

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

Court of Appeals Case No. 2015-001199
State v. Shands, ___ S.C. ___, 817 S.E.2d 524 (Ct. App. 2018)

The State, ... Respondent

v.

Preston Shands, Jr., ... Appellant.

APPENDIX

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State of South Carolina)
) Court of General Sessions
County of Laurens) 2014-GS-30-1477-1482

State of South Carolina)
) vs.) Transcript of Record
)
Preston Shands, Jr.)
) Defendant

May 26, 2015
Laurens, South Carolina

B E F O R E:

Honorable Edward W. Miller, Judge

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

Warren Mowry, Deputy Solicitor
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Attorney for the State

E. Charles Grose, Jr.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

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1 (Whereupon, State's Exhibits 1-40 were marked for
2 identification only.)

3 THE COURT: Are y'all ready to go?

4 MR. MOWRY: Yes, sir.

5 THE COURT: You all have been qualified now generally
6 to serve as jurors for a week. And this, I don't know
7 that I told you but you probably already know that I am
8 holding the term, General Sessions Court, that is how we,
9 term of art for criminal court. Okay. So, we are going
10 to move into the process now to select, qualifying a jury
11 to serve on this particular case. And then we will move
12 into the selection process. We will get to that in just a
13 few minutes. Before I do anything else I want to
14 introduce the case to you. And I will tell you that this
15 is a, I have got five indictments and I am going to
16 announce those to you or publish them to you. The first
17 indictment which is 14-GS-1482 is an indictment for
18 kidnapping. This indictment alleges that Preston Shands,
19 Jr. did on or about July 20th, 2014 in Laurens County
20 willfully and unlawfully with criminal intent seized,
21 confined, inveigled, deploy, kidnap, abduct or carry away
22 Sharon Shands without authority of law in violation of the
23 laws and statutes of our State.

24 The next indictment is GS-1481, it is an indictment
25 for burglary. This indictment alleges that Preston Shands

1 did on or about July 20, 2014 in Laurens County willfully
2 and unlawfully enter a dwelling without consent with
3 intent to commit a crime therein when in effecting entry
4 or while in immediate flight therefrom he or another
5 participant in the crime was armed with a deadly weapon or
6 explosive or caused physical injury to a person who is not
7 a participant in the crime or used or threatened the use
8 of a dangerous instrument or displayed what was or
9 appeared to be a knife, pistol, revolver, rifle, shotgun,
10 machine gun or other firearm or the entering or remaining
11 occurred in the nighttime, the same dwelling being owned,
12 and/or occupied by Clarence Koon all in violation of the
13 statutes and laws of our State.

14 The next indictment is GS-1479, it is an indictment
15 for assault and battery. This indictment alleges that
16 Preston Shands, Jr. did on or about July 20th, 2014 in
17 Laurens County willfully and unlawfully injure another
18 person, that is T.C. and the act occurred
19 during the commission of a robbery, burglary, kidnapping
20 or theft or he did offer or attempt, injure another person
21 with the present ability to do so and the act was
22 accomplished by means likely to produce death or great
23 bodily injury or occurred during the commission of a
24 robbery, burglary, kidnapping or theft in violation of the
25 statutes and laws of our State.

1 The next indictment, GS-1478, an indictment for
2 possession of a weapon during a violent crime. And this
3 alleges that Preston Shands, Jr., did on or about July
4 20th, 2014 in Laurens County possess a firearm or visibly
5 displayed what appeared to be a firearm or visibly
6 displayed a knife during the commission of a violent
7 offense, that is attempted murder, kidnapping, and/or
8 first degree burglary or any lessor included violent
9 offense in violation of the statutes and laws of our
10 State.

11 And finally the last indictment is GS-1477. This is
12 an indictment for attempted murder. And this indictment
13 alleges that Preston Shands, Jr., did on or about July
14 20th, 2014 in Laurens County willfully and unlawfully with
15 the intent to kill and with malice aforethought attempt to
16 kill Sharon Shands in violation of our statutes and laws.

17 Now, ladies and gentlemen, to these indictments Mr.
18 Shands has plead not guilty. And that, when that happens
19 certain rights attach which belong to each and every
20 person in the Country and that is that anyone who is
21 charged with a crime is presumed to be innocent unless and
22 until the charging body, in this case, the State of South
23 Carolina, can prove to a jury beyond any reasonable doubt
24 each and every element of each offense that that person is
25 charged with. Please keep that in mind throughout the

1 course of these proceedings. I would also tell you that
2 these documents which I published to you, just read them
3 to you, are just what they appear to be, they are just
4 pieces of paper. And you should take no inference or make
5 any presumption from the fact that these documents exist
6 and issue with respect to the guilt or innocence of the
7 Defendant in this case because they are just the formal
8 documents which allow this case to wind its way through
9 out criminal justice system, arrive here in court for a
10 resolution. And with resolution of the case should be
11 determined solely from the evidence presented in this
12 courtroom and the law as I will give it to the jury. So
13 please keep that in mind through the course of these
14 proceedings. Now, before I go any farther and begin the
15 qualifications, would ask the lawyers to stand and
16 introduce themselves and their clients. All right.

17 MS. WHITE: Good morning, ladies and gentlemen, my
18 name is Elizabeth White and I am the Assistant Solicitor
19 for the Eighth Judicial Circuit. I am handling most of
20 the violent crimes. This is Deputy Solicitor Warren Mowry
21 who is trying the case with me. Also at our table we have
22 your elected Solicitor, David Stumbo, Investigator Wendy
23 Chappell and Investigator Walter Bentley.

24 MR. GROSE: Good morning. My name is Charles Grose,
25 I am a lawyer here in the area and throughout this

1 circuit. This is Preston Shands and is my client.

2 THE COURT: Thank you, very much. Ladies and
3 gentlemen of the jury, is there any member of the jury
4 panel who is related by blood or marriage or who has a
5 business, personal or social relationship with any of the
6 lawyers involved in this case or any member of the Eighth
7 Circuit Solicitors office. If so, please stand.

8 (No response.)

9 THE COURT: Is there any member of the jury panel
10 related by blood or marriage to Mr. Preston Shands, Jr.
11 If so, please stand.

12 (No response.)

13 THE COURT: I am going to read a list of potential
14 witnesses so please pay attention. I will need to know
15 the same about these folks. Sharon Shands, T.C.
16 T.C. , J.S. , Clarence Koon, Martha Koon,
17 Sergeant Michael Gainey with the Laurens Police
18 Department, Officer Simmons with the Laurens Police
19 Department, Officer Kanipe with the Laurens Police
20 Department, Detective Tony Lynch with the Laurens Police
21 Department, John Stankus with the Laurens Police
22 Department, Andrew Heiney with the Laurens EMS, Dr. John
23 Rinkliff, Joey Avery, Jimmy McBeth, David Brewer with the
24 Laurens Police Department, Tony Lynch with the Laurens
25 Police Department, Steven Sweat formally with the Laurens

1 Police Department and currently with the Laurens Sheriffs
2 Office, Hedi Blackstock with the Laurens County Police
3 Department, Erin King with EMS, Julie Medlin with EMS. Is
4 there any member of the jury panel related by blood or
5 marriage or who has a business, personal or social
6 relationship with any of those potential witnesses whose
7 names I have just read, if so please stand. All right,
8 yes sir, your name and number.

9 JUROR: Larry Penland, II; I am 122.

10 THE COURT: Yes sir, who is it that you are familiar
11 with?

12 JUROR: Joey Avery, first cousin.

13 THE COURT: First cousin. Okay. Would the fact that
14 you have that relationship impair your ability to be fair
15 and impartial in this case?

16 JUROR: No, sir.

17 THE COURT: Could you follow the law under your oath
18 and judge this case solely on the merits of the evidence
19 and the testimony presented?

20 JUROR: Yes, sir.

21 THE COURT: Okay. Thank you very much. Yes ma'am,
22 your name and number.

23 JUROR: Tammy Owens, 118.

24 THE COURT: Who is it you know?

25 JUROR: David Brewer is a former client of mine.

1 THE COURT: And the fact that you have that
2 relationship with him, would that impair your ability to
3 be fair and impartial in this case either to the State or
4 the Defense?

5 JUROR: No, sir.

6 THE COURT: Could you judge this matter solely on the
7 merits of the evidence and the law as you would hear it in
8 the courtroom?

9 JUROR: Yes, sir.

10 THE COURT: Be fair and impartial?

11 JUROR: Yes, sir.

12 THE COURT: Thank you very much. Is there any member
13 of the jury panel who has any knowledge about the events
14 that are alleged in these indictments. If so please
15 stand.

16 (No response.)

17 THE COURT: Is there any member of the jury panel, a
18 family member or a close friend who has ever been a victim
19 of or charged with any of these types of offenses. If so
20 please stand.

21 (No response.)

22 THE COURT: Is there any member of the jury panel who
23 is aware of any biased or prejudice towards either the
24 State or the Defense. If so please stand.

25 (No response.)

1 THE COURT: Is there any member of the jury panel who
2 is a member of or a contributor to a group whose primary
3 concern is the promotion of law enforcement or victims
4 rights. Examples would be MADD, SADD, CAVE or No More
5 Lies or Bruises. If so please stand.

6 (No response.)

7 THE COURT: Is there any member of the jury panel who
8 knows of any reason whatsoever why you shouldn't serve in
9 this case with particular emphasis on your ability to be
10 fair and impartial for both the State and the Defense and
11 to follow the law as I would give it to you. If you can't
12 do those things please stand.

13 (No response.)

14 THE COURT: Anything further from the State?

15 MS. WHITE: No, sir.

16 THE COURT: From the Defense?

17 MR. GROSE: None other than what was handed up, Your
18 Honor.

19 THE COURT: All right. This is my opportunity for
20 song and dance. Y'all have to sit and wait while we begin
21 the selection process. What happens, a couple of these
22 people look like they are old enough to remember when a
23 jury was selected by putting your names in these little
24 capsules. I have one somewhere in my stuff. You know, a
25 piece of paper and put it into a bingo thing and they turn

1 it around and the clerk will reach in and pull it out and
2 unscrew the cap and read the name. We have come a long
3 way, haven't we. So, anyway, your names are flying around
4 in cyberspace right now. So if you feel a little dizzy or
5 anything like that that is what is going on. We have a
6 certified program which randomly mixes your names up and
7 then prints out a list. And that is what is going on
8 right now. That wasn't enough of a song and dance, I
9 don't think it is ready now. I guess I can ask if anybody
10 remembers when this was a shopping mall. I would just
11 tell you the Court House downtown on the square is
12 beautiful and we have a number of Court Houses like that
13 around the State that just are elegant old buildings and I
14 like the history and all of that. But they are not
15 functional really as Court Houses much any more. So, we
16 have moved into these more modern facilities which better
17 accommodate your needs and the Court House staff and all
18 of their needs. But it is sad to lose some of those old
19 buildings. Okay, we are ready.

20 CLERK OF COURT: When I call your name if you will
21 come forward. Juror number 85, Courtney M. Johnson. What
22 says the State.

23 MS. WHITE: Please present Ms. Johnson.

24 CLERK OF COURT: What says the Defense?

25 MR. GROSE: Please excuse this juror from this case.

1 CLERK OF COURT: You may be seated. Juror number
2 157, Chris A. Skinner. What says the State?

3 MS. WHITE: Please present Mr. Skinner.

4 CLERK OF COURT: What says the Defense?

5 MR. GROSE: Please excuse this juror from this case.

6 CLERK OF COURT: Juror number 1, Katina A. Alexander.
7 What says the State?

8 MS. WHITE: Please present Ms. Alexander.

9 CLERK OF COURT: What says the Defense?

10 MR. GROSE: Please excuse this juror from this case.

11 CLERK OF COURT: Juror number 17, India A. Brock.
12 What says the State?

13 MS. WHITE: Please present Ms. Brock.

14 CLERK OF COURT: What says the Defense?

15 MR. GROSE: Please seat Ms. Brock.

16 CLERK OF COURT: Juror number 126, Coco S. Pulley.
17 What says the State?

18 MS. WHITE: Please excuse Ms. Pulley from the trial
19 of this case.

20 CLERK OF COURT: Juror number 162, Eric S. Spradling.
21 What says the State?

22 MS. WHITE: Please present Mr. Spradling.

23 CLERK OF COURT: What says the Defense?

24 MR. GROSE: Please seat Mr. Spradling.

25 CLERK OF COURT: Juror number 15, Relois Briggs.

1 What says the State?

2 MS. WHITE: Please present Ms. Briggs.

3 CLERK OF COURT: What says the Defense?

4 MR. GROSE: Please seat Ms. Briggs.

5 CLERK OF COURT: Juror number 118, Tammy G. Owens.

6 What says the State?

7 MS. WHITE: Please present Ms. Owens.

8 CLERK OF COURT: What says the Defense?

9 MR. GROSE: Please excuse this juror from this case.

10 CLERK OF COURT: Juror number 36, Lynzie M. Coffey.

11 What says the State?

12 MS. WHITE: Please present Ms. Coffey.

13 CLERK OF COURT: What says the Defense?

14 MR. GROSE: Please seat Ms. Coffey.

15 CLERK OF COURT: Juror number 125, Todd J. Priestley.

16 What says the State?

17 MS. WHITE: Please excuse Mr. Priestley.

18 CLERK OF COURT: Juror number 108, Kaherine E.

19 Mcclellion. What says the State?

20 MS. WHITE: Please present Ms. Mcclellion.

21 CLERK OF COURT: What says the Defense?

22 MR. GROSE: Please seat Ms. Mcclellion.

23 CLERK OF COURT: Juror number 54, Kimberly A. Dial.

24 What says the State?

25 MS. WHITE: Please present Ms. Dial.

1 CLERK OF COURT: What says the Defense?

2 MR. GROSE: Please seat Ms. Dial.

3 CLERK OF COURT: Juror number 182, Sara B. Watts.

4 What says the State?

5 MS. WHITE: Please seat Ms. Watts.

6 CLERK OF COURT: What says the Defense?

7 MR. GROSE: Please excuse this juror from this case.

8 CLERK OF COURT: Juror number 91, Kenneth J. Kern,

9 Jr. What says the State?

10 MS. WHITE: Please present Mr. Kern.

11 CLERK OF COURT: What says the Defense?

12 MR. GROSE: Please excuse this juror from this case.

13 CLERK OF COURT: Juror number 5, Bridget B. Ashley.

14 What says the State?

15 MS. WHITE: Please present Ms. Ashley.

16 CLERK OF COURT: What says the Defense?

17 MR. GROSE: Please seat Ms. Ashley.

18 CLERK OF COURT: Juror number 115, George D. Nolin.

19 What says the State?

20 MS. WHITE: Please excuse Mr. Nolin from the trial of
21 this case.

22 CLERK OF COURT: Juror number 114, Mary C. Morton.

23 What says the State?

24 MS. WHITE: Please present Ms. Morton.

25 CLERK OF COURT: What says the Defense?

1 MR. GROSE: Please excuse this juror from this case.

2 CLERK OF COURT: Juror number 156, Robin L. Simpson.

3 What says the State?

4 MS. WHITE: Please excuse Mr. Simpson from the trial
5 of this case.

6 CLERK OF COURT: Juror number 82, Suzanne B.
7 Hutchins. What says the State?

8 MS. WHITE: Please present Ms. Hutchins.

9 CLERK OF COURT: What says the Defense?

10 MR. GROSE: Please seat Ms. Hutchins.

11 CLERK OF COURT: Juror number 53, Tavon L. Dendy.
12 What says the State?

13 MS. WHITE: Please present Mr. Dendy.

14 CLERK OF COURT: What says the Defense?

15 MR. GROSE: Please seat Mr. Dendy.

16 CLERK OF COURT: Juror number 69, Chad D. Gregory.
17 What says the State?

18 MR. GROSE: Please present Mr. Gregory.

19 CLERK OF COURT: What says the Defense?

20 MR. GROSE: Please seat Mr. Gregory.

21 CLERK OF COURT: Juror number 121, Lisa M. Pearson.
22 What says the State?

23 MS. WHITE: Please present Ms. Pearson.

24 CLERK OF COURT: What says the Defense?

25 MR. GROSE: Please excuse this juror from this case.

1 CLERK OF COURT: Juror number 170, Shamica M.
2 Thompson. What says the State?

3 MS. WHITE: Please present Ms. Thompson.

4 CLERK OF COURT: What says the Defense?

5 MR. GROSE: Please seat Ms. Thompson.

6 CLERK OF COURT: Juror number 44, Thomas A. Cox, Jr.
7 What says the State?

8 MS. WHITE: Please present Mr. Cox.

9 CLERK OF COURT: What says the Defense?

10 MR. GROSE: Please excuse this juror from this case.

11 CLERK OF COURT: Juror number 68, Marilyn M.
12 Grayson. What says the State?

13 MS. WHITE: Please present Ms. Grayson.

14 CLERK OF COURT: What says the Defense?

15 MR. GROSE: Please seat Ms. Grayson.

16 THE COURT: One alternate, one and two.

17 CLERK OF COURT: Juror number 99, Kimberly B. Leroy.
18 What says the State?

19 MS. WHITE: Please present Ms. Leroy.

20 CLERK OF COURT: What says the Defense?

21 MR. GROSE: Please excuse this juror from this case.

22 CLERK OF COURT: Juror number 127, Susan H. Putnam.
23 What says the State?

24 MS. WHITE: Please present Ms. Putnam.

25 CLERK OF COURT: What says the Defense?

1 MR. GROSE: Please seat Ms. Putnam.

2 THE COURT: Any exceptions or objections to the jury
3 as a panel pursuant to Batson or Capps?

4 MS. WHITE: Nothing from the State, Your Honor.

5 MR. GROSE: Yes sir, Your Honor.

6 THE COURT: All right. Well, y'all approach for a
7 second.

8 (Whereupon, a bench conference was held in the
9 presence of the jury panel but out of the hearing of
10 the jury panel.)

11 THE COURT: Okay, ladies and gentlemen of the jury,
12 we are going to take a break and ask y'all, this group to
13 be back in fifteen minutes. Thank you.

14 (Whereupon, the jury panel was excused from open
15 court for a break.)

16 THE COURT: Okay, take the jury here to the jury
17 room.

18 (Whereupon, the jury picked for the trial of the case
19 was excused from open court to their jury room for a
20 break.)

21 THE COURT: Okay, Mr. Grose, please state your
22 objection for the jury that has been picked.

23 MR. GROSE: Your Honor, when we were at the bench I
24 challenged, pursuant to Batson's, State's strikes numbers
25 2, 3 and 4. Their second strike was number 25, I am

1 sorry, 125, a black male. Their third strike was 115, a
2 white male. Their fourth strike was number 156, a white
3 male. And I challenge them based on gender.

4 THE COURT: All right.

5 MS. WHITE: Your Honor, with regards to juror number
6 125, that was Mr. Priestly, he had a CDV conviction. This
7 is a case involving allegations of domestic violence.
8 Juror 115, he had a number of different convictions for
9 lottery law violations. It looks like the same law he
10 violated, off the top of my head, it was four different
11 years, respected violations, the same law. And then juror
12 number 156 also had a CDV conviction. And in regards to,
13 we did seat other jurors who had contact with law
14 enforcement, that was number 5, Ms. Ashley. She had a
15 false info, that there was no disposition on for 2004.
16 And also Ms. Dial, I believe her name is, her number 54,
17 fraudulent check in 2003. Both of those, Your Honor, one
18 time incidents multiple years ago, 11, 12 years ago. Also
19 we seated number 53, Mr. Dendy, he has a pending simple
20 possession, has not been convicted of that yet. And we
21 seated 170 who has an unlawful neglect from 2006 that was
22 nolle prossed and a simple possession. It looks like it
23 was a one time, the main charge of that was dismissed.

24 MR. GROSE: It just happens, Your Honor, that all
25 three of the ones that have their's resolved somehow

1 happen to be women. And the ones that we challenged are
2 men. And in particular, there is really no way to
3 separate juror number 54 who was the sixth juror set who
4 is a black female who does have a conviction for
5 fraudulent check. So that's, you know, an actual
6 conviction. If you are going to use criminal record as a
7 reason to strike somebody then you have got to be
8 consistent otherwise, you know, I don't think they
9 overcome their burden of showing that it was not gender
10 neutral.

11 MS. WHITE: Your Honor, I don't think--

12 THE COURT: Well, I was going to say, you objected to
13 them striking the male jurors. She is a female.

14 MR. GROSE: Right, that is my point, Your Honor.
15 There is a similar situated female. There are three parts
16 to Batson, one--

17 THE COURT: I am aware of them.

18 MR. GROSE: Okay. Well, I am under the part of
19 Batson where I am trying to show that they sat a similarly
20 situated female. And I think that, you look confused.

21 THE COURT: No, I am not confused. But you made an
22 objection based on gender and you objected to males.

23 MR. GROSE: Right. And so now it is incumbent to me
24 to show that there was a similarly situated female that
25 was sat and I have done that. There is a similarly

1 situated female that had a record that was sat. I think
2 that shows that there are three strikes of males--

3 MS. WHITE: -- Your Honor, there is a big difference
4 between someone who accidentally overdrew their bank
5 account and someone who struck a household member,
6 threatened to strike a household member. They are not
7 similarly situated.

8 THE COURT: No problem with number 125, number 146.
9 My problem is you objected based on gender and you
10 objected to them striking males.

11 MR. GROSE: Right.

12 THE COURT: And now you are raising female.

13 MR. GROSE: Right. That they sat a female. The fact
14 that they sat a female on the jury that is similarly
15 situated, that is the third prong of Batson. I am sorry,
16 I can't explain any better.

17 THE COURT: Thank you. Thank you for that, Mr.
18 Grose. Well, I am going to find that it is gender neutral
19 and anything else you need to put on the record to protect
20 you.

21 MR. GROSE: I would just say that an element of
22 fraudulent check is that they have to prove that it was
23 done with fraud. That is just not overdrawing a bank
24 account, overdrawing a bank account by mistake would be a
25 Defense. People do it all the time and correct it. So I

1 believe that fraudulent check and lottery are similarly
2 situated. They are all misdemeanors, they are all
3 magistrate court cases, Your Honor.

4 THE COURT: Okay. Anything else before we bring the
5 jury back and swear them. I would suggest that we,
6 assuming there is nothing else to talk about, we go ahead
7 and swear them.

8 MR. GROSE: Well, I have a motion to quash the
9 indictment, Your Honor.

10 THE COURT: Go ahead.

11 MR. GROSE: And depending upon what they are willing
12 to concede about their Grand Jury process we may have to
13 take testimony. If you were wanting to excuse them I
14 would propose not to swear them and bring them back later.

15 THE COURT: Well, give me a synopsis of what it is
16 you seek.

17 MR. GROSE: As I understand the Grand Jury process
18 here in Laurens County, what they do is they have an
19 Administrative Assistant that prepares an indictment. The
20 indictment then goes to a Solicitor for review and in this
21 case, I believe, it was Mr. Mowry who is here in the
22 courtroom. They signed the indictment. When the Grand
23 Jury meets, well, let me back up. The name of the people
24 that are put as the witness on the indictment are the
25 names of the officers that appear as the advocate on the

1 warrant. When the times comes for the Grand Jury to
2 testify somebody from the Agency, who they keep no record
3 of, is typically a designated person but could be somebody
4 else. Somebody from the Agency comes and picks up the
5 indictments and goes and testifies in front of the Grand
6 Jury. The instruction that Grand Jurors are given at the
7 beginning of the year is that only witnesses that are
8 listed on the indictment are allowed to testify. There is
9 law that suggest that it should be somebody who has
10 personal knowledge of the case. And if a witness who is
11 not listed on the indictment testified the Grand Jurors
12 are instructed to report that to the Court as an
13 unauthorized intent to influence the Grand Jury. This
14 motion, my motion is based on, the arguments and motion
15 are based on a petition that is currently pending before
16 the South Carolina Supreme Court out of Florence County
17 dealing with some aspects of this same issue. I backed
18 into this issue before. I tried to take it up and when I
19 got to the Supreme Court I got hammered for not getting a
20 record of what the exact procedures are. So, unless the
21 State can stipulate it then I need to call some witnesses
22 from the Solicitor's office, just what I was accused of
23 not doing in the other case that was argued last year.

24 MR. MOWRY: Essentially, Your Honor, since Solicitor
25 Stumbo has come into office, each individual assistant

1 will, as he is assigned cases, there is a template for the
2 indictment that is electronically produced and put in our
3 electronic record system. We will go in, we will tailor
4 the indictment to the facts that we have and then those
5 are presented out, each individual assistant or deputy
6 will then sign the indictments. But, essentially, yes,
7 the individual agencies are notified the Grand Jury is
8 coming, they will send a representative and one
9 representative from each department will present all
10 indictments from that individual department. That has
11 been pretty much standard since I started in 1982.

12 THE COURT: Does that satisfy your evidentiary
13 concerns?

14 MR. GROSE: I believe so. But just for the record,
15 neither of the two people who are listed on these
16 indictments, in front of the Grand Jury.

17 MR. MOWRY: And I could not tell you, Your Honor.

18 MR. GROSE: I understand that because y'all have no
19 records of who actually testified.

20 MR. MOWRY: That's correct. We notify the
21 departments, an individual will show up from the
22 department to take the cases before the Grand Jury. That
23 is how that operates.

24 THE COURT: Okay. Anything else?

25 MR. GROSE: Well, just the argument. I mean our

1 position would be, if you look at the line of cases that
2 started with Chief Justice Lewis dissent in Capps and
3 these are cited in our memorandum. It appears that our
4 Courts want somebody who has a personal knowledge, even if
5 it is an investigative officer, should be an investigative
6 officer who has personal knowledge. Our Supreme Court, by
7 the jury instruction that they give the Circuit Court
8 Judges in charge wants the witness or the witnesses listed
9 on the indictment and they consider it to be improper and
10 those are not the ones that testify. And, yes, this is
11 probably the way it has been done for a long time but that
12 is actually exactly what they said after Capps when they
13 wanted Solicitors to stop testifying in front of the Grand
14 Jury, was the next case where they outlaw that practice.
15 The Defense was, said we can't do it, or you didn't say
16 you can't do it, you said you shouldn't do it. But as
17 long as you don't prohibit it we are going to continue to
18 do it. And we think that an indictment is more than just
19 a piece of paper, it is more than just a piece of paper to
20 put somebody on notice. If it was just those two things
21 the Grand Jury wouldn't be involved in the process.
22 Constitutionally there is something significant to the
23 presentment. The probable cause determination has to be
24 made, it should not be based entirely on hearsay, it
25 should be based on somebody with personal knowledge. And

1 there should be a record of, you know, who it is that
2 testifies. And, in fact, Thrift talks about how we have
3 an equal protection due process problem in South Carolina.
4 I have only had the honor to be appointed in one State
5 Grand Jury case. And in those cases you get Grand Jury
6 testimony. And if the Thrift case, they said they were
7 able to review the indictment because you had testimony
8 that was transcribed and determined whether or not the
9 probable cause determination was made. People like Mr.
10 Shands who were indicted in State Court, in County Courts
11 by the Grand Jury do not have that same fortune of being
12 able to have access to the testimony that was presented.
13 Here the minimal record that was made is not accurate.
14 These indictments are just bare boned allegations. We
15 don't know exactly what supporting testimony was
16 presented. So, yes, I do think that the procedure that is
17 followed in Laurens County is unconstitutional and we
18 would ask that Your Honor quash the indictments, require a
19 meaningful Grand Jury process, require that the testimony
20 be recorded so that we will have a record of it and
21 required that any exculpatory evidence is noted to the
22 State and be presented.

23 THE COURT: Okay.

24 MR. MOWRY: Two things, Your Honor. I can assure you
25 that no Assistant Solicitor or anybody else from the

1 Solicitor's office appeared in front of the Grand Jury.
2 So we did not violate any Supreme Court case on that line.
3 And also we don't know what was said in front of the Grand
4 Jury either. The entire process is designed to be secret.
5 So, none of that is public record.

6 THE COURT: Okay.

7 MR. GROSE: And just a response to that. I am not
8 saying that the Solicitor testified. When you look at the
9 cases, Capps talks about the Solicitor or other State
10 Agency and the distinction that has been made in the case
11 law is between an investigator that had actual knowledge
12 whereas here they don't follow that procedure. And the
13 Supreme Court does want some kind of record which we don't
14 have in this case and that is the identity of the person
15 who testified.

16 THE COURT: If I understand correct you are arguing
17 against precedent to encourage me to rule with Justice
18 Lewis' dissent. Is that right?

19 MR. GROSE: Well, that is not entirely correct. If
20 you jump forward, I forget if it is Anderson or Williams,
21 Justice Lewis' dissent was adopted. And we may be
22 extending it a little bit as far as not presenting
23 hearsay. But there is a case cited in the brief where the
24 language about another agent of the State other than a
25 prosecutor testified was found to be okay in that case

1 because the person had actual knowledge. I don't think I
2 am asking you to step beyond precedent.

3 THE COURT: Okay. Well, I am going to deny your
4 motion. I think you are protected on the record and I
5 will let higher authority make the decision. Okay.

6 MS. WHITE: Your Honor, just for scheduling purposes.
7 My first witness, we have got to call to get here so it
8 might be a good time to break for lunch.

9 THE COURT: Any reason not to swear this jury?

10 MS. WHITE: None from the State, Your Honor.

11 MR. GROSE: Just subject to our two objections, our
12 Batson objection and our motion to quash.

13 THE COURT: You want to let that group back in and we
14 will cut them loose.

15 MR. STUMBO: Your Honor, if I may address them for
16 one minute before you cut them loose, the jury pool. I
17 would just like to thank them for their service.

18 THE COURT: Well, I will do that.

19 MR. STUMBO: Okay, that is fine. Thank you, Judge.

20 (Whereupon, the jury panel entered the courtroom at
21 approximately 11:15 a.m.)

22 THE COURT: Ladies and gentlemen, I am sorry I had to
23 excuse you and couldn't let you go and ask you to come
24 back. The good news is I can excuse you now to go about
25 your business and ask you to call back on the number that

1 has been provided to you after 6:00 o'clock tonight to
2 determine when you need to report back or call back.

3 Thank you for your service, appreciate the sacrifices you
4 have made, I know each and every one of you is anxious and
5 willing to get seated on a jury and I hope you get that
6 opportunity, if not this week some other time. Thank you
7 very much. Call back after 6:00.

8 (Whereupon, the jury panel was excused from open
9 court.)

10 THE COURT: Yes, sir.

11 MR. GROSE: Real quick, this may not be necessary but
12 I don't want you discharging the panel to operate as a
13 wavier of my two objections. I agree with you, that seems
14 a little technical. But I guarantee you the Attorney
15 Generals office would argue that. So I would just renew
16 the Batson motion and the motion to quash.

17 THE COURT: Okay. You are covered on that. All
18 right, what I would propose is we bring them back, swear
19 them, do some opening statements, get those out of the way
20 and cut them loose for lunch and let you get your witness
21 up here. Let's bring them back.

22 (Whereupon, the jury came into open court at
23 approximately 11:59 a.m.)

24 THE COURT: Ladies and gentlemen, I guess you are
25 looking out there wondering where all of your friends and

1 fellow jurors are. They are gone. They will call back
2 later tonight to determine what their next move shall be.
3 I want to thank y'all for serving. And I want to tell you
4 that we have a dispute about the facts in the case that
5 can't be resolve in any way other than to select a jury, a
6 fair and impartial jury to hear the facts, the evidence
7 and the law and to render a decision that will resolve
8 that dispute. Now, I don't know what I did with the
9 indictments but remember that they are not evidence.
10 Okay. Just the fact that they have issued, they are just
11 documents. Okay. Evidence will be presented in the
12 courtroom either through testimony or physical documents
13 and that is what you all will use to make your decision.
14 I also tell you that to remember that everyone charged
15 with a crime is presumed to be innocent unless and until
16 the State can prove them guilty beyond any reasonable
17 doubt of each and every element of each offense that they
18 are charged with. So each offense stands on its own and
19 must be proved individually. Just keep that in mind
20 throughout the course of the trial. Now, I break a trial
21 into five parts. You can break it into as many parts as
22 you want. If you read some of these books or you watch
23 some of the TV shows they break it into minute little
24 parts. But I like to give you all sort of a roadmap so
25 you know where you are and where you are going to be next.

1 It is very simple and I will tell you that the parts are
2 not of equal length. The first part, I guess we are
3 engaging in now, and that would be the opening comments to
4 you but I am really referring to the opening statements to
5 you which will be made by the attorneys in this case. And
6 those are brief and non-argumentative statements about the
7 case. Second part of the trial is the meat and potatoes
8 in every case and that will be the presentation of the
9 testimony and the evidence in the case. The third part of
10 the trial will be when all of the evidence has been
11 presented, the attorneys will get up and make their
12 closing arguments to you. So you notice it is an opening
13 statement and it is a closing argument. And in their
14 closing arguments they advocate their position and urge
15 you to resolve the dispute for their particular side. The
16 fourth part of the trial will be when I give you the
17 charge on the law. And I will tell you what the law is as
18 it relates to all of these indictments. And throughout
19 the course of the trial I may give you some instructions.
20 And the fourth part of the trial will be when I tell you
21 what the law is. And then the fifth part of the trial
22 will be when you all retire to your jury room to
23 deliberate the case and resolve the dispute. And as I
24 said, the parts are not of equal length but at least you
25 know the order in which they are going to come, what you

1 can expect next. I will ask you to do probably a number
2 of things throughout the course of the trial but there are
3 three main things I ask you to do. The first is to keep
4 an open mind, we go through all of that questioning and
5 all of the qualification an impartial jury who doesn't
6 come into court with their mind made up one way or
7 another. A fair and impartial jury that would base their
8 decision based on the testimony and the evidence presented
9 in the case. The second thing I ask you to do is pretty
10 simple but vital. And that is to pay attention, please
11 don't let your mind wonder off during the course of the
12 trial and not watch a particular witness or not listen
13 carefully, you might miss a way a witness reacts on the
14 witness stand to a question. And that is what we call a
15 witness' demeanor. And if you weren't paying attention
16 you would put yourself at a disadvantage at the fifth
17 state of the trial with your fellow jurors to deliberate.
18 The third vital thing that I ask you today and I instruct
19 you to do is not to discuss this case with anyone until
20 you are free to deliberate at the end of the trial. I
21 will tell you this case is going to take longer than
22 today. I am not sure how long but it will last more than
23 today. So we are going to break for lunch after the
24 opening statements. And you may go to lunch with a family
25 member or a friend. You can't talk about the case now,

1 because even a comment from someone who you like and trust
2 or even someone who you don't like might have an impact on
3 your state of mind. And it wouldn't be fair to these
4 parties involved in this case, it wouldn't be fair to your
5 fellow jurors and most importantly it wouldn't be fair to
6 yourself to allow someone who is not making the sacrifices
7 that each of you are making, to have any influence in the
8 outcome of this trial. Those people outside of this case
9 are not watching the witnesses, they are not listening to
10 the evidence, they don't have anything at stake in here
11 and they are not making the sacrifices that each of you
12 are making. So, follow that instruction and it is a
13 little bit more than just not talking to somebody. Don't
14 go visit the scene or some place that you may hear about
15 in the course of the testimony. Don't do research on the
16 internet which is so easy to do, don't do it. Everything
17 you are going to need to learn and know and make the
18 decision in this case in a fair and impartial way
19 according to your constitutional requirements you will
20 hear in this courtroom. So, don't talk about it. A huge
21 play in my mind is all of this social media. Don't get on
22 social media and talk about it with your friends. We have
23 had cases where we have to throw the case out and start
24 over because somebody got on Facebook. And I will tell
25 you this, you all are the sole judges of the facts. The

1 law does not allow the trial Judge to have an opinion
2 about the facts in the case. So don't think about
3 anything I say or do throughout the course of the trial
4 that I have such an opinion. The law does not allow it.
5 You all are the sole judges of the facts and you will get
6 to determine, you will determine who to believe, who not
7 to believe and what is true and what is not true. That
8 same law makes me the same sole Judge of the law. So, you
9 have some idea about what you think the law is or what the
10 law should be and it differs from what I tell you the law
11 is throughout the trial and at the end of the case and you
12 are going to swear an oath in just a second to set aside
13 your own opinion and apply the law precisely as I state it
14 to you. The reason for that is, we want everyone in this
15 Country to be tried pursuant to the same law so we don't
16 have a different type of law being applied in every case.
17 A couple of things, maybe you saw me speak with the
18 lawyers up here. We call that a bench conference and I
19 ask y'all to leave so we can put some stuff on the record.
20 We are not trying to deceive you in any way, but we might
21 be trying to keep something from you that we need to talk
22 about a piece of evidence that is disputed and should not
23 be admitted and you all can understand why you all
24 shouldn't hear it. Okay. We want to keep y'all fair and
25 impartial. And hear only what is proper and

1 constitutionally protected. And the other thing I want to
2 tell you is when we break and we come back from lunch I am
3 going to ask you all to decide, from the first twelve
4 folks, alternate is not allowed to serve as a foreperson,
5 if you all can decide who you would like to be your
6 foreperson. And the foreperson is, you don't get a raise
7 in pay for it, sorry. But that foreperson would be the
8 jury spokesperson in the courtroom should that become
9 necessary and would be the moderator of the discussions
10 during your deliberations. So, when you come back from
11 lunch y'all take a few minutes and see if you can decide
12 who you want to be the foreperson. With that I am going
13 to ask y'all to stand, I am going to ask your outstanding
14 Clerk of Court to administer the oath to you.

15 (Whereupon, the jury was sworn at approximately 12:10
16 p.m.)

