard that referenced in some of the pretrial
15 motions where he actually had choked an officer unconscious.
16 And, you know, but for a citizen being there, obviously, that
17 could have been a whole lot worse. That would be his only
18 prior record, would be that incident. He ended up serving
19 almost three years' incarceration as a result of that from his
20 arrest.

21 THE COURT: From 2014?

22 MR. SORENSON: '14. He was arrested back -- and that
23 was one of the incidents you heard reference to that we had
24 attempted to get into the pretrial matters, where he was found
25 to have a knife on him, where he had actually then assaulted a

1 police officer who had responded to that incident, was taken
2 into custody. And had gotten out of prison about three months
3 prior to this incident. Yeah.

4 We would like to just point out, obviously, so the
5 jury gets to hear kind of the full thing that they didn't --
6 things they didn't get to hear during the trial, that obviously
7 for various legal reasons were inadmissible.

8 But we did have -- law enforcement had had a fair
9 amount of contact with Mr. Stokes back in the end of 2012
10 through most of 2013. We had ultimately found six incident
11 reports that had been filed where they had had some interaction
12 with him, all in that same Robynwyn neighborhood. Every one of
13 those incidents he had a steak knife on him. So that was
14 obviously something that I think in talking to law enforcement
15 officers, is fairly unique. And lo and behold, part of the
16 reason why when this happened, why Detective Weaver immediately
17 thought of Tyreece Stokes as being the possible suspect,
18 because of where and because of all that history as far as the
19 steak knives go. But that would be as far as prior record
20 surgeons.

21 Nikia would like to address the Court.

22 THE COURT: Absolutely.

23 MR. SORENSON: She's accompanied by her mother and
24 father that are coming up with her.

25 THE COURT: Yes, ma'am.

1 MS. PITTS: I just wanted to say that these last two
2 years, what he did to me that night, has hurt me and my kids.
3 I have to go through therapy. My daughter has to go through
4 therapy because she's saw me in that state. And just knowing
5 that someone left me out there to die in my car, knowing that I
6 had kids and me having to relive this every day, I haven't been
7 able to be comfortable with being out past a certain time at
8 night without having someone near me because of this. And
9 just, I can't -- my health and everything, I am not being able
10 to see sometimes at work. I'm always afraid of him. And I
11 always remember that night and how everything happened.

12 And just, I would ask for the maximum of anything, not
13 letting him out, because he has no heart at all, at all when it
14 comes to -- he almost took me away from my kids. So I ask that
15 you please give him the maximum of anything you can be able to
16 do.

17 THE COURT: I recall the solicitor's closing argument.
18 Do you have three children or four?

19 MS. PITTS: Four.

20 THE COURT: Thank you. Ma'am, their ages are?

21 MS. PITTS: My daughter is about to turn 12 -- 13 in
22 [REDACTED]. My son is 10. I have a 9-year-old and a
23 four-year-old.

24 THE COURT: Thank you. You've stayed strong. You've
25 done well.

1 MS. PITTS: Thank you. Thank you.

2 MR. SORENSON: I guess just in closing, Your Honor, I
3 mean, truly this is a horrific, senseless act. And I would
4 echo Nikia's sentiments. I do think it's one that deserves a
5 very substantial, if not the maximum sentence that Your Honor
6 can impose.

7 THE COURT: All right. Yes, sir, counselor.

8 MR. WEHMAN: May it please the Court. Mr. Stokes is
9 25 years old. He has a GED, no children. He's not married.
10 He hasn't had any family support or any family in his life
11 since he was about 17 years old. He's been fending for
12 himself, basically, on the street, had no family contact until
13 just a month or two ago when his father for the first time
14 reached out to him at the detention center, like I said, since
15 he was 17 or 16 years or 17 or 18 years old.

16 He's been incarcerated in Dorchester County since
17 September 7th, 2016, the date of his arrest.

18 THE COURT: Do you know how many days that is?

19 THE CLERK: 687.

20 THE COURT: 687 days.

21 MR. WEHMAN: Since that time, he and I have been
22 meeting quite regularly preparing for trial. I don't think
23 this was a frivolous trial. We had very real issues that the
24 Court heard and ruled on. I understand the verdict of the
25 jury. We would ask the Court to give any consideration that

1 you can when it comes to sentencing.

2 And I don't believe my client wishes to make any
3 statement to the Court at this time.

4 THE COURT: Is that correct, Mr. Stokes?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You do not wish to say anything?

7 THE DEFENDANT: Not at all.

8 THE COURT: Sir?

9 THE DEFENDANT: Not at all.

10 THE COURT: All right. Well, the maximum penalty for
11 ABHAN is 20 years, isn't it?

12 MR. SORENSON: Yes, sir.

13 THE COURT: And the minimum sentence for armed robbery
14 is 10; the maximum is 30?

15 MR. SORENSON: Yes, sir.

16 THE COURT: Armed robbery is classified as being a
17 most serious offense. If you commit another most serious
18 offense at any time during your life, you are subject to a
19 sentence of life without the possibility of parole.