17 THE COURT: Thank you very much. All right, we begin
18 with our opening statements.

19 MR. MOWRY: Your Honor, may I have the indictments.

20 THE COURT: Yes.

21 MR. MOWRY: Thank you, Your Honor. Good morning,
22 ladies and gentlemen or afternoon, however. My name is
23 Warren Mowry, as you heard a little while ago I am the
24 Deputy Solicitor, the prosecutor here in Laurens County.
25 And along with Senior Assistant Solicitor, Elizabeth White

1 we will present the case for the State in this matter that
2 is coming before you. Every criminal case that is brought
3 in South Carolina is brought in the name of the people of
4 the State and that is why you always see cases entitled
5 the State versus whomever. This case is the State versus
6 Preston Shands, Jr. Mr. Shands is charged with a number
7 of offenses as His Honor laid out before you. He is
8 charged with attempted murder, he is charged with
9 possession of a weapon during the commission of a violent
10 crime. He is charged with assault and battery. He is
11 charged with burglary and he is charged with kidnapping.
12 All of these offenses, ladies and gentlemen, arise out of
13 one incident that occurred last year, July the 20th of
14 2014 in Laurens County, actually in the city limits of
15 Laurens. This is, for lack of a better term, a case of
16 domestic abuse. The victim in this case is Sharon Shands,
17 she is seated on the front row there. This case arose
18 from a disagreement or an argument, however you want to
19 put it and escalated into a case of near murder.
20 Witnesses will testify, ladies and gentlemen, that Mr.
21 Shands essentially became enraged in their home and he
22 tried and in fact succeeded in stabbing his wife with
23 several inputs. She and their two sons, one who I believe
24 was seven at the time, is eight now, and the other one who
25 is a teenager, fled from the home. They ran across the

1 street to the home of Mr. Clarence Koon, they begged him
2 to open the door, he did, he let them in. But Mr. Shands
3 didn't stop there, he proceeded across the street and
4 demanded to speak with his wife. Mr. Koon finally got him
5 out of the house but that still didn't satisfy Mr. Shands.
6 Mr. Shands went back to his house, he retrieved a hammer,
7 he came across the road, shattered the front window of Mr.
8 Koon's house, couldn't gain entry so he went around the
9 back. He broke out a sliding glass door, went in the
10 house, got one of Mr. Koon's own knives and began to try
11 to stab Sharon Shands yet again. Needless to say, ladies
12 and gentlemen, law enforcement were called. During this
13 time, during this event T.C. T.C. , the
14 teenage son attempted to protect his mother and was
15 slashed by Mr. Shands. Law enforcement arrived at the
16 scene. You will hear from Sergeant Gainey with the City
17 Police Department who will tell you that he had arrived
18 there looking at the Shands home not realizing that the
19 incident was now extending across the road. Yet when he
20 looked over and heard the commotion and looked over here
21 came Sharon Shands running out of the house, her clothing
22 ripped, covered with blood, injured to the extent she had
23 to be airlifted to Greenville Memorial for treatment. Out
24 of the house also, after her, came Preston Shands wheeling
25 a knife, a knife still in his hand with their eight year

1 old in the other hand. Only when Sergeant Gainey ordered
2 him to drop the knife, did he do so, and he was secured.
3 Those are the facts that you will hear from witnesses.
4 Let me go through these charges very quickly here, ladies
5 and gentlemen. Attempted murder, attempted murder in
6 essence is a murder where the victim did not die, that is
7 the only difference. Murder is an unlawful killing of a
8 human being with malice aforethought either expressed or
9 implied. Let me just quickly go through those elements.
10 There are times when it is legal for one human being to
11 kill another. A soldier in wartime, somebody acting in
12 self Defense, state sponsored execution, those are legal
13 killings, those are called justifiable killings.
14 Sometimes a tragic accident where there really isn't a
15 criminal mindset, that is excusable authority of the law.
16 But when a killing or an attempt to kill somebody is
17 neither justified nor excused and I submit to you that
18 this is an example, a prime example, then that is a
19 criminal act. An unlawful killing then or attempt to kill
20 a human being with malice, what is malice. It is
21 meaningless, it is wickedness. There is a Court opinion
22 that talks about malice being a heart bent fatally in
23 mischief. But setting out in your mind to kill somebody,
24 having the time to reflect on it, that is exactly what we
25 are talking about here. Unlawful killing of a human being

1 with malice aforethought. What is malice aforethought.
2 We hear that term a lot. Aforethought means
3 premeditation. Now a lot of times when you hear the word,
4 premeditation you think, okay, somebody who is lying in
5 wait, somebody who has planned out every step of an act,
6 like an assassin or something like that. That is not what
7 the law requires in South Carolina. Malice aforethought
8 means that there is some amount of time that the person
9 has had to reflect on what he has done, it can be like
10 that, it can be very, very fast. And yet he does it
11 anyway. It is not just having it happen and seeing red.
12 It is having time to reflect on what you are doing. It is
13 not a hotblooded crime, it is a coldblooded crime. That
14 is what we had with Preston Shands. He had the time when
15 his wife fled the house, we would submit to you, to
16 reflect on what he did. He had the time. Once he was
17 ejected essentially from Mr. Koon's house to reflect on
18 what he did he went back, got a hammer, broke into Mr.
19 Koon's house and continued the assault. This is nothing
20 short of an attempted murder, ladies and gentlemen.
21 Again, a lot of time you hear kidnapping. What do you
22 think of, kidnapping for ransom, kidnapping something,
23 holding a child for example for ransom. Again, that is
24 not what South Carolina requires. But you hold or contain
25 somebody or even move on a short distance against their

1 will and that is kidnapping and you will hear facts in
2 this case that we submit will justify a conviction on that
3 crime. Assault and battery. As I told you, during this
4 entire incident T.C. , or T.C. , Sharon Shands'
5 son, tried to help his mother and received the swipe of a
6 knife, a slash of a knife from Preston Shands, Jr., in
7 response. That is where the assault and battery comes
8 from. Possession of a weapon during a violent crime. His
9 Honor will instruct you at the end of the case, ladies and
10 gentlemen, there are two violent crimes in this matter.
11 The burglary and the attempted murder. In each of those
12 this Defendant was in possession of a knife. Our State
13 law makes that criminal, if you are committing a violent
14 crime and are in possession of a deadly weapon that in and
15 of itself is a separate criminal offense. And finally,
16 ladies and gentlemen, the burglary. If I come home
17 tonight and I find my backdoor kicked in and I find my
18 stereo has been moved out or my TV has been taken across
19 the room or something like that, most of us are probably
20 going to say, I've been robbed. That is not robbery
21 though, it is a burglary. Burglary is an unlawful entry
22 without consent into the home of another with the intent
23 to commit a crime inside. What we will show, ladies and
24 gentlemen, is that Mr. Shands was not welcome in Clarence
25 Koon's house yet he took that hammer, he shattered that

1 backdoor and went inside and he retrieved a knife, Mr.
2 Koon's own knife and used that knife to continue the
3 assault on Ms. Shands. Those are the crimes that we will
4 present to you, ladies and gentlemen. Now in every
5 criminal case the State carries the burden of proving the
6 case which is as it should be, we accept that burden. And
7 we must do so beyond a reasonable doubt, probably heard
8 that term before. Let me just go into that a little bit.
9 My mother was an English teacher and she would probably
10 reach down and smack me across the head for using a term
11 to define the term but there is probably no better way of
12 describing a reasonable doubt than to use the term, it is
13 a doubt for which you can give a reason. It is not a
14 whimsical doubt, it is not some fanciful doubt. If we
15 prove this case to you beyond a reasonable doubt, ladies
16 and gentlemen, what that means is is that you are left
17 firmly convinced of the guilt of Preston Shands, Jr. You
18 know, I have never been to Russia, don't really have any
19 desire to go quite frankly. But since I have never been
20 there how can I be sure it exist. But if I believe it did
21 not exist I would have to disbelieve all of the history
22 books, and all of the geography books and maps and frankly
23 the newspapers and all of the news media that talk about
24 events in Russia. So even though I have never been there
25 I am still firmly convinced that Russia exist. That is

1 what I wanted you to remember in this case. Now, in each
2 case I argue in front of a jury I always like to ask a
3 jury to do three things, some of which are going to be an
4 extension of what Judge Miller instructed you a few
5 minutes ago. First, let's listen very carefully to the
6 testimony that comes off this witness stand because it is
7 from here and whatever exhibits might be admitted to you,
8 physical exhibits, pictures, those sorts of things, that
9 you are to render your verdict. Nothing I am saying right
10 now is evidence, nothing that Mr. Grose may say or Ms.
11 White would say, only people that get up on the witness
12 stand and testify to you, that is your evidence. We are
13 going to essentially boil this down to people who know,
14 for people who can give you direct or other evidence of
15 what happened. So listen very carefully as His Honor
16 said, listen very carefully, you are the fact finders, you
17 determine what the truth is, but it is based on what comes
18 off of that list. That is number one. Number two is
19 going to come at the close of the trial when His Honor
20 instructs you in the law in the case. Just as you are the
21 fact finders in the case His Honor is the lawgiver. He
22 will instruct you on what the law is on all of these
23 matters. It may not be the law as you think it is and
24 sometimes it may not be the law as you think it ought to
25 be but it is the law that you have to take with you back

1 to the jury room when you render your verdict. The third
2 thing I want to ask you to do, each and every one of
3 y'all, you come from Laurens County but you have got
4 different backgrounds, different jobs, perhaps different
5 lifestyles. But each and everyone of you have at least
6 one thing in common, that is common sense. I ask you to
7 use that common sense when you are listening to the
8 evidence that is coming off the witness stand, use that
9 common sense at the close of the trial when you are
10 applying the law as His Honor is giving you to the facts
11 as you have found them to be. If you do all of those
12 three things, ladies and gentlemen, I am confident you are
13 going to come back with a just and fair and a true
14 verdict. Thank you very much.

15 THE COURT: Mr. Grose.

16 MR. GROSE: Thank you, Your Honor. May it please the
17 Court.

18 THE COURT: Yes, sir.

19 MR. GROSE: The prosecutor started off talking about
20 how the case was brought in the name of the people and it
21 is the State versus an individual and in this case my
22 client, Preston Shands. That is a really important
23 concept that I would like for y'all to focus on for a
24 minute and focus on throughout the trial. Because when we
25 are talking about the State we are not just talking about

1 these prosecutors that are here in this courtroom but we
2 are talking about the witnesses from the police department
3 that they are going to call as witnesses to try to explain
4 to you what happened that night. And this is important
5 because sometimes things aren't always what they appear to
6 be. Things are not always what they appear to be and I
7 suggest to you that some of that is going on in this case
8 because you are probably sitting there after listening to
9 that opening statement saying why would somebody do
10 something like that, why would something like this ever
11 happen. Well, it is the police, the State, the ones with
12 the resources who do the investigation that are suppose to
13 determine that. Because you have already heard a couple
14 of times talk about the standard being proof beyond a
15 reasonable doubt. You have heard it from the Judge, you
16 have heard it from them, and you have heard it from me
17 again now. And it is not just proving the actions, it is
18 not just proving the elements of the crime. There is an
19 important concept that you have heard several times right
20 now, when Judge Miller first read the indictment to you,
21 more than once he talked about with criminal intent. The
22 prosecutor talked about a criminal's mindset and
23 absolutely every single case the State has to prove a
24 criminal intent, they have to prove a criminal mindset and
25 sometimes with individual elements of the crime like they

1 do in this case, they have to prove a state of the mind.
2 And I submit to you that what happened was is when Officer
3 Gainey and the other police officers showed up on that
4 night in July of last year, they rushed to judgment and
5 they jumped to some conclusions. They thought they saw a
6 certain set of facts and that is what went forward until
7 this day. When we question them and you have an
8 opportunity to look at it, what I want to look at and I
9 want you to pay attention is were there things that the
10 State, that law enforcement in the name of the people, you
11 and me and Preston Shands, could have done differently,
12 better, or thoroughly to understand what happened and how
13 it came about. Because at the end of the case it is not
14 your jobs to figure out what happened here, we are nine or
15 ten months removed from that incident now, we don't have
16 the resources that they had to do the investigation. We
17 don't have the time to go out there and go through it step
18 by step methodically and try to figure it out. What we
19 can do in this courtroom, the only thing that we can do as
20 the people, also in the name of the people is to hold the
21 State to their burden of proof, not only do they have to
22 prove facts, not only do they have to prove the elements
23 of the crime but they also have to prove criminal mindset
24 or criminal intent. I want you to listen to all of the
25 evidence, we all agree on that, I want you to listen to

1 all of the evidence. And the importance of that is, there
2 is orders that we go in and our time doesn't come until
3 later. And so I ask that you listen to everything.
4 Listen to both sides of the story, both sides of the coin,
5 so to speak. The other thing that I ask for is your
6 individual attention and judgment. Because Judge Miller
7 has already told you if you go to lunch with a friend or
8 family member you are not allowed to talk about this case.
9 And that may be a little bit of a burden because I like to
10 go home and talk about what I have done today and hear
11 what my wife has done during the day. But because of your
12 jobs as jurors in this case it requires your individual
13 attention. Each and every one of you is entitled to
14 listen to this evidence, view the evidence, consider the
15 evidence and come to your own informed, individual
16 judgment of the evidence. And then when it gets to that
17 last stage, the fifth stage so to speak when Judge Miller
18 talked about, when it comes time for deliberations, to
19 express that individual judgment, to listen to other
20 people's judgments and then alternately make the
21 determinations of whether or not the State has met their
22 burden, not just on the facts, not just on the elements
23 but whether or not they have proven criminal intent. And
24 at the end of this case, when I get my last chance to
25 speak with you, I am going to explain to you why we

1 believe that there is reasonable doubt in this case and
2 not guilty is the appropriate verdict in this case.

3 THE COURT: All right. Okay, ladies and gentlemen,
4 now is a good time to break for lunch. You are free to go
5 where ever you choose. Have a great lunch and ask you to
6 be back at 1:30. Don't discuss the case. Thank you.

7 (Whereupon, the jury was excused from open court for
8 a lunch break.)

9 THE COURT: Anything before we break?

10 MS. WHITE: No, sir.

11 (Whereupon, a lunch break was taken.)

12 THE COURT: Let's bring the jury in, please.

13 (Whereupon, the jury came into open court at
14 approximately 1:40 p.m.)

15 THE COURT: Ms. Briggs?

16 FOREPERSON: Here.

17 THE COURT: I understand you have agreed to serve as
18 the Foreperson?

19 FOREPERSON: Yes.

20 THE COURT: Did you leave the room when they took the
21 vote or something?

22 FOREPERSON: No.

23 THE COURT: Thank you very much for you agreeing to
24 serve, we appreciate that. At this time I will turn it
25 over to the State and to call their first witness.

1 MS. WHITE: Thank you, Your Honor, the State calls
2 Joey Avery.

3 JOEY AVERY, being
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 By Ms. White:

7 Q State your name, please.

8 A My full name is Joseph Samuel Avery, Jr.

9 Q And where do you work, Mr. Avery?

10 A I work for Laurens County 911 as a Director.

11 Q How long have you been at Laurens 911?

12 A Roughly twenty-six and a half years.

13 Q All right. As part of the course of business at
14 Laurens 911 do y'all keep a record of the calls that come
15 in?

16 A Yes ma'am, we do.

17 Q Do you keep an actual recording of the phone calls?

18 A Yes ma'am, we do.

19 Q Do you have or were you asked to retrieve a phone
20 call from July the 20th of 2014 at Street?

21 A I was.

22 MS. WHITE: May I approach the witness?

23 THE COURT: Yes.

24 Q I am handing you what has been marked for State's
25 exhibit number 1. Can you identify that for me.

1 A Yes ma'am, this is the copy of the recording that
2 came from my office identified by my initials in the
3 left-hand corner.

4 Q Is that a true and accurate copy of the call that
5 night?

6 A It is.

7 Q And we are talking about a call from what location?

8 A Street in Laurens.

9 MS. WHITE: Your Honor, the State moves exhibit 1
10 into evidence at this time.

11 MR. GROSE: No objection.

12 THE COURT: Without objection.

13 (Whereupon, State's Exhibit 1 was admitted into
14 evidence.)

15 MS. WHITE: Permission to publish, Your Honor?

16 THE COURT: Yes.

17 (Whereupon, 911 tape played for the jury.)

18 MS. WHITE: No further questions, Your Honor.

19 THE COURT: Cross.

20 CROSS-EXAMINATION

21 By Mr. Grose:

22 Q As I understand it your role here was just as a
23 records custodian. Your role in this case is to bring
24 that tape to trial?

25 A That is correct, sir.

1 Q So you didn't go on that call that night?

2 A I did not, no sir.

3 Q And it is not your voice on there?

4 A No, sir. That is night shift supervisor that works
5 directly for me.

6 Q And are you aware that EMS actually sent out two
7 units that night?

8 A They would be listed in the report here, sir, the
9 actual units that went.

10 Q One for Ms. Shands and one for Mr. Shands?

11 A I don't have the names for the individuals as far as
12 the EMS responded to.

13 Q But it does, without going into what it says, because
14 it is hearsay, but it does talk about a second transport?

15 A Let me look here, sir. We did have an initial medic
16 unit that was dispatched that, on 7/20 at 21:09 which
17 would be 9:09 p.m, we also had another medic unit
18 dispatched on 7/20 at 21:10 which would be 9:10 p.m.

19 Q So there were two?

20 A Yes, sir.

21 Q Thank you, sir.

22 THE COURT: Thank you, you can step down. Call your
23 next witness.

24 MS. WHITE: The State calls Sharon Shands.

25 SHARON SHANDS, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Ms. White:

4 Q State your name for the record?

5 A Sharon Copeland Shands.

6 Q How old are you, Ms Shands?

7 A 38.

8 Q And where do you work?

9 A For Laurens County Disability Special Needs Board.

10 Q Are you nervous today, Ms. Shands?

11 A Yes.

12 Q You said you work for Laurens County Disability and
13 Special Needs?

14 A Yes.

15 Q And are you married?

16 A Yes.

17 Q Who are you married to?

18 A Preston Shands, Jr.

19 Q Is Mr. Shands in the courtroom today?

20 A Yes.

21 Q Where is he sitting?

22 A To the left.

23 Q Is that him over there in the dark suit and the red
24 tie?

25 A Yes.

1 MS. WHITE: Your Honor, let the record reflect that
2 she pointed out the Defendant.

3 THE COURT: Okay.

4 Q How long have you and Mr. Shands been married?

5 A A little over nine years.

6 Q Do you have any children?

7 A Yes.

8 Q Who are your children?

9 A J.S.

10 Q And how old is he?

11 A Eight.

12 Q And he is your child with Mr. Shands?

13 A Yes.

14 Q And do you have any other children?

15 A Yes.

16 Q And who is that?

17 A T.C.

18 Q How old is T.C. ?

19 A 16.

20 Q You said you and Mr. Shands have been married about
21 ten years. Where do y'all live.

22 A Street in Laurens.

23 Q Is that in the City of Laurens?

24 A Yes.

25 Q Maybe about five minutes from the Court House?

1 A Yes.

2 Q How long have you lived there?

3 A Around eight years.

4 Q Turning to the evening of July 20th of 2014. Do you
5 remember that day?

6 A Vaguely.

7 Q What day of the week was it?

8 A Sunday.

9 Q And what had you been doing that day?

10 A I was at church.

11 Q Were you at church all day?

12 A Yes, I got home around 6:30.

13 Q All right. Do you know where Mr. Shands was that
14 day?

15 A At home.

16 Q Where were your children?

17 A With him.

18 Q So you went to church and they were all home?

19 A Yes.

20 Q You say you got home around 6:00?

21 A Yes.

22 Q What happened when you got home?

23 A I changed clothes, I redone my hair, started watching
24 TV. And he started asking me why I didn't talk to him.

25 Q Did he, what was his demeanor at first?

1 A Quiet.

2 Q Did you smell any alcohol or did he seem to be
3 intoxicated to you?

4 A No.

5 Q You said he started asking why you wouldn't talk to
6 him. What happened after that?

7 A He started cursing at me.

8 Q And where were y'all when that happened?

9 A I was in the bedroom and he was in the hallway of the
10 house.

11 Q When he started cursing at you what happened after
12 that?

13 A I told him I was going to leave.

14 Q And then what did you do?

15 A I told the kids to come on and I tried to get in the
16 car and somebody kicked the door on my leg or something.
17 I don't remember everything, I remember seeing him on top
18 of T.C. in the garage. We tried to get out of the garage.
19 It was halfway so we couldn't get out.

20 Q When you say it was halfway, are you talking about
21 the garage door?

22 A Yes.

23 Q Was it like a powered garage door opener?

24 A Yes.

25 Q And you say it was halfway. The door itself was

1 halfway up?

2 A Yes.

3 Q And where was everybody. You said you were trying to
4 leave. Where was everybody at that point?

5 A T.C. had done made it back in the house. J.S. , he
6 was in the garage and at that time I remember him pulling
7 me by my hair to try to get me in the backdoor. And I
8 told him to go to Bill's house and call the police. And
9 when he got back, I don't know exactly what happened but
10 he told me to run. So me and J.S. went up under the
11 garage door. And I don't know how I got to Bill's house.
12 But somehow I got there.

13 Q What is the next thing you remember?

14 A Being on the floor. I remember glass shattering. I
15 was trying to block him from cutting me again. Trying to
16 get out of Bill's bedroom window.

17 Q When you say, let me stop you right there, when you
18 say block him from cutting you again. Had he already cut
19 you?

20 A Oh my hand, my left hand.

21 Q Had he stabbed you anywhere?

22 A I don't remember.

23 Q Do you have wounds, did you have any marks that
24 night?

25 A Yes.

1 Q You said you remember trying to block him from
2 stabbing you again. What else do you remember then?

3 A I remember going to a police cruiser. Everything is
4 vague.

5 Q Before he attacked you did you threaten him in any
6 way?

7 A No.

8 Q Did you have any weapons on you?

9 A No.

10 Q I am going to hand you what has been marked as
11 State's 2, 3 and 4, actually let's do 2 and 3 first. Can
12 you identify those for me?

13 A That is my front yard and my garage.

14 Q And State's 4, can you identify that for me?

15 A That is my neighbor's house.

16 Q And that is Mr. Koon's house?

17 A Yes.

18 Q Is that the house that you ended up running to?

19 A Yes.

20 Q You called your neighbor, Bill, is that what he goes
21 by?

22 A Yes.

23 Q Do you know his real name?

24 A No.

25 Q Do you know his last name?

1 A Yes.

2 Q What is his last name?

3 A Koon.

4 MS. WHITE: Your Honor, the State moves exhibits 2, 3
5 and 4 into evidence.

6 MR. GROSE: No objection.

7 THE COURT: Okay.

8 (Whereupon, State's Exhibits 2, 3 and 4 were admitted
9 into evidence.)

10 Q This is State's exhibit 2. Do you see that?

11 A Yes.

12 Q What was that again?

13 A That is my front yard.

14 Q And is this your garage right here?

15 A Yes.

16 Q And is that, sort of where the altercation started?

17 A Yes.

18 Q State's exhibit 3. What is behind this door right
19 here?

20 A My kitchen.

21 Q And you said State's exhibit 4, that is your
22 neighbor's house?

23 A Yes.

24 Q Do you remember which door you went in at your
25 neighbor's house?

1 A The front.

2 Q This door right here on the porch?

3 A Yes.

4 Q I am going to hand you what has been marked as
5 State's exhibit 5 through State's exhibit 13 for
6 identification. Can you thumb through those and I will
7 have some questions for you.

8 A Okay.

9 Q And what are those all pictures of?

10 A The wounds I received.

11 Q Was that taken right after or a few weeks after?

12 A A few weeks after.

13 Q And are those accurate pictures of the scars that you
14 have?

15 A Yes.

16 MS. WHITE: State moves exhibits 5 through 13 into
17 evidence, Your Honor.

18 MR. GROSE: No objection.

19 THE COURT: Okay.

20 (Whereupon, State's Exhibits 5 through 13 were
21 admitted into evidence.)

22 Q Looking at State's exhibit 5. Can you see that one?

23 A Yes.

24 Q What is that we are looking at?

25 A That is my left side.

1 Q And did you have that before Mr. Shands attacked you?

2 A No.

3 Q State's exhibit 6. What are we looking at there?

4 A That is my head, left side behind my ear.

5 Q State's exhibit 7.

6 A That is my left arm.

7 Q And you can't really, it is not showing up very well.

8 But you have a scar down by your elbow, is that right?

9 A A little above.

10 Q And then there is some more scars farther up your

11 arm?

12 A Yes.

13 Q And State's exhibit 8. What is that?

14 A My left shoulder.

15 Q That is another scar on your left shoulder?

16 A Yes.

17 Q And did you have any of these injuries before that

18 night?

19 A No.

20 Q State's exhibit 9. What is that?

21 A That is my finger.

22 Q Where on your finger is this scar?

23 A Like on that tip.

24 Q Right up here?

25 A Yes.

1 Q State's exhibit 10, what is that?

2 A That is a scar right above my heart, my chest.

3 Q And that is another one you received that night?

4 A Yes.

5 Q State's exhibit 11, what is that?

6 A That is a bite mark on my left eye.

7 Q Who bit you?

8 A Preston.

9 Q And that was that night?

10 A Yes.

11 Q State's exhibit 12, what is that?

12 A That is above, right by my ribs is at on the left
13 side.

14 Q Kind of up in this region on your left side?

15 A Yes.

16 Q And State's 13?

17 A My left arm.

18 Q That is a scar right there?

19 A Yes.

20 Q Is that another one right there?

21 A Yes.

22 Q Do you know how many times you were stabbed that
23 night?

24 A No.

25 Q Do you know how many stitches you received?

1 A No.

2 Q Was it a lot?

3 A I guess 40 to 50.

4 Q You said you remembered getting into the helicopter,
5 where were you taken?

6 A Greenville Memorial.

7 Q And how long did you stay there?

8 A Four or five days.

9 Q Do you remember where they had you in the hospital?

10 A When I went in I was in ICU and then I went to a
11 regular room.

12 Q Ms. Shands, are you and Mr. Shands still legally
13 married right now?

14 A Yes.

15 Q Are you going through a divorce?

16 A Yes.

17 Q And have you spoken directly to him since July 20th
18 of 2014?

19 A No.

20 Q Have you received any letters from him?

21 A Yes.

22 MS. WHITE: Can I approach the witness, Your Honor.

23 THE COURT: Yes.

24 Q I am handing you what has been marked as State's 14
25 and State's 15. If you can look at those for me. Do you

1 recognize the handwriting on those letters?

2 A Yes.

3 Q And who are those from?

4 A Preston.

5 Q And who are they directed to?

6 A The kids.

7 Q Did the kids ever see them?

8 A No.

9 Q How did you come to possess those?

10 A They came in the mail.

11 Q And what did you do with them when they came?

12 A Put them up and turned them in.

13 Q Turned them into law enforcement?

14 A Yes.

15 MS. WHITE: State moves exhibits 14 and 15 into
16 evidenced.

17 MR. GROSE: No objection.

18 THE COURT: Go ahead.

19 (Whereupon, State's Exhibit 14 and 15 were admitted
20 into evidence.)

21 Q And you said you never showed these to the kids?

22 A No.

23 Q Ms. Shands, when you were trying, you said you were
24 trying to leave and he shut the garage door, was that just
25 one time or did it keep going on?

1 A It went on for about one or two minutes. I was
2 trying to open it and he was trying to close it.

3 Q So you were trying to leave and he was trying to keep
4 the door shut?

5 A Yes.

6 Q Ms. Shands, were you in fear for your life that
7 night?

8 A Yes.

9 Q Please answer any questions Mr. Grose has for you.

10 CROSS-EXAMINATION

11 By Mr. Grose:

12 Q I want to ask you about State's exhibits 14 and 15.
13 These are the letters you just testified about, is that
14 right?

15 A Yes.

16 Q And I think you said those letters came in envelopes
17 addressed to your children?

18 A Yes.

19 Q And your oldest child, if I am saying his name right,
20 Travious.

21 A T.C.

22 Q T.C., I am sorry. That was the son from a prior
23 relationship?

24 A Yes.

25 Q But you and Preston had known each other for 11 or 12

1 years now?

2 A Yes.

3 Q And you all lived together as a family and he helped
4 raise your son, didn't he?

5 A Yes.

6 Q And the second son is J.S. , is that correct?

7 A Yes.

8 Q And that is the son that you and Preston have
9 together?

10 A Yes.

11 Q And these letters were addressed to both of them,
12 right?

13 A Yes.

14 Q Have you read the letters?

15 A No.

16 Q Okay. They came and then you gave them to law
17 enforcement?

18 A Yes.

19 Q When did you give them to law enforcement?

20 A A week after I got them.

21 Q And you got one in December and one in January,
22 right?

23 A Yes.

24 Q So, did you give them to them both at the same time
25 or did you give them the December one and then give the

1 January one?

2 A They were separate.

3 Q They were separate. So they have had those, one
4 since last December and one since January, is that right?

5 A Yes.

6 Q All right. Now, you said you haven't read those?

7 A No.

8 Q You took them to law enforcement for whatever value
9 they might have, didn't you?

10 A No, I was told that he couldn't contact us.

11 Q But you turned them over to them so they could do
12 with those whatever they needed to do, right?

13 A Yes.

14 Q Okay. And if there was something in there to
15 followup on you would expect them to followup, wouldn't
16 you?

17 A Yes.

18 Q Now, the Prosecutor ask you about smelling alcohol on
19 Preston the night that this happened, do you remember that
20 question?

21 A Yes.

22 Q And you said you didn't?

23 A No.

24 Q All right. Would it surprise you to learn that he
25 talks about alcohol in those letters?

1 A No, it wouldn't.

2 Q All right. You and Preston have fussed before,
3 right?

4 A Yes.

5 Q And argued, right?

6 A Yes.

7 Q This is the first time he has ever done something
8 like this, isn't it?

9 A Yes.

10 Q And you had concern that you have expressed to other
11 people that maybe Preston had been poisoned this night,
12 didn't you?

13 A No.

14 Q Do you remember talking to Jimmy McBeth about that?

15 A No. The conversation came up that he brought to me.

16 Q And you don't remember telling him about the
17 possibility that Preston's friends, that you didn't
18 approve of, might have given him something?

19 A No.

20 Q But the way Preston was acting that night, he was
21 more agitated than usual, right?

22 A I guess a little because he did stuff all the time.

23 Q Okay. But he never did anything like this before?

24 A No, not to this extreme, no.

25 Q But he has never physically harmed you before?

1 A No.

2 Q So, if there was something that could explain why
3 this that was out of the ordinary happened, you would want
4 to know that, wouldn't you?

5 A I would.

6 Q That is all I have. Thank you.

7 REDIRECT EXAMINATION

8 By Ms. White:

9 Q What was Mr. Shands demeanor, well, let me back up.
10 When y'all first got married would you describe your
11 relationship as happy?

12 A It was wonderful.

13 Q And the months leading up to this incident, how would
14 you describe Mr. Shands behavior towards you?

15 A Controlling, we walked on pins and needles every day,
16 we just didn't know what to expect.

17 Q No further questions.

18 THE COURT: Thank you, Ma'am, you can step down.

19 Call your next witness.

20 MS. WHITE: The State calls T.C.

21 T.C. , being

22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 By Ms. White:

25 Q What is your name?

1 A T.C. .
2 Q Your full name is T.C. ?
3 A Yes, ma'am.
4 Q And you go by T.C. ?
5 A Yes, ma'am.
6 Q How old are you, T.C. ?
7 A 16.
8 Q Where do you go to school?
9 A Clinton High.
10 Q What grade are you in there?
11 A Tenth.
12 Q And who are your parents?
13 A Sharon.
14 Q Did you live with your mom and her husband, Preston?
15 A Yes, ma'am.
16 Q Do you remember how old you were when your mom first
17 married Mr. Shands?
18 A No, ma'am.
19 Q Has he been pretty much there the whole time you have
20 been growing up?
21 A Yes, ma'am.
22 Q Where did y'all live?
23 A Laurens on Street.
24 Q At ?
25 A Yes, ma'am.

1 Q How would you describe your relationship with Mr.
2 Shands while you were growing up?

3 A It was good.

4 Q Are you nervous to be here today?

5 A Yes, ma'am.

6 Q Do you remember the night of July 20th of 2014?

7 A Yes, ma'am.

8 Q And what had you been doing that day?

9 A In my room.

10 Q And that was at your house?

11 A Yes, ma'am.

12 Q And who was there with you?

13 A Step-dad and my brother.

14 Q Your brother, are you talking about J.S. ?

15 A Yes, ma'am.

16 Q And y'all were there all day together?

17 A Yes, ma'am.

18 Q Did you see Mr. Shands with any sort of alcohol that
19 day?

20 A A Bud Light.

21 Q Just one Bud Light?

22 A I don't know how many he drunk, I just seen a Bud
23 Light.

24 Q Did you see him drinking anything else that day?

25 A No, ma'am.

1 Q Have you ever, let me back up, would you say that Mr.
2 Shands got intoxicated, that he got drunk?

3 A I don't know.

4 Q About what time did your mom get home?

5 A Probably 1:00 or 2:00.

6 Q It was in the afternoon some time?

7 A Yes, ma'am.

8 Q What happened once your mom got home?

9 A She walked back to her room because she watched TV.

10 Q What happened after that?

11 A I heard him walking into my mama's room. And he was
12 like, why don't you never talk to me. And mama was like,
13 what do you mean. And that is when they started arguing.

14 Q What happened after they starting arguing?

15 A My mama told us, let's go to the car.

16 Q And where was the car parked?

17 A In the garage.

18 Q What happened after that?

19 A My mama, she got in the car and the door was opened
20 and he, I think he tried to close the garage.

21 Q When you say the door was open, are you talking about
22 the garage door was open?

23 A Yes.

24 Q And then you say he tried to shut it?

25 A Yes, ma'am.

1 Q What happened after that?

2 A He kicked the door and my mama's leg was still out.

3 Q Which door are you talking about now?

4 A The car door.

5 Q After he kicked the car door what happened?

6 A I got him out of the way and we got by the front of
7 the car and that is when I fell. And he was on top of me
8 and then my mom came and that is when he, that is when he
9 started, I believe before he kicked the door he got a
10 knife or whatever. And that is when, kind of runs away
11 and then my mom came and then somehow they got over there,
12 outside of the garage in the grass.

13 Q You said he had gotten a knife or something. What
14 was he doing with it?

15 A He was stabbing my mama.

16 Q What did you do when you saw him stabbing your mom?

17 A I ran to Bill's.

18 Q When you say, Bill, is that Mr. Koon who is sitting
19 right back here?

20 A Yes, ma'am.

21 Q You ran to his house and what did you do after that?

22 A I told Bill to call the police and that is when I ran
23 back over.

24 Q You ran back to your house?

25 A Yes, ma'am.

1 Q What did you do from there?

2 A I had to stop him from cutting my mom.

3 Q How, were you able to stop him?

4 A A little bit.

5 Q What did y'all do after that?

6 A I got my mom off and that is when she ran to Bill's
7 house and I told J.S. or whatever. And then that is when
8 I took off to the house and that is when he tackled my mom
9 at the front door at Bill's house. And that is when he
10 started stabbing again.

11 Q You said he tackled her at the front door of Bill's
12 house, were y'all actually in the house at that point,
13 kind of in the doorway?

14 A Right on the steps.

15 Q Started stabbing her again?

16 A Yes, ma'am.

17 Q What happened from then?

18 A That is when I grabbed his hand and I stopped him
19 from stabbing her.

20 Q Were y'all able to get him to stop?

21 A Yes, ma'am.

22 Q What did y'all do?

23 A I got his arm and did like that and leaned back.
24 That is when he left and he got a hammer and he came back
25 to Bill's house and he busted out the front window.

1 Q And when he had left to go get the hammer were y'all
2 inside with the door locked?

3 A Yes, ma'am.

4 Q You said he came back and busted out the window,
5 which window was that?

6 A The front window.

7 Q And then what did he do?

8 A He went to the back of the house and busted it out.

9 Q And what did he do from there?

10 A I think he busted out two windows and he got in and
11 in front of the kitchen and got another knife. That is
12 when the police came.

13 Q When the police came what did he do?

14 A He came to the front porch.

15 Q Did he have anybody with him when he came to the
16 front porch?

17 A I don't know.

18 Q What did your mom do when the police got there?

19 A She ran to the police officer.

20 Q And he followed her out the door?

21 A Yes, ma'am.

22 Q Did you, were you injured?

23 A Yes, I had some cuts and stuff.

24 Q How did you get those cuts?

25 A From catching a knife.

1 Q When you say from catching a knife, what were you
2 doing?

3 A I was trying to stop him from stabbing my mama.

4 Q And he cut you kind of in the process?

5 A Yes, ma'am.

6 Q Do you know what point during all of this that
7 happened?

8 A No ma'am, I really didn't feel it.

9 Q T.C. , the person who had the knife that night, is
10 he in the courtroom today?

11 A Yes, ma'am.

12 Q Where is he.

13 A (The witness pointed to Mr. Shands.)

14 Q You are pointing to Mr. Shands. Did you see anybody
15 else with a weapon that night?

16 A No, ma'am.

17 Q What did you think was going to happen to your mom
18 that night?

19 A I thought she was going to die.

20 Q Please answer any questions Mr. Grose has for you.

21 CROSS-EXAMINATION

22 By Mr. Grose:

23 Q I am going to try to be brief. But in doing so if I
24 ask you something that you don't understand will you let
25 me know before you try to answer?

1 A Yes, sir.

2 Q Do you remember talking to the police officers that
3 night or the next day?

4 A Yes, sir.

5 Q And do you remember them wanting you to make a
6 statement?

7 A I don't know about a statement.

8 MR. GROSE: May I approach, Your Honor?

9 THE COURT: Yes.

10 Q Did you sign that statement?

11 A Yes, sir.

12 Q Okay. And what I wanted to ask you about was, the
13 first object that you saw Preston with, did you tell the
14 police officers that was a fork instead of a knife?

15 A I told them it was a knife, something that you use on
16 the grill.

17 Q And like the fork kind of with prongs to turn meat or
18 whatever on the grill, is that right?

19 A Yes, sir.

20 Q And, now Ms. White ask you about living with your
21 mother and Preston growing up?

22 A Yes, sir.

23 Q I think you said you did, correct?

24 A Yes, sir.

25 Q And Preston treated you like his own son?

1 A Yes, sir.

2 Q Did things with you?

3 A Yes, sir.

4 Q I think you said you had a good relationship?

5 A Yes, sir.

6 Q And other than this one incident Preston has never
7 done anything like this that you have seen, has he?

8 A He did some other things.

9 Q But he, he could fuss and get irritable but he has
10 never had stabbed anybody like this, has he?

11 A No, sir.

12 Q Okay. Now, they ask you questions about what you saw
13 Preston drinking that day and you said you saw one Bud
14 Light, is that right?

15 A Yes, sir.

16 Q There was also a time where he had a clear glass with
17 some, like coke, do you remember that, coca cola?

18 A No, sir.

19 Q You just don't remember that. And what time did you
20 say that your mother got home, I think you said it was
21 around 1:00 or 2:00?

22 A Yes, sir.

23 MR. GROSE: I beg the Court's indulgence for a
24 moment.

25 Q This was almost a year ago, right?

1 A Yes, sir.

2 Q And you are probably having a little trouble
3 remembering back when these things actually happened,
4 right?

5 A A little bit.

6 Q Thank you, that is all I have.

7 MS. WHITE: No questions.

8 THE COURT: Thank you, sir, you may step down.

9 MS. WHITE: The State calls J.S. .

10 J.S. , being
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 By Ms. White:

14 Q Can you tell us your name?

15 A J.S. .

16 Q Your last name is J.S. ?

17 A Yes, ma'am.

18 Q When is your birthday, J.S. ?

19 A [REDACTED] the [REDACTED].

20 Q How old are you?

21 A Eight.

22 Q Where do you go to school?

23 A Clinton.

24 Q And you are in second grade there?

25 A Yes, ma'am.

- 1 Q Who is your mom?
- 2 A Sharon Shands.
- 3 Q And who is your dad?
- 4 A Preston.
- 5 Q Did you live with your mom and your dad?
- 6 A Yes, ma'am.
- 7 Q Do you remember back on July the 20th of last year?
- 8 A Yes, ma'am.
- 9 Q What had you been doing that day?
- 10 A Watching TV.
- 11 Q And had you been home all day?
- 12 A Yes, ma'am.
- 13 Q And where was your mom?
- 14 A At church.
- 15 Q And your mom got home at some point?
- 16 A Yes.
- 17 Q And what happened when your mom got home?
- 18 A We talked and watched TV.
- 19 Q Did she and your dad start arguing?
- 20 A Yes.
- 21 Q Did you hear what it was over?
- 22 A Yes.
- 23 Q What were they fighting over?
- 24 A (No response.)
- 25 Q You don't remember. It is fine. If you don't

1 remember just tell me you don't remember, okay. What
2 happened after they were arguing?

3 A My mom cranked up the car and her leg and he kicked
4 it.

5 Q When you say he kicked it, who are you talking about?

6 A My dad.

7 Q Your dad. He kicked the door of the car?

8 A Yes.

9 Q And what happened after that?

10 A T.C. told me to call the police and that is when he
11 got the fork.

12 Q Who got the fork?

13 A My dad.

14 Q And what did he do with the fork?

15 A He got my mom by the hair and that is when my brother
16 and he just said, he had a fork. And he busted a window.

17 Q You said that your dad had your mom by the hair and
18 he had a fork, what was he doing with the fork.

19 A After he had the fork, he went back to her and he
20 tried to cut her throat but the fork was bent up.

21 Q And you saw him trying to cut your's mom throat?

22 A Yes.

23 Q Was T.C. going to get him out of the house?

24 A Yes, he still had the fork when he went back to that
25 house and that is when the police arrived.

1 Q And when you are talking about the house, you are
2 talking about Mr. Bill's home?

3 A Yes.

4 Q J.S. , what did you think was going to happen to your
5 mom that night?

6 A She was going to be okay.

7 Q I am talking about while all of this was going on,
8 were you scared?

9 A Uh-huh.

10 Q Was your mom bleeding?

11 A Yes.

12 Q Did you see T.C. get cut?

13 A No.

14 Q Please answer any questions Mr. Grose has.

15 CROSS-EXAMINATION

16 By Mr. Grose:

17 Q J.S. , if I ask you something that you don't
18 understand will you let me know, is that fair?

19 A Yes.

20 Q Are you a little nervous about being here, aren't
21 you?

22 A Yes.

23 Q Have you ever had to come to court for anything like
24 this before, have you?

25 A No, sir.

1 Q All right. I just want to kind of go back to a
2 couple of things real quickly, if that is all right.

3 Okay. I think you said that the first thing you saw your
4 dad grab was the fork, is that right?

5 A Yes, sir.

6 Q And this isn't so much for me, but this lady over
7 here keeps reminding us that she has got to record
8 everything so I need you to say your answer out loud,
9 okay.

10 A Okay.

11 Q And I think you said when you were in Bill's house
12 that your dad was still using the fork, is that right?

13 A Yes, sir.

14 Q And you said it was too bent up, is that right?

15 A Yes.

16 Q Now, you said you were scared that night and I can
17 understand that. This is the first time you have ever
18 seen your dad do something like that with a fork, isn't
19 it?

20 A Yes, sir.

21 Q And it was kind of out of the ordinary?

22 A Yes.

23 Q And you have never seen him in that kind of state of
24 mind before, have you?

25 A No.

1 Q That is all I have.

2 MS. WHITE: No questions.

3 THE COURT: You may step down. Call your next
4 witness.

5 MS. WHITE: The State calls Clarence Koon to the
6 stand.

7 CLARENCE KOON, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Ms. White:

11 Q Tell us your name for the record?

12 A Clarence Koon, Jr., known as Bill.

13 Q I was about to say, do you go by Bill. Where do you
14 live, Mr. Koon?

15 A Street.

16 Q That is here in the City of Laurens?

17 A Yes.

18 Q Are you neighbors with Mr. and Ms. Shands?

19 A Yes.

20 Q And where, if you are standing on your front porch
21 kind of looking out where is their house?

22 A An angle to my front door.

23 Q They are across the street neighbors?

24 A Yes.

25 Q Now, going right to the night of July 20th of 2014,

1 what were you doing that night?

2 A Just had sat down and fixing to watch TV.

3 Q And what is the first thing you heard?

4 A Somebody was banging on my door like they were fixing
5 to knock it down. And I jumped up and went to the door.

6 Q And when you went to the door who was there?

7 A His boy.

8 Q And what happened after that?

9 A He was telling me that he was killing his mama,
10 stabbing her. And when he told me that he kind of turned
11 and went back across the road. And then it wasn't but a
12 few minutes later they all came over to the house.

13 Q When you say all of them who all was it?

14 A Mr. Shands was running, the two kids and the mama.

15 Q And they came back over to your house?

16 A Yes, they came in the house and that is when, I don't
17 know if he pushed her down on the floor but I know they
18 both wound up on my front room floor.

19 Q And what, that is just right inside of your front
20 door?

21 A Yes, ma'am.

22 Q And kind of how did they end up, who was where?

23 A Ms. Shands was on the bottom and Mr. Shands was on
24 top of her.

25 Q What was Mr. Shands doing?

1 A He was trying to, he looked to me he was trying to
2 cut her throat with some kind of object wrapped around his
3 hand, I couldn't tell at the time what it was. But when I
4 finally got to see the handle, it was white or it looked
5 white. And it was wrapped around his hand like a pair of
6 steel nooks. And he was trying to use the bottom end of
7 it, the broke end part and he was trying to go across her
8 throat with it.

9 Q Was he saying anything?

10 A He never said a word, not the first word, period.

11 Q Was Ms. Shands' bleeding?

12 A Oh, she had blood everywhere. I mean I didn't even
13 see no part of her, all I saw was blood.

14 Q You said he was trying to cut her throat?

15 A Yes, ma'am. He was trying to cut her throat with
16 whatever it was in his hand.

17 Q What happened after that?

18 A I got the phone. I went in the bathroom to tell my
19 wife but she was in the shower, what was going on because
20 Ms. Shands was screaming and hollering for me to help her.
21 And I grabbed my telephone and I go into the shower with
22 my wife to try to dial 911 and get the police out there.
23 And then when I went back in there the two boys had his
24 hand, him facing Ms. Shands and they had his hand kind of
25 back like this keeping him from whatever that was on his

1 hand from hurting their mama.

2 Q Were y'all able to get him off of her?

3 A Well, the weird thing was, I turned around and went
4 back into the bathroom and when I came back in there he
5 was gone. And that is when he went across the house,
6 across to his house. I guess that is when he got the
7 hammer and come back and started whelling, (phonetic),
8 because I noticed my windows were disappearing.

9 Q When you say your windows were disappearing, which
10 windows?

11 A The big, windowpane window in the front, the big one
12 is the one he hit first. It is like a five by five
13 windowpane.

14 Q And what happened after that?

15 A And he kind of goes to the back of the house and I
16 cut through the house and go back there to lock the door
17 because we had done locked the front door. When he got
18 back there I told him to cool off a little bit and just
19 take a few minutes and try to ease down. And the next
20 thing I know was wham, bam, he just busted two more
21 standing right beside me on the back of the house.

22 Q And he busted two more windows?

23 A Yes, busted two more windows. And then he just said,
24 let me in. And that was the only word, he hasn't spoke to
25 me since he had even been in my yard, just let me in,

1 Bill. And a few minutes later, I have two sliding glass
2 doors to the, would have been to his right. And he threw
3 the hammer through the sliding glass doors and that is how
4 he came back into my house. That is how he gained
5 entrance again.

6 Q When he came back into your house what did he do?

7 A I was outside on the front. At that point and time
8 me and the oldest boy and the youngest boy came out, it
9 seemed like with his daddy and he had a knife in his hand
10 that he got from my kitchen.

11 Q When you said he had a knife, you are talking about--

12 A Mr. Shands.

13 Q -- Mr. Shands?

14 A Yes, ma'am.

15 Q And you know it was a knife from your kitchen?

16 A Oh, yes ma'am, it was a knife from my kitchen.

17 Q What did he do with the knife?

18 A Well, about the time Mr. Shands came out the door the
19 policeman pulled up and drewed his weapon and told Mr.
20 Shands to drop the weapon and he just dropped it on the
21 grass.

22 Q I am going to hand you what has been marked as
23 State's 16 through 24, well I am going to hand you 16
24 through 24 but take out 17. Can you look at those and
25 identify them for me?

1 A Yes, ma'am. This one is the entrance to my home.

2 Q Are those all pictures of various places around your
3 house?

4 A Yes, ma'am. That is to the back entrance.

5 Q Are all of these pictures a fair and accurate
6 depiction of how it looks today?

7 A Yes, ma'am. That is what it looks like right now.

8 Q And with the exception of the boarded up or the sided
9 over place on the back, is that pretty much what it looked
10 like last year on July 20th?

11 A Yes, ma'am.

12 MS. WHITE: The State moves number 16 through, well,
13 let me ask you about 17.

14 Q What is 17 a picture of?

15 A That is Mr. Shands house.

16 Q Is that what it looked like back then?

17 A Yes.

18 MS. WHITE: State moves exhibits 16 through 24 into
19 evidence at this time, Your Honor.

20 MR. GROSE: No objection.

21 THE COURT: All right.

22 (Whereupon, State's Exhibits 16 through 24 were
23 admitted into evidence.)

24 MS. WHITE: Permission to publish.

25 THE COURT: Yes.

1 Q Looking at this, what is that picture of, Mr. Koon?

2 A That is the entrance to my home.

3 Q Is that where they came in that night?

4 A Yes, ma'am.

5 Q And you said he broke out a window. Is that this
6 window right here?

7 A Yes, ma'am.

8 Q Is that a better, closer picture of the window?

9 A Yes, ma'am. That is the big window.

10 Q You said he went around towards the back. This is
11 State's exhibit 18. What is that on your house?

12 A That is my patio back there. That is where he went
13 to.

14 Q So he came around this side of the house?

15 A Yes, ma'am.

16 Q Did he have to go in this gate?

17 A Yes, ma'am.

18 Q And this is State's exhibit 20. What is that?

19 A That is my patio.

20 Q Did he break out any windows there?

21 A The two on the left of the door.

22 Q These two right here?

23 A Yes, ma'am. Well, at the top and the bottom, the
24 stack window, yes.

25 Q State's exhibit 21. What is that there?

1 A That used to be a patio door.

2 Q Sliding glass door?

3 A Yes.

4 Q What happened there?

5 A That is how Mr. Shands reentered my home. He took
6 the hammer, we found the hammer where he threw the hammer
7 through the glass and that is how he came through.

8 Q Where was he when he threw the hammer?

9 A I don't really know but I am sure he had to be
10 somewhere standing on that patio to angle it the way it
11 went in the window.

12 Q And I guess y'all fixed it, y'all decided to close it
13 in?

14 A Yes, ma'am. Because people throw hammers through big
15 windows.

16 Q Mr. Koon, did you get a good look at the hammer that
17 night?

18 A I looked at it briefly, not up close.

19 Q I am going to show you what has been marked as
20 State's 25 for identification. Do you recognize that?

21 A Yes, that looks like the hammer, it sure does.

22 Q And, Mr. Koon, you said he grabbed the knife from
23 your kitchen. I am going to hand you State's exhibit 26.
24 Can you identify that for me. Be careful because it can
25 poke through.

1 A Yes, ma'am. That is the knife from my kitchen, we
2 got a set of them.

3 Q Mr. Koon, did he have your permission to come to your
4 house that night?

5 A No ma'am, he sure didn't.

6 Q And was it dark by the time he came in?

7 A It was getting dark, it wasn't completely one-hundred
8 percent dark but it was getting kindly dusky.

9 Q After everything kind of settled down, how was your
10 house left?

11 A Like a tornado went through it. It took us a long
12 time to get the blood off the floor and off the furniture.
13 It was a nightmare. In fact, it took me almost three days
14 before the insurance even sent me any money. And we sat
15 there with our guns because my windows were knocked out.
16 They didn't, nobody sent me any money or nothing. And we
17 had to put plywood up against them and that is how we took
18 care of the house.

19 Q Mr. Koon, what did you think Mr. Shands was trying to
20 do that night?

21 A I don't think, that man was trying to kill that
22 woman.

23 Q Please answer any questions Mr. Grose has.

24 CROSS-EXAMINATION

25 By Mr. Grose:

1 Q Mr. Koon, I probably will just have a few questions.
2 The first object that you saw in Preston's hands. What
3 did you call that?

4 A It looked like a meat fork from some kind of grill is
5 what it actually looked like.

6 Q So that wasn't a knife?

7 A No, sir. I don't think that was no knife, not at
8 that time.

9 Q And was that what you thought was wrapped around his
10 hands or was that something else?

11 A No, the meat fork is what he had wrapped around his
12 hands.

13 Q And the knife, did you actually see him cut or stab
14 anybody with the knife?

15 A No sir, I did not.

16 Q And you talked about seeing blood in your house and
17 on Ms. Shands?

18 A Oh, yes. She was covered.

19 Q And Preston was covered with blood?

20 A Yes sir, he was.

21 Q Do you know what parts of Preston's body were
22 injured?

23 A I know he had one or two cuts on his arm when he
24 broke the glass. I mean, I wasn't really paying a lot of
25 attention, everything was going ninety miles an hour.

1 Q You don't know exactly how he got those cuts, do you.
2 You just know he had some cuts?

3 A Yes.

4 Q And since things were going ninety miles an hour, out
5 of fairness, don't speculate.

6 A Right.

7 Q So, you did see cuts on Preston?

8 A Yes sir, he had cuts.

9 Q And you have no actual knowledge as to how he got
10 those cuts?

11 A I sure don't.

12 Q Now, you and Preston have lived across the street a
13 number of years, I would imagine?

14 A Yes.

15 Q And you have talked to Preston before?

16 A Real nice guy.

17 Q Real nice guy. You have seen him play with his
18 children?

19 A Yes, sir.

20 Q I believe you probably have had children of yours
21 visit him, his children at his house?

22 A Yes.

23 Q Kids play together?

24 A Yes.

25 Q And this was entirely out of character for Preston?

1 A Well, see I don't know if that was out of character
2 or not. I know he has been a neighbor to us.

3 Q Right, he had always been a good neighbor to you?

4 A Yes, sir.

5 Q And you had never witnessed anything like this?

6 A No sir, I have not.

7 Q That is all I have.

8 REDIRECT EXAMINATION

9 By Ms. White:

10 Q Mr. Grose was just asking you about Mr. Shands as a
11 neighbor. How would Mr. Shands react if someone tried to
12 speak to Ms. Shands?

13 A He could get sometimes a little jealous at times. I
14 mean he would say something to her and get her attention.

15 Q And that night, by my count, he broke three windows
16 and a sliding glass door?

17 MR. GROSE: Objection, leading.

18 A Yes.

19 THE COURT: Don't lead.

20 Q How many windows did he break out?

21 A Five total.

22 Q So there, was there a lot of broken glass around?

23 A It was everywhere.

24 Q No further questions.

25 THE COURT: You can step down, thank you.

1 MR. GROSE: Your Honor, can we take a brief recess.

2 THE COURT: We will take a break and don't talk about
3 the case and we will get back with you shortly.

4 (Whereupon, the jury was excused from open court for
5 a break.)

6 THE COURT: We will take a few minutes.

7 (Whereupon, a short break was taken.)

8 THE COURT: Let's get them in.

9 (Whereupon, the jury came into open court at
10 approximately 3:40 p.m.)

11 THE COURT: Call your next witness.

12 MS. WHITE: The State calls Martha Koon to the stand.

13 MARTHA KOON, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Ms. White:

17 Q Tell us your name for the record?

18 A Martha Koon.

19 Q And where do you live, Ms. Koon?

20 A Street.

21 Q Who do you live with?

22 A My husband, Clarence.

23 Q Do you know Preston and Sharon Shands?

24 A Yes, I do.

25 Q Where do they live in relation to you?

1 A Street, right across the street.

2 Q Going to July 20th of 2014, do you remember that
3 night?

4 A I do.

5 Q And what, I guess this was a Sunday, did you work
6 that day?

7 A No.

8 Q What were you doing that evening?

9 A Well, when it first started I had gone in and I was
10 getting ready to take a shower. And, I had already gotten
11 in the shower and I heard screams.

12 Q Did it sound like a male voice, a female voice?

13 A Female.

14 Q What did you do when you heard the screams?

15 A Well, I got out of the shower and I went in to see
16 what was going on. And at that time I saw Preston on top
17 of Sharon.

18 Q You said he was on top of her, what was he doing?

19 A I could tell, it had begin to get dark. I could not
20 see what the weapon was but I could see that he had
21 something in his hand and they were struggling and she was
22 screaming. I could see blood everywhere and he was aiming
23 for her throat with whatever the weapon was.

24 Q Who else was there?

25 A Her oldest son and also her youngest son.

1 Q What were they doing when you came in?

2 A Well, the youngest son was just screaming because he
3 was very scared. And the older son was trying to pull
4 Preston off of Sharon.

5 Q What happened after that?

6 A Well, I went back into the bathroom to get dressed
7 and when I came back he was already gone. He had went
8 back to his home and a few minutes later he came back and
9 that is when he had the hammer. And he threw the hammer
10 or started breaking my front window with the hammer. Then
11 he went around to the back of the house and he asked Bill
12 to let him in and Bill said no. So, he went to my sliding
13 glass door and he threw the hammer and broke it and he
14 entered in my home through my den. He went straight to my
15 kitchen and got one of my kitchen knives and he started
16 towards Sharon and she went to, through the hall to my
17 bedroom. And at that time that is when the police arrived
18 and he went out the front door with the knife in his hand.

19 Q Did anybody give him permission to come in the house?

20 A No, ma'am.

21 Q Did he have permission to come in your house
22 ordinarily?

23 A No.

24 Q Please answer any questions Mr. Grose has.

25 CROSS-EXAMINATION

1 By Mr. Grose:

2 Q Thank you for being here. I will try to be very
3 brief. If I ask you anything you don't understand would
4 you let me know before you try to answer.

5 A Sure.

6 Q As I understand you were in the shower when this
7 started?

8 A Yes, sir.

9 Q And you heard a scream?

10 A I did.

11 Q So obviously you don't know what lead up to that
12 point, that is the first time you were aware of it?

13 A Right.

14 Q And when you went into your living room you saw
15 Preston with an object in his hand but you couldn't tell
16 what it was?

17 A No.

18 Q And I guess you never got a good look at it?

19 A No.

20 Q And then he left and he came back. That is when he
21 got the kitchen knife, right?

22 A Yeah, when he came back and came into my home for the
23 second time, right.

24 Q Yes, ma'am. And you didn't see him do anything with
25 the kitchen knife other than hold it, did you?

1 A No.

2 Q Okay. Now, as I understand it, there was blood in
3 your house?

4 A Right.

5 Q And you probably saw blood on Sharon?

6 A Yes.

7 Q And you saw blood on Preston?

8 A I don't remember, honestly I don't remember if I saw
9 blood on Preston or not.

10 Q Do you know if Preston was injured?

11 A I don't know, I was mainly concerned for Sharon.

12 Q So if Preston was injured you don't know how that
13 happened?

14 A I don't know, no sir.

15 Q You and Preston have been neighbors for a lot of
16 years?

17 A Yes.

18 Q About how many years do you think?

19 A At that time it would have been a little over four
20 years, because I have been there about five now.

21 Q And your children played with his children?

22 A Well, my son is older than his children.

23 Q But you saw him playing with the children?

24 A Right, yes.

25 Q Up until this night, as far as you know, he has been

1 a good neighbor?

2 A Yes, he was always very friendly, very polite, he
3 always spoke, he seemed like a good guy.

4 Q That is all I have.

5 THE COURT: You can step down, thank you.

6 MR. MOWRY: Call Michael Gainey.

7 MICHAEL GAINNEY, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Mowry:

11 Q You are Michael Gainey?

12 A That's correct.

13 Q And by whom are you employed, please, sir?

14 A Laurens City Police Department.

15 Q What is your position with the Laurens County Police
16 Department?

17 A I am a supervisor, shift supervisor, sergeant.

18 Q Were you employed in that capacity back on the 20th
19 of July of last year?

20 A I was.

21 Q And were you working that day?

22 A Yes.

23 Q What shift were you working?

24 A Night shift, 7:00 p.m. to 7:00 a.m.

25 Q Twelve hour shift, you were working from 7:00 in the

1 evening to 7:00 on the morning of the 21st, is that right?

2 A That's correct.

3 Q So you were on duty around 9:00 o'clock that night,
4 is that right?

5 A That's correct.

6 Q Sometime around 9:00 o'clock, shortly after 9:00 did
7 you receive instructions to go to a location?

8 A I did.

9 Q And how did you get that information?

10 A We got it through 911 dispatch, took me in route to
11 Street.

12 Q And let me ask you this, is Street in
13 Laurens County?

14 A It is in the County of Laurens, but it is in the
15 City.

16 Q It is in the City limits and in the County limits?

17 A That's correct.

18 Q Can you describe for the jury exactly where
19 Street is located in relation to the Court House?

20 A If you go out Highway 14, I don't know if you are
21 familiar with, you go out to the Little Cricket. You go
22 straight out like you are going to Gray Court, when you
23 get to the Burger King gas station you turn right and go
24 down probably a tenth of a mile and turn left, you will be
25 on Lakeview Drive which Street runs off of Lakeview.

1 Q So if you are heading out towards Gray Court, you get
2 to the BP, the Burger King out there it is pretty much
3 right behind there?

4 A That's correct.

5 Q In the City limits of Laurens?

6 A That's correct.

7 Q Were you advised how to proceed out to the scene,
8 whether this was a big emergency?

9 A That's correct. When they dispatch the calls the
10 supervisor makes that decision, whether or not to respond
11 emergency traffic which is blue lights and sirens. You
12 will hear people refer to it as code three. The
13 supervisors make that decision but any time the call is
14 dispatched in any type of nature, as this particular case,
15 you know, you automatically run blue lights and sirens.

16 Q So, what did you hear this type of call to be
17 involving, what were you told?

18 A The 911 dispatcher stated that a male subject called
19 in and said that his neighbor was stabbing his wife and
20 trying to cut her throat, I believe.

21 Q So you made the call as to whether to respond with
22 blue lights and sirens, is that correct?

23 A That's correct.

24 Q And how long after you got the call did you get
25 there?

1 A I would have to refer to the report but I would say
2 minutes, you know, it was a short time.

3 Q When you got to the scene, had your windows been up,
4 let me ask you that, when you were driving out there?

5 A The windows were up but what I do, is I always, any
6 time I go on the scene of the call I always roll my
7 windows down just to make sure I don't miss anybody, you
8 know, talking or screaming for help, anything, I always
9 roll my windows down. So once I arrived in the area of
10 Street I automatically roll my windows down.

11 Q When you got onto Street, the fact that you had
12 your windows down did that help you hear something?

13 A That's correct.

14 Q What did you hear?

15 A When I initially went on the scene or arrived on
16 Street I was looking for the numerics, is what I was
17 dispatched to, with my windows down I was looking on the
18 right side trying to find a house that had some type of
19 numeric so I knew where I was at in relation to the
20 incident location. And I heard a male subject on my left
21 side, from the driver's side of my vehicle screaming help,
22 he is going to kill her.

23 Q Did you later find out who that individual was?

24 A That's correct.

25 Q Who was it?

1 A Clarence Koon who was the original complainant.

2 Q Is this Mr. Koon sitting here on the front row?

3 A It is.

4 Q All right, sir. When you saw Mr. Koon did you see
5 anything else?

6 A At that point, he was standing on the front porch, I
7 arrived in front of his house. Immediately upon exiting
8 my patrol vehicle I seen the victim run out of the house.

9 Q When you talk about the victim who are you speaking
10 of here?

11 A Ms. Shands, the wife of the Defendant.

12 Q Is this Ms. Shands right here?

13 A It is.

14 Q All right. Then what happened?

15 A When she came out of the front door of
16 Street I immediately seen blood, she was covered in blood.
17 Her shirt was torn, her shirt was just hanging by a
18 thread. She was running to me. At that point I seen a
19 teenage or an older juvenile come out of the house behind
20 her. And I advised both of them to go to my patrol car
21 and then I seen the Defendant and a smaller boy coming out
22 of the house as well.

23 Q Did you later find out who that boy was?

24 A That's correct. It was the victim's son, J.S. .

25 Q J.S. ?

1 A J.S. , that's correct.

2 Q You talk about the Defendant, do you see him present
3 in the courtroom today?

4 A I do.

5 Q Can you point him out.

6 A Yes, I see him right there.

7 Q What is he wearing over there, please, sir.

8 A He has got a red tie on.

9 MR. MOWRY: For the record, Your Honor, he has
10 pointed out the Defendant.

11 Q Did the Defendant have anything in his hand?

12 A He did, his right hand, he had his left hand present
13 on J.S. 's left shoulder. And he had a knife in his right
14 hand.

15 Q Let me hand you what has been marked as State's
16 exhibit number 26 for identification. Do you recognize
17 that?

18 A That is it.

19 Q That is the knife?

20 A Uh-huh.

21 Q When you saw him with the knife what did you do?

22 A At that point I drew my service issued firearm and
23 started giving him commands to first let the son go. At
24 that point he did, he complied with every order I gave
25 him. I advised him to drop the knife and he did. I gave

1 him commands to, you know, lay on the ground, spread his
2 arms out, distance himself from the knife. He did, he
3 complied with every order that I gave him.

4 Q Let me back up for just a second. You say that he
5 had the knife in his hand, how was he holding it?

6 A He just had it down by his side.

7 Q Down by his side, okay. When you told him to drop
8 the knife what did he do with it?

9 A He dropped there on, he was standing on the door or
10 the porch steps and he dropped it right where he was
11 standing.

12 Q Okay. Let me show you State's exhibit number 4 which
13 has already been identified as Mr. Koon's, there it is.
14 Do you recognize that?

15 A I do.

16 Q Where in relation, on that photograph, did Mr. Shands
17 drop the knife?

18 A There coming off the porch, in between those, one of
19 those two--

20 Q Two pillars?

21 A Yes.

22 Q The two swans there?

23 A Swans, yes.

24 Q So he dropped it right in there, is that right?

25 A That's correct.

1 Q Thank you, sir. You say that you told him to lie
2 down, is that right?

3 A That's correct.

4 Q Lie down on the ground?

5 A Face down.

6 Q Did he comply?

7 A He did.

8 Q Was there any fumbling around, any misdirection or
9 anything?

10 A No.

11 Q He did it immediately, is that right?

12 A That's correct.

13 Q What did you tell him at that time?

14 A I secured him in handcuffs and advised him that he
15 was under arrest and read him his Miranda warning.

16 Q Did you tell him what he was under arrest for?

17 A I did not at that point.

18 Q Did you know exactly what you were going to charge
19 him with at that stage?

20 A I knew it was, there was several charges involved but
21 I had to secure the scene and just figure out what was
22 going on.

23 Q So first thing is first, is that right?

24 A That's correct.

25 Q How did you, you talked about Miranda rights or

1 Miranda warnings, what are those?

2 A Miranda warning is basically explaining the rights to
3 him so that he knows he is being investigated. So,
4 everything that he says will be used in court.

5 Q Okay. Are those the rights you always hear on TV cop
6 shows?

7 A That's correct.

8 Q How did you go about advising him of those rights?

9 A I have a card that I keep on my person any time I am
10 working in an official capacity, I keep it with me.

11 Q Do you have that card with you today?

12 A I do.

13 Q Would you advise or read that card as you advised the
14 Defendant that night?

15 A That's correct. You have the right to remain silent.
16 Anything you say can and will be used against you in a
17 court of law. You have the right to speak to an attorney
18 and to have him present during any questioning. If you
19 cannot afford a lawyer one will be provided for you at the
20 government's expense. Knowing and understanding your
21 rights as I have explained them to you are you willing to
22 answer any questions without an attorney present.

23 Q And what did he indicate to you?

24 A He said, yes.

25 Q Did you ask him any questions?

1 A I didn't.

2 Q Okay. But you advised him of those rights?

3 A That's right.

4 Q Did he seem to understand them, in your opinion?

5 A He did.

6 Q Was there anything about him that gave you any reason
7 for pause, did he seem to be slurring his speech or
8 anything like that?

9 A No.

10 Q Did you smell anything that would have given you
11 concern?

12 A Not that I recall.

13 Q Were there other officers that arrived on the scene?

14 A That's correct.

15 Q Who else showed up?

16 A Officer Simmons and Officer Kanipe who also worked,
17 at the time worked on my shift.

18 Q So you were their supervisor, is that right?

19 A That's correct.

20 Q What did you advise them to do at that time?

21 A When they, I advised them to go ahead and respond
22 blue lights and sirens as well once I had the Defendant at
23 gunpoint. Once they arrived I immediately told them to
24 start rendering aide to Ms. Shands. Because at that point
25 I had not even had a chance to, you know, assess her

1 injuries or anything.

2 Q Did EMS arrive shortly thereafter?

3 A They did. They were called immediately. Once I
4 advised them to respond blue lights and siren EMS was
5 dispatched as well.

6 Q How quickly after you got there did they get there?

7 A I don't know the exact time. I mean they were there
8 pretty quick. It wasn't a long amount of time.

9 Q What else did you have Officers Kanipe and Simmons
10 do?

11 A Once they started accessing the victim and I had Mr.
12 Shands secured I started taping off the scene, you know,
13 securing the scene with crime scene tape.

14 Q The yellow tape that says, crime scene, do not cross,
15 that sort of thing?

16 A That's correct.

17 Q Describe how you decide where to put that?

18 A The way I like to do is I like to go as big as I
19 possibly can because you don't know where the evidence is,
20 has been placed. So, I like to make it as large as I
21 possibly can. And that situation, you know, I went from
22 the neighbor's house to the neighbor's house and got all
23 of Mr. Koon's property, as much as I could.

24 Q Okay. Did you know whether or not it extended that,
25 the crime scene extended beyond that?

1 A I did not until I spoke with T.C. which is also a
2 son of the victim.

3 Q And based on that where did you believe that the
4 crime extended?

5 A Once I spoke with T.C. he told me that the
6 initial assault took place in their residence which is
7 across the road. So then that is when I went across the
8 road and had, I believe it was Officer Kanipe tape off
9 that house as well and across the road.

10 Q Okay. Were there any other officers that eventually
11 came to the scene?

12 A That's correct. Our policy, any time something of
13 that magnitude happens we have to notify the captain of
14 the uniform patrol which during this time was Captain
15 Stankus and then he makes the decision whether or not to
16 contact an investigator.

17 Q Was an investigator brought to the scene that night?

18 A He was.

19 Q Who did you see there that was an investigator?

20 A Detective Lynch.

21 Q Sergeant Lynch?

22 A Yes.

23 Q Let me show you what has been marked for
24 identification as State's exhibit number 27. Do you
25 recognize that?

1 A I do.

2 Q And can you point out where the Shands' home is?

3 A That's correct, it is here.

4 Q Where it is marked , is that right?

5 A That's correct.

6 Q And where is Mr. and Ms. Koon's home?

7 A Would be across the road here.

8 Q The one with the red car in the driveway?

9 A That's correct.

10 Q Thank you, sir.

11 MR. MOWRY: Your Honor, I would offer this as a
12 State's exhibit at this time.

13 MR. GROSE: No objection.

14 THE COURT: Okay.

15 (Whereupon, State's Exhibit 27 was admitted into
16 evidence.)

17 Q Sergeant, what was your purpose there that night.
18 What tasks were you there to accomplish?

19 A Basically uniform patrol's job is just to secure the
20 scene, you know, and the welfare of the community. So
21 once the scene is secure and they were already rendering
22 aide to the victim, I don't like to say my job was done
23 but in a sense my job was completed at that point. I had
24 to turn the scene over to an investigator.

25 Q So the investigator would be the one that would

1 collect evidence and do all that kind of thing?

2 A That's correct.

3 Q Did you assist Detective Lynch with any of that
4 purpose, any of those tasks?

5 A I was with him for a brief time just showing him
6 basically the crime scenes because at this point the crime
7 scenes had expanded. It was a big crime scene so I wanted
8 to make sure he was familiar with all of the incident
9 locations of what took place. But other than that, I mean
10 I was with him when he was photographing some of the
11 evidence but as far as collecting it, all of that was on
12 him, he did all of that.

13 Q Were you involved with taking statements from any
14 witnesses later on?

15 A Briefly. The sons were transported back to the
16 police departement by their great-aunt and the victim's
17 advocate was notified and she arrived on the scene. But I
18 walked in briefly. Officer Kanipe conducted the interview
19 of the children, I just walked in to make sure he had
20 everything he needed to conduct the interview.

21 Q So that was pretty much the end of your involvement
22 with this case, is that right?

23 A That's correct.

24 Q Thank you.

25 CROSS-EXAMINATION

1 By Mr. Grose:

2 Q Just to go back over it real quick. You said that
3 your job that night was to secure the crime scene?

4 A That's correct.

5 Q And there is sort of a division of labor or jobs or
6 tasks within law enforcement, aren't there?

7 A That's correct.

8 Q And you were, in fact, doing what your assigned job
9 was that night?

10 A That's correct.

11 Q And then it sounds like your supervisor but there is
12 also people above you that make decisions?

13 A Right.

14 Q And so the decision whether to go blue lights and
15 sirens or as you call it, code three, that was made by
16 somebody else?

17 A That was my decision.

18 Q That was your decision?

19 A That's correct.

20 Q Okay. The decision to involve an investigator was
21 somebody's else's decision?

22 A That's correct.

23 Q And that investigator was Tony Lynch?

24 A That's correct.

25 Q And he did get there that night while you were still

1 there?

2 A That's correct.

3 Q And so part of it is, you kind of hand off the crime
4 scene to him?

5 A Right.

6 Q Get them acclimated?

7 A Right.

8 Q As I understand it, you came into contact with
9 Preston pretty soon after you got there?

10 A That's correct.

11 Q And, if you can see that, you said he came out that
12 front door?

13 A He did.

14 Q Now, you were the one who, for lack of a better word,
15 made the arrest and put him into custody, right?

16 A Right.

17 Q So you were actually having, you know, personal
18 upclose contact with Mr. Shands?

19 A Right.

20 Q Now, he had some injuries, didn't he?

21 A He did.

22 Q But you didn't document those injuries in your
23 report, did you?

24 A I didn't. When I say he had injuries, I would say
25 those were superficial.

1 Q But you are not EMS?

2 A No.

3 Q That wasn't your role that night, was it?

4 A No.

5 Q You weren't the doctor?

6 A No.

7 Q So it wasn't your role to treat him at the hospital?

8 A No.

9 Q All right. You did document that Sharon Shands had
10 injuries?

11 A That's correct.

12 Q But you didn't document the fact that Preston did?

13 A No.

14 Q Now, you went through and shared with us what you
15 read to Preston as far as what we call the Miranda
16 warnings, right?

17 A Right.

18 Q And you asked whether or not he wanted to answer
19 questions?

20 A Right.

21 Q And I believe you testified that Preston said he
22 would answer questions, right?

23 A That's correct.

24 Q But you didn't ask him any questions, did you?

25 A I did not, did not.

1 Q Now, at some point, you put him in handcuffs but at
2 some point he was put in a patrol car?

3 A That's correct.

4 Q And if I understand that correctly he was put in
5 Steven Sweat's patrol car?

6 A That's correct.

7 Q And at the time Mr. Sweat, was he employed with
8 Laurens Police Department?

9 A He was employed with the sheriffs office, Laurens
10 County.

11 Q And so sheriffs deputies responded to this as well?

12 A That's correct.

13 Q And was Mr. Sweat's role to stay with Mr. Shands
14 until somebody else got there?

15 A He was secured in his patrol car.

16 Q Do you know whether or not EMS came and looked at Mr.
17 Shands?

18 A They did.

19 Q Okay. And that is not in your report either, is it?

20 A No.

21 Q I mean you have in your report about EMS being there
22 for--

23 A It says EMS was on scene.

24 Q But it is not in your report about them being there
25 for Preston?

1 A It is not in the report about being there for Sharon
2 either. It doesn't say who they treated, it just says EMS
3 was contacted to arrive to the scene.