20 The ABHAN is classified as a serious offense. And if
21 you commit three serious offenses, you can be sentenced to life
22 without the possibility of parole.

23 As I stated to the jury earlier in my comments, with
24 the statute as it is for attempted murder, it is creating quite
25 a bit of difficulty for juries and for courts and analyzing

1 what are the elements and what does it mean to attempt to kill
2 someone? Of course, you can always fall back on your
3 commonsense. A person who stabs someone in the chest and stabs
4 someone in the head, in the face, a jury could easily conclude
5 that that person attempted to kill the person whom they
6 stabbed, not just once, but twice.

7 And, obviously, if the victim dies, then we wouldn't
8 be dealing with issues of whether it's attempted murder or
9 ABHAN. It would clearly be murder.

10 I certainly understand all the other issues
11 surrounding the case and involving identification or
12 misidentification. Though, in having listened to the evidence
13 and the testimony of the victim outside of the presence of the
14 jury as well as inside, in the presence of the jury, the
15 evidence clearly showed that the victim was not in a position
16 to look at any lineup to attempt any kind of identification
17 while being treated with -- after a knife had just come out of
18 her brain and having been stabbed in the chest and gone into
19 the shock that she obviously was in.

20 So I mention those things only to let you know that I
21 considered the crime -- crimes that you committed to be the
22 most serious that exist in our laws. And you ask the question
23 why, what kind of mercy, what kind of leniency, what kind of
24 person we are dealing with. And when you are dealing with
25 people who have just no regard for the life of another, who

1 just want to kill someone, have no respect for life and just
2 murder, attempt to murder, attempt to kill someone, who would
3 just do the kind of thing that you did to this lady, Ms. Pitts,
4 that's a sad commentary on you and your life.

5 I don't know where it went astray to the point that
6 you have no regard for human life and you are willing to treat
7 it as trivial and to just do what you did on that night. But
8 you must be separated from all the other people in society who
9 have a right to move around without encountering people like
10 you, as Ms. Pitts did on the night that she did. So there's
11 nothing that I can do to help you, assist you. And she's
12 entitled to the full force of the law as far as expecting a
13 sentence from the Court. So you've had the benefit of
14 excellent lawyers. I really am most impressed by your defense
15 and by the prosecution. It's a well-tried case and before a
16 jury that studied it real hard. And we've ended where we
17 needed to end on this case based on what we were dealing with.

18 On the assault and battery of a high and aggravated
19 nature, the sentence is 20 years with credit for time served,
20 which is 687 days.

21 On armed robbery, the sentence is 25 years with credit
22 for 687 days. And the sentences will run concurrent. Good
23 luck to you.

24 MR. WEHMAN: Thank you, Your Honor.

25 THE COURT: Ladies and gentlemen, y'all didn't

1 volunteer for it, but you responded. It's hard work, might
2 have been harder for someone than for others. But in addition
3 to the part of what we have to deal with before your coming in
4 is whether or not you should have been informed about the six
5 instances during 2014 when he had these steak knives and had
6 encounters with the police with them, with these knives,
7 including the one where he choked the officer, not with the
8 knife, but he had the knife at the time.

9 So it's -- you can't -- if someone has a propensity
10 crime, if he has bad character or a propensity to commit
11 crimes, that's not necessarily an indication that he committed
12 this particular crime. So in order for you not to learn
13 anything about that, I did not allow that portion in.

14 Another heavy dispute was about whether or not you
15 should have learned about the -- him being arrested with two
16 more knives, the butcher knife and another steak knife. And
17 defense furiously argued that that shouldn't come in since
18 those were not weapons that were used, but the weapons were
19 consistent, or at least the butcher knife was consistent, and
20 he had two knives. And I allowed those in. We did a lot of
21 back-and-forth on that issue. And all of that is, you know, in
22 my view, relevant and important evidence.

23 And I'm impressed by the fact that y'all could --
24 would take the time that you took to study this case and render
25 the verdict that you did. And I commend y'all for that. And

1 that's about it.

2 Now, there are no more cases this week. We got to be
3 back here at 9:30 tomorrow on other things, but you are all
4 done. I want to thank you very much. Anything further for the
5 jurors?