4 Q Well, in fact two units came, more than one unit
5 came?

6 A Right.

7 Q Some for Sharon and some for Preston?

8 A As far as I know. They arrived on the scene to
9 assess of injuries of everybody.

10 Q Well, we wouldn't look at your report and think that
11 EMS was there for Preston because you didn't note any
12 injuries for Preston?

13 A Right.

14 Q Now, at some point there was also Officer Heidi
15 Blackstock?

16 A That's correct.

17 Q She works with the police department?

18 A She does.

19 Q And do you know if she rode with Preston to the
20 hospital?

21 A She did.

22 Q Now, as far as reports, do you have a report from
23 Officer Sweat?

24 A I do not.

25 Q Are you aware of one?

1 A No.

2 Q Are you aware of a report from Officer Heidi
3 Blackstock?

4 A I am not.

5 Q And you have access to all of the incident reports,
6 correct?

7 A That's correct.

8 Q So it is probably safe to say that they don't exist,
9 right?

10 A Right.

11 Q So, there is no record of what might have been said
12 when Preston was in the police car with Officer Sweat and
13 the Laurens Sheriff Department?

14 A That's correct.

15 Q And there is no record of might have been said or
16 might have happened when Preston was being transported to
17 the hospital?

18 A That's correct.

19 Q But Preston did say he was willing to answer your
20 questions?

21 A That's correct.

22 Q And you didn't ask them, did you?

23 A I didn't ask anything.

24 Q That is all I have.

25 MR. MOWRY: Just a few on redirect, Your Honor.

REDIRECT EXAMINATION

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By Mr. Mowry:

Q Sergeant, is it unusual for deputies with the Laurens County Sheriffs Office to come to Laurens PD crime scenes?

A It is not, it happens very often.

Q I wanted to ask you, do you have your report up there?

A I do.

Q Would you refer to the last paragraph of your two page incident report. And then right down there near the bottom does it talk about Preston Shands injuries?

A It does. It says statements were also obtained by Clarence Koon. Preston Shands was transported to Laurens Hospital due to a laceration on his hand.

Q Then what was done with him after that?

A Once he was cleared from the hospital he was transported to Johnson Detention Center.

Q One last question. You saw Sharon Shands come running out of--

MR. GROSE: Objection, leading.

Q Did you see Sharon Shands come out of the house at
?

A I did.

Q When you saw her did she have anything in her hands?

A No.

1 Q Her hands were empty?

2 A That's correct.

3 Q Thank you.

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

5 MR. MOWRY: Your Honor, we call Andrew Heiney to the
6 stand.

7 ANDREW HEINEY, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Mowry:

11 Q Would you state your name for the record, please, and
12 spell your last name?

13 A My name is Andrew Heiney, H-E-I-N-E-Y.

14 Q Mr. Heiney, what is your employment, what do you do?

15 A I am a paramedic with Laurens County EMS.

16 Q How long have you been employed in that capacity?

17 A Twelve years.

18 Q What sort of education did you receive before
19 becoming a paramedic?

20 A I received a Bachelor of Science Degree from Western
21 Carolina University.

22 Q And what discipline was that Bachelor's Degree in?

23 A Emergency medical care, specifically pre-hospital
24 emergency med.

25 Q How many other such programs are offered in the area

1 that you are aware of?

2 A In the State of North Carolina there is two.

3 Q Is it a very common degree to get?

4 A No, I would say that there are about eight to ten
5 schools in the country that offer a Bachelor's Degree.

6 Q Okay. Describe, if you would, the levels of
7 emergency medical technician?

8 A Currently there is three basic levels. The first one
9 is emergency medical technician basic that is more or less
10 advanced first aide. There is another level that is
11 called emergency medical technician intermediate which you
12 are able to start IV's. And the third level is emergency
13 medical technician paramedic which receives the gamut of
14 all training, medical and trauma.

15 Q And that last level is where you are at, is that
16 right?

17 A That's correct.

18 Q And you say you have been doing this for twelve
19 years, is that right?

20 A I have been a paramedic for twelve years and I have
21 been an EMT basic for five years before then.

22 Q So 17 years in emergency situations, is that right?

23 A Yes, sir.

24 Q How many calls do you think you have made as a
25 paramedic or answered as a paramedic?

1 A Currently Laurens EMS and in the last year I
2 personally went on about 650 calls. So, multiple that by
3 12 so over 6,000.

4 Q 7,000 at that point, is that right?

5 A Yes, sir.

6 MR. MOWRY: Your Honor, I would offer this witness as
7 an expert in pre-hospital emergency medicine.

8 THE COURT: Any voir dire?

9 MR. GROSE: No voir dire.

10 THE COURT: Any objection?

11 MR. GROSE: I will leave that in the Court's
12 discretion.

13 THE COURT: Yes sir, so qualified.

14 MR. MOWRY: Thank you, Your Honor.

15 THE COURT: I will just tell y'all, the distinction
16 being that most witnesses are not allowed to give
17 opinions. When someone is qualified in some art or
18 science through education or experience they are allowed
19 to give an opinion in that subject in which they are
20 qualified as an expert. And they may talk about what they
21 base their opinion on.

22 Q Mr. Heiney, were you employed--

23 MR. MOWRY: Excuse me, Your Honor, let me go ahead
24 and get this marked if I may, Your Honor.

25 THE COURT: One other thing I will tell you about

1 expert witness testimony, you can evaluate it with the
2 same tools and skills that you do with every other piece
3 of testimony and give it the weight that you think it
4 deserves.

5 Q Let me show you what has been marked as State's
6 exhibit number 28 for identification and if you could use
7 this for reference. You were employed or you were working
8 the night of July 20th of 2014, is that right?

9 A That's correct.

10 Q What times does your shift run between?

11 A They run from 7:30 in the morning until 7:30 the next
12 morning.

13 Q So twenty-four hour shift, is that right?

14 A Yes, sir.

15 Q So you were about half way through your shift around
16 9:00 o'clock that night, is that correct?

17 A That's correct.

18 Q About what time did you receive a call?

19 A Yes, we did.

20 Q Do you recall, is it listed in your report exactly
21 what time that call came in?

22 A It does.

23 Q Let me hand you this and ask you if that would assist
24 you in that conclusion?

25 A Yes. The call came in for us at 9:10 p.m.

1 Q So you got the call at 9:10. What did you do in
2 response to that?

3 A After we received the call we, obviously get in the
4 ambulance and, we will proceed there. That call came out
5 an assault so we have to always, as per Laurens County 911
6 policy standby for law enforcement which means law
7 enforcement makes the scene safe for us to arrive.

8 Q Okay. You said you got into your ambulance. Where
9 is y'all's headquarters?

10 A It is on Exchange Drive in Laurens City.

11 Q In relation to here, where is it?

12 A If you follow Hillcrest Drive and turn left out of
13 the Court House it is about three miles from here.

14 Q So, it is on the way over to Ingles or Walmart?

15 A That's correct.

16 Q Okay. Do you recall how long it took you to get to
17 the place you were dispatched to?

18 A According to the report we arrived at 9:14 p.m. So,
19 just about four minutes.

20 Q So you were moving pretty quick?

21 A At times we monitor the police radio too. So, I
22 imagine that we heard that go on and knew that we were
23 going to be going there for a call.

24 Q Okay. When you got to Street did you see
25 anything unusual?

1 A I recall there were at least two Laurens City police
2 cruisers there. I don't remember exactly how many at that
3 time. But I remember seeing a person sitting kind of in
4 the trunk of that, one of those police cruisers with the
5 trunk open just kind of resting there, if you will.

6 Q Male or female?

7 A Female.

8 Q Did you later find out who that individual was?

9 A Yes, sir.

10 Q What was her name, please?

11 A Sharon Shands.

12 Q Is this Ms. Shands right here sitting on the front
13 row?

14 A It is.

15 Q Okay. What was her condition, what was her
16 appearance that night?

17 A Her initial appearance, she appeared dazed to me.
18 Her clothing was ripped, there was obviously blood about
19 her head and arms and torso. It was dark out so we needed
20 to move to the ambulance pretty soon after that to get a
21 good lighting to be able to inspect her a little bit
22 closer.

23 Q And did you do that at that time?

24 A We did. We ask her to stand up and sit down right
25 from where she was. We brought the stretcher immediately

1 next to her and immediately took her into the ambulance
2 which provides much better lighting.

3 Q How would you characterize the amount of blood you
4 saw?

5 A I would say moderate but it was wet, meaning new, not
6 dry blood. So, she had obviously been bleeding.

7 Q Did it appear that she was still bleeding?

8 A Yes, one specific wound was to her head where she had
9 a significant laceration that was bleeding rather briskly.

10 Q Describe that in a little bit more detail, please,
11 sir?

12 A I remember it being right to the rear of her left ear
13 and it was difficult to directly visualize because her
14 hair was matted. But you could tell it was still actively
15 bleeding and a bandage needed to be applied to control
16 that.

17 Q You say her hair was matted, you mean matted with
18 blood?

19 A Yes, sir.

20 Q Let me hand you what has already been admitted as
21 State's exhibit number 6, does that appear to be the
22 location on her head that you were talking about?

23 A Yes.

24 Q What was the State of the wound when you took a look
25 at it?

1 A From the best I could visualize it was still open and
2 briskly bleeding.

3 Q Briskly bleeding, thank you, sir. When you examined
4 her, if you could use these red stars here and let me just
5 show you this chart, State's exhibit 28 for
6 identification. If you would place a star on the location
7 corresponding where you found the wounds.

8 A Okay. There was three stab wounds to the left, the
9 anterior portion of the left arm which would be on this--

10 Q -- when you say anterior you are talking about the
11 front?

12 A This is the top of the arm. So there was three here,
13 there were two other on the right arm that were also on
14 the anterior portion. There were two other stab wounds,
15 what appeared to be stab wounds. This would be the left
16 flank area. And then there was this head wound that is
17 right there as I described before.

18 Q So total of eight wounds, is that right?

19 A That is where the ones that were readily visible.

20 Q Okay. Could there have been others that you just
21 didn't notice?

22 MR. GROSE: Objection, speculation.

23 THE COURT: I will sustain that.

24 Q Let me ask you this, did you do an in depth
25 assessment of her condition that night?

1 A At that point we were just going with what we saw and
2 that was enough to, for our treatment at that point.

3 Q Okay. When you spoke with her did you ask her
4 whether or not she had any other ailments, complaints or
5 anything?

6 A She just complained of general pain, about her ribs
7 on both sides.

8 Q Was there anything else that she complained about as
9 far as the red area was concerned?

10 A She was having a lot of pain and difficulty
11 breathing.

12 Q Based on that fact, the injuries that you saw and you
13 called it her flank areas, and the shortness of breath,
14 what was your concern?

15 A My concern was that she could possibly have a
16 collapsed lung especially with the stab wounds, that could
17 be easily caused with the stab wounds or any other trauma
18 sustained to the chest.

19 Q Do you have an opinion as to whether or not the
20 wounds you saw were potentially life threatening?

21 A I do.

22 Q What is your opinion, please, sir?

23 A I believe her wounds were life threatening.

24 Q In response to that belief what did you do?

25 A Within a few minutes we, we meaning my partner and I,

1 determined that her wounds were severe enough to be
2 transported to the trauma center via helicopter.

3 Q Is that something you would undertake lightly?

4 A No, sir.

5 Q And where was the trauma center?

6 A It is up to the helicopter crew to decide but for
7 this area it is mainly Greenville Memorial or Spartanburg
8 Regional.

9 Q Where did you take Ms. Shands at that point?

10 A After we requested the helicopter our dispatch center
11 coordinates a landing zone usually through the fire
12 department which in this case was at Laurens Electric
13 which was only about a mile and a half away. So we
14 transported her there to the landing zone that was
15 established.

16 Q Do you have in your records or your report the time
17 you transferred her to the airlift?

18 A We transferred her at 9:36 p.m.

19 Q So that would have been twenty-two minutes after your
20 arrival, is that right?

21 A That's correct.

22 Q Arrived at 9:14?

23 A That's correct.

24 Q Why did you opt to send her by airlift rather than
25 take her by ambulance?

1 A If she indeed had a collapsed lung or that was
2 progressing she needed to be in a trauma center, not just
3 in an emergency room but a trauma center as quickly as
4 possible because of the definitive care in a trauma
5 center, not a paramedic in an ambulance or even paramedic
6 in a helicopter. She needs a doctor in the proper
7 facility.

8 Q Thank you, that is all I have.

9 THE COURT: Mr. Grose.

10 MR. GROSE: I have no question.

11 THE COURT: You can step down, thank you.

12 MS. WHITE: Your Honor, our last witness, as we
13 discussed, will be here in the morning.

14 THE COURT: All right. Ladies and gentlemen, we
15 don't punch a time clock. We don't know when we will
16 break and we can't schedule things to run on thirty minute
17 shifts. So we break when things are good. Sometimes we
18 run late, today we will be leaving a little early. So, we
19 are going to break for the evening. I will ask you to be
20 back just a little bit before 10:00 o'clock in the
21 morning. And we will resume the trial at that time.
22 Don't talk about the case. You are excused and we will
23 see you in the morning.

24 (Whereupon, the jury was excused from the trial of
25 the case at approximately 4:40 p.m.)

1 THE COURT: Anything before we break?

2 MR. GROSE: If I could, Your Honor, I would like to
3 take up tonight, since I understand that they have one
4 witness to call in the morning. Mr. Shands and I are
5 discussing whether or not to testify. As you know from
6 earlier in the motions that I have handed up that he has a
7 conviction for murder in Florida from the 1970's. He was
8 released on parole in 2003. Before that can be, I don't
9 think it is admissible, not only the age but something
10 that far in the past would have little if any relevance,
11 no probative value in our opinion and the prejudicial
12 impact would be extraordinarily high if he were to take
13 the stand and be asked about that. They have not given us
14 notice. The rules says release from confinement. So
15 while he is still technically under the sentence he was
16 released from confinement over ten years ago. They have
17 not given us notice that they want to use that but out of
18 abundance of caution I want to make sure it is excluded
19 before we have some conversations that we are going to
20 have at the jail tonight.

21 MS. WHITE: Your Honor, my understanding of the rule
22 is that when he is done serving the sentence, that is ten
23 years from the sentence stop date. He was actually still
24 on parole being supervised in Laurens County when this
25 occurred. So he was still serving out his sentence. So I

1 think the ten years wouldn't--

2 MR. GROSE: Well, the rules says released from
3 confinement. So if you are sentenced to ten years then
4 you have got to wait another ten years. He was released
5 from confinement. But regardless, that I don't think is
6 our strongest argument. I think our strongest argument
7 is, is under the rule evidence that an accused has been
8 convicted of such a crime shall be admitted if the Court
9 determines that the probative value of admitting this
10 evidence outweighs it prejudicial effect to the accused.
11 And then you have, you know, the Green versus State case
12 that cites Colf, C-O-L-F, both from 2000, that deal with
13 similar crimes. Of course, attempted murder which is
14 charged for here is very similar sounding to murder. The
15 facts may be entirely different but the prejudicial effect
16 comes from the nature of the crime. And I think under our
17 precedent you have to conduct an analysis under Rule 609
18 in those cases. And I would note that this dealt with a
19 witness where the threshold is lower for the State to get
20 over than a Defendant. I would note that the State versus
21 Black case where a 20 year old's manslaughter conviction
22 should have been excluded but wasn't.

23 THE COURT: What case is that?

24 MR. GROSE: That was State versus Black, 400 S.C. 10,
25 2012. You should have a copy with the materials I handed

1 up this morning, a three-page motion to exclude Mr. Shands
2 prior conviction from Florida for murder. That case in
3 Green and Colf in the rule are cited in that motion.

4 MR. MOWRY: Your Honor, if I can be excused from the
5 courtroom for just one minute I will go get a case that I
6 have got a copy of in my office.

7 (Whereupon, Mr. Mowry retrieves case from his
8 office.)

9 MR. MOWRY: During the time he was out on parole he
10 was not a free citizen. He was, as we have seen, still a
11 prisoner and notwithstanding his prison bounds were not
12 so contracted as the prison bounds of an insolvent debtor,
13 this is 1922. At the time of our laws recognized
14 imprisonment or debt he was still give prison bounds.
15 Essentially and I can give you this, this is a 2012 case.
16 Appellate sentenced for probation for his attempted
17 burglary in the second degree conviction began after his
18 parole concluded for his conviction for burglary in the
19 second degree and not following his release from
20 incarceration. Thus the Circuit Court did not abuse its
21 discretion in revoking the Defendant's probation. But
22 this is a, there is a, Judge Hocker had the same question
23 probably a year or so ago, Your Honor, and we dealt with
24 it with this particular case.

25 THE COURT: That is?

1 MR. MOWRY: That is 2012, it is State versus Ellis,
2 it was filed May 16th of 2012, Chief Justice Toal was the,
3 wrote the opinion.

4 MR. GROSE: Regardless of the ten year, I think given
5 the fact that he has been out of parole without any
6 incident before this for over twelve years speaks heavily.
7 And that has actually, part of the analysis that you are
8 suppose to take into account under Green, the impeachment
9 value of the prior crime is number one. Number two, the
10 point and time with the conviction and the witness'
11 subsequent history. The similarity between the past crime
12 and the charged crime which is something that weighs
13 heavily in favor of us, importance of his testimony and
14 the credibility. If you will allow this to come in that
15 is going to devastate his credibility and for him to be
16 able to get up and tell his side of the story, I think
17 that his credibility is a sensual issue in the case. And
18 that is where, if we had to appeal this issue that is
19 where, you know, his testimony and the undermining of his
20 credibility where we would be arguing prejudice on appeal,
21 which we are arguing that as prejudice here too.

22 THE COURT: Outweighs the probative value, 403?

23 MR. GROSE: I don't think there is any probative
24 value.

25 THE COURT: Well,--

1 MR. GROSE: He was, I think, 17 years old when the
2 incident took place. Now you have, well now you have
3 Graham and Miller from the United States Supreme Court
4 from South Carolina talking about rehabilitation of
5 juveniles. I mean he was a juvenile when--

6 THE COURT: 17?

7 MR. GROSE: According to the U.S. Supreme Court the
8 cutoff is at 18, yes sir.

9 THE COURT: I think technically it is allowable. But
10 try to limit the impact of it. And I decline to allow
11 them to impeach his credibility by asking whether or not
12 he has been convicted of a violent crime. I don't know
13 how you want to characterize it as a violent crime as
14 opposed to saying murder limits a good bit of prejudiced
15 and allows him to--

16 MR. GROSE: -- if you are going to do that I would
17 suggest that it would be limited to a felony and that they
18 have to say the conviction was from 1975.

19 MR. MOWRY: Or we can say that he is still on parole
20 for it or something like that.

21 MR. GROSE: That is where I think prejudice comes
22 into play.

23 THE COURT: Yes, there is prejudice of him being
24 convicted of murder, yes.

25 MR. GROSE: Well, normally they are not allowed, the

1 rule makes no provision to be allowed to ask somebody if
2 they are on parole.

3 THE COURT: I think a violent offense, think about
4 overnight. But I am going to allow them to use it. I
5 will limit their use of the word, murder. All right
6 anything else?

7 MR. GROSE: That is all for now, Your Honor.

8 THE COURT: Mr. Shands, let just do this right now.
9 I want you to understand, I know you have spoken with your
10 attorney about this. I want to make sure you understand
11 that you have the absolute constitutional right to testify
12 in your own Defense. You have the equal absolute
13 constitutional right to not testify. And it cannot be
14 held against you in this court. And I will give
15 instructions to a jury, a person charged with a crime does
16 not have to testify. There are a lot of different
17 strategic issues that go into making that decision. And
18 that is what we have been talking, of your prior criminal
19 history. And there are other strategic decisions that you
20 have to make and you will need to discuss those with your
21 lawyer. Mr. Grose says he is coming to talk to you after
22 you leave court. And I am sure he will discuss all of
23 that with you. You have any questions that you would like
24 to ask me about your testifying?

25 MR. SHANDS: No, sir.

1 THE COURT: All right. I do want you to understand
2 that the lawyers and it is their job and they are trained
3 and experienced to make recommendations and tell you what
4 they think is best. But the final decision belongs to
5 you, it is your constitutional right. Okay. If you think
6 of any questions you need to ask about it overnight just
7 let me know. All right. Anything else before we break
8 for the day?

9 MS. WHITE: Not from the State, Your Honor.

10 THE COURT: See y'all in the morning.

11 (Whereupon, the trial will resume the next morning at
12 10:00 a.m.)

13 May 27, 2015

14 THE COURT: Are y'all ready?

15 MR. MOWRY: Yes, sir.

16 THE COURT: Are y'all ready?

17 MR. GROSE: Yes, sir.

18 THE COURT: Bring the jury in.

19 (Whereupon, the jury came into open court at
20 approximately 10:05 a.m.)

21 THE COURT: Good morning, ladies and gentlemen. We
22 are ready to start back. Okay.

23 MR. MOWRY: Before I call my next witness, Your
24 Honor, it occurred to me that the, that I had not moved
25 State's exhibit number 28 for identification, the body

1 chart into evidence and as it has been marked I would like
2 to move it into evidence at this time.

3 MR. GROSE: No objection.

4 THE COURT: Without objection. Okay.

5 (Whereupon, State's Exhibit 28 was admitted into
6 evidence.)

7 MR. MOWRY: The State calls Tony Lynch to the stand.

8 TONY LYNCH, being
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Mowry:

12 Q Mr. Lynch, I believe you are a Sergeant, an
13 Investigator with the Laurens City Police Department, is
14 that right?

15 A I am.

16 Q Before we go any further, I can see your arm in a
17 sling. What has happened to you?

18 A I had shoulder surgery, had to reverse my shoulder
19 and put it on the outside.

20 Q And currently you are in rehab for that?

21 A Yes, sir.

22 Q How long have you been a police officer?

23 A 38 years.

24 Q And how long have you been employed by the City of
25 Laurens?

1 A 13 years.

2 Q As an investigator what are your duties, how does
3 those differ from a road patrol officer like Sergeant
4 Gainey for example?

5 A We get the reports and we go over the reports and see
6 what needs to be investigated by us and take statements
7 and gather evidence and first one thing and another.

8 Q And were you employed on that capacity back on the
9 20th of July of last year?

10 A I was.

11 Q Sometime after 9:00 o'clock that evening did you
12 receive a call to come to Street in the City of
13 Laurens?

14 A I did.

15 Q And in response to that call what did you do?

16 A When I got the call, I actually had the radio on that
17 night listening to it and I was getting in the car when
18 they called me.

19 Q So you were at home that night, is that right?

20 A Yes, sir.

21 Q What did you do?

22 A I proceeded to Street.

23 Q What did you see when you got there?

24 A I saw, when I drove up Officer Gainey had one subject
25 laying on the ground at , in front of Street.

1 Q And did that subject, who did that subject turn out
2 to be?

3 A Turned out to be Mr. Shands.

4 Q The Defendant in this case?

5 A Yes, sir. They had, the residence it was taped
6 off with crime tape. And come to find out after I got
7 there, we had two crime scenes, and , talking to
8 Officer Gainey.

9 Q But only one was taped off at that point?

10 A That's correct.

11 Q What was done once you determined there was a second
12 crime scene?

13 A We proceeded to tape the other crime scene at .

14 Q What was your process that night, what steps did you
15 take in investigating this scene?

16 A After talking to Officer Gainey and finding out what
17 was going on I took photos and retrieved the evidence and
18 that is about it.

19 Q Let me show you a few photographs here, let me ask
20 you before we proceed. Did you have problems with your
21 camera that night?

22 A I did.

23 Q What was the problem?

24 A The battery was going low and I had to use a
25 flashlight to take photos.

1 Q So the quality of them, how would you describe that?

2 A Not good, no.

3 Q Let me hand you a series of pictures then and ask you
4 if you can identify them. First of all, let me show you
5 what has been marked for identification as State's exhibit
6 number 36.

7 A Yes sir, that is the butcher knife that was laying at
8 the bottom of the steps at , near Mr. Shands, where he
9 was.

10 Q Let me show you what has been marked as State's
11 exhibit, what is State's exhibit number 19, do you
12 recognize that?

13 A Yes, sir.

14 Q And what is that please, sir?

15 A That is the residence at Street.

16 Q The Koon's house?

17 A That's correct.

18 Q And where was the knife found?

19 A Right at the foot of the step, as you enter the
20 sidewalk, right there at the grass.

21 Q Right down in here?

22 A That's correct.

23 Q Okay.

24 MR. MOWRY: I would offer this as a State's exhibit
25 at this time, Your Honor.

1 MR. GROSE: No objection.

2 THE COURT: What number is that?

3 MR. MOWRY: This is number 36. These have been
4 premarked, I am probably going to have these out of order.

5 (Whereupon, State's Exhibit 36 was admitted into
6 evidence.)

7 Q Let me show you what has been marked as State's
8 exhibit number 32 and ask if you can identify that?

9 A That's the back patio door to Street, Mr.
10 Koon's residence.

11 Q And also number 31 for identification, what is that?

12 A That is the picture of the hammer laying at the base
13 of the patio door at .

14 Q The same door that you referred to State's exhibit
15 number 32, is that right?

16 A That's correct.

17 Q And when you talk about the patio door, let me refer
18 you to State's exhibit 21. Is this the location that you
19 are talking about?

20 A That's correct.

21 Q It is different from the way you saw it that night,
22 is that right?

23 A It is.

24 Q It is now boarded up or closed up, is that right?

25 A That's correct.

1 Q But what was it that night?

2 A It was the patio door.

3 Q Okay.

4 MR. MOWRY: And I would offer State's exhibits for
5 identification 31 and 32 into evidence at this time, Your
6 Honor.

7 MR. GROSE: No objection.

8 THE COURT: Okay.

9 (Whereupon, State's Exhibits 31 and 32 were admitted
10 into evidence.)

11 Q Where else did your investigation take you?

12 A .

13 Q Did you find anything of interest between and
14 ?

15 A Some blood.

16 Q Okay, and how did you go about collecting blood
17 evidence?

18 A I used some sterile water and swabbed it with some
19 swabs.

20 Q Let me hand you this packet that has been marked as
21 State's exhibit number 40 for identification. What are
22 those, please, sir?

23 A Those are the swabs.

24 Q These are the blood or what you suspected as blood
25 that night?

1 A Yes, sir.

2 Q Let me hand you what has been marked as
3 identification as State's exhibit 26?

4 A Yes, sir.

5 Q Do you recognize that?

6 A I do.

7 Q What is that please, sir?

8 A That is the butcher knife I found at the bottom of
9 the step at .

10 Q Okay. And does that correlate to State's exhibit
11 number 36?

12 A It does.

13 MR. MOWRY: Your Honor, I would offer this butcher
14 knife into evidence at this time.

15 MR. GROSE: No objection.

16 THE COURT: Okay.

17 (Whereupon, State's Exhibit 26 was admitted into
18 evidence.)

19 Q Referring you now to State's exhibit 32, sliding
20 glass door, it is kind of hard to see. What is the
21 condition in the glass in this area?

22 A It was knocked just about completely out, just little
23 pieces hanging.

24 Q Did you find anything of interest in the door?

25 A The hammer.

1 Q Referring you to State's exhibit 31.

2 A Yes sir, that is what was found.

3 Q Is that the way you found it?

4 A Exactly the way I found it, yes sir.

5 Q And let me now hand you what has been marked for
6 identification as State's exhibit number 25. Do you
7 recognize that?

8 A I do.

9 Q What is that please, sir?

10 A That is the hammer that was in the patio door.

11 Q Okay. And you collected that that night?

12 A I did.

13 Q Is that your signature?

14 A It is.

15 Q Or your handwriting on the front?

16 A Yes, sir.

17 MR. MOWRY: Your Honor, I would offer this hammer as
18 a State's exhibit at this time.

19 MR. GROSE: No objection.

20 THE COURT: Okay.

21 (Whereupon, State's Exhibit 25 was admitted into
22 evidence.)

23 Q You say you proceeded on over to , across the
24 road, is that right?

25 A That's correct.

1 Q I am going to refer you to State's exhibit 27, and
2 ask you if you can point out where and were or
3 are?

4 A There is which is the Shands residence and is
5 the--

6 Q -- the one here in, with the red car in the driveway?

7 A That is Mr. Koon's.

8 Q Diagonally across the street from each other, is that
9 right?

10 A Yes, sir.

11 Q You said you found blood between the houses. How
12 much, would you quantify how much you found?

13 A Droplets of blood, leading from their house across
14 the street to Mr. Koon's house.

15 Q How much would you say it was, was it a good bit or a
16 little bit or how would you say?

17 A Not too awful much but a good bit.

18 Q Enough for you to collect several swabs, is that
19 right?

20 A It was, yes sir.

21 Q What were you looking for besides blood?

22 A The weapon that was used and other things that I
23 might need for evidence.

24 Q Let me hand you this photograph that has been marked
25 for identification as State's exhibit 33. Can you

1 recognize that?

2 A That is the broken fork, yes sir.

3 Q And again you were using a flashlight as your flash,
4 is that right?

5 A I was, yes sir.

6 MR. MOWRY: Your Honor, I would offer State's exhibit
7 33 into evidence at this time.

8 MR. GROSE: No objection.

9 THE COURT: Okay.

10 (Whereupon, State's Exhibit 33 was admitted into
11 evidence.)

12 Q This is the fork right here, is that right?

13 A That's right.

14 Q Let me hand you this bag that has been marked for
15 identification as State's exhibit 33, do you recognize
16 that?

17 A I do.

18 MR. GROSE: I thought 33 was the photo.

19 MR. MOWRY: I am sorry, 38, I misread it. I am
20 sorry.

21 A Yes, sir.

22 Q What is that please, sir?

23 A That is the broken fork with the handle and a garage
24 opener door.

25 Q Garage door opener?

1 A Yes, sir.

2 Q Where did you find that?

3 A In the carport.

4 Q Okay. And that was at ?

5 A Yes, sir. Now, the fork was found in the grass in
6 the carport, and the other was under the carport, just at
7 the edge.

8 Q When you talk about the carport, let me just show you
9 these two pictures, State's exhibit 2 and 3 and I will put
10 these up together if I can. Is that what you are talking
11 about?

12 A That is at Street, the Shands residence, yes
13 sir.

14 Q And what does this show?

15 A That shows the door coming out of the kitchen into
16 the carport at Street.

17 Q And that was the general location in which you found
18 the garage door opener and the broken fork, is that right?

19 A It was, yes sir.

20 Q Does there appear from your observation to be
21 anything on the fork?

22 A A little blood on the fork, yes sir.

23 Q Did you continue your search?

24 A I did.

25 MR. MOWRY: Your Honor, I would like to enter into

1 evidence State's 38.

2 MR. GROSE: No objection.

3 THE COURT: Okay.

4 (Whereupon, State's Exhibit 38 was admitted into
5 evidence.)

6 Q Let me hand you this bag that has been marked as
7 State's exhibit 37 and ask you if you can identify this?

8 MR. GROSE: Can I see that?

9 MR. MOWRY: I am sorry, yes.

10 MR. GROSE: Your Honor we have a matter of law.

11 THE COURT: All right, ladies and gentlemen, remember
12 I told you there are times when I will either talk with
13 the lawyers up here or outside of your presence. This is
14 one of those times so I ask you to go back to the jury
15 room and we will be with you in just a short time.

16 (Whereupon, the jury was excused from open court at
17 approximately 10:34 a.m.)

18 THE COURT: Okay.

19 MR. GROSE: Your Honor, I don't remember the number.

20 THE COURT: 37.

21 MR. GROSE: In State's exhibit 37 for identification,
22 what they are getting to show is two items. We have one
23 knife into evidence and we had, which I did not object to,
24 we had testimony about where that came from, that it was
25 seen in Preston's hands, where it was found. We have had

1 absolutely no testimony about these other two knives. And
2 so at this point I would object because they are not
3 relevant to any facts in evidence in this case. And I
4 would also object that putting in multiple knives without
5 establishing any relevance, the prejudicial effect
6 substantially outweighs the probative value. I would also
7 note on item 38, I am not going to object to the fork
8 handle because we have had testimony about that, while
9 nobody has identified that object, that object fairly
10 links to the testimony of other witnesses. The garage
11 door opener, again, is not relevant.

12 THE COURT: I thought you did not object to--

13 MR. GROSE: They haven't moved that into evidence
14 yet, Your Honor.

15 THE COURT: No?

16 MR. GROSE: No.

17 MR. MOWRY: Which one, Your Honor?

18 THE COURT: 38.

19 MR. MOWRY: No, sir.

20 THE COURT: That has not been moved in?

21 MR. MOWRY: No, sir. It was identified, that was
22 all. I believe that is right.

23 MR. GROSE: I don't have and the garage door opener
24 may not be, I don't know how they are planning on using
25 that later in the case.

1 THE COURT: The garage door thing is in with the
2 fork.

3 MR. MOWRY: I take it back, 38 should be in.

4 THE COURT: I thought it was in, unobjected to.

5 MR. MOWRY: I thought I had gotten and the fork
6 itself in.

7 THE COURT: I could be mistaken.

8 MR. GROSE: I remember agreeing to the picture of the
9 fork.

10 MR. MOWRY: Once the jury gets back in I would like
11 to move that in if there is no objection.

12 MR. GROSE: There is no objection to the fork. There
13 is an objection to the garage door opener.

14 THE COURT: Why are they in the same bag?

15 MR. MOWRY: And that is a question I am going to ask,
16 yes sir.

17 THE COURT: Why don't we do it right now.

18 Q Mr. Lynch, Sergeant Lynch, why were the handle and
19 the broken piece of the fork in the same bag with the
20 garage door opener?

21 A I mistakenly put it in the same bag, it is my fault,
22 yes sir.

23 MR. MOWRY: We can keep that out if you like, Your
24 Honor.

25 THE COURT: What is the relevance of the garage door

1 opener?

2 MR. MOWRY: There really is none, the way the
3 testimony has come out, Your Honor.

4 MR. GROSE: I want to hear some argument later about
5 the garage door opener.

6 THE COURT: In my mind I have been thinking about
7 that. Okay. Take it out.

8 MR. MOWRY: I have no trouble.

9 THE COURT: What about these other knives?

10 MR. MOWRY: They were found at the scene, Your Honor.
11 One of them is bent, that is why it was of interest.
12 Again, let me just confirm with Ms. White for a second.
13 Your Honor, I think we will just withdraw that, we won't
14 proceed any further on that issue.

15 THE COURT: All right. Now, I think 38 is admitted
16 because I wrote it down. I think it is in the testimony
17 but I would say for the record that Mr. Mowry has removed
18 the garage door opener from the bag and it will not be
19 tendered as an exhibit unless you want to include it in
20 the record as a Court's exhibit.

21 MR. GROSE: No, I assume it will go back to the
22 police department.

23 MR. MOWRY: No problem whatsoever, Your Honor. We
24 will withdraw the knives, we will not proceed on that any
25 further. The two that we were talking about.

1 THE COURT: Joy, is it admitted and if the jury
2 heard, do you have it.

3 MR. MOWRY: Your Honor, what I can do--

4 COURT REPORTER: Yes sir, it was admitted.

5 THE COURT: So, I will just give a brief curative
6 instruction that the garage door opener is not going to be
7 admitted into evidence.

8 MR. MOWRY: And I am not going to proceed upon
9 State's exhibit 37. I will withdraw that.

10 THE COURT: You can proceed with that or not.

11 MR. MOWRY: I am just going to let it go, Your Honor.

12 THE COURT: Okay. Do you request some kind of
13 curative instruction about that?

14 MR. GROSE: No, because those were never identified.
15 There is not even, and I would object, that is why I
16 objected, I don't want any testimony about those.

17 THE COURT: Okay. All right. Everybody ready?

18 COURT REPORTER: Judge, I have got number 37, the
19 knife into ID. I am just going to leave it into ID or
20 just take it completely out?

21 THE COURT: Well, it has been marked for
22 identification. There is testimony in the record about
23 it.

24 (Whereupon, State's Exhibit 37 was marked for
25 identification only.)

1 MR. MOWRY: But I will go no further with it and I
2 will not seek to admit it into evidence.

3 THE COURT: You want me to give a curative on it I
4 will.

5 MR. GROSE: I don't think that is required for the
6 jury.

7 THE COURT: Are y'all ready?

8 MR. MOWRY: Yes, sir.

9 (Whereupon, the jury came into open court at
10 approximately 10:43 a.m.)

11 THE COURT: Thank y'all. We just cleaned up a little
12 issue that occurred. And y'all may or may not remember
13 that in the State's exhibit number 38, which is in
14 evidence, it had the fork and the garage door opener. The
15 garage door opener was admitted in error so it has been
16 removed, it is not evidence. Y'all pay it no attention.
17 Thank you very much, Mr. Mowry.

18 CONTINUE DIRECT EXAMINATION

19 By Mr. Mowry:

20 Q Captain Lynch, let's move on a little bit. Let me
21 show you this photograph that has been marked for
22 identification as State's exhibit 29. Do you recognize
23 that?

24 A I do.

25 Q What is that, please, sir?

1 A Hair.

2 Q Where was that found?

3 A At the steps of the garage, where the kitchen door
4 comes out into the garage.

5 Q Is that or ?

6 A That is .

7 MR. MOWRY: Your Honor, I would offer this photograph
8 as a State's exhibit at this time.

9 MR. GROSE: No objection.

10 THE COURT: Okay.

11 (Whereupon, State's Exhibit 29 was admitted into
12 evidence.)

13 Q I will publish what has been marked or what has been
14 admitted as State's exhibit number 29. Is this the hair
15 that you were talking about?

16 A That's correct.

17 Q Okay. And I want to show you a bag, what did you do
18 with the hair that was in that photograph?

19 A I gathered it and placed it in the evidence bag.

20 Q Did you, let me show you this bag, State's exhibit
21 number 39 for identification. Do you recognize that?

22 A I do, yes sir.

23 Q What is that, please, sir?

24 A That is the evidence bag I placed the hair in.

25 Q And your handwriting on the front of the bag?

1 A Yes, that is my handwriting, yes sir.

2 MR. MOWRY: Your Honor, I would offer this bag and
3 its contents as State's exhibit number 39.

4 MR. GROSE: No objection.

5 THE COURT: All right, without objection.

6 (Whereupon, State's Exhibit 39 was admitted into
7 evidence.)

8 Q Mr. Lynch, did you submit any of this evidence for
9 further testing?

10 A I did not, no sir.

11 Q What could you have done?

12 A I could have sent the blood done for DNA testing at
13 SLED but there is a backlog that generally takes them a
14 year or maybe two to get the evidence back.

15 Q Did you have an unknown suspect in this case?

16 A No, sir. I had the suspect and the three individuals
17 that were bleeding.

18 Q Who were the three individuals?

19 A Ms. Shands and the two young sons.

20 Q Was one of the young sons bleeding?

21 A One was, yes sir, the oldest son was bleeding.

22 Q The other would have been the suspect himself?

23 A Yes, sir.

24 Q Let me hand you this photograph, State's exhibit
25 number 34 for identification. Did you take that

1 photograph?

2 A I did.

3 Q What does that depict, please, sir?

4 A That is the right knee of the older--

5 Q The teenage?

6 A That's right.

7 Q That would have been T.C. , is that right?

8 A That's correct.

9 Q What does that depict in there?

10 A A gash in his knee.

11 MR. MOWRY: Your Honor, I would offer this as a
12 State's exhibit at this time.

13 MR. GROSE: No objection.

14 THE COURT: Okay.

15 (Whereupon, State's Exhibit 34 was admitted into
16 evidence.)

17 Q What kind of injuries did Mr. Shands have?

18 A He had injuries to his hands, small cuts.

19 Q Did that come as a surprise to you?

20 A No, sir.

21 Q Given the circumstances?

22 A No, sir.

23 Q How many windows do you, were you able to count that
24 were broken out at ?

25 A There was the big patio window out front, the glass

1 window in the back of the little tanning room that leads
2 off from the patio door and the patio door itself.

3 Q Okay. So there were several broken windows, is that
4 right?

5 A At least three, yes sir.

6 Q You have had dealings with blood before, is that
7 right?

8 A That's right.

9 Q What characteristic does blood have as far as
10 slippery is concerned?

11 A Very much so, it is more like the syrup, it is real
12 sticky and slippery.

13 Q Let me also ask you, could you have submitted the
14 hair that was found in State's exhibit 39, could you have
15 submitted that for analysis?

16 A I could have, yes sir, but I knew where it came from.

17 Q Okay. Did you later take statements from individuals
18 involved with this?

19 A I did.

20 Q Did you go to the police department afterwards?

21 A I did, yes sir.

22 Q Did you assign anyone to take statements from the two
23 boys?

24 A An Officer Kanipe, I believe, took the statement from
25 one boy and I took the statement from the other.

1 Q Okay. Did you get a statement from Ms. Shands that
2 night?

3 A No sir, I did not.

4 Q Why was that?

5 A Because she went to the hospital in Greenville.

6 Q Okay. Did you visit her in the hospital?

7 A I did, the following, that Monday morning. I called
8 the hospital and she was still in ICU and sedated. So I
9 asked them to call when she came out, I would like to come
10 talk to her. Well, it was several days. I think it was
11 on Wednesday morning I went to the Greenville Hospital and
12 talked with Ms. Shands.

13 Q And she was still in the hospital, is that right?

14 A A little sedated, yes sir.

15 Q Did you take a statement from her at that time?

16 A I did not. And she was still very much upset and
17 crying.

18 MR. GROSE: I am going to object. This is not
19 relevant or connected to the case.

20 THE COURT: Let's move on.

21 MR. GROSE: Move to strike, Your Honor.

22 THE COURT: Y'all disregard that last statement.

23 Q Was she also, in your observation, under sedation
24 still?

25 A Yes, sir.

1 Q Based on that did you determine whether or not to
2 take a statement from her?

3 A I decided not to.

4 Q What did you do, what arrangement did you make to get
5 a statement from her?

6 A I just told her when she felt like talking to me
7 about what happened to get in touch with me and I would
8 come take a statement from her.

9 Q And did she in fact write one herself?

10 A She did.

11 Q That is all I have.

12 CROSS-EXAMINATION

13 By Mr. Grose:

14 Q I am going to hand you what was previously marked as
15 State's exhibit number 40 and also has been marked as
16 Defendant's exhibit number 1. Is that the blood swabs
17 that you talked about?

18 A Yes, sir.

19 Q And those were taken, that was between the two
20 houses, right?

21 A And the roadway mostly, yes sir.

22 Q And the roadway mostly?

23 A Yes, sir.

24 Q And you testified earlier that you chose not to
25 submit those for analysis?

1 A I did.

2 Q That you could have submitted them to SLED?

3 A I could have, yes sir.

4 Q And what you testified to was is that you had three

5 people with injuries, right?

6 A That's correct.

7 Q Ms. Shands, correct?

8 A Correct.

9 Q Mr. Shands?

10 A Correct?

11 Q And the oldest son, T.C. ?

12 A Correct.

13 Q Earlier you started to say that the youngest son,

14 J.S. , had injuries but that was a mistake?

15 A That was a mistake, yes.

16 Q Okay. So he didn't?

17 A No, sir.

18 Q Okay. Now, having that analyzed could have lead to

19 other information, couldn't it?

20 A Well, maybe other information about the subject and

21 the victim.

22 Q Right, it could have told us whose blood that was?

23 A Well, it had three people.

24 Q Right?

25 A Yes, sir.

1 Q And so it could have been any one of those three?

2 A It could have been.

3 Q Or it could have been a mix?

4 A Could very possible, yes sir.

5 Q And so that is information that we don't know the
6 answer to?

7 A That's correct.

8 MR. GROSE: Your Honor, at this time I would move
9 Defendant's exhibit number 1 into evidence.

10 MR. MOWRY: No objection.

11 THE COURT: Without objection.

12 (Whereupon, Defendant's Exhibit 1 was admitted into
13 evidence.)

14 Q Now, I think you testified that you got there and
15 Officer Gainey was with Preston and Preston was on the
16 ground?

17 A That's correct.

18 Q And eventually Preston was, was with somebody and he
19 was put in a patrol car?

20 A That's correct.

21 Q A Laurens Sheriff's office patrol car?

22 A That's correct.

23 Q Were you present when Officer Gainey read Preston his
24 Miranda rights?

25 A No, sir.

1 Q Were you aware that Preston said he would answer
2 questions?

3 A No, sir.

4 Q Are you aware that Officer Gainey didn't ask Preston
5 any questions?

6 A No, sir.

7 Q Now, you said, you testified earlier that you took
8 some statements, right?

9 A I did, I did.

10 Q And you talked about that you took one of the child's
11 statement, right?

12 A That's correct.

13 Q And Officer Kanipe took the other one?

14 A That's correct.

15 Q And you testified about the circumstances of taking
16 statements from Ms. Sharon, right?

17 A That's correct.

18 Q And you wanted her to get out of the hospital and not
19 be sedated, you took her statement or she actually wrote
20 it out and brought it to you?

21 A That's correct.

22 Q Okay. And you have had an opportunity to ask her
23 questions and I am sure you probably did?

24 A Yes, sir.

25 Q There was also a statement from, that you didn't

1 testify about earlier but you took statements from Mr.
2 Koon and Ms. Koon?

3 A That's correct.

4 Q Okay. At some point you did talk to Preston when he
5 was in custody, didn't you?

6 A That's correct.

7 Q And you told him what you were going to charge him
8 with?

9 A No sir, I did not.

10 Q You told him that you could charge him with a number
11 of things?

12 A I did not.

13 Q All right. You didn't get a statement from Preston?

14 A I did not. I ask did he want to talk to me and he
15 told me, no.

16 Q But he also told you that he didn't have a memory of
17 these events, didn't he?

18 A I can't remember.

19 Q You can't remember?

20 A No, sir.

21 Q Okay. You memorialized some things in your reports,
22 didn't you, didn't you?

23 A Yes, sir.

24 Q You did some paperwork?

25 A Yes, sir.

1 Q Now I think some of the paperwork, well some of the
2 paperwork you did were these statements that we talked
3 about, right?

4 A Yes, sir.

5 Q And so those were all written down and a copy of the
6 file?

7 A Yes, sir.

8 Q Goes to the Solicitor's office?

9 A That's correct.

10 Q And we have access to it?

11 A That's right.

12 Q And you had a report from July 22nd of 2014, right?

13 A That's correct.

14 Q And then that just talks about you taking a statement
15 from Mr. Koon?

16 A Yes, sir.

17 Q And we have a report from July 30th that that, you
18 memorializing that Ms. Shands came in?

19 A That's right.

20 Q And of course you accepted her statement and that is
21 in the file?

22 A That's correct.

23 Q There is no report from your conversation with Mr.
24 Shands, is there?

25 A No, sir.

1 Q That is all I have.

2 THE COURT: Any redirect?

3 MR. MOWRY: No, sir.

4 THE COURT: Thank you, you can step down.

5 MS. WHITE: At this time the State rests, Your Honor.

6 THE COURT: Okay. This is a time for us, we need to
7 have a legal discussion and this is probably a good time
8 to take a break. Will get you back in just a few minutes.

9 (Whereupon, the jury was excused from open court for
10 a break.)

11 THE COURT: Okay, any motions?

12 MR. GROSE: Yes sir, Your Honor. I would like to
13 start with indictment 2014-GS-30-1482 which is the
14 indictment for kidnapping. I want to treat that
15 separately because I have two motions related to that.

16 THE COURT: Okay.

17 MR. GROSE: One motion is the standard directed
18 verdict motion. The State has failed to present any
19 direct evidence or any substantial circumstantial evidence
20 based upon which a jury could convict beyond a reasonable
21 doubt. If, however, and this goes to the second motion,
22 this record is construed to provide that, then I believe
23 that the kidnapping statute is unconstitutionally vague
24 and overbroad because we have not really heard any
25 evidence in this case of what would put somebody on notice

1 that they had committed a kidnapping crime and come to
2 defend the case at trial. And I would note that there is
3 really no factual allegations in this indictment to tell
4 us what exactly was done in the course of these events for
5 Mr. Shands to have to defend. And so we think the State's
6 proof has failed on this issue and if this evidence
7 somehow is construed that it has not then the statute is
8 unconstitutionally vague and overbroad and based on the
9 facts of this case Mr. Shands has standing to challenge
10 that statute.

11 THE COURT: Okay. I would just, go ahead.

12 MS. WHITE: Your Honor, as far as the evidence, Ms.
13 Shands testified, actually several people have testified
14 that she was grabbed by the hair as she was attempting to
15 leave, pulled back into the doorway of the house. There
16 is testimony that she lifted the garage door and closed it
17 and sort of ended up in kind of a halfway state where she
18 would not have been able to get her car out and leave.
19 That is confining her for purposes of the statute. I
20 don't have any research in front of me on the overbroad
21 argument. But the kidnapping statute has gone up on
22 appeal, I know it has been upheld.

23 MR. GROSE: It has and when you look at those cases
24 where it has been upheld you have conduct, actually a lot
25 of the cases it was never challenged in. There may be

1 some cases where they said the person didn't have standing
2 because what was the issue in that case would clearly
3 constitute kidnapping. But when you read the kidnapping
4 statutes they all, I mean not the statute, the cases on
5 kidnapping, they all seem to have a whole lot more in the
6 way of confinement or seizure or carrying from one place
7 to another than what you, what the evidence is in this
8 case. So I think a review of those cases would actually
9 support Mr. Shands argument in this case.

10 THE COURT: Okay. Viewing in the light most
11 favorable to the State, I am going to deny your motion on
12 both grounds. Okay.

13 MR. GROSE: Just a follow-up question on that. With
14 regard to the overbroad and vague, constitutional
15 challenge you are considering the statute as part of that
16 and not just the facts?

17 THE COURT: Right.

18 MR. GROSE: Thank you, Your Honor. I just want to
19 make sure we had a ruling on the record. With regard to
20 the other counts we would move for a directed verdict
21 based on the fact that the State has failed to present any
22 direct evidence or substantial circumstantial evidence
23 based upon which a jury could convict Mr. Shands beyond a
24 reasonable doubt.

25 THE COURT: Okay. In a light most favorable to the

1 non-moving party I am going to deny your motion. All
2 right. Mr. Shands, let me--

3 MR. GROSE: Well, before you do that can I follow-up
4 on our conversation from last night because I left it,
5 whether it was something you said or the impression that I
6 took away from that you were going to sleep on it a little
7 bit overnight and then we would know today exactly how you
8 intended to handle his prior record. And I think we
9 should address that before you go into your colloquy.

10 THE COURT: That is fine.

11 MR. GROSE: I am still in the position that when you
12 do the test outlined by the Green case that the factors
13 weigh in our favor and it should be, his prior conviction
14 should be excluded all together. No reference to it as a
15 conviction for a felony or a violent crime.

16 THE COURT: Okay. And I disagree with you on that.
17 I think it is pretty clear that it is, the end of
18 confinement refers to termination of parole or probation.

19 MR. GROSE: And just for the record, if that is what
20 the rule had meant I think it would have said, the
21 termination of the sentence and not confinement. But we
22 also have just the regular part, (a) of the Rule where,
23 regardless of the ten year timeframe, it can be excluded
24 based on you weighing those factors under the Green case.

25 THE COURT: What is the case name, you know case

1 names. What is the case, I think it was burglary
2 convictions, Judge Cole, do you remember that one.
3 Anyway, he wouldn't say burglary when they impeached him.
4 Do you remember that one.

5 MR. GROSE: Well, I know several cases with burglary.
6 The difference would be, you know, burglary is a crime of
7 dishonesty. These aren't necessarily a crime of
8 dishonesty.

9 THE COURT: I am not sure that was part of the
10 analysis when the Supreme Court agreed to it. I am going
11 to allow them to do it. And I am just torn with exactly
12 the logistics of how. What do you propose.

13 MS. WHITE: Well, Your Honor, there is also a robbery
14 conviction that I think would go to honesty.

15 THE COURT: Is that at the same time as the murder?

16 MS. WHITE: Yes, sir. It was a robbery, essentially
17 a robbery gone bad from what I can tell. Conspiracy to
18 rob, robbery and first degree murder.

19 MR. GROSE: And what was the sentences on those?

20 THE COURT: Y'all take a look at that.

21 MR. GROSE: It may very well be, but all of the
22 offenses other than murder have expired.

23 THE COURT: Yeah, we don't know that, if it was a
24 consecutive sentence it might not. It is hard to know and
25 I am not going to allow, what is your position on that.

1 MS. WHITE: Your Honor, the three, the way the
2 indictment reads, the sentence is actually written on the
3 indictment. It says, it has got conspiracy to commit a
4 felony to commit robbery, robbery and then murder in the
5 first degree. The sentence, ordered by a Judge, you be
6 confined for the rest of your natural life and then he is
7 given credit for 183 days. So to me that implies that the
8 life sentence is for all three charges.

9 THE COURT: Well, what is the, you can't impose a
10 life sentence on something that only carries ten years.

11 MR. GROSE: Right. And in South Carolina you have
12 that rule that you can't impose a sentence for kidnapping
13 if they are convicted of murder. So, we don't know what
14 rule might be in Florida.

15 MS. WHITE: And, Your Honor, my suggestion would be
16 that I be allowed to cross-examine him when he was
17 convicted of violent felonies unless he opens the door to
18 something else with his testimony.

19 THE COURT: I think that that is, I am sure Mr. Grose
20 would object, but I think violent felony is a, would be an
21 appropriate appellation to this. Without something else,
22 I am not going to allow y'all to talk about plural. The
23 robbery, without anything else I can't, I just can't let
24 you do that.

25 MS. WHITE: Thank you, Your Honor.

1 MR. GROSE: So they can ask, have you been convicted
2 of a violent felony.

3 THE COURT: Violent felony.

4 MR. GROSE: And that would be over objection at the
5 time.

6 THE COURT: And it is unnecessary unless you want to,
7 to object. Is that agreeable with the State? I am not
8 going to make him get up and object.

9 MS. WHITE: Yes, sir.

10 THE COURT: Okay. Let me, you want to talk to him?

11 MR. GROSE: He is going to testify.

12 THE COURT: Mr. Shands, please stand. Mr. Shands,
13 raise your right hand, please.

14 PRESTON SHANDS, being
15 first duly sworn, testified as follows:

16 THE COURT: Do you remember our conversation
17 yesterday which we had about your right to testify?

18 MR. SHANDS: Yes, sir.

19 THE COURT: And you understand that you have an
20 absolute constitutional right to testify in your own
21 Defense?

22 MR. SHANDS: Yes, sir.

23 THE COURT: You have an equal absolute constitutional
24 right not to testify and it cannot be held against you and
25 I give a strong instruction to that effect to the jury.

1 And as I told you yesterday there is a lot of strategic
2 decisions encompassed by a person's decision to testify.
3 And so I will ask you now, do you have any questions you
4 want to ask me about this issue?

5 MR. SHANDS: No, sir.

6 THE COURT: Have you had ample opportunity to speak
7 with your attorney about this?

8 MR. SHANDS: Yes, sir.

9 THE COURT: Okay. And are you satisfied with your
10 conversations with your lawyer?

11 MR. SHANDS: Yes sir, I am.

12 THE COURT: Okay. And have you made a decision about
13 what you are going to do?

14 MR. SHANDS: Sir?

15 THE COURT: Have you made a decision?

16 MR. SHANDS: Such as?

17 THE COURT: Are you going to testify or not testify?

18 MR. SHANDS: Yes, I am going to testify.

19 THE COURT: Okay, all right. Very good, we will take
20 a five or ten minute break and then we will be ready.

21 (Whereupon, a short break was taken.)

22 THE COURT: Let's bring them in.

23 (Whereupon, the jury came into open court at
24 approximately 11:25 a.m.)

25 MR. GROSE: We will call Steven Sweat from the

1 Laurens County Sheriffs Office.

2 STEVEN SWEAT, being
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Grose:

6 Q Where are you employed?

7 A Laurens County Sheriffs Office.

8 Q And how long have you been employed there?

9 A Almost eight years.

10 Q And what is your title or your position there?

11 A Currently Sergeant in narcotics unit.

12 Q And did you have any involvement in the followup of
13 the incident that happened on July 20th of 2014 involving
14 Preston Shands or Sharon Shands?

15 A Yes, sir.

16 Q What was that?

17 A During the incident I showed up after the scene was
18 secured, Laurens City Units let the Defendant, the Laurens
19 City Unit put the Defendant in my patrol vehicle.

20 Q When you say the Defendant you are talking about
21 Preston?

22 A Yes, sir.

23 Q And while he was in your vehicle did he receive any
24 medical treatment?

25 A They had to get him out of the vehicle to do that,

1 sir.

2 Q Did you write any incident reports?

3 A No sir, the incident was recorded and documented by
4 Laurens City Police Department.

5 Q Do you have any notes from that night?

6 A No, sir.

7 Q Do you have any memory of what might have been said
8 when Preston was talking to EMS?

9 A No, sir. Like I said, I was just there to support
10 personnel.

11 Q And at some point did they take Preston to the
12 hospital?

13 A I believe so, I don't know where he went after he
14 left.

15 Q You didn't go with him?

16 A No, sir.

17 Q That is all the questions I have.

18 CROSS-EXAMINATION

19 By Mr. Mowry:

20 Q Sergeant Sweat, you say this is a Laurens City case
21 and you are employed by the Sheriffs Office?

22 A Sheriffs Office, yes sir.

23 Q Is that unusual for an agency, another agency to come
24 into another agencies investigation or case?

25 A Absolutely not. The City lays within Laurens

1 County's jurisdiction. I heard them out on something over
2 the radio, on the scanner. So I went over there and saw
3 what I could do to help.

4 Q And you say your sole involvement in the case was
5 having Mr. Shands in the backseat of your car, is that
6 right?

7 A Yes, sir.

8 Q Was there anything you noticed about his demeanor
9 that stuck in your memory?

10 A No, sir.

11 Q Do you remember how he appeared that night?

12 A I believe he was wearing, he seemed to be wearing
13 casual clothes, dressed comfortably, he was handcuffed.
14 But as far as exactly what he was wearing I couldn't tell
15 you.

16 Q Did you have any conversation with him yourself?

17 A Beside have a seat, no sir.

18 Q Okay. Thank you, that is all I have.

19 MR. GROSE: Nothing further.

20 THE COURT: Thank you, you can step down.

21 MR. GROSE: Call Hedi Blackstock.

22 HEDI BLACKSTOCK, being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Grose:

1 Q Where are you employed?

2 A At the Laurens City Police Department.

3 Q How long have you been employed there?

4 A Approximately a year and a half.

5 Q What is your position there?

6 A Currently I am a Resource Officer at Eddie Morris
7 Elementary.

8 Q And were you employed there in July of 2014?

9 A Yes sir, I was.

10 Q And did you have any involvement in the followup of
11 the incident involving Preston and Sharon Shands?

12 A I was, I was there.

13 Q And what was that?

14 A At the time I arrived the Lieutenant had called me
15 basically because they needed someone to ride with Mr.
16 Shands to the hospital. I came after the scene had been
17 secured already. As soon as I pulled up in my vehicle,
18 one of the other officers took the keys, he was going to
19 take the vehicle back to the Department for me. I got in
20 the ambulance, Mr. Shands was already loaded up in the
21 ambulance and they were basically waiting for me to get
22 there so that they could leave and take him straight to
23 the hospital.

24 Q And who was the Lieutenant?

25 A It would be Lieutenant Brewer.

1 Q And did you ride with Mr. Shands to the hospital?

2 A I did, I road in the back of the ambulance with Mr.
3 Shands.

4 Q Do you have any recollection of anything that
5 happened to him?

6 A I don't, honestly we didn't discuss the case, we
7 didn't communicate with him about anything like that. I
8 just rode with him.

9 Q In fact, were you instructed not to talk to him about
10 the case?

11 A I was advised not to give him any information to talk
12 to him because I had just shown up. So, it wasn't, not to
13 tell him anything, but it was because of the fact that,
14 you know, I really knew nothing about what was going on
15 when I got there.

16 Q Or to ask him any questions?

17 A Right.

18 Q And who instructed you that?

19 A Lieutenant Brewer.

20 Q And you sat with him at the hospital for a while?

21 A That's correct.

22 Q And any recollection of that?

23 A I just sat at the outside of his room and just
24 basically was there just to secure his room and didn't
25 really have any interaction with him other than, you know,

1 just sitting with him.

2 Q Any notes or reports that you made?

3 A No sir, I didn't write any supplementals for the
4 report.

5 Q That is all I have. Thank you.

6 THE COURT: Cross.

7 CROSS-EXAMINATION

8 By Mr. Mowry:

9 Q Officer Blackstock, were you with Mr. Shands the
10 entire time he was at the hospital?

11 A No sir, I believe there was another officer that came
12 in and relieved me and they were the ones who transported
13 Mr. Shands to the detention center or where ever he went
14 from the hospital.

15 Q Okay. According to your information how long was he
16 at the hospital, just approximately?

17 A I honestly don't remember. I sat with him for a
18 while, maybe an hour or longer. I don't remember how long
19 we were there.

20 Q But was it days or was it that evening when he was
21 transported or what?

22 A I just sat there with him that evening.

23 Q For about an hour?

24 A Probably about an hour.

25 Q Okay. Thank you, that is all I have.

1 MR. GROSE: Nothing further, Your Honor.

2 THE COURT: You can step down.

3 MR. GROSE: We call Julie Medlin to the stand.

4 JULIE MEDLIN, being

5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Grose:

8 Q Can you tell us where you are employed?

9 A Laurens County EMS.

10 Q And how long have you been employed there?

11 A Approximately two and a half years.

12 Q And does that mean you were employed there in July of
13 2014?

14 A Yes, sir.

15 Q And then were you one of the people that went on the
16 call involving Preston Shands?

17 A Yes, sir.

18 Q And there was more than one call that night, wasn't
19 it?

20 A Yes, sir.

21 Q And so it is fair to say you just know about the one
22 you were involved in?

23 A Yes, sir.

24 Q And do you have some recollection of that night?

25 A Yes, sir.

1 Q And can you tell us what Preston's demeanor was on
2 that night?

3 A He was slightly agitated, that is why we ask for law
4 enforcement to ride with us.

5 Q And when you say agitated, what do you mean?

6 A Just very upset, we don't know the details of what
7 happened before we got there. When we arrived he was in
8 the back of the car, whenever they got him out and brought
9 him to the ambulance he just seemed very upset, not
10 aggressive, just very, kind of I guess high strung.

11 Q Did he give you any information about what had
12 happened?

13 A Just that, he said that the wounds that he got were
14 in self-defense.

15 Q What did he mean by that?

16 A I am not sure, that is all he said.

17 Q Okay. And did he tell you how these wounds were
18 inflicted?

19 A From the report, it just says he got them in
20 self-defense by a knife.

21 Q Thank you, that is all the questions that I have.

22 CROSS-EXAMINATION

23 By Ms. White:

24 Q Were you the driver or the--

25 A I was the driver.

1 Q So during the actual transport you would have been up
2 front?

3 A Right, I had no patient contact during the transport.

4 Q And who actually wrote the run report?

5 A Erin King.

6 Q All right. Now, it says that the patient was alert
7 and oriented to person, place, time and event. What does
8 that mean?

9 A That means he knew who he was, he knew where he was,
10 he knew the events leading up to why we were called and
11 just everything that was going on around him, like what
12 day and time it is.

13 Q And so he didn't seem disoriented in any way?

14 A No, ma'am.

15 Q Did he seem intoxicated in any way?

16 A No, ma'am.

17 Q And do you remember him being covered in glass?

18 A Yes, ma'am. He had like small glass shards on his
19 skin.

20 Q And where exactly were his wounds?

21 A I have to read, I am sorry. He had a laceration to
22 his right hand, fifth digit; he had a laceration to the
23 outside of his left calf and an abrasion to the back of
24 the left shoulder.

25 Q And the laceration on his left calf, that was just

1 kind of a superficial?

2 A Yes, ma'am.

3 Q Was it like a graze?

4 A It says it is just, it says superficial laceration.

5 Q Okay. And the fifth digit, you said right hand?

6 A Yes, yes.

7 Q That would be his pinky finger?

8 A Yes, ma'am.

9 Q And Mr. Shands walked from the patrol car to your
10 ambulance, correct?

11 A Yes, ma'am.

12 Q And did he have any trouble with walking to the
13 ambulance?

14 A No, ma'am.

15 Q Once you take the patient to the hospital, that is
16 the end of your patient contact, correct?

17 A Yes, ma'am. We give a report to the nurse at the
18 hospital and that is it.

19 Q And once the hospital assumes his care you don't know
20 what is happening in the ER?

21 A Right, right.

22 Q Thank you.

23 THE COURT: You may step down, thank you.

24 MR. GROSE: At this time I would call Preston Shands.

25 PRESTON SHANDS, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Grose:

4 Q Preston, are you the Defendant in this case?

5 A Yes, sir.

6 Q Do you have any memory of the events that happened
7 that night?

8 A No, sir.

9 Q Have you had a chance to look at the evidence from
10 that night before you came to the courtroom this week?

11 A Yes, sir.

12 Q And based on looking at that evidence do you agree
13 that you are responsible for the injuries that happened to
14 Sharon?

15 A Yes, sir. I don't think my wife would allow me, she
16 is not that type of person.

17 Q And you are not saying you were defending yourself or
18 anything?

19 A No, sir.

20 Q And were you responsible for the cut that or the
21 other injuries, any injuries that Travious got?

22 A No, sir.

23 Q All right. Do you think it could have happened in
24 the incident that involved with Sharon?

25 A It possibly could, it is speculation to me because I

1 have no memory of what happened that night.

2 Q At, before the incident happened, let me go back. Do
3 you remember what day this happened on?

4 A It was on a Sunday, July 20th, me and the boys stayed
5 up late that night watching the fight. And my wife told
6 me, she said, you need to spend time in church. I said, I
7 know.

8 Q When you say you stayed up late that night, are you
9 talking about the Saturday night?

10 A Saturday night, yeah, me and the boys stayed up and
11 watched the fight.

12 Q And when you are talking about the boys you are
13 talking about--

14 A My two boys.

15 Q And you need something, some water?

16 A No, I am good, good, good.

17 Q What do you remember about that Sunday?

18 A My traditions on Sunday that we all eat breakfast
19 together, whether we go to church or not, we sit at the
20 table. We have a family that is on the go, I have got two
21 boys that are active in sports, I work 70 hours a week, my
22 wife works and we do a lot of things together. On Sunday
23 mornings we mostly go to church together. But every
24 Sunday I always cook breakfast and it is a rule in the
25 house for all of us to sit down on Sunday morning and if

1 we don't get no other meal together we have to have
2 breakfast together on Sunday. I cook breakfast on Sunday.
3 That is the only meal I am specialized to cook.

4 Q And did you do that this Sunday?

5 A Yes sir, every Sunday, it is a ritual unless we are
6 out of time.

7 Q All right. Now, did Sharon go to church?

8 A Yes, she is a church person. The boys, they don't
9 like to be hung out in church all day. And my youngest
10 gets real restless in church and all, he is on the phone
11 and I refereeing them in the church. So I passed it this
12 Sunday because I had a lot of things I had to do.

13 Q And what did y'all do that day?

14 A Well, we cleaned the house. And my son has a
15 driver's permit.

16 Q Which son are you talking about?

17 A My oldest son, T.C. . He is 15 and he likes to
18 drive my truck and he has all kind of excuses of why we
19 need to go out there and get some experience and I was
20 with that. And my wife, when he is driving it makes him
21 nervous. He likes to drive with me because I let him be
22 himself, you know. He went different places all that day,
23 back home and Walmart two or three times, the gas station
24 to put gas in, give him turns and everything, took him on
25 the highway. My youngest son is all boy.

1 Q So, did y'all practice driving that day?

2 A We practiced driving all morning, yes.

3 Q And what did y'all do that afternoon?

4 A We went and got something to eat and I let my son
5 drive to get something to eat. And we went back and forth
6 and back and forth. And every time he made a excuse, we
7 need to go do this, we need to go there. So, we finished
8 everything we were doing and got something to eat and came
9 home about 1:00. I texted my wife on that day and she
10 asked me, she said, what are y'all doing. I said, Trey is
11 driving. She said, how is he doing with his driving. I
12 said, he is doing better with it. He said, ha ha, really
13 funny. And I said, texted to her, I can't wait to get
14 home, get home because we are going to go ahead and make
15 decisions on what we are going to do with our moving, our
16 family, family are going to move in. They had nowhere to
17 go so we were going to make arrangements for them, where
18 everybody was going to sleep. And I was going to talk to
19 her about that.

20 Q Did you have anything to drink that afternoon?

21 A When I go home I had one Bud Light. And then I had
22 spilt that on the table and I said, oh man, she is going
23 to get me on this one. Spilled something and I went to
24 the cabinet to get the sponge and stuff to clean it with.
25 And so, she asking me to stop drinking and I said, okay.

1 So I went to give all of it to my father-in-law but under
2 the cabinet was this stuff that I had bought at work.

3 Q And then let me back up just a second. About what
4 time was it that you had this Bud Light?

5 A About 1:00, 1:30.

6 Q All right. And this stuff that you had bought from
7 work, what was that?

8 A It was stuff that people told me was homemade
9 moonshine. You couldn't smell it but you knew it was
10 alcohol in it when you tasted it. And I said, well, I am
11 going to go ahead and take me a shot, my last little
12 drink. So, I tasted it so I would know what it tasted
13 like because it was my first time.

14 Q Had you had anything to drink out of that bottle of
15 moonshine?

16 A Yes, I did.

17 Q Before that day?

18 A No.

19 Q Now that day did you have something to drink?

20 A Just a Bud Light.

21 Q I mean, did you start drinking that moonshine?

22 A Yes, I did.

23 Q Okay. And how did you go about doing that?

24 A I had a cup and ice. Like I said, this was my first
25 time of having something to drink in it. It was so

1 strong, it didn't have a smell because I spit it out of
2 the cup. So, I went and got a pitcher, a tall blue
3 pitcher and I poured it in there and I started mixing it
4 would coke and the more coke I mixed and I would put more
5 moonshine in there, it was in a preservative type jar.
6 And I poured that much of moonshine in there and I poured
7 a whole two liter coke into it and it was still strong, so
8 strong. I add ice to it and I drunk a cup of it. And
9 most of the time I drank I fall out and go to sleep.

10 Q Let's talk about that, you said most of the time you
11 drink you fall out and go to sleep?

12 A Yes, I just fall out.

13 Q Can you tell us about that?

14 A Most of the time I drink I am watching in front of
15 the TV in my living room, we have an air mattress. My
16 wife doesn't like us having an air mattress. But the boys
17 like the air mattress because we can sit and watch the
18 sports and the air mattress is one of those couches that
19 you can roll out from the couch right over to the air
20 mattress. And my youngest son like to roll and a little
21 kid rolling. When I drank I lay on that couch because we
22 have protection on our furniture and when I get on that
23 air mattress and go to sleep. I just sleep it off and I
24 just go off and go to bed.

25 Q Is that the reaction you had this time?

1 A No.

2 Q And because you had a different reaction do you have
3 some thoughts about that?

4 MS. WHITE: Objection, Your Honor.

5 THE COURT: What is the basis of your objection?

6 MS. WHITE: Speculation.

7 MR. GROSE: He can talk about what he experienced.

8 MS. WHITE: Not his thoughts as to any causation.

9 MR. GROSE: I think he can when it's--

10 THE COURT: He can talk about his state of mind.

11 Q Do you have any thoughts or any comments about your
12 state of mind in this situation?

13 A This is something that took me clean out of my round.

14 Q And by that what do you mean?

15 A It didn't have, it didn't cause me to have any action
16 that normal alcohol would cause me to a reaction. This
17 wasn't just alcohol.

18 Q What do you mean by that?

19 A This was something more strong and powerful in there,
20 that they put in there other than alcohol. Because
21 normally alcohol just makes me drunk and fall out and go
22 to sleep.

23 Q Do you think there was some type of drug in it?

24 A It had to be, there had to be something more powerful
25 that I had ever experienced in my life. I have never

1 experienced nothing like that, I don't do drugs. I am a
2 father, I don't do drugs. This had some effect on me that
3 took me slap clean out of mind, just took me slap out.

4 Q And as a result of that do you feel like it took away
5 your ability to exercise independent judgment?

6 A I had no--

7 MS. WHITE: Objection, Your Honor.

8 THE COURT: Yes, this is going over, he is now in the
9 realm of speculation.

10 MR. GROSE: Okay. Thank you, Your Honor.

11 Q Now, you have had a chance to review the evidence in
12 this case. You have indicated that you were responsible
13 for the events with Sharon?

14 A Yes, sir.

15 Q And at some point did your memory start to come back?

16 A No.

17 Q You remember any of the events, when did your memory
18 pick up?

19 A When I got to the, the next day, the other house.
20 Tony Lynch approached me and he said, you got something
21 you want to tell me. I said, first, what I am getting
22 here for. He said, man, you did a number on her. All he
23 would tell, I just didn't remember what went on.

24 Q So, you tried to tell them you couldn't remember?

25 A I couldn't and I was being honest because when it

1 came to my wife and kids I want to know what is going on
2 because I am an overprotective parent. And I love my
3 wife, man.

4 Q All right. And when was it that you first started
5 finding out what you had done?

6 A When the charges were read in front of me.

7 Q The charges, when you went in front of the
8 magistrate?

9 A Yes.

10 Q That probably Monday morning?

11 A That Monday morning.

12 Q Now, you mentioned earlier about having a job and
13 having a family?

14 A Yes.

15 Q How long have you known Sharon?

16 A Since 2003.

17 Q And how long have you and Sharon been married?

18 A Next month will be ten years.

19 Q And when you met Sharon did she already have a child?

20 A Yes, T.C. .

21 Q And you refer to T.C. as your son?

22 A Yes.

23 Q So you trusted him like a son?

24 A Yes.

25 Q And as I understand the testimony that has come out,

1 you and Sharon have a child together?

2 A J.S. .

3 Q And how old is J.S. ?

4 A He is eight.

5 Q And where were you working at the time?

6 A I was working with canvas and hardwood flooring.

7 Q And what was your job there?

8 A Quality control, quality assurance.

9 Q And what does that mean, is that an inspection thing?

10 A Yes, they just, what we have in this country today,
11 so many recalls, we don't have recalls.

12 Q And does your job in quality involve working with
13 processes in inspection?

14 A From the start to the finish. That is why, when the
15 person that is over it from the start to the finish, which
16 is my job was, I knew every department. I could
17 distinguish whether it was a good claim or a bad claim.

18 Q Now, in the State's case they introduced State's
19 exhibit 14 and 15. Did you write those letters?

20 A Yes, sir. I wrote them to my boys.

21 Q All right. And what was the purpose of writing those
22 letters?

23 A After months and months sitting in here trying to
24 figure what is going on at night and looking at my motion
25 in discovery and everything and after hearing things

1 people are saying on the street, what people were telling
2 me. I wanted them to know that I didn't voluntarily did
3 this, this happened against my own knowing.

4 Q And did you talk in here something about the
5 intoxication?

6 A Yes sir, I did.

7 Q Did you go into all the details about it?

8 A There wasn't much details to go into.

9 Q All right. Preston, that is all the questions I have
10 right now. If you would answer any questions that they
11 have.

12 CROSS-EXAMINATION

13 By Ms. White:

14 Q Mr. Shands, you were just telling Mr. Grose about
15 your job. You had a pretty good job, didn't you?

16 A Yes ma'am, I did.

17 Q And you had a beautiful family, beautiful wife?

18 A Yes, I had it all.

19 Q Sharon is a good bit younger than you, isn't she?

20 A Twenty years, we had a lot of similarities because we
21 had a lot of problems in our background. She was raised
22 by her grandparents and I was raised by my grandparents.
23 And we have shared a lot of common. Out of all the women
24 I knew she was more than my mother. My mother, she put us
25 last and I never wanted a woman that didn't put God first

1 or family first. She was hardheaded, she was Christian
2 bound because she was raised by her grandmother and two
3 aunts.

4 Q And I am sorry to cut you off but Sharon took care of
5 you, didn't she?

6 A That is my rock.

7 Q And you love her son like he was your own?

8 A Treated him like my own, yes, since three and a half.

9 Q You coached him in his ballgames?

10 A Every moment.

11 Q Throw the ball with him?

12 A Every moment.

13 Q You said you were teaching him to drive?

14 A Yes, ma'am.

15 Q And your baby, J.S. .

16 A That is my heart.

17 Q You were a good dad to him too?

18 A I love my children, my family. People said I was
19 overprotective of my family, my wife was a good woman.

20 Q And y'all were happy at first, right?

21 A We was happy for a lot of times.

22 Q And then things kind of started, kind of falling
23 apart, didn't they?

24 A Yes.

25 Q And you got pretty jealous and kind of controlling,

1 right?

2 A Yeah, I started drinking.

3 Q And started fussing a lot at the kids being strict
4 about where they were going, where your wife was going,
5 where she was?

6 A No, we wanted to know where everybody was at all
7 times because we had two kids, we had to know where each
8 other was at.

9 Q Well, let me ask you about that. You told Mr. Grose
10 you were there with the kids that day?

11 A Yes.

12 Q And y'all had been driving around?

13 A Yes.

14 Q And you came back to the house?

15 A Yes.

16 Q And you were the one responsible, he was then 15?

17 A Yes, ma'am.

18 Q And a 7-year-old?

19 A Yes, ma'am.

20 Q And you were the adult in the house?

21 A Yes, ma'am.

22 Q And you went and, first of all you got a Bud Light,
23 right?

24 A Yes, ma'am. Knowing that is all I drink on Sunday.

25 Q But you spilled that?

1 A Yes.

2 Q So, tell me about this moonshine, is this something
3 you bought from somebody you work with?

4 A Yes, ma'am.

5 Q So it is not something, now they sell moonshine in
6 the liquor stores.

7 A I don't know if it is real moonshine, I don't know, I
8 never tried it, it is my first time trying it.

9 Q But this is something you bought, do you know
10 actually who made it?

11 A No, it is just the guys told me, before you quit
12 drinking why don't you try the granddaddy of all, the
13 cremator of all whiskey. It is the granddaddy, until you
14 tasted the granddaddy you can never say you drunk anything.

15 Q So, you were home alone with two children and you
16 decided to drink something that you had no idea where it
17 came from?

18 A Yes, ma'am.

19 Q And you had no idea what was in it and you had no
20 idea how you were going to react to it. That is what you
21 are telling us?

22 A Yes, ma'am.

23 Q These two boys that you love more than life itself?

24 A Yes.

25 Q And you bought that?

- 1 A It was given to me.
- 2 Q It was given to you?
- 3 A Yes.
- 4 Q But you went and drank that of your own free will?
- 5 A Yes, ma'am.
- 6 Q Nobody forcing you to drink it?
- 7 A No, ma'am.
- 8 Q And you said, you tasted it first, it tasted really
- 9 bad, it was strong?
- 10 A I didn't know what it was suppose to taste like. It
- 11 didn't have a smell, it had a taste but not a smell and I
- 12 didn't know what it was suppose to taste like. I just
- 13 know it was stronger than normal alcohol that you buy.
- 14 Q You spit out the first sip of it and then you said
- 15 you kept mixing it?
- 16 A With coke.
- 17 Q What sort of ratio were you mixing it with coke?
- 18 A A cup of coke and the shine. But every time I tasted
- 19 it it was strong.
- 20 Q But you kept drinking it?
- 21 A Two glasses all together. I only drank half of it, I
- 22 don't remember finishing the other half.
- 23 Q Now, you wrote these letters, do you have them?
- 24 A Yes, ma'am.
- 25 Q And you sent these to J.S. and T.C. , right?

1 A My sons.

2 Q But you kept telling them, tell your mama this and
3 tell your mama that, right?

4 A Yes.

5 Q And at one point you start promising them things,
6 right?

7 A I always, I have made promises to them before but it
8 just hadn't happened.

9 Q But you start, you are promising them, you are
10 telling 'T.C. that you are going to buy him a car, you
11 are telling J.S. you will buy him a bike. Is that right?

12 A But that was promises I had already made before this
13 had ever happened.

14 Q But you are also saying you will do it if you get to
15 come home, right?

16 A Yes.

17 Q You say tell your mama I will make her a stay at home
18 mom, she will never have to work?

19 A That was part of our future, plans.

20 Q And that is if you get to come home?

21 A No, that was before this ever happened, that is the
22 plans we had made.

23 Q Please, J.S. , I want to be your only dad. Please
24 let daddy come home. You are not asking to come home?

25 A Yes, I am asking to come home.

1 Q And in these letters you keep reminding them over and
2 over of everything that you have done for them, right?

3 A Yes.

4 Q And you are begging them to help you, you use the
5 words, help me, don't you?

6 A Yes.

7 Q And you, mean you understand that what you did that
8 night, you understand what you did, right?

9 A I know I did it but I don't understand it, I don't
10 understand what happened that night.

11 Q And in these letters you keep asking, why does
12 everybody turn their backs on me, right?

13 A I was talking about my sisters and my brothers.

14 Q And why do y'all hate me so much. Did you ask that?

15 A Yes, because everybody turned their back on me.

16 Q You say tell your mother to give me one last chance,
17 don't you?

18 A Yes.

19 Q Now, you never once mentioned moonshine in these
20 letters, do you?

21 A No.

22 Q You just mention alcohol?

23 A Yes.

24 Q Mr. Shands, you have been convicted before of a
25 violent felony, right?

1 A Yes, ma'am.

2 Q And you were, it looks like you have lost some weight
3 since July of last year. You were a bigger guy back then?

4 A Yes. This has caused me not to eat and I lost almost
5 thirty something pounds.

6 Q Now, how long, y'all have lived in that house about
7 ten or eleven years?

8 A 2004 is when I bought it and she moved in, the last
9 part of 2004.

10 Q And the Koon's moved in about five years ago?

11 A Yeah.

12 Q And you knew them?

13 A Great guy, he has helped me, come to my house and
14 fixed things and I paid him for it. And his son come
15 over, dropped out of school and I helped him. He has come
16 over and got in my pool. I have an above ground pool and
17 I let him come over any time he wants to.

18 Q Thank you, Mr. Shands.

19 A You are welcome, ma'am.

20 MR. GROSE: No redirect, Your Honor.

21 THE COURT: You can step down, thank you.

22 MR. SHANDS: Your Honor, can I address the Court and
23 Jury?

24 THE COURT: No, sir. Please step down.

25 MR. SHANDS: Okay.

1 MR. GROSE: Your Honor, as this time I call Jimmy
2 McBeth.

3 MS. WHITE: Your Honor, we have a matter of law
4 regarding Mr. McBeth's testimony.

5 THE COURT: All right, ladies and gentlemen, let's
6 take a short break.

7 (Whereupon, the jury was excused from open court.)

8 MS. WHITE: Your Honor, it is my understanding from,
9 I have had a brief discussion with Mr. McBeth this
10 morning, that the basis of his testimony is going to be
11 comments made to him by Mr. Shands about having been
12 poisoned essentially or something that was given to him.
13 That would fall under the category of self-serving
14 hearsay.

15 MR. GROSE: Actually his testimony is about the
16 conversation that he had with Sharon Shands where she
17 believed that that was possible because of people that he
18 got the moonshine from.

19 MS. WHITE: Your Honor, I think it is irrelevant at
20 this point.

21 THE COURT: Well, I will tell you what let's do. Let
22 us put him up and proffer and let us see what the
23 testimony is.

24 JIMMY MCBETH, being
25 first duly sworn, testified as follows:

PROFFER DIRECT EXAMINATION

By Mr. Grose:

Q Mr. McBeth, where do you work?

A Pet Dairy.

Q And where is that at?

A Spartanburg.

Q And are you related to Preston?

A Yes, I am.

Q And how are you related to him?

A Cousins.

Q And do you know Sharon Shands?

A Yes, I do.

Q And how do you know her?

A By marriage.

Q And have you had any conversations with her?

A Yes, I have.

Q And did you have any conversations with her about the possibility that Preston was poisoned?

A Yes, I did.

Q And when you shared that with her what was her response?

A She said what she told him to quit fooling with them people, they were just bringing him down.

THE COURT: I can't hear you.

A She told him to leave the people's alone that he was

1 hanging around.

2 Q And did she express an opinion about whether it was
3 possible or not possible that he had been poisoned?

4 A She said they could have, you know, she told them to
5 leave them alone.

6 MR. GROSE: That would essentially be it, Your Honor.
7 And this is relevant because she denies saying that.

8 THE COURT: You want to cross?

9 MS. WHITE: No sir, I don't have any questions on
10 cross at this time. I still, I have an argument as to, no
11 questions on cross, no sir. Your Honor, I think it is
12 irrelevant mainly because there is no involuntary
13 intoxication Defense here legally speaking. He testified
14 that he purchased moonshine.

15 THE COURT: Yes, okay.

16 MR. GROSE: I disagree because he also testified that
17 he thought it was something other than alcohol that he
18 didn't know about. So, while he voluntarily ingested that
19 legally the Defense is here and we are going to request
20 that charge, so I think this is relevant.

21 MS. WHITE: Your Honor, to me this would be the same
22 as he bought marijuana that was lased with LSD. It is an
23 illegal substance.

24 THE COURT: This is liquor. I am intrigued by the
25 impeachment part of it.

1 MS. WHITE: And, Your Honor, I don't think her
2 opinion, I get the impeachment part but it is still
3 going--

4 THE COURT: What I understood him to say was that she
5 thought it could be possible. That is speculation.

6 MS. WHITE: And the testimony from Ms. Shands--

7 THE COURT: Just a second. Her state of mind is not
8 an issue here.

9 MR. GROSE: Well, and this goes to her state of mind,
10 it goes to Preston's state of mind and it goes to what she
11 knew about surrounding circumstances of what has come out
12 in the evidence now.

13 MS. WHITE: Your Honor, I don't see how her opinion
14 as to his state of mind is relevant. Furthermore, as far
15 as the impeachment--

16 THE COURT: It is not going to be to testify to
17 somebody else's state of mind.

18 MS. WHITE: From an impeachment standpoint her
19 testimony was that Mr. McBeth had mentioned it to her.
20 Because I think Mr. Grose asked her, do you recall saying
21 you thought he could have been poisoned. And she said,
22 no, Mr. McBeth mentioned it to me. And that was where
23 that line of questioning ended.

24 MR. GROSE: And when he mentioned it to her she
25 acknowledged that that was possible.

1 MS. WHITE: Which is still irrelevant.

2 MR. GROSE: Well, when she denied the statement under
3 the rules we are allowed to--

4 THE COURT: Impeach her testimony. Which I suggest
5 you all stay on your toes. All right. He hadn't taken
6 the stand when the jury exited, did he.

7 MR. GROSE: No, sir.

8 THE COURT: Step back down. Bring the jury, yes sir.
9 (Whereupon, the jury came into open court at
10 approximately 12:10 p.m.)

11 THE COURT: All right, Mr. Grose.

12 MR. GROSE: We call Jimmy McBeth to the stand.

13 JIMMY MCBETH, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Grose:

17 Q Mr. McBeth, where are you employed?

18 A Pet Dairy in Spartanburg.

19 Q And what do you do for Pet Dairy?

20 A I am a maintenance helper.

21 Q And these are people that make some of the food
22 products we eat?

23 A Yes, sir.

24 Q Do you know Preston Shands?

25 A Yes, sir.

1 Q And how do you know Preston Shands?

2 A He is my cousin.

3 Q Do you know Sharon Shands?

4 A Yes, I do.

5 Q And how do you know her?

6 A By marriage.

7 Q And since this incident happened have you had any
8 conversations with Sharon Shands?

9 A Yes, I have.

10 Q And did you have a conversation with her about the
11 possibility that Preston might have been poisoned?

12 A Yes, I did.

13 Q And what did she say?

14 A She said she had told him to leave those people alone
15 that he was hanging around.

16 Q And did she acknowledge that it was possible?

17 A Yes, she did.

18 Q That is all I have.

19 CROSS-EXAMINATION

20 By Ms. White:

21 Q Mr. McBeth, you weren't there on July the 20th?

22 A No, I wasn't.

23 Q And you don't have a clue what actually happened that
24 day, do you?

25 A No, I don't.

1 Q No further questions.

2 THE COURT: Thank you.

3 MR. GROSE: Your Honor, at this time the Defense
4 would rest.

5 THE COURT: All right. Y'all approach.

6 (Whereupon, a bench conference was held in the
7 presence of the jury but out of the hearing of the
8 jury.)

9 THE COURT: All right. Ladies and gentlemen, it is
10 12:15, we are going to break for lunch. And I tell you
11 this, remember I gave you a roadmap, the first two parts
12 are finished and complete. So we will break for lunch, I
13 have got some things I need to go over with the attorneys.
14 And when you come back we will then begin part three which
15 is the closing arguments from the lawyers. And after that
16 I will give you the charge on the law and then the case is
17 yours to talk about. So, you have come a long way, I am
18 sure you want to discuss it and you will have that
19 opportunity soon. But remember your oath and remember the
20 reasons why we don't talk about it with anybody outside of
21 your group. And be back at 1:30, that is an hour and
22 fifteen minutes, hope that gives you plenty of time.

23 (Whereupon, the jury was excused from open court for
24 a lunch break.)

25 THE COURT: Okay, anything?

1 MR. GROSE: First thing is I want to renew the
2 motions for all the grounds previously stated including
3 the additional ground for kidnapping.

4 THE COURT: Okay, additional ground?

5 MR. GROSE: Well, based on the statute. I think I
6 made the same motion for all the charges and then that
7 additional ground.

8 THE COURT: The same ruling. Okay.

9 MR. GROSE: Your Honor, I just handed up four request
10 to charge that I have already filed copies of this
11 morning. The first one is I request the State versus
12 Manning language, that is the reasonable doubt charge.
13 The second charge we are requesting the State versus
14 Logan, circumstantial evidence charge. If I don't request
15 that you might not be required to give it so I want to
16 make sure the record reflects that and we want to request
17 that. Request to charge number three is the criminal
18 intent instruction. That is from the Judge's manual, it
19 is online from the Judicial Department. And then request
20 to charge number four is the involuntary intoxication
21 charge from, involuntary intoxication charge from Judge
22 Anderson's charge book in criminal cases.

23 MS. WHITE: Your Honor, as to the request to charge,
24 I am not sure what Your Honor's standard charges are but
25 most of the ones I have heard on reasonable doubt,

1 circumstantial evidence and criminal intent seem to cover
2 it fairly well. I don't know that these additional
3 charges are necessary. As to number four, involuntary
4 intoxication, this is not involved in the State of South
5 Carolina. He has testified under oath that he took an
6 illegal substance, it doesn't matter what he thought he
7 was taking. You cannot have involuntary intoxication for
8 taking an illegal substance regardless what may or may not
9 that was mixed with it.

10 THE COURT: I am not going to charge that. I am
11 curious about the circumstantial evidence.

12 MR. GROSE: Well, Your Honor, they have to prove
13 intent for, as elements for some of these crimes and the
14 standard charge on malice almost always talked about
15 direct or inferred malice and inferred malice is based on
16 circumstances. We have done a lot of talk about
17 circumstantial evidence in this case. And I do disagree
18 with them, I think I am required to request the Logan
19 charge under the plain wording of the Logan opinion. So I
20 am making that request.

21 THE COURT: Logan, what circumstantial evidence?

22 MR. GROSE: Your Honor, they have to prove criminal
23 intent and they have to prove, they have to prove intent,
24 specifically for some of these crimes. Attempted murder
25 is specific intent crime. Intent almost always is proven

1 or disproven by circumstantial evidence and it goes two
2 ways. We make the argument that our circumstantial
3 evidence that we presented go into a state of mind as
4 evidence that he didn't have criminal intent.

5 THE COURT: What do you say?

6 MS. WHITE: Your Honor, like I say, I think the
7 standard charge covers it. The circumstantial and the
8 direct evidence, I don't see the need to add anything else
9 to what I am sure is already going to be a pretty lengthy
10 charge for the jury to listen to. I don't necessarily
11 have a problem with the language that is in there.

12 MR. GROSE: If circumstantial evidence is charged
13 Logan is mandatory if requested.

14 THE COURT: I am not going to charge the involuntary
15 intoxication, I will charge the other stuff.

16 MS. WHITE: Your Honor, we are going to request that
17 you charge voluntary intoxication is not a Defense.

18 THE COURT: Okay.

19 MR. GROSE: We would object to that, without the
20 charge on involuntary that goes with it.

21 THE COURT: Okay. All right. The general, duties,
22 Judge and jury, the indictment is not evidence, normal
23 charges, credibility of the witnesses, presumption of
24 innocence, reasonable doubt, prior record only for
25 impeachment, voluntary intoxication. This is a burglary

1 first, right?

2 MS. WHITE: Yes, sir.

3 THE COURT: I will do the direct and circumstantial
4 evidence, intent, and the various offenses.

5 MR. GROSE: And what is your reasonable doubt charge
6 going to be?

7 THE COURT: I think you will like it. Reasonable
8 doubt, the kind of doubt which would cause a reasonable
9 person to hesitate to act. They arise from the evidence
10 in the case or the lack of evidence in the case. The jury
11 must determine whether or not it exist as to the guilt of
12 the Defendant. The State has the burden of proving each
13 and every element beyond a reasonable doubt.

14 MR. GROSE: And one other question. On offenses,
15 since attempted murder is a specific intent crime, it is
16 conceivable that they could find that there was a specific
17 intent, you should probably charge the lessor included of
18 assault and battery of a high and aggravated nature.

19 THE COURT: I would like to finish reading the charge
20 today.

21 MS. WHITE: They could find that there was not a
22 specific intent to kill her. I agree with Mr. Grose as
23 much I don't want to sit through an hour and a half
24 charge.

25 THE COURT: That's what I heard.

1 MS. WHITE: And Mr. Mowry brings up the expert
2 witness charge, Your Honor, since the EMT was qualified as
3 an expert.

4 THE COURT: Do you want expert witness done?

5 MR. GROSE: I don't care one way or the other.

6 THE COURT: I gave them the charge during the trial,
7 you think that will suffice. It is a very intelligent
8 jury.

9 MR. GROSE: Good enough for me.

10 THE COURT: Do you disagree with that?

11 MS. WHITE: No, sir.

12 THE COURT: All right. Well, see y'all at 1:30.

13 (Whereupon, a lunch break was taken.)

14 THE COURT: All right, are we ready?

15 MR. GROSE: I just want to put on the record, just so
16 there is no misunderstanding, that when I did not object
17 during cross-examination of Mr. Shands about the prior
18 record, that was based on discussions that we had earlier,
19 not because I had changed my mind.

20 THE COURT: I think I told you you didn't have to.

21 MR. GROSE: Right, you did and I just wanted the
22 record to reflect, I don't want the Attorney General to
23 say I must have changed my mind.

24 THE COURT: All right.

25 MR. GROSE: The second matter is in that packet that

1 I handed up on the first day. The final one, you might be
2 happy to know, is I had a motion regarding the order of
3 the closing arguments and I am asking that the State be
4 required to open in full on the law and the facts,
5 allowing us to have, I think due process requires that we
6 have a full opportunity to respond to their entire
7 argument. And then they would have a chance to respond to
8 new matters that were raised in the response.

9 THE COURT: Okay.

10 MR. GROSE: I realize this is different than what our
11 procedure is but I think it is within your discretion.

12 THE COURT: Well, maybe the Supreme Court will want
13 to change it, I decline to do so. Thank you, very much.
14 It is in the record.

15 MR. GROSE: It is filed in the record as long as you
16 have had an opportunity to review it, the arguments.

17 THE COURT: Yes, I have.

18 MR. GROSE: Thank you, Your Honor.

19 THE COURT: Anything?

20 MS. WHITE: No, sir.

21 THE COURT: Bring them in.

22 MR. GROSE: I still move for them to be required to
23 open and close, that is just on the law, subject to my
24 objection.

25 THE COURT: Okay. Before they come back, what were

1 the, burglary first, it would be--

2 MR. MOWRY: Injury to an individual not involved with
3 the burglary, not a party to the burglary.

4 MS. WHITE: And in the nighttime.

5 MR. GROSE: On that note, Your Honor, if I can have
6 just a moment.

7 THE COURT: And it is assault and battery first
8 degree, is that right?

9 MS. WHITE: Yes, sir.

10 MR. GROSE: I don't know that nighttime was proven,
11 Your Honor.

12 THE COURT: I think I believe I heard testimony that
13 it was dark.

14 MR. GROSE: Of course she was not outside so I don't
15 know how she could know.

16 MS. WHITE: Your Honor, there is testimony it is 9:00
17 o'clock, she said it was getting dark.

18 THE COURT: I am going to do the nighttime.

19 MR. GROSE: Thank you, Your Honor.

20 (Whereupon, the jury came into open court at
21 approximately 1:43 p.m.)

22 THE COURT: Ladies and gentlemen, I hope you had a
23 pleasant lunch. As I told you we have completed the first
24 two parts of the trial. We are going to now move into the
25 third part and that is the closing arguments of these

1 attorneys. And this is where they advocate their
2 positions to you and you have paid great attention
3 throughout the whole trial and I ask you to continue to
4 give your full attention to the arguments of these fine
5 attorneys. Thank you.

6 MS. WHITE: May it please the Court. Ladies and
7 gentlemen, I get to talk to y'all twice. The first time,
8 the first thing I am going to talk to y'all about is the
9 law that applies to this case and you will hear more about
10 that from the Judge in a little while. But I am going to
11 just kind of go over what we think the laws are that apply
12 to this case. You will hear from Mr. Grose and then I
13 will come back and kind of sum everything up for you of
14 what we have proven here in these past two days. The law
15 that applies to this case and Mr. Mowry has told y'all
16 yesterday, Mr. Shands is charged with a number of crimes.
17 The first is attempted murder. And like he said
18 yesterday, attempted murder is a murder where the victim
19 didn't die. It is the attempt to kill another human being
20 with malice aforethought. And attempt to kill another
21 human being, that is pretty easy, we can all understand
22 that. But malice aforethought, malice can be expressed or
23 implied. And what malice is, it is a hatred and ill will,
24 just an evil kind of state of mind. And expressed malice
25 is, you know, I am going to kill you, if someone says

1 that. That is them expressing malice. I am going to kill
2 you. Implied malice can be inferred from the
3 circumstances that surround it, using a deadly weapon,
4 trying to stap someone in the head with it. That is
5 implied malice. And aforethought just means a split
6 second, just a time that the person thinks that is it, I
7 am going to kill him, and they do it. It doesn't have to
8 be planning for days and days, it can be just that, split
9 second, grab a weapon and go. It can also be chasing
10 someone, having time to think about it, going back, coming
11 back and having time to think about it.

12 Burglary first degree is the next one. Burglary is
13 breaking into somebody's house in this case, first degree
14 burglary, you are breaking into a dwelling where somebody
15 lives of another person with the intent to commit a crime
16 therein. And in this case the crime therein would be the
17 attempted murder. And for it to be a first degree
18 burglary there have to be other aggravating factors. And
19 there is a whole list of them in the statute but there are
20 few that apply in this case. There is, if it occurs in
21 the nighttime then it is a first degree burglary. If it
22 occurs while someone is either, goes in with a deadly
23 weapon or while they are in the house they use a deadly
24 weapon. So if they come in and see a gun and grab it or
25 come in and see a butcher knife and grab it. That is

1 using a deadly weapon during burglary which makes it a
2 burglary first degree. Also, if you cause an injury to
3 someone who is in the house who is not a participant in
4 the crime then that makes it a burglary first degree. So
5 there are several different factors that come into play
6 that can make a burglary a first degree burglary. Another
7 crime he has been charged with is kidnapping. And again,
8 this isn't the traditional kidnapping we all think about
9 there is Amber alert and somebody's child is missing.
10 Kidnapping is confining someone against their will and it
11 doesn't have to be for a long time, there is no set amount
12 of time that you have to confine somebody. But it is
13 holding somebody against their will. That is what a
14 kidnapping is. Possession of a weapon during a violent
15 crime, that is kind of an easy one. You have a weapon,
16 our legislature, is a violent crime. Burglary first,
17 kidnapping and attempted murder are all violent crimes.
18 So if you find him guilty of any of those and say he had a
19 weapon during it he is guilty of possession of a weapon
20 during a violent crime. And then the final one is assault
21 and battery, first degree. And that is causing an injury
22 to another person and either you cause a great bodily
23 injury or you are using a means that can cause great
24 bodily injury. Great bodily injury is also defined and I
25 am going to read it because I tend to get it mixed up. It

1 is injury which causes a substantial risk of death or
2 which causes serious permanent disfigurement or protracted
3 loss or impairment of the function of a bodily member or
4 organ. So we are talking about something that could cause
5 an injury that is more serious than, say black eye or, and
6 bruising, something that could cause a great bodily
7 injury, protracted loss of use of some part of your body
8 or a significant injury to some part of your body. It
9 doesn't mean the injury has to happen, just means it could
10 happen. Assault and battery first degree can also occur
11 if there is an injury and it is inflicted during the
12 commission of a burglary or a kidnapping. So those are
13 the statutory crimes that apply in this case. And when I
14 come back I will talk to you a little bit about how I
15 think all the evidence we presented, how it applies to
16 those crimes. But that is all I have for right now.

17 THE COURT: Mr. Grose.

18 MR. GROSE: May it please the Court.

19 THE COURT: Yes, sir.

20 MR. GROSE: Obviously those crimes that she has just
21 talked are extraordinarily serious crimes. And when this
22 trial began yesterday the Judge talked about how there
23 would be five parts to the trial. And right before lunch
24 today he said that we had done the first three parts, that
25 we had the opening statements where we had an opportunity

1 to tell you about what we thought the evidence would show,
2 where there was a presentation of the evidence and I ask
3 that you listen to everything because there are certain
4 orders that we have to go in and the closing arguments.
5 So we are actually at the third part right now. The
6 fourth part is the charge on the law and the prosecution
7 has had a chance to talk about that a little bit already.
8 And the final part is the deliberations. As it has kind
9 of already been eluded to this is going to be my last
10 opportunity to address you and I am at a little bit of a
11 handicap because our rules and our procedures don't allow
12 me to hear what they are going to say about the facts
13 before they make their argument. So one point that I
14 would like to make at the onset is, is I have no idea how
15 they are going to explain kidnapping to you under this
16 evidence. And the reason that I have no idea about that
17 is because all they have told you in opening and just a
18 minute ago in closing is that it is not something that you
19 traditionally think of. So, what I would ask is, is that
20 when they are trying to explain it, not only look at the
21 broad sense of what we are trying to discuss in closing,
22 the broad picture of how we frame these issues for y'all
23 to consider in trial but look and see if that really, what
24 they argue really makes sense with what the Judge
25 ultimately tells you what the law is, because I don't get

1 a chance to respond to what their theory under the facts
2 is on. So I am going to talk more about the issues that
3 we wanted to present in this trial and how we had framed
4 these issues for your consideration. Now, I think one of
5 the things that Judge Miller told you in his opening
6 statement was that he is the Judge of the law and that you
7 are judges of the facts and that the law has to be
8 consistent from case to case, from courtroom to courtroom,
9 from incident to incident. And when he has an opportunity
10 after the closing arguments to talk to you about what the
11 law is I want you to pay particular attention, but pay
12 attention to everything but listen, do me a favor and
13 listen for two things. Listen for when he talks about
14 circumstantial evidence because one of the things you are
15 going to hear, you know the circumstantial evidence, there
16 is what is called direct evidence and there is what is
17 called circumstantial evidence. Direct evidence is when I
18 see, what I smell, what I touch. Circumstantial evidence
19 is something that you can infer from the circumstances,
20 that you listen to, that there is a chain of events and
21 you can infer from the circumstances. And what the law
22 is, is that crimes may be proven by circumstantial
23 evidence, the law makes no distinction between the weight
24 of the value to be given to either direct or
25 circumstantial evidence. However to the extent that the

1 State relies on circumstantial evidence, all circumstances
2 must be consistent with each other and when taken together
3 point conclusively to the guilt of the accused beyond a
4 reasonable doubt. And this not only goes for proving the
5 actions, it goes to the elements of the crime and it also
6 goes to what we talked about yesterday. And you heard it
7 from all of us, you heard it from the Judge, you heard it
8 from the prosecution in their opening and you heard it
9 from me which is criminal intent. And that is the second
10 thing that I want you to listen to when the Judge charges
11 the law in the case, is the law of criminal intent.
12 Because this is the law that we all have to accept, this
13 is what makes this consistent from one case to another,
14 one incident to another, one courtroom to another and that
15 is that criminal intent is always a matter that must be
16 determined by the jury from circumstances surrounding the
17 situation. So we get back to circumstantial evidence and
18 what you can look at and infer from the circumstances.
19 There is no way to prove intent to a mathematical
20 certainty, there is no way medical science can dissect a
21 person's brain and determine what the person had in mind.
22 So the law says that criminal intent must be inferred from
23 the circumstances shown to have existed, circumstances
24 shown to have existed. This is how you make the
25 determination of whether or not the element requiring

1 intent was present. It is not necessary to establish
2 intent by direct or positive evidence but may be
3 established by inference in the same way as any other fact
4 by taking into consideration all the acts of the parties
5 and the facts and circumstances of the case. So we get
6 back to the circumstances, circumstantial evidence. And
7 criminal intent is a mental state, a conscious wrongdoing.
8 The other thing, I said two, but the third thing I want
9 you to pay attention to is reasonable doubt. Again, that
10 is the law that applies in this case and in every case and
11 consistent in courtroom from courtroom across the country.
12 And the law of reasonable doubt is, if there is a doubt
13 that can cause you to hesitate, and that can come not only
14 from the evidence that is presented but from the evidence
15 that is not presented. Now, I am just going to be
16 straight with you, I realize I have got a pretty high
17 hurdle to get over here because Preston got on the stand
18 and admitted that, you looked at the evidence and admitted
19 that he committed the acts that were involved here. The
20 question that really comes down to is, is was there
21 criminal intent and was there that conscious wrongdoing
22 that the law requires. And one of the things that, you
23 know, we tried to bring out was the fact that there was
24 many opportunities for law enforcement to ask Preston
25 about what his side of the story was. The facts that you

1 will recall is that the Officer Heiney had read him his
2 Miranda rights and asked if he wanted to answer any
3 questions and they didn't ask him any questions. The
4 officer said, instructed them not to talk to him, they
5 made no notes, they made no records of what happened
6 during that period of time. Preston talked about the fact
7 that his injuries had come from a knife. And there has
8 been no explanation in this trial as to how those injuries
9 took place. The same with the blood, we know that the
10 blood could have come from three people but this also
11 helps to prove, help us learn more about the circumstances
12 that were then existing at the time so that you could make
13 the determinations that you have to make in regard to
14 circumstantial evidence and the criminal intent. When
15 Sergeant Lynch talked to Preston he documented everything
16 else but he didn't document the conversation that he had
17 with Preston where Preston told him that he didn't have
18 any memory of the events from that night. That is
19 something that should have been followed up because the
20 memory and the conscious wrongdoing has to go with
21 criminal intent that the State has to prove. And whether
22 you like the law or you don't like the law the Judge says
23 that you have to accept it as he gives it to you. And
24 when the law is given to you that the State has to prove
25 criminal intent and they fail to follow through and do

1 investigations, bring new information that you could use
2 in order to make that decision, that is not your fault,
3 that is the fault of the police officers, the people who
4 acted in the name of the community and the name of you and
5 me to bring charges against somebody knowing what the
6 burden of proof was, that they had to prove their case
7 beyond a reasonable doubt. The final thing that I really
8 want to close on is, is what I asked of you earlier in the
9 trial in my opening statement. I made mention of the fact
10 that the Judge was going to tell you, as he has done at
11 every break, that you are not allowed to discuss the case,
12 and that is because in a case like this everybody has to
13 exercise, the jurors are called upon and expected to
14 exercise their own independent judgment. And like I said,
15 I am not going to get a chance to get up and respond to
16 things that they are going to say. But I ask when you
17 view the evidence that everybody take a look at the facts
18 and take a look at the fact that it was undisputed during
19 this trial that Preston had ever done anything like this
20 before to his wife, Sharon. It was undisputed. It was
21 undisputed that he married Sharon, that he treated her son
22 as his own, that they had a child together, that they had
23 a family, that Preston was a good neighbor. And so it
24 gets back to the circumstances and the criminal intent.
25 The question that I asked you yesterday is how can

1 something like this happen. And Preston told you that he
2 thought he had been drugged or poisoned by what was in
3 this drink that he drank and how he reacted to that was
4 different than he ever reacted to alcohol. And that goes
5 to his ability to exercise an independent judgment and it
6 goes to the ability to inform criminal intent. And so
7 when you look at all of the evidence we ask that you find
8 Preston not guilty because there was no criminal intent.
9 Thank you.

10 THE COURT: Ms. White.

11 MS. WHITE: I thought my mama was going to die, I
12 thought he was going to kill my mama. I thought he was
13 going to kill me. I don't think, I know he was going to
14 kill that woman. Every person who got on that stand who
15 was there that night knew exactly what Preston Shands was
16 trying to do. He was trying to murder his wife of nine
17 years and he was trying to do it in front of their
18 7-year-old and their 15-year-old boys. That 15-year-old
19 boy shouldn't be pulling this man off of his mother, he
20 should be texting girls and worrying about whether he is
21 going to make it on the football team, instead he is
22 saving his mama's life. Those boys should never had to go
23 through that. Sharon should never have had to go through
24 that. I don't know, one of the things as jurors that
25 y'all get to look at is people's demeanor. How they act

1 in the courtroom. I don't know if y'all noticed but, when
2 I called Sharon to the stand it took a good thirty,
3 thirty-five seconds for her to get up from right there up
4 here. She didn't want to come because where she had to
5 walk. Who is sitting right there. She is terrified of
6 him because that man almost ended her life that night. I
7 am not going to rehash everything, y'all heard it all.
8 Y'all heard how he, a relationship that had been good and
9 nobody is disputing that, when they first met she said
10 things were wonderful. And he was a good daddy to her boy
11 and he was a good daddy to the child they had together and
12 they loved him. But things started going downhill and he
13 said he started drinking. And what happens, he is an
14 almost 60-year-old man with a 38-year-old wife and she is
15 beautiful and she is a good woman and she was taking care
16 of him but it wasn't good enough for him. He starts
17 getting controlling. Bill Koon told y'all, he could be
18 jealous if you tried to talk to her in the neighborhood.
19 He starts getting jealous and controlling. And it gets
20 worse and it gets worse and he is arguing and he is
21 fussing and he is drinking and Sharon said we were on pins
22 and needles. So this, he may not have put his hands on
23 her before but this is a relationship that is going
24 downhill fast. And what happens on July 20th, 2014, she
25 finally says, you know what, I am leaving, I am going.

1 Come on kids, get in the car. And that is when he snaps.
2 He is not, his wife and his kids that he provides for and
3 he works for that are his property, she is not leaving
4 him, she is not taking those kids, no, no, no, no. Grabs
5 her by the hair, grabs the first thing he can get his
6 hands on and starts going at her. This isn't about he was
7 drinking something that day, this is a jealous,
8 controlling husband who was not going to let his property
9 leave that house.

10 MR. GROSE: I object to the characterization, outside
11 of the evidence, Your Honor.

12 THE COURT: Let's keep it to the facts.

13 MR. GROSE: Move to strike.

14 THE COURT: Go ahead.

15 MS. WHITE: You heard how he stabbed her in that
16 garage, T.C. trying to pull him off of her. You heard
17 how they ran across the street and him following right
18 behind, tried to cut her throat in Bill Koon's house,
19 left, got the hammer, came back, broke out all the
20 windows. No doubt in anyone's mind he was trying to kill
21 her. You heard how it took Bill and Martha Koon eight
22 hours to clean up all the blood that was in their house,
23 that is how violent it was in that house. Applying what
24 happened to the facts or to the law, the attempted murder,
25 the intent to kill another person. And y'all will have

1 the pictures, he stabbed her, got her in the head right
2 here, got her right here in the chest, got her up here on
3 the side and down here. When you are trying to kill
4 somebody when you stab them in the head and in the chest,
5 the chest again and in the lower side. Trying to kill
6 somebody, y'all will have this to look at. When you break
7 the handle off of the meat fork, breaks it off. And that
8 those prongs look like they could go in, like go into and
9 kill somebody. Tried to slash her throat, again,
10 attempted to kill. Malice aforethought I told y'all
11 about, he is running back and forth, he has got plenty of
12 time to think about what he is doing. He goes back and
13 gets a hammer to get into that house. That goes to
14 burglary first degree, Bill and Martha both said, we did
15 not want him in our house, he was not wanted. He goes in
16 without consent, it is getting to be dark. Martha
17 testified about that, 9:00 o'clock, y'all heard that a
18 lot. It is, he has got a deadly weapon, he grabs this
19 knife once he is in the house and takes off after her.
20 And y'all will have all of this to look at back there. Be
21 careful because it is kind of a coming out a little bit.
22 Takes off after her with that knife trying to commit a
23 crime inside of that house, trying to kill her. T.C. ,
24 the assault and battery first degree. T.C. , he is trying
25 to save his mama's life, he is trying to pull him off of

1 her. He gets cut and he is injured, that is an injury,
2 assault and battery first degree. And what could that
3 have caused, gets him on the leg. Could have caused
4 plenty of damage when you cut somebody with a knife. It
5 is assault and battery first degree. Kidnapping, Mr.
6 Grose brought up that he didn't know what our position was
7 going to be on kidnapping. It is pretty obvious, she
8 wanted to leave, he closed the garage door, she opened it,
9 he closed it again until it was half way open. She can't
10 get out. He grabs her by the hair and pulls out a great
11 big chunk of it and won't let her leave. Can she leave
12 when he has got her hair. Can she leave when he has got
13 this fork stabbing her with it. She can't get away, she
14 has to be rescued by her own teenage son, she couldn't get
15 away on her own. There is a kidnapping, ladies and
16 gentlemen. And the weapons charge, again, guilty of
17 attempted murder, he is guilty of burglary first, he is
18 guilty of kidnapping and he had a weapon so he is guilty
19 of that too. Going to criminal intent, we have to show
20 that he did all of this knowingly and willfully. Was he
21 knowingly and willfully stabbing her in the head, in the
22 chest. Was he knowingly and willfully chasing her with a
23 knife, did he knowingly and willfully throw a hammer
24 through a sliding glass door to get into that house.
25 Ladies and gentlemen, he knew what he was doing that day.

1 The Judge is going to charge you voluntary intoxication is
2 not a Defense. You are just as guilty of what you do
3 while you are drunk or high as you are when you are sober.
4 So, I don't care what he smoked, what he drank, he did it
5 voluntarily, he admitted that. He bought it or somebody
6 gave it to him and he sat there and he--

7 MR. GROSE: Objection, no evidence that he was
8 smoking anything, Your Honor.

9 THE COURT: Limit it to the evidence.

10 MS. WHITE: I don't care what he drank, somebody gave
11 him something and that story has so many holes in it to
12 begin with. All right, he loves his kids, he loves them
13 so much, they are 15 and 6, 7, excuse me. And he is the
14 only one responsible for them and he is going to pull out
15 a jar of something he has never drank before and sit there
16 and kill a whole two liter bottle of coke while he is
17 drinking it, just him and these kids. That doesn't make
18 sense. And then let's talk about what happens afterwards.
19 He talks to Bill Koon at the backdoor, let me in, Bill.
20 That doesn't sound like somebody who is so drunk or high
21 or out of his mind that he doesn't know what he is doing.
22 Let me in, Bill. No, I am not letting you in. Then he
23 comes out the door and the minute he sees that officer
24 standing there with his gun drawn, he drops the knife,
25 gets down, completely compliant. Does that make sense,

1 that he is so out of his mind on something that all of a
2 sudden he stops, all of a sudden, there is somebody there
3 who can stop him he stops. That doesn't make sense,
4 ladies and gentlemen. Then their own witness, the
5 emergency medical technician they called. He was alert
6 and oriented to time, place, events, he knew where he was,
7 he knew what he was doing, he knew who he was, he could
8 answer all of their questions. They had no concerns that
9 he was drunk or intoxicated. Then, you know, he told the
10 EMT that his wounds were caused in self-defense. Well, he
11 has got to say something. And self-defense clearly wasn't
12 going to fly once he figured that out. I mean, look at
13 all of this evidence against him; oh, it was self Defense;
14 oh wait, that is not going to work; oh, I don't remember;
15 I must have been poisoned, I don't remember. What else is
16 he going to say, ladies and gentlemen. What else can he
17 possibly say. I don't remember, I was drunk, I had been
18 poisoned. Because after he tried self-defense he saw he
19 wasn't going to get very far with that. And his wounds,
20 are those consistent with self-defense. This knife, you
21 know, he has been cutting on her a pretty good bit, he is
22 covered in blood at this point. What did the officer tell
23 you, blood is kind of slippery, sticky in a way, his hands
24 slipping on that knife. And he is struggling, his arms
25 are being pulled. That is how he got cut, the cut on his

1 leg, he was covered in glass. He busted out how many
2 windows at this point. And then if y'all look at the
3 picture of the sliding glass door, the patio door, it
4 didn't just shatter the whole thing out. There is some
5 glass at the bottom, glass at the top, probably how he got
6 those cuts. That is how he got those injuries, ladies and
7 gentlemen. You know, we always want to put the police on
8 trial, what did the police do or not do that they should
9 have done or shouldn't have done. In this case you have
10 an officer who got on the scene and saw the assailant with
11 a knife still in his hand. You have five people telling
12 them what happened. What else did they need to do.
13 Everything they were seeing matched with what they were
14 being told. All of the evidence matched. They could have
15 sent the blood off for DNA but what would that have told
16 us, it would have told us that Sharon was bleeding or
17 Shands was bleeding or T.C. was bleeding. We knew that,
18 we knew they were bleeding, we saw it. So that adds
19 nothing. Ladies and gentlemen, Sharon was leaving him on
20 that day, leaving someone she was constantly fighting
21 with, that was jealous, who was controlling, who was
22 manipulative. Y'all can see that in these letters. I
23 didn't read them all but y'all can read them. It is all,
24 I did this for you and I did that for you and I did this
25 and I did that and I am the man, this is my family. That

1 is what this is and you have to help me because of
2 everything I did for you. Why want you help me, why
3 doesn't anybody want to help me, making it about him, not
4 about what he did to his wife and his children. They are
5 just extensions of him. He is the only one that matters.
6 He was trying to manipulate y'all up here. A jealous,
7 controlling, manipulative person who was losing the family
8 that he thought he had earned. That is what happened
9 here. Ladies and gentlemen, he is guilty. And I know
10 once y'all get back there y'all will vote and y'all will
11 convict him. Thank you.

12 THE COURT: All right, ladies and gentlemen of the
13 jury, during this trial you and I have certain duties to
14 perform. And as a trial Judge it is my responsibility,
15 presiding over the trial of the case and to rule on the
16 admissibility of the evidence offered during the trial.
17 It is also my duty to charge you the law applicable to the
18 case. It is your duty as jurors to accept and apply the
19 law as I now state it to you. If you think you have any
20 idea as to what the law is or what the law ought to be and
21 it does not agree with what I tell you the law is you must
22 forget your own idea and apply the law precisely as I
23 state it to you. I would remind you that in every case
24 tried in this court before a jury, the jury is the sole
25 and exclusive judge of the facts. The trial Judge cannot

1 comment on or make any statement about the facts in the
2 case. So please don't think by anything I have said or
3 done throughout the trial I have such an opinion, I do not
4 and the law does not allow it.

5 And I instruct you that the fact that the Defendant
6 was arrested, charged and indicted in this case is not
7 evidence of guilt nor does it create any presumption or
8 inference of guilt. These documents are simply the formal
9 written instruments which contain the charges made against
10 the Defendant and they serve as the formal documents by
11 which the case is processed or brought into court, the
12 resolution.

13 The indictments in this case charge several different
14 offenses against the Defendant. And the charges are,
15 attempted murder, burglary first degree, kidnapping,
16 assault and battery and possession of a weapon during the
17 commission of a violent crime. Each indictment charges a
18 separate and distinct offense and you must decide each
19 case, each indictment separately on the evidence and the
20 law applicable to it uninfluenced by your decision as to
21 any other indictment. A Defendant may be convicted or
22 acquitted on any or all of the offenses charged and you
23 will be asked to write a separate verdict of guilty or not
24 guilty for each indictment.

25 Now necessarily you, the jury, must determine the

1 credibility or believability of the witnesses who have
2 testified. And it becomes your duty as jurors to evaluate
3 the evidence and determine which evidence convinces you it
4 is true. And in determining the believability of the
5 witnesses you may believe one witness over several or
6 several over one. You may believe a part of the testimony
7 of a witness and reject the remaining part. You may
8 believe the testimony of a witness in its entirety or
9 reject that testimony in its entirety. You may consider
10 whether the witness has an interest in the result of the
11 trial, whether the witness is prejudice towards either the
12 State or the Defendant, the opportunity for the witness to
13 have seen the matters and things about which the witness
14 has testified and the way a witness acts on the witness
15 stand or what we call a witness' demeanor.

16 You have heard evidence that the Defendant was
17 convicted of a crime other than the one for which he is
18 now on trial. Now this evidence may be considered by you,
19 if you conclude that it is true only in deciding whether
20 the Defendant's testimony is believable and for no other
21 purpose. You must not consider the Defendant's prior
22 record as any evidence of the Defendant's guilt from the
23 charge we are charging or the charges we are trying today.

24 The Defendant has plead not guilty to these
25 indictments. And that plea puts the burden on the State

1 to prove the Defendant guilty. A person charged with
2 committing a criminal offense in South Carolina is never
3 required to prove themselves innocent. And I charge you
4 that it is a cardinal and a fundamental rule of the law
5 that a Defendant in a criminal trial will always be
6 presumed to be innocent of the crimes for which
7 indictments have been issued unless and until guilt has
8 been proven by evidence satisfying you of guilt beyond a
9 reasonable doubt.

10 Now a reasonable doubt is the kind of doubt which
11 would cause a reasonable person to hesitate to act. It
12 may arise from the evidence which is in the case or from
13 the lack or absence of evidence in the case. And you, the
14 jury, must determine whether or not reasonable doubt
15 exists as to the guilt of this Defendant. The State has
16 the burden of proving each and every element of the crime
17 beyond a reasonable doubt. And any reasonable doubt that
18 you may have in your deliberations should be resolved in
19 favor of the Defendant.

20 There are two types of evidence which are generally
21 presented during a trial, direct and circumstantial
22 evidence, direct evidence and circumstantial evidence.
23 Direct evidence directly proves the existence of a fact
24 and does not require deduction. Circumstantial evidence
25 is proof of a chain of facts and circumstances indicating

1 the existence of a fact. Now, crimes may be proven by
2 circumstantial evidence and the law makes no distinction
3 between the weight and the value to be given to either
4 direct or circumstantial evidence. However, to the extent
5 that the State relies on circumstantial evidence, all of
6 the circumstances must be consistent with each other and
7 when taken together point conclusively with the guilt of
8 the accused beyond a reasonable doubt. If these
9 circumstances merely portray the Defendant's behavior as
10 suspicious the proof has failed. The State has the burden
11 of proving the Defendant beyond a reasonable doubt and
12 this burden rests with the State regardless of whether the
13 State relies on direct evidence, circumstantial evidence
14 or any combination of the two.

15 Now, in order to establish criminal liability,
16 criminal intent is required. And criminal intent must be
17 proven by the State beyond a reasonable doubt. Criminal
18 intent is always a matter that must be determined by you,
19 the jury, from the circumstances surrounding the
20 situation. Criminal intent may be inferred from the
21 circumstances shown to have existed. It is not necessary
22 to establish intent by direct and positive evidence but
23 intent may be established by inference in the same way as
24 any other fact by taking into consideration the acts of
25 the party and all of the facts and circumstances of the

1 case. Criminal intent is a mental state, a conscious
2 wrongdoing. It is up to you to determine beyond a
3 reasonable doubt whether the Defendant possessed criminal
4 intent based on the circumstances shown to have existed.
5 Criminal intent may arise when action or a failure to act,
6 it may arise from negligence, recklessness or an
7 indifference to the duty or the consequences that is
8 considered by, consequences considered by the law that
9 would be the equivalent of criminal intent.

10 I also tell you that voluntary intoxication is not a
11 Defense to a crime. A person who voluntarily becomes
12 intoxicated is just as responsible for the acts committed
13 while intoxicated as when a person is not intoxicated.

14 Now the Defendant is charged with attempted murder
15 and in order to prove this crime the State must prove that
16 the Defendant attempted to kill another person with malice
17 aforethought either expressed or implied. Malice is
18 hatred, ill will or hostility towards another person, it
19 is the intentional doing of a wrongful act without just
20 cause or excuse and with an intent to inflict an injury or
21 under circumstances that the law will infer an evil
22 intent. Malice aforethought does not require that malice
23 exist for any particular time before the act is committed
24 but malice must exist in the mind of the Defendant just
25 before and at the time the act is committed. Therefore

1 there must be a combination of previous evil intent in the
2 act. Malice aforethought may be expressed or inferred.
3 These terms, expressed and inferred does not mean
4 different kinds of malice but merely the manner in which
5 malice may be shown to exist. That is either by direct
6 evidence or by inference from the facts and circumstances
7 which have been proven. Expressed malice is shown when a
8 person speaks words which express hatred or ill will for
9 another or when the person prepared beforehand to do the
10 act which was later accomplished. For example, lying in
11 wait for a person or any other act of preparation going to
12 show that the deed was within the Defendant's mind would
13 be expressed malice. Malice may be inferred from conduct
14 showing a total disregard for human life. Inferred malice
15 may also arise when the deed is done with a deadly weapon.

16 Now, deadly weapon is any article, instrument or
17 substance which is likely to cause death or great bodily
18 harm. Whether an instrument has been used as a deadly
19 weapon depends on the facts and circumstances of each
20 case. The following are examples of instruments which may
21 be deadly weapons. A pistol, a shotgun, a rifle, a dirk,
22 a dagger, a knife, a sling shot, metal knuckles, a razor,
23 gasoline, fire bomb, a molotov cocktail. And a gun may be
24 a deadly weapon even when it is not operating. Ordinary
25 objects may become deadly weapons when the facts show that

1 they have been used to inflict serious bodily harm or
2 death. If that's all proven beyond a reasonable doubt,
3 sufficient to raise an inference of malice to your
4 satisfaction this inference would simply be an evidentiary
5 fact to be considered by you along with all the other
6 evidence in the case and you may give it the weight that
7 you decide it should receive.

8 A specific intent to kill is not an element of
9 attempted murder but there must be a general intent to
10 commit serious bodily injury. An intent means intending
11 the result which actually occurs, not accidentally or
12 involuntarily. Intent may be shown by acts and conduct of
13 the Defendant and other circumstances from which you may
14 naturally and reasonably infer intent. Evidence of the
15 character of the act and character of the instrument used,
16 the manner in which it was used, the purpose to be
17 accomplished and the resulting wounds or injuries may be
18 considered in determining the intent with which the act
19 was committed. Intent may also be inferred when it is
20 demonstrated that the Defendant voluntarily and willfully
21 commits an act, the natural tendency of which is going to
22 destroy another's life.

23 Now, if you find that the State has failed to prove
24 beyond a reasonable doubt attempted murder you must then
25 consider whether the State has proven assault and battery

1 of a high and aggravated nature. Now, assault and battery
2 of a high and aggravated nature which is being treated as
3 a lesser included offense in this regard is an unlawful
4 act of violent injury to a person of another accompanying
5 by circumstances of aggravation. An assault occurs when a
6 person unlawfully attempts or offers to commit a violent
7 injury upon another person and had the present ability to
8 complete the attempted injury. An assault is the
9 intentional creation of a reasonable fear of immediate
10 bodily harm. It is not necessary that the attempted
11 injury or harm actually take place. This is for an
12 assault. For example, if I walk up to you and when we are
13 within arms reach I draw back to hit you, that is an
14 assault. Now that is the unlawful touching of another
15 person by a person who has committed the assault. An
16 unlawful touching can be caused by a part of the accused
17 body or any object the accused puts in motion. A battery
18 is the completion of the assault by using or applying
19 force to another person, however slight in a rude, angry
20 or resentment manner without legal justification for doing
21 so. Using my earlier example, if I carry through the
22 assault by hitting you that is the battery. And the State
23 must also prove a circumstance of aggravation.
24 Circumstances of aggravation include the use of a deadly
25 weapon, the intent to commit a felony, the infliction of

1 serious bodily injury, great disparity between the ages or
2 physical conditions of the parties, difference in the
3 genders of the parties, the taking of indecent liberties
4 or familiarities with a female though the use of force,
5 the purpose for infliction of shame or disgrace, the
6 resistance of lawful authorities. These are only examples
7 of circumstances in aggravation.

8 The Defendant is also charged with burglary in the
9 first degree. The State must prove beyond a reasonable
10 doubt that the Defendant entered a dwelling without
11 consent. A dwelling is any building or portion of a
12 building in which a person ordinarily sleeps. In order to
13 prove that the Defendant entered the dwelling the State
14 does not have to show that the Defendant's entire body
15 entered the dwelling. The smallest entry is sufficient.
16 It may be any part of the body such as a hand or a foot or
17 even an instrument such as a book or other instrument. In
18 addition, the State does not have to prove that force was
19 used to gain entry. Next, the State must prove beyond a
20 reasonable doubt that the Defendant intended to commit a
21 crime, or a felony or a misdemeanor at the time of the
22 entry. The mere entry into a dwelling without consent is
23 not burglary. If the intent to commit a crime is formed
24 after the entry it is not burglary. On the other hand, if
25 the Defendant intended to commit a crime at the time of

1 the entry it is a burglary even if the intent was
2 abandoned after the entry and it doesn't matter if the
3 intended crime was not completed. Intent may be shown by
4 acts and conduct of the Defendant and other circumstances
5 from which you may naturally and reasonably infer intent.

6 Finally the State must prove beyond a reasonable
7 doubt at least one of the following. The first one, when
8 entering, while in the dwelling or when fleeing the
9 Defendant or an accomplice was armed with a deadly weapon
10 or explosive. Deadly weapon is any article, instrument,
11 or substance which is likely to cause death or great
12 bodily harm. Whether an instrument has been used as a
13 deadly weapon depends on the facts and circumstances of
14 each case. The following are examples of instruments
15 which may be deadly weapons. A pistol, a shotgun, a
16 rifle, a dirk, a dagger, a knife, a sling shot, metal
17 knuckles, razor, gasoline, a fire bomb, molotov cocktail.
18 Ordinary objects may become deadly weapons when the facts
19 show they have been used to inflict serious bodily harm or
20 death. That is the first one that the State has to prove.
21 The second one is when entering while in the dwelling or
22 when fleeing the Defendant or an accomplice caused
23 physical injury to anyone not participating within the
24 crime. The next one, when entering, while in the dwelling
25 or when fleeing the Defendant used or threatened to use a

1 dangerous object. The next one, when entering while in
2 the dwelling or when fleeing the Defendant or an
3 accomplice displayed what was appeared to be a knife,
4 pistol, revolver, rifle, shotgun or other firearm. And
5 finally the Defendant entered or remained in the dwelling
6 in the nighttime. Nighttime is the period between sunset
7 and sunrise during which there is not enough daylight to
8 recognize a person's face except by artificial light or
9 moonlight.

10 The next indictment is for kidnapping. The Defendant
11 is charged with kidnapping and the State must prove beyond
12 a reasonable doubt that the Defendant knowingly and
13 unlawfully seized, confined, inveigled, decoyed,
14 kidnapped, abducted or carried away another person without
15 authority of law. To do a thing unlawfully is to do it
16 willfully against the law. Knowingly means with
17 knowledge, consciously and not accidentally. Seized means
18 to take hold of suddenly or forcibly. Confine means to
19 limit, restrict or enclose within bounds, imprison or shut
20 or keep in. Inveigle means to lure, entice or lead astray
21 by false representations, promises or other deceitful
22 means. Decoy means to lure by, or as if by, decoy. And
23 decoy is something to entice a person into a trap. Kidnap
24 is to remove a person against his will by unlawful force
25 or by fraud. And abduct means to carry off secretly or by

1 force or illegal purpose. And carry away means to remove.
2 The State does not have to prove that the Defendant did
3 all of these things. Instead if you find beyond a
4 reasonable doubt that the Defendant did any of these
5 things you may find the Defendant guilty of kidnapping.
6 Something done without authority of law is something which
7 the law does not sanction, permit, allow, condone or
8 provide justification for. And the kidnapping does not
9 have to be for any personal or monetary gain or any
10 illegal purpose that may be for any reason whatsoever.

11 And it is also charged assault and battery in the
12 first degree. A person commits the offense of assault and
13 battery in the first degree and the person unlawfully
14 injures another person and the act occurred during the
15 commission of a robbery, burglary, kidnapping or a theft,
16 or a person may also commit an offense of assault and
17 battery in the first degree if the person unlawfully
18 offers or attempts to injure another person with the
19 present ability to do so and the act is either
20 accomplished by means likely to produce death or great
21 bodily injury or occurred during the commission of a
22 robbery, burglary, kidnapping or a theft. Great bodily
23 injury means bodily injury which causes a substantial risk
24 of death or which causes serious permanent disfigurement
25 or protracted loss or impairment of the function of bodily

1 member or organ.

2 Finally the Defendant is charged, indicted for
3 possession of a weapon during the commission of a violent
4 offense or attempt to commit a violent offense. The State
5 must prove beyond a reasonable doubt that the Defendant
6 was in possession or visibly displayed a knife during the
7 commission of a violent crime. And a knife means an
8 instrument or tool with a sharp cutting blade where they
9 were not fastened to a handle which can be used to inflict
10 a cut/or wound. In order to find the Defendant guilty of
11 possession of a weapon during the commission of a violent
12 crime you must first find the Defendant guilty of either
13 committing a violent crime or attempting to commit a
14 violent crime. Under our law attempted murder, burglary
15 first degree and kidnapping are all violent crimes. So
16 before you can consider this last indictment you must have
17 decided unanimously that he was guilty of one of those
18 three offenses.

19 Now, ladies and gentlemen, of these indictments there
20 are, on each of these indictments there are two possible
21 verdicts. And they are guilty or not guilty. It makes no
22 difference what order I say them in, one word has got to
23 go first. I want to tell you that all twelve of you must
24 agree on your verdict and it must be unanimous. And your
25 verdict cannot be based on sympathy, passion, prejudice,

1 emotion or any other consideration not in evidence in this
2 case. You have no enemies to punish and you have no
3 friends to reward. I will tell you we have prepared a
4 verdict form which we will send back with you in the jury
5 room. I think it is self-explanatory. And if you have
6 trouble interpreting it just let me know. The only, on
7 the attempted murder case I have also charged you with the
8 lesser included offense of aggravated assault and battery.
9 So if the jury says, no, we, says that the State has not
10 proven beyond a reasonable doubt that he is guilty of
11 attempted murder then and only then should you consider
12 assault and battery in a high and aggravated nature to
13 determine whether or not the State has met the burden of
14 proof beyond a reasonable doubt as to that offense. If
15 you find that the State met the burden beyond a reasonable
16 doubt on attempted murder then do not consider aggravated
17 assault and battery. I think it is explained on the form.
18 All right, ladies and gentlemen, I am going to ask y'all
19 to retire to your jury room at this time. I am going to
20 instruct you not to begin your deliberations just yet, I
21 need to go over my charge on the law and make sure I did
22 not misstate something or omit something. But when the
23 evidence comes back to you along with the verdict form
24 then y'all can begin your deliberations. Ms. Putnam, I
25 have to ask you to remain in the courtroom otherwise

1 please, the rest of you say goodbye to Ms. Putnam.

2 (Whereupon, the jury was excused from open court.)

3 THE COURT: Ms. Putnam, you are just as qualified as
4 every one of those twelve, you paid every sacrifice that
5 they had and you are entitled, should be entitled but the
6 law only allows twelve people to deliberate. So I
7 appreciate your service and I hope it has been a good
8 experience for you. You are welcome to stay, go. If you
9 want to stay you can, if not you are finished.

10 (Whereupon, the alternate was excused from the trial
11 of the case.)

12 THE COURT: Any exception or objection to the charge
13 from the State?

14 MS. WHITE: The only thing that I noticed was the
15 charge on ABHAN, I think it was the old ABHAN. The
16 circumstances of aggravation.

17 THE COURT: Okay, what have you got.

18 MR. GROSE: Well, the first thing I would do is I
19 would renew our request for request to charge number four
20 on involuntary intoxication. And also renew our prior
21 objection to charging voluntary intoxication without
22 corresponding involuntary intoxication charge. Also I
23 think that the way it came out, to leading one and talking
24 about the other that it also rises to a comment on the
25 facts in the case. The second thing I was going to object

1 to is you charged that an inference of malice can arise
2 from the use of a deadly weapon. Of course, that is State
3 versus Belcher which said that that charge was not
4 appropriate in a self-defense case or an insanity case.
5 And the basis of that would be when the Defense was
6 arguing criminal intent or the absence of criminal intent.
7 And so I think the Belcher objection or the Belcher
8 prohibition to that applies here particularly, again, when
9 a knife was also featured in your charge about burglary
10 and also the use of a weapon during the commission of a
11 violent crime. You also charged, take me a second to get
12 on my screen here, you also charged that attempted murder
13 is a general intent crime, it does not require proof of a
14 specific intent. That is actually the case of State
15 versus King which was Appellate case number 2012213405.
16 And Court of Appeals opinion number, I believe, 5313, that
17 was decided just recently, a little over a month ago on
18 April 22nd, 2015 which talks about the fact that the
19 legislature did require specific intent. And then
20 charging general intent, charging that attempted murder
21 was general intent as you have done in this case was
22 reversible. I think this also gets into the next issue
23 that Ms. White has already raised which is that you
24 charged the common law assault and battery of a high and
25 aggravated nature which of course was abrogated by the

1 General Assembly long before the facts of this case arose.

2 THE COURT: You don't need to make that argument. I
3 will recharge it.

4 MR. GROSE: Well, but one of my concerns is, is that
5 I think one of the differences between attempted murder
6 and assault and battery of a high and aggravated nature is
7 the difference between the general and the specific intent
8 where attempted murder requires a specific intent and
9 ABHAN does not. I think that covers the charges. I also
10 wanted to put on the record, with regard to the motion
11 that we had made regarding the order of closing arguments
12 that, you know, I was not going to have a chance to be
13 able to respond to what the Solicitor had done and so I
14 think it is incumbent on me, based on how some of these
15 cases have been arguing on appeal and placed on the
16 record, what I would have done if I had been able to
17 respond. I would have responded to what I considered to
18 be somewhat an emotional attack on Mr. Shands both in some
19 of how it was delivered but in particularly the language
20 that was used. We would have particularly responded to
21 comments about jealous, controlling, manipulative and
22 viewing his family as property. We would have responded
23 about what they said about kidnapping, we would have
24 responded to what they said about placing the police on
25 trial, that was not our purpose. And we would have

1 responded to the evidence about, the argument made about
2 Sharon leaving that day as well as a number of things that
3 I think that they said that exceeded the bounds of what
4 the evidence really was, Your Honor. So, thank you for
5 allowing me to place all of that on the record.

6 THE COURT: All right, anything? What was the case,
7 April what?

8 MR. GROSE: It is State versus King, it was decided
9 April 22nd, 2015. It is Appellate case number 2012213405,
10 it is from the Court of Appeals. West Law number is
11 2015WL1813949.

12 THE COURT: Have y'all got that case?

13 MS. WHITE: I can try to pull it up.

14 MR. GROSE: I usually have a hard time of getting it
15 on line. I can email it to you.

16 THE COURT: What was the name of it?

17 MR. GROSE: State versus King, Your Honor.

18 THE COURT: I am going to recharge them on the
19 assault and battery. Tell me what page.

20 MR. GROSE: What page?

21 THE COURT: Yes, so I can get there without reading
22 the whole thing.

23 MR. GROSE: I am looking at section, Roman Numeral
24 II, regarding jury charge and the last paragraph of that.

25 THE COURT: The last paragraph. I wonder if that one

1 is on, you must know.

2 MR. GROSE: Is on what?

3 THE COURT: Going up.

4 MR. GROSE: What I can tell you is, we can have it on
5 West Law, it is probably too early to know whether the
6 hearing petition has been denied or not. My argument
7 would be that this has occurred before, correct law in
8 South Carolina right now. And actually I would like to
9 add a couple of little points on my Belcher objection.

10 THE COURT: Really, okay, go ahead.

11 MR. GROSE: One is, I don't think that that can be
12 cured under the facts of this case so we would ask for a
13 mistrial. I also think that the issue of decided in
14 Belcher is whether the finding of what a deadly weapon
15 would be, to comment on the facts all points to the State
16 versus Huey case where they said that you couldn't give
17 examples of manslaughter.

18 THE COURT: Tell me this. Under the facts of this
19 case, where your client said he was not claiming
20 self-defense.

21 MR. GROSE: Well, it is not just self-defense. It is
22 any time that criminal intent is an issue is our position.

23 THE COURT: Okay. I don't think we have gone on that
24 part.

25 MR. GROSE: I think we did, but they said it would

1 also apply in the case where insanity was raised as a
2 Defense, self-defense, insanity. You know, what we have
3 argued here all go to whether or not the State has met
4 their burden on criminal intent.

5 THE COURT: I disagree with you so that will be
6 denied.

7 MR. GROSE: Thank you, Judge.

8 THE COURT: I am going to recharge them on the
9 aggravated assault and battery. If you want me to I will
10 recharge them the whole attempted murder and remove the
11 one or the part about general intent. It is one sentence,
12 what do you prefer.

13 MR. GROSE: What is the other option. If you don't
14 recharge it what is the other thing we are being asked?

15 THE COURT: I would just tell them that I incorrectly
16 stated, specific intent to kill is not an element of
17 attempted murder. It must be a general intent to commit
18 serious bodily injury. I will tell them that that is
19 incorrect. And that there must be a specific intent to
20 kill. You want me to recharge the whole thing?

21 MR. GROSE: That option would be acceptable.

22 THE COURT: Anything else?

23 MR. GROSE: No, sir.

24 THE COURT: Bring them back.

25 (Whereupon, the jury came into open court at

1 approximately 2:58 p.m.)

2 THE COURT: Welcome back. And a good reason I asked
3 you not to begin your deliberations. It is always
4 difficult to admit that you made a mistake and I made a
5 mistake and these very fine attorneys pointed it out to me
6 and I want to correct it. The first thing I want to do,
7 with respect to the indictment for attempted murder. I
8 told you specific intent to kill is not an element of
9 attempted murder but there must be a general intent to
10 commit serious bodily injury. That is not correct.
11 Please disregard that. Instead I will tell you that a
12 specific intent to kill is an element of attempted murder.
13 Okay. The other thing I am going to do is tell you that
14 if the State fails to prove beyond a reasonable doubt
15 attempted murder then you should consider aggravated
16 assault and battery. This, what I am about to tell you,
17 is the correct charge on the law. Okay. So disregard
18 what I told you previously. A person commits the offense
19 of assault and battery of a high and aggravated nature if
20 the person unlawfully injures another person in great
21 bodily injury to another person results. Or the act is
22 accomplished by means likely to produce death or great
23 bodily injury. Great bodily injury means bodily injury
24 which causes a substantial risk of death or which causes
25 serious permanent disfigurement or protracted loss or

1 impairment of the function of a bodily member or organ.

2 Okay. All right, please retire to your room, we will get
3 you everything in a minute.

4 (Whereupon, the jury was excused from open court at
5 approximately 3:02 p.m.)

6 THE COURT: Other than previously stated, objections,
7 anything?

8 MS. WHITE: No, sir.

9 MR. GROSE: Just the previous objections, Your Honor.

10 THE COURT: Okay. If y'all want to take a look at
11 the verdict form before we send it back and get all of the
12 evidence together.

13 (Whereupon, the jury starts deliberations at
14 approximately 3:10 p.m.)

15 THE COURT: I understand the jury has reached a
16 verdict. Let's bring the jury in.

17 (Whereupon, the jury came into open court with the
18 verdict at approximately 3:37 p.m.)

19 THE COURT: Thank you, very much. Madam Forelady,
20 ladies and gentlemen, I understand you have reached a
21 verdict, is that right?

22 MADAM FORELADY: Yes, Your Honor.

23 THE COURT: Okay. If you will hand it over. Okay, I
24 will ask the Clerk to please publish.

25 CLERK OF COURT: Your Honor, in the case of the State

1 of South Carolina versus Preston Shands, Jr., case number
2 2014-GS-30-1477, 1478, 1479, 1481 and 1482. As to
3 question one, as to the charge of attempted murder of
4 Sharon Shands, we the jury find the Defendant guilty.

5 As to the charge of a possession of a weapon during a
6 violent crime, we the jury find the Defendant guilty.

7 As to the charge of assault and battery, we the jury
8 find the Defendant guilty.

9 As to the charge of burglary, we the jury find the
10 Defendant guilty.

11 As to the charge of kidnapping, we the jury find the
12 Defendant guilty.

13 I certify this decision was a unanimous decision of
14 the jury. Signed by Relois Briggs, May 27th, 2015.

15 Ladies and gentlemen, if that be your verdict please
16 indicate by raising your right hands.

17 (Whereupon, all jurors raised their hands.)

18 MR. GROSE: We request the jury to be polled.

19 THE COURT: All right.

20 CLERK OF COURT: Ladies and gentlemen, the verdict
21 that I just published was the verdict you reached in the
22 jury room. I ask you, was it your verdict then and is it
23 your verdict now. As I call your name if you will answer
24 yes or no. Relois Briggs?

25 JUROR: Yes.

1 CLERK OF COURT: India Brock?
2 JUROR: Yes.
3 CLERK OF COURT: Eric Spradling?
4 JUROR: Yes.
5 CLERK OF COURT: Lynnzle Coffey?
6 JUROR: Yes.
7 CLERK OF COURT: Kaherine Mcclellion?
8 JUROR: Yes.
9 CLERK OF COURT: Kimberly Dial?
10 JUROR: Yes.
11 CLERK OF COURT: Bridget Ashley?
12 JUROR: Yes.
13 CLERK OF COURT: Suzanne Hutchins?
14 JUROR: Yes.
15 CLERK OF COURT: Tavon Dendy?
16 JUROR: Yes.
17 CLERK OF COURT: Chad Gregory?
18 JUROR: Yes.
19 CLERK OF COURT: Shamica Thompson?
20 JUROR: Yes.
21 CLERK OF COURT: Marilyn Grayson?
22 JUROR: Yes.
23 CLERK OF COURT: Thank you.
24 THE COURT: Anything further from the Defense?
25 MR. GROSE: No, sir.

1 THE COURT: From the State?

2 MS. WHITE: Not from the State, Your Honor.

3 THE COURT: All right. Madam Forelady, ladies and
4 gentlemen of the jury, I want to thank you for your
5 service. It is an incredible service that you rendered
6 for your whole community. All the other citizens of
7 Laurens County and the State of South Carolina, it is a
8 great privilege and a great responsibility to serve on a
9 jury and I want you to know that we all work up here in
10 the court system, this system belongs to each of us. So,
11 I want you to know that we couldn't operate without you.
12 I congratulate you on your service. I don't think anybody
13 told you that it was easy because it is not. It is a
14 heavy responsibility. Thank you for your service and I am
15 very happy to tell you that you have completed your
16 service for the week and for the year and three years if
17 so choose. You are welcome to stay, go, whatever you
18 would like to do. Thank you very much. You are also free
19 to talk about it with whoever you would like to. And I
20 also say this, if someone bothers you, you don't want to
21 talk about it, let the Clerk of Court know and we will fix
22 that problem. We don't want anyone to be harassed or
23 bothered because of your service. Thank you very much.
24 Okay. And, Ms. Briggs, we need to get your signature on a
25 couple of things.

1 (Whereupon, the jury was excused at 3:43 p.m.)

2 THE COURT: All right, are you ready?

3 MS. WHITE: Yes, sir. Your Honor, if I can have just
4 a minute to talk to Ms. Shands.

5 THE COURT: Okay.

6 MS. WHITE: We are ready, Your Honor.

7 THE COURT: Okay.

8 MR. GROSE: Your Honor, before we go into that can I
9 just put a couple of things on the record?

10 THE COURT: Yes, please do, I am sorry.

11 MR. GROSE: The first thing we would do is we would
12 renew all the motions that we made during the trial
13 including the mistrial motion and the motions for the
14 directed verdict, for all the grounds previously stated.
15 And at this time, Your Honor, we would move for a new
16 trial based on the fact that the State failed to present
17 any direct evidence or substantial circumstantial evidence
18 that the jury could convict beyond a reasonable doubt.
19 And we would also move for a new trial on the kidnapping
20 statute, that that charge be dismissed because that
21 statute is unconstitutionally vague and overbroad.

22 THE COURT: Okay. Same ruling on all that and I will
23 deny your motions.

24 MR. GROSE: You want us to come around?

25 THE COURT: Yes.

1 MR. GROSE: We will wait here if that is all right,
2 Your Honor.

3 THE COURT: I will hear from the State.

4 MS. WHITE: Thank you, Your Honor, with regards to
5 the victim impact, Ms. Shands, that is what we were just
6 discussing, she is frankly still too scared and terrified
7 to even come forward. So, she did not wish to address the
8 Court during sentencing. His prior record, the only
9 record I am aware of, Your Honor, is, are the January
10 27th, 1976 conviction out of Florida for conspiracy to
11 commit robbery, robbery and first degree murder. And he
12 was on parole for a life sentence out of Florida. And,
13 Your Honor, we did serve LWOP notice September 4th of 2014
14 at his bond hearing and the State is seeking life with
15 parole.

16 THE COURT: Okay. Have you got a copy of the notice?

17 MS. WHITE: Yes, sir.

18 MR. GROSE: And I think the statute also requires,
19 since it was an out-of-state conviction that you find that
20 the elements are, would comply under our statute.

21 THE COURT: Mr. Grose, how many days has he been in
22 jail?

23 MR. GROSE: Said since July 20th.

24 MS. WHITE: Judge, this is a copy of the notice that
25 I gave Mr. Grose and Mr. Shands back in September. Also I

1 have the indictments. As far as the elements it appears
2 from the face of the indictment, on the murder conviction,
3 did unlawfully from a pre-mediated design effect the death
4 of one Ramon Guirao by stabbing him with a sword.

5 MR. GROSE: And I would argue that that is not, does
6 not comply under our statute as being equivalent of any
7 other crime because it doesn't require, it is not
8 equivalent because it doesn't require malice, Your Honor.

9 MS. WHITE: And, Your Honor, also the robbery would
10 be a most serious offense and that is a robbery with a
11 deadly weapon.

12 MR. GROSE: But you would have to, again, look at the
13 elements, whether or not a deadly weapon was actually
14 required. A weapon is not always required in a robbery,
15 Your Honor.

16 THE COURT: The documents submitted to me by the
17 State, I am going to find that these offenses do qualify
18 under our statute.

19 MR. GROSE: I just request that those be made a
20 Court's exhibit, Your Honor.

21 THE COURT: Yes, we can do that.

22 MR. GROSE: And I presume that notice has been filed
23 previously, correct?

24 MS. WHITE: Yes sir, I believe it was.

25 THE COURT: All right.

1 MR. GROSE: Giving the ruling that you just made I
2 don't know that there is much to add at this point, Your
3 Honor.

4 THE COURT: Anything you want to say, Mr. Shands?

5 MR. SHANDS: No, sir.

6 THE COURT: All right. Mr. Shands, on three most
7 serious offenses, kidnapping, burglary first and attempted
8 murder, the sentence is life without parole. Burglary,
9 excuse me, assault and battery is ten years and the
10 weapons charge five years. Credit for the time you are
11 entitled to. If you want to put on the record that you
12 have ten days to file a notice of intent to appeal, so if
13 you intend to do that please let your attorney know as
14 soon as possible.

15 MR. GROSE: We have already discussed that, Your
16 Honor.

17 THE COURT: Okay. All right.

18 MR. MOWRY: Thank you, Your Honor.

19 MS. WHITE: Thank you, Your Honor.

20 (Whereupon, Court's Exhibit 1, 2 and 3 were marked
21 for identification only.)

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
23
24
25

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Laurens, South
14 Carolina on the 26th day of May, 2015.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 August 23, 2015
19
2021 _____
22 Joy E. Holston, Court Reporter23 My Commission expires: March 13, 2016
24
25

THE STAT OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	Indictment Number(s): 2014-GS-30-1477-82
THE STATE	)	
	)	
	)	Motion to Quash Indictments
vs.	)	
	)	
Preston Shands, Jr.	)	
	)	
	)	

The defendant, Preston Shands, Jr., moves the Court for an order quashing the indictments for abuse of the grand jury process.¹ Mr. Shands challenges the indictment itself as well as the perfunctory process that produced the indictment.

I. Introduction: The Laurens County Grand Jury Process.

Although the grand jury process in South Carolina is cloaked in secrecy, it is supposed to protect citizens from unfettered, abusive, and otherwise unaccountable prosecution by the sovereign. These protections do not exist in Laurens County. Mr. Shands is informed and believes that an Administrative Assistant in the Solicitor's Office prepares indictments. The Administrative Assistant lists the affiant on the warrant as the sole witness to be called before the Laurens County Grand Jury. The indictments are then reviewed and signed by an Assistant Solicitor. When the Laurens County Grand Jury meets, a police officer from the arresting agency obtains copies of the indictments from the Solicitor's Office and presents them to the grand jurors. The testifying police officer, who is not the person listed on the indictment, does not have any personal knowledge of the case. The Solicitor's Office does not keep a record of the identity of the person *actually* testifying before the Laurens County Grand Jury.

¹ This motion presents the same legal arguments as the Common Law Petition for Writ of *Certiorari* in *Henry Bennett Davis v. State*, Florence County Case No. 2014-GS-21-00701, which is currently pending before the South Carolina Supreme Court.

II. Constitutional Right to a Challenge a Defective Grand Jury Process.

The right of an accused to have a grand jury review the charges against him is a Constitutional right enumerated in the Fifth Amendment to the United States Constitution as well as in Article I, §11 of the South Carolina Constitution. “It is the right of the accused to have the question of his guilt decided by two competent juries before he is condemned to punishment.” *State v. Rector*, 158 S.C. 212, 236, 155 S.E. 385, 394 (1930) (quoting *Crowley v. United States*, 194 U.S. 461, 473 (1904)).

It has long been recognized that when an indictment is presented, the accused “may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined.” *State v. Faile*, 43 S.C. 52, 20 S.E. 798 (1895). *See also, State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). Our Supreme Court has recognized that questions about the fairness and impartiality of the grand jury are “so closely analogous” to questions regarding the qualification of jurors, that questions of the latter have bearing on considering questions related to the former. *Rector* at 240, 395 (citing *State v. Richardson*, 149 S.C. 121, 146 S.E. 676 (1928)).

A defendant must challenge the legality and sufficiency of the process of the grand jury *before* the jury renders a verdict in order to preserve the error for direct appellate review. *See Evans v. State*, 363 S.C. 495, 509 (2005) (citing *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005)).

“Grand jury proceedings are presumed to be regular unless clear evidence indicates otherwise.” *State v. Moses*, 390 S.C. 502, 521, 702 S.E.2d 395, 405 (Ct. App. 2010)

(citing *State v. Thompson*, 305 S.C. 496, 501, 409 S.E.2d 420, 424 (1991)). Our Supreme Court has recognized the incredible burden this standard places on defendants. “It is usually difficult for a defendant to make such a claim ... speculation about ‘potential’ abuse of grand jury proceedings cannot substitute for evidence of *actual* abuse as grounds for quashing an otherwise lawful indictment. Fortunately, given the nature of State Grand Jury proceedings, there is a complete record available for analysis.” *State v. Thrift*, 312 S.C. 282, 302-303, 1993 S.C. LEXIS 218, 32-33 (1993) (quoting *State v. Thompson* at 502, 424 emphasis in the original).

Pursuant to *Gentry*, Mr. Shands must challenge the indictment and the indictment process before his trial jury is sworn. The law also gives him the burden of proving actual irregularity or abuse by clear evidence pursuant to *Thrift* and *Evans*. During the *State v. Carrier* oral argument,² our Supreme Court made it clear that failure to present and preserve evidence on the record was fatal to a defendant wishing to make one of the very same arguments Mr. Shands attempts to make here. He challenges the indictment itself as well as the perfunctory process that produced the indictment.

Unless this Court hears testimony, Mr. Shands (and other similarly situated defendants) will have no meaningful right to an impartial grand jury in South Carolina. A contrary process would make it impossible to marshal evidence to challenge whether the right has been violated. A right without a remedy is no right at all. *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (“The government of the United States has been emphatically termed a government of laws, not of men. It will certainly cease to deserve this high appellation,

² S.C.S.Ct. Memorandum Opinion No. 2014-MO-043 (filed October 22, 2014). Oral argument found at <http://media.sccourts.org/videos/2012-212777.mp4> (last viewed May 24, 2015).

if the laws furnish no remedy for the violation of a vested right.”).

III. Correcting Abuse of the Grand Jury Process in South Carolina.

In 1981, the South Carolina Supreme Court began an almost 12-year journey addressing how the State was allowed to go about presenting indictments to grand juries. *State v. Capps* began that journey by finding that “the practice of using a solicitor or *other officer of the State*, as the sole witness before the grand jury, to provide only a summary of the evidence could be abused and we strongly suggest it be abandoned unless no alternative is available.” 276 S.C. 59, 62, 275 S.E.2d 872, 873 (1981) (emphasis added).

Chief Justice Lewis authored a vigorous dissent in *Capps* in which he noted that the Court's previous call for a comprehensive study and ultimate revision in some respects to the current grand jury system had gone unheeded. He, therefore, felt that not only was the Court “compelled in the interests of justice” to reevaluate the system, but also that it was their duty given the “significance of the right involved” to “give this constitutional provision meaning.” *Capps* at 63-64, 874. Chief Justice Lewis saw a “pressing need for change as is evidenced by the further deteriorating nature of the proceedings.” *Capps* at 64-65, 874.

Chief Justice Lewis’ greatest concern arose over the use of hearsay evidence to obtain indictments. Drawing on the Court's decision in *State v. Williams*, an opinion that he had authored, Chief Justice Lewis argued that the Court had not intended to create “a limitless haven” for the routine use of hearsay in grand jury presentments. He noted that the “deliberate use of hearsay testimony is a questionable practice which seriously erodes the function of the grand jury.” *Capps* at 67-68, 876, referencing *State v. Williams*, 263 S.C. 290, 210 S.E.2d 298 (1974) and *U.S. v. Gramolini*, 301 F.Supp. 39 (D. R.I. 1969).

Chief Justice Lewis further found that the routine acquisition of indictments based solely on hearsay testimony requires that the indictment be dismissed. He reasoned:

In order to provide more than lip service to the constitutional provision here in question, I would hold that an indictment cannot, as a matter of course, be acquired solely on oral hearsay testimony. The routine practice of one individual appearing before the proceeding to give his "third hand" capsule version of facts which he has no direct knowledge without some other competent evidence, is insufficient.

The drafters of Article I, §11 as well as those citizens who voted for its implementation clearly intended the right to a grand jury indictment to be meaningful because they incorporated it into such a solemn document, our State constitution. The disposition I propose seeks to rekindle the spirit with which it was created.

Capps at 67-68, 876.

Despite the strong warning the *Capps* court issued, cases continued to come before the appellate courts of South Carolina raising issues about what was acceptable and adequate evidence to present to grand juries.

In *State v. Anderson*, prosecutors argued that while our Supreme Court had "frowned upon" an assistant solicitor being the only witness to appear before a grand jury, the Court had not prohibited the practice. In referencing *Capps*, the State's argument was "that case did not say we could not do it, they said they didn't like it." *State v. Anderson*, 439 S.E.2d 835, 1993 S.C. LEXIS 228 (1993). The *Anderson* Court rejected this position and explicitly prohibited the practice of prosecutors appearing as the sole witness before the grand jury. *Anderson* at 836, 3. In doing so, the *Anderson* Court specifically cited Chief Justice Lewis' dissent in *Capps*.

Capps dealt with more than *solicitors* testifying to the grand jury. The *Capps* Court also explicitly warned of the potential for abuse of using *any* "other officer of the State, as

the sole witness before the grand jury....” *Capps* at 62, 873 (emphasis added).

The lone case touching on the “other officer” issue is *State v. Whitted*, 279 S.C. 260, 305 S.E.2d 245 (1983). The defendant in *Whitted* challenged her indictment on the grounds that a sheriff’s deputy was the sole witness who testified before her grand jury, arguing that *Capps* prohibited the sheriff’s deputy from being the sole witness to testify before the grand jury. The *Whitted* Court said that *Capps* “did not contemplate and should not be construed to prohibit *the investigative officers*, such as the sheriff’s deputy was in this case, from appearing as the sole witness before the grand jury” and found no error. *Whitted* at 262, 246 (emphasis added).

As our Supreme Court made clear in *Anderson*, *Capps* was meant to be more than a warning. It was meant to stop “the practice of using a solicitor *or other officer of the State*, as the sole witness before the grand jury....” *Capps* at 62, 873 (emphasis added). Mr. Shands believes the circumstances of his case show that the State continues to engage in the type of grand jury presentment practices our Supreme Court has been warning of since *Capps*. In his case, five of the indictments (attempted murder, possession of a weapon during the commission of a violent crime, and two counts of assault and battery) list Hal Martin of the Laurens County Sheriff’s Office as the sole witness testifying before the Grand Jury. From the discovery provided by the State, it appears that Officer Martin does not have any personal knowledge of this investigation. The sixth indictment (kidnapping) lists Tony Lynch of the Laurens County Sheriff’s Office as the sole witness before the Grand Jury.

As outlined in Section I, *supra*, based on his knowledge of the Laurens County Grand Jury practice, Mr. Shands is informed and believes that neither officer actually testified before

the grand jury. This practice creates three problems.

First, if a witness not listed on the indictment testified before the Grand Jury, his appearance before the grand jury violates S.C. Code §14-7-1550, which provides:

The foreman of the grand jury or acting foreman in the circuit courts of any county of the State may swear the witnesses whose names shall appear on the bill of indictment in the grand jury room. No witnesses shall be sworn except those who have been bound over or subpoenaed in the manner provided by law.

Second, if the witness was not subpoenaed or bound over to appear in front of the grand jury, then the grand jury did not recognize his appearance as “unauthorized” and report it as a “clearly improper” attempt to influence their decision. These actions were compelled by the charge given to the grand jury. The pertinent part of that charge provides:

On the back of the indictments, the names of the witnesses for the State will be listed. You may call the witnesses before you for questioning ...The Foreperson of the Grand Jury will swear witnesses whose names appear on the bill of indictment. No witness may be sworn except those who have been bound over or subpoenaed in the manner provided by law. . . .

The presence of anyone other than Grand Jurors, witnesses under examination, and, at certain times, the Solicitor, during the sessions of the Grand Jury is unauthorized. Thus, any attempt to influence your decision is clearly improper and should be reported to me or the presiding judge.

S.C. Judicial Website, Sample Jury Charges, Chapter II: Grand Jury, pp. 5-6, a copy of which is attached.

Third, if the witness was neither an investigating officer, nor an actual witness, his testimony could have only been "a deliberate use of hearsay" by the State when there were clear alternatives, in violation of *Capps*, *Anderson*, and *Whitted*. It is easy to envision a scenario in which a witness, having held no personal knowledge as a witness and having had

no role in the investigation, merely appeared before the Grand Jury and read from the indictment prepared and signed by the Solicitor. Such a presentment would be exactly what *Capps* and *Anderson* prohibit. In that situation, the testimony would be akin to allowing “a solicitor to merely ‘tell his story’ by giving a summary of the evidence,” a result Chief Justice Lewis warned would lead to grand jury soon being “viewed by a justifiably skeptical public as a mere plaything for prosecutors.” *Capps* at 67, 875.

The journey towards completing the process of correcting abuse of the grand jury process in South Carolina is not complete. This Court should declare unconstitutional the practice followed by the Laurens County Grand Jury and require the State to present witnesses with actual knowledge of the case. Mr. Shands also argues that the State had a duty under Rule 3.3(d) of the Rules of Professional Conduct to provide the grand jury with all material facts, which would enable the tribunal to make an informed decision whether or not those facts were adverse to the prosecution.

IV. Denying Defendants Indicted By A County Grand Jury The Same Due Process Safeguards As Those Indicted By A Statewide Grand Jury Violates The Fifth and Fourteenth Amendments To The United States Constitution, As Well As Article I, Sections 3 and 11 of The Constitution of South Carolina.

Mr. Shands case illustrates a fundamental inequality within the grand jury process in South Carolina: defendants indicted under the statewide grand jury system are afforded different protections under the law than defendants who are indicted under the county grand jury system.

A defendant's rights to an indictment, due process, and equal protection under the law are secured through the Fifth and Fourteenth Amendments to the United States Constitution, as

well as through Article I, Sections 3 and 11 of the Constitution of South Carolina. Unfortunately, the current grand jury process in South Carolina denies defendants some of those rights.

In South Carolina, two types of grand juries issue indictments: a county grand jury or a statewide grand jury. Articles 13 and 15 of Chapter 7, Title 14 of the South Carolina Code contain the statutory authority controlling the grand jury systems in South Carolina. Article 13 deals with the county grand jury system. Article 15 addresses the statewide grand jury system.

The best example of the disparity between the two systems can be found in S.C. Code §14-7-1700, which is titled “Record of testimony and other proceedings of grand jury; furnishing of copy to defendant; transcripts, reporter's notes and all other documents to remain in custody and control of attorney general.” That statute provides:

A court reporter shall record, either stenographically or by use of an electronic recording device, all proceedings except when a state grand jury is deliberating or voting. Subject to the limitations of Section 14-7- 1720(A) and (D) and Rule 5, South Carolina Rules of Criminal procedure, a copy of the transcript of the recorded testimony or proceedings requested by the Attorney General or his designee shall be provided to the defendant by the court reporter, upon request, at the transcript rate established by the Office of Court Administration. An unintentional failure of any recording to reproduce all or any portion of the testimony or proceedings does not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom and all books, papers, records, correspondence, or other documents produced before a state grand jury must remain in the custody and control of the Attorney General or his designee unless otherwise ordered by the court in a particular case.

This language illustrates the inequality that a defendant indicted by a county grand jury faces compared to a defendant indicted by a statewide grand jury: statewide grand jury

proceedings must be recorded. There is no corresponding requirement that county grand juries be recorded. Thus, a defendant indicted by a statewide grand jury *does* have a record from which to obtain evidence of irregularity, while a defendant indicted by a county grand jury *does not*. In *State v. Thrift*, our Supreme Court noted the difficulty defendants like the Mr. Shands face attacking the grand jury process, specifically finding that Thrift was fortunate his grand jury proceedings were statewide grand jury proceedings, thus providing a complete record for analysis. *Thrift* at 302-303, 32-33. By commenting on the good fortune Thrift received by virtue of being indicted by a statewide grand jury (and by implication, the *misfortune* of those defendants, like Mr. Shands, who are indicted by country grand juries without a record), the *Thrift* Court was implicitly acknowledging the inequality of our current grand jury system. Thus, if a defendant, like Mr. Shands, indicted by a country grand jury can not force the recording of the grand jury proceedings or compel testimony regarding the proceedings, he is effectively prohibited from challenging the propriety of those proceedings unlike the defendant who is fortunate enough to be indicted by the statewide grand jury which provides defendants with the evidence needed to mount such challenges. Such discriminatory treatment of defendants is prohibited by the equal protection clauses of the South Carolina and United States Constitutions.

V. Conclusion.

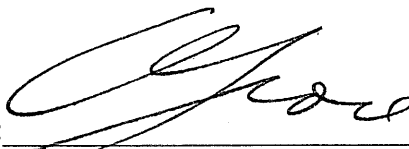
The Court should grant the following relief:

- a. Declare unconstitutional the process followed by the Laurens County Grand Jury;
- b. Quash the indictments;
- c. Order the State provide Mr. Shands with a meaningful grand jury process;

- d. Require the State to present exculpatory evidence to the Grand Jury;
- e. Require those proceedings to be recorded; and
- f. Such other and further relief that this Court deem just and proper.

IT IS SO MOVED.

Respectfully submitted,

By: _____

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May 26, 2015
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taken from an appellate opinion must be supplemented by additional relevant statements of the law because of the particular factual situation.”

State v. Grant, 275 S.C. 404, 407, 272 S.E.2d 169, 171 (1980).

CHAPTER TWO - GRAND JURY CHARGE

YOU HAVE BEEN SELECTED AND SWORN TO SERVE AS THE GRAND JURY OF _____ COUNTY AND, THEREFORE, HAVE BEEN CALLED TO PERFORM AN IMPORTANT PUBLIC SERVICE. AT THIS TIME, I AM REQUIRED TO TELL YOU THE DUTIES AND POWERS OF THE GRAND JURY.

A GRAND JURY IS SELECTED AND ORGANIZED TO INQUIRE INTO THE COMMISSION OF CRIMES WITHIN THE COUNTY, DETERMINE THE LIKELIHOOD OF GUILT, AND FIND INDICTMENTS AGAINST SUPPOSED OFFENDERS. THE GRAND JURY IS NOT ONLY A WAY TO BRING TO TRIAL PEOPLE ACCUSED OF CRIMES, BUT ALSO A WAY TO PROTECT CITIZENS AGAINST UNFOUNDED PROSECUTION. THIS IDEA IS FIRMLY ENTRENCHED IN OUR PRESENT SYSTEM OF JUSTICE. BOTH THE SOUTH CAROLINA AND UNITED STATES CONSTITUTIONS REQUIRE AN INDICTMENT BEFORE A PERSON CAN BE TRIED FOR MOST CRIMES.

THE GRAND JURY OF EACH COUNTY CONSISTS OF EIGHTEEN MEMBERS. WHILE ALL EIGHTEEN MUST BE PRESENT AT THE TIME THE GRAND JURY IS ORGANIZED AT THE FIRST TERM OF COURT FOR THE YEAR, AFTER THAT, A GRAND JURY WITH ONLY TWELVE MEMBERS PRESENT IS SUFFICIENT. TWELVE OF YOU MUST AGREE ON A MATTER BEFORE A “TRUE BILL” CAN BE FOUND AND THE CASE CAN BE SUBMITTED TO THE COURT. IN ADDITION, THREE ALTERNATE GRAND JURORS ARE DRAWN WHO WILL ACT IN PLACE OF ANY ORIGINAL GRAND JURORS WHO MAY BE UNABLE TO SERVE DURING THE YEAR.

THE DUTIES OF THE GRAND JURY ARE CRUCIAL TO THE ADMINISTRATION OF OUR SYSTEM OF JUSTICE. THE GRAND JURY HAS TWO MAIN JOBS - IT ACCUSES PEOPLE OF CRIMES AND IT CAN INVESTIGATE CRIMES. THE GRAND JURY IS AN ARM OF THE COURT, WITH ITS MAIN GOAL BEING THE DETECTION AND PUNISHMENT OF CRIME.

THE MOST IMPORTANT DUTY OF THE GRAND JURY IS PASSING ON BILLS OF INDICTMENT. THE SOLICITOR PREPARES THESE BILLS FROM ARREST WARRANTS AND TESTIMONY AT PRELIMINARY HEARINGS AND INQUESTS. IT IS NOT YOUR RESPONSIBILITY TO DECIDE THE GUILT OR INNOCENCE OF ANY PERSON. YOU HEAR ONLY THE EVIDENCE ON BEHALF OF THE PROSECUTION, BECAUSE THE FINDING OF AN INDICTMENT IS ONLY IN THE NATURE OF AN INQUIRY OR ACCUSATION WHICH WILL BE HEARD AND DETERMINED LATER. YOU, AS THE GRAND JURY, ARE ONLY TO DECIDE WHETHER THERE IS SUFFICIENT REASON TO BRING THE PERSON TO TRIAL. IF YOU ARE CONVINCED THAT THE EVIDENCE THE SOLICITOR PRESENTS TO YOU, UNEXPLAINED AND UNCONTRADICTED, WILL WARRANT A CONVICTION BY A TRIAL JURY, IT IS YOUR DUTY TO FIND A 'TRUE BILL'. OTHERWISE, IT IS YOUR DUTY TO FIND A "NO BILL". THE GRAND JURY MAY EXERCISE ITS DISCRETION TO DECIDE, NOT ONLY THE PROBABILITY OF CONVICTION OR THE SUFFICIENCY OF THE EVIDENCE, BUT ALSO IF IT IS PROPER, UNDER THE PARTICULAR CIRCUMSTANCES, TO PROSECUTE THE PERSON AND THE EFFECT ON THE PUBLIC INTEREST BY PROSECUTING THE CHARGE. IN OTHER WORDS, THE GRAND JURY SHOULD DECIDE WHETHER OR NOT THE CASE IS ONE WHICH SHOULD GO TO TRIAL.

THE GRAND JURY MAY TAKE TESTIMONY AND RECEIVE EVIDENCE AND, IF THE EVIDENCE WARRANTS, DIRECTLY INDICT A PERSON WITHOUT AN ARREST WARRANT HAVING BEEN ISSUED. IN THAT CASE, THE SOLICITOR

WILL BE ASKED TO PREPARE AN INDICTMENT WHICH, IF A TRUE BILL IS RETURNED, WILL BE PRESENTED TO THE COURT AND A BENCH WARRANT WILL BE ISSUED FOR THE ARREST OF THE PERSON ACCUSED.

IF YOU FIND THAT THERE IS SUFFICIENT REASON TO BRING THE ACCUSED TO TRIAL, YOU WILL WRITE THE WORDS "TRUE BILL" ON THE FRONT OF THE INDICTMENT, AND THE FOREPERSON WILL SIGN THE INDICTMENT. IF, ON THE OTHER HAND, YOU FIND THAT THERE IS NOT SUFFICIENT CAUSE TO BRING THE ACCUSED TO TRIAL, YOU WILL WRITE THE WORDS "NO BILL", AND THE FOREPERSON WILL SIGN THE INDICTMENT.

OVER THE COURSE OF YOUR SERVICE THIS YEAR, YOU WILL HAVE PRESENTED TO YOU INDICTMENTS CHARGING MANY VARIOUS CRIMES. TIME DOES NOT PERMIT ME TO ATTEMPT TO DEFINE THE MANY CRIMINAL OFFENSES YOU WILL CONSIDER. IF YOU WISH TO BE ADVISED IN ANY LEGAL PARTICULAR, PLEASE SEND WORD TO ME OR THE PRESIDING JUDGE AND WE WILL BE HAPPY TO INSTRUCT YOU FURTHER IN OPEN COURT. COMMUNICATIONS OF THE GRAND JURY SHOULD ALWAYS BE DIRECTED TO THE PRESIDING JUDGE OR THE CHIEF JUDGE FOR ADMINISTRATIVE PURPOSES OF THE CIRCUIT, AND NO ONE ELSE.

YOUR RECOMMENDATIONS ARE ONLY ADVISORY AND SUGGESTIVE TO THE VARIOUS OFFICIALS CONCERNED. THEY DO NOT HAVE THE FORCE AND EFFECT OF LAW. THIS BY NO MEANS DESTROYS THE VALUE AND IMPORTANCE OF WHAT YOU DO.

THE GRAND JURY HAS OTHER DUTIES IN ADDITION TO PASSING ON BILLS OF INDICTMENT. A GRAND JURY HAS SUPERVISION OF THE ENFORCEMENT OF LAW AND ORDER, THE PRESERVATION AND PROTECTION OF MORALS AND SOCIAL ORDER, THE SUPERVISION OF PUBLIC OFFICES, THE INSPECTION AND EXAMINATION OF THE BOOKS OF PUBLIC OFFICES, AND THE CONDUCT OF PUBLIC OFFICES BY THE OFFICERS OCCUPYING THEM.

IT IS ALSO THE DUTY OF THE GRAND JURORS TO PROSECUTE VIOLATIONS OF LAW THEY KNOW OF. EACH INDIVIDUAL GRAND JUROR HAS THE DUTY TO BRING BEFORE THE GRAND JURY AS A WHOLE ANY INFORMATION WHICH THE INDIVIDUAL MIGHT HAVE ABOUT ANY LAW VIOLATION. HOWEVER, THIS INFORMATION MUST BE ACTED ON BY THE FULL GRAND JURY, OR AT LEAST TWELVE MEMBERS, NOT BY ANY INDIVIDUAL GRAND JUROR.

GRAND JURIES HAVE LARGE INVESTIGATIVE POWERS, BUT THOSE POWERS ARE LIMITED, AND THEY MUST BE EXERCISED FOR THE PURPOSE OF PRESENTING OFFENDERS TO THE PROPER OFFICERS FOR PROPER LEGAL PROCEEDINGS AGAINST THEM OR FOR THE FINDING OF BILLS OF INDICTMENT. FOR EXAMPLE, GRAND JURORS MAY CALL ATTENTION TO THE PROPER AUTHORITIES CONDITIONS WHICH ARE A MENACE TO GOOD MORALS OR THE PEACE OR HEALTH OF COMMUNITIES; THE CONDITION OF ROADS, BRIDGES, PUBLIC BUILDINGS, SCHOOLS, SCHOOL BUILDINGS; AND OTHER SIMILAR MATTERS. HOWEVER, GRAND JURORS CANNOT MAKE A SORT OF GENERAL PRESENTMENT OF EVILS OR BAD THINGS TO CALL ATTENTION TO THEM. A GRAND JURY HAS NO POWER TO FILE WITH THE COURT A REPORT OF THIS TYPE WHICH CHARGES NO CRIME, BUT JUST REFLECTS ON THE WAY A PERSON IS ACTING. YOU MAY NOT COME OUT WITH A FINDING THAT "JOHN DOE" IS NOT CONDUCTING HIS OFFICE AS HE SHOULD, UNLESS YOU BRING AN INDICTMENT AGAINST "JOHN DOE".

ON THE BACK OF THE INDICTMENTS, THE NAMES OF THE WITNESSES FOR THE STATE WILL BE LISTED. YOU MAY CALL THE WITNESSES BEFORE YOU FOR QUESTIONING. YOU DO NOT HAVE TO EXAMINE ALL OF THEM IN EVERY CASE, SINCE IN SOME CASES THE TESTIMONY OF ONE WITNESS MAY CONVINCE YOU THAT THE ACCUSED SHOULD GO TO TRIAL. IF SO, YOU DO NOT HAVE TO EXAMINE THE OTHER WITNESSES. HOWEVER, DO NOT

FIND A "NO BILL" WITHOUT EXAMINING ALL OF THE WITNESSES BECAUSE THE LAST WITNESS MAY KNOW FACTS WHICH THE OTHERS DID NOT KNOW. THE FOREPERSON OF THE GRAND JURY WILL SWEAR THE WITNESSES WHOSE NAMES APPEAR ON THE BILL OF INDICTMENT. NO WITNESS MAY BE SWORN EXCEPT THOSE WHO HAVE BEEN BOUND OVER OR SUBPOENAED IN THE MANNER PROVIDED BY LAW. THE GRAND JURY IS ALLOWED TO HIRE AN EXPERT ACCOUNTANT TO HELP THEM EXAMINE AND INVESTIGATE THE OFFICES, BOOKS, PAPERS, VOUCHERS, OR ACCOUNTS OF ANY PUBLIC OFFICER OF THEIR COUNTY WHEN, IN THEIR JUDGMENT, IT BECOMES NECESSARY. THE GRAND JURY MAY ALSO FIX THE AMOUNT OF COMPENSATION OR PER DIEM TO BE PAID. HOWEVER, THE APPROVAL OF THE PRESIDING JUDGE MUST BE GIVEN BEFORE ANY EXPERT IS EMPLOYED. IN ORDER TO CARRY OUT YOUR OVERSIGHT FUNCTIONS, THE GRAND JURY USUALLY FORMS VARIOUS COMMITTEES. IN THE PAST THESE HAVE BEEN: *(insert committees specific to your county)* MR./MADAM FOREPERSON, YOU WILL PLEASE NAME THE CHAIRPERSON AND MEMBERS OF ANY COMMITTEES THAT THE GRAND JURY CHOOSES TO FORM. THE PROCEEDINGS OF THE GRAND JURY ARE LARGELY INFORMAL AND FREE FROM TECHNICALITIES IN OBTAINING INFORMATION. HOWEVER, THE GRAND JURY SHOULD COMPLETE ITS ASSIGNED TASKS WITHOUT OUTSIDE INTERFERENCE, AND IMPROPER COMMUNICATION WITH THE GRAND JURY IS UNAUTHORIZED. THE PRESENCE OF ANYONE OTHER THAN GRAND JURORS, WITNESSES UNDER EXAMINATION, AND, AT CERTAIN TIMES, THE SOLICITOR, DURING THE SESSIONS OF THE GRAND JURY IS UNAUTHORIZED. THUS, ANY ATTEMPT TO INFLUENCE YOUR DECISION IS CLEARLY IMPROPER AND SHOULD BE REPORTED TO ME OR THE PRESIDING JUDGE.

THE GRAND JURY WILL NOT MEET EXCEPT BY ORDER OF THIS COURT. A SCHEDULE OF YOUR REGULAR MEETINGS WILL BE FURNISHED TO YOU.

YOUR ROLE IN THIS VITAL SERVICE TO THE JUDICIAL SYSTEM IS GREATLY APPRECIATED BY THE COURT. YOU ARE ENCOURAGED TO ASSUME THIS DUTY WITH A SERIOUS MIND, TO STUDY CAREFULLY ALL EVIDENCE SUBMITTED TO YOU, AND TO ACT FAIRLY ON THE EVIDENCE.

CHAPTER THREE - PRELIMINARY CHARGE

LADIES AND GENTLEMEN OF THE JURY, THE CASE WE ARE ABOUT TO TRY IS THE CASE OF THE STATE VERSUS _____, DEFENDANT.

JUROR EXPECTATIONS - PROFESSIONALISM CHARGE

(The Chief Justice's Commission on the Profession recommends that the following charge be given prior to trial in every case.)

BEFORE WE BEGIN THIS TRIAL, I WANT TO TELL YOU THAT THIS TRIAL PROBABLY WILL BE DIFFERENT FROM WHAT YOU MIGHT EXPECT. MANY PEOPLE DO NOT HAVE THE CHANCE TO ATTEND ACTUAL COURT SESSIONS, AS YOU ARE DOING NOW, AND MAY THINK, FROM WATCHING TELEVISION OR MOVIES OR READING BOOKS, THAT TRIALS ARE ALWAYS FULL OF HIGH DRAMA, INTENSE ACTION, AND RIVETING CIRCUMSTANCES. WHILE ALL OF THESE THINGS MAY BE TRUE AT TIMES, THIS TRIAL IS NOT FOR ENTERTAINMENT. IT IS A FUNDAMENTAL PART OF OUR DEMOCRACY; A SEARCH FOR THE TRUTH IN AN EFFORT TO MAKE SURE THAT JUSTICE IS DONE BETWEEN THE PARTIES BEFORE THE COURT. SEARCHING FOR THE TRUTH AND MAKING SURE THAT JUSTICE IS DONE IS OFTEN SLOW, DELIBERATE, AND REPETITIVE - THE OPPOSITE OF WHAT YOU MAY

THE STAT OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	Indictment Number(s): 2014-GS-30-1477-82
THE STATE	)	
	)	
	)	
vs.	)	Motion to Exclude Mr. Shands' Prior
	)	Conviction from Florida for Murder
Preston Shands, Jr.	)	
	)	
	)	

The defendant, Preston Shands Jr., is on parole from Florida for a murder conviction that resulted from an incident occurring when he was a juvenile. Mr. Shands moves the court for an order excluding evidence of his prior conviction for murder. This motion is based on the following grounds.

Rule 609(a)(1), SCRE provides, "For the purpose of attacking the credibility of a witness, evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and *evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused*" (emphasis added). Mr. Shands' conviction for murder—occurring almost forty (40) years ago—has absolutely no probative value in this case. Admitting evidence of this conviction would create "the risk that a jury will convict for crimes other than those charged—or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment—creates a prejudicial effect that outweighs ordinary relevance." *Old Chief v. United States*, 519 U.S. 172, 181 (1997).

Rule 609(b) additionally provides, "Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of

the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.” Mr. Shands was released from confinement over ten years ago. The prosecution, moreover, has not noticed its intent to introduce this conviction as required by Rule 609(b).

Additionally, the similarity of Mr. Shands’ prior conviction for murder to the current charge of attempted murder is more reason for this Court to exclude evidence of the prior conviction. Our Supreme Court has “decline[d] to hold similar prior convictions inadmissible in all cases. Trial courts must weigh the probative value of the prior convictions against their prejudicial effect to the accused and determine, in their discretion, whether to admit the evidence. The following factors, along with any other relevant factors, should be considered:

1. The impeachment value of the prior crime.
2. The point in time of the conviction and the witness's subsequent history.
3. The similarity between the past crime and the charged crime.
4. The importance of the defendant's testimony.
5. The centrality of the credibility issue.”

Green v. State, 338 S.C. 428, 433-34, 527 S.E.2d 98, 101 (2000) (citing *State v. Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000)).

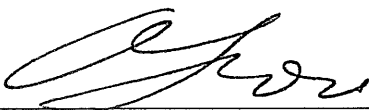
Allowing the prosecution to impeach Mr. Shands with evidence of the prior murder conviction—occurring almost forty (40) years ago—will be extremely prejudicial and interfere with the jurors’ evaluating Mr. Shands’ testimony, the credibility of which will be central to his defense. *See also State v. Black*, 400 S.C. 10, 732 S.E.2d 880 (2012) (defense witness's prior

convictions for manslaughter that were approximately 20 years old were inadmissible to impeach witness's credibility).

The Court, therefore, should exclude evidence of Mr. Shands prior conviction for murder.

IT IS SO MOVED.

Respectfully submitted,

By: _____

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Counsel for the Defendant

May 26, 2015
Greenwood, South Carolina

THE STAT OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	Indictment Number(s): 2014-GS-30-1477-82
THE STATE	)	
	)	
	)	Motion to Require the State to Open Fully on
vs.	)	the Law and the Facts and then Reply Only to
	)	New Matters Raised by Defense Counsel in His
Preston Shands, Jr.	)	Closing Argument
	)	
	)	

The defendant, Preston Shands, Jr., moves he court for an order requiring the State to open fully on the law and the facts and then reply only to new matters raised by defense counsel in his closing argument.

In South Carolina, no Rule of Criminal Procedure addresses the question of the order of argument to the jury.¹ The practice of the State opening only on the law and then closing fully on the facts after the defendant has given the closing argument is long on tradition but short on law to support that tradition. The early practice in South Carolina was for the state to open fully on the law and the facts. In *State v. Atterberry*, 129 S.C. 464, 124 S.C. 648 (1924), the Supreme Court held that the failure to require the state to open fully on the law and facts was reversible error. At that time Circuit Court Rule 59 provided, "The party having the opening in argument shall disclose his entire case and on his closing shall be confined strictly to a reply to the points made, and authorities cited by the opposite party."² In reversing the conviction of the defendant

¹ The South Carolina Supreme Court has requested comments on proposed Rule 21 S.C. RCrimP, which would require the prosecution to proceed in the manner requested in this motion. Proposed Rule 21 can be found at <http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=1013> (last viewed May 23, 2015).

² Rule 59 in 1924 was part of the Code of Civil Procedure. The concurring opinion by Acting Associate Justice Aycock makes reference to the fact that nothing in the Code of Civil

the Court said, "The defendant moved the court to require the solicitor to make the opening speech to the jury before the defendant's attorney's were required to make their arguments. This was refused. This was error." *Atterberry*, 129 S.C. at ___, 124 S.E. at 651. In his concurring opinion Acting Associate Justice Aycock stated the principle best when he said, "It is but fair that the party who has the advantage of the last address to a jury should be required to open and apprise the opposing party of his views as to his entire case." *Id.* at ___, 124 S.E. at 651. As a matter of legal history, the State in South Carolina was required to open fully on the law and the facts.

The more recent practice developed when the Circuit Court Rules were changed. This change was noted in *State v. Lee*, 255 S.C. 309, 178 S.E.2d 652 (1971). Again the defense counsel requested that the state be required to open fully on the law and the facts. The trial judge denied this request. The Court noted that since the decision in *Atterberry*, Rule 59 of the Circuit Court Rules had been changed to Rule 58 and the rule then read, "The party having the opening in an argument shall disclose fully the law upon which he relies if demanded by the opposite party." The Court in *Lee* concluded, "It follows that the trial judge, under the changed rule, was correct in holding that a solicitor is no longer required to make an opening argument to the jury on issues of fact."³ *Lee*, at 318, 178 S.E.2d at 656. Thus began the more recent, but incorrect, practice of requiring the state to open only on the law and not the facts.

Today Rule 43(j) of the South Carolina Rules of Civil Procedure controls the order of argument in civil cases. This rule now provides that the plaintiff shall have the right to open and

Procedure limits the application to civil cases. Rule 1 of the South Carolina Rules of Civil Procedure today does limit their application to civil cases.

³ Again this was a change in the Code of Civil Procedure which the court had no problem applying to a criminal case.

close at the trial of the case. The rule then concludes, “The party having the right to open shall be required to open in full, and in reply may respond in full but may not introduce any new matter.” With Rule 43(j) of the South Carolina Rules of Civil Procedure, the long practice in civil cases of plaintiff’s lawyers “sandbagging” and saving their real argument for their last argument, came to an end. But the practice, without any support in the law, continues in the general sessions courts not based upon the law or logic, but upon misapplication of the civil rules.

The practice of “sandbagging” in a closing argument was a basis for reversal of a criminal conviction in Delaware