6 THE CLERK: They have excuses downstairs in the
7 clerk's office unless Ms. Susie has them upstairs. Okay.

8 THE COURT: Very good.

9 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina at
Large, do hereby certify that the foregoing transcript is a
true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in the
events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

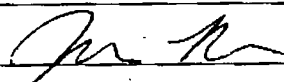
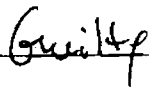
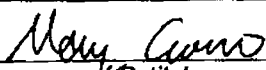
WITNESSES

Michael Weaver

Summerville Police Department
16-079486**ARREST WARRANT NUMBER**

2016A1820500788

Arrested: September 8, 2016

ACTION OF GRAND JURYForeperson of Grand Jury
Date: March 9, 2017**VERDICT****TRUE BILL**
Foreperson of Petit Jury
Date: 7/25/2016

DOCKET NO. 2016GS18-1736

The State of South Carolina
County of DORCHESTER**COURT OF GENERAL SESSIONS**

March 13, 2017 TERM

THE STATE
vs.

Tyreece Raheam Stokes

Indictment for

Armed Robbery

SC Code: 16-11-330(A)

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2017 MAR -9 PM 3:54
CLERK OF COURT
SOUTH CAROLINA
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF DORCHESTER

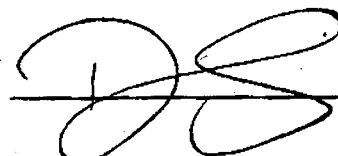
2016GS18-1736

As a Court of General Sessions, convened on March 9, 2017 the Grand Jurors of DORCHESTER County present upon their oath:

ARMED ROBBERY

That on or about September 1, 2016, in Dorchester County, the defendant, Tyreece Raheam Stokes did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Nikia Pitts, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a Knife. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a horizontal line extending to the right.

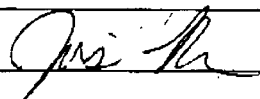
Donald N. Sorenson, Solicitor

WITNESSES

Michael Weaver

Summerville Police Department
16-079486**ARREST WARRANT NUMBER**
2016A1820500787

Arrested: September 8, 2016

ACTION OF GRAND JURYForeperson of Grand Jury
Date: March 9, 2017**VERDICT**Guilty of assault &
battery of a high & aggravated
nature **WE BILL**Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-1735

The State of South Carolina
County of DORCHESTER**COURT OF GENERAL SESSIONS**

March 13, 2017 TERM

THE STATE
vs.

Tyreece Raheam Stokes

Indictment for

Attempted Murder

SC Code: 16-3-29

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2017 MAR -9 PM 3:34
CLERK OF COURT
DORCHESTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2016GS18-1735

As a Court of General Sessions, convened on March 9, 2017 the Grand Jurors of DORCHESTER County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Tyreece Raheam Stokes, did in Dorchester County on or about September 1, 2016 with the intent to kill, attempt to kill one Nikia Pitts with malice aforethought by stabbing the victim. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A handwritten signature in black ink, appearing to be 'DS', is written over a horizontal line.

Donald N. Sorenson, Solicitor

458

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Dorchester

STATE VS.

Tyreece Raheam Stokes

AKA:

Race: BLACK Sex: M Age: 25DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Summerville, SC [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Armed RobberyINDICTMENT/CASE#: 2016GS18-1736A/W#: 2016A1820500788Date of Offense: 9/1/2016S.C. Code §: 16-11-330(A)CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

9512

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Cheryl AndersonCourt Reporter: Karin Anderson

SCCA/217 (04/2018)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge [Signature]Judge Code: 2127Sentence Date: July 25, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 459

COUNTY OF DorchesterSTATE VS.Tyreece Raheam Stokes

AKA:

Race: BLACK Sex: M Age: 25DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Summerville, SC [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault and Battery of a High and Aggravated NatureINDICTMENT/CASE#: 2016GS18-1735A/W#: 2016A1820500787Date of Offense: 9/1/2016S.C. Code § : 16-3-29CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

APPEAL:

Solicitor

9512
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

\$

\$

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ea

\$ 3.75

\$ 128.75

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

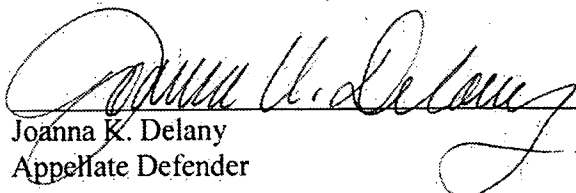
Presiding Judge

Judge Code: 2127Sentence Date: July 25, 2018

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of July, 2019.

RECEIVED

JUL 17 2019

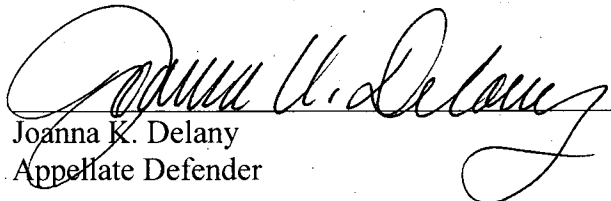
SC Court of Appeals

460

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of July, 2019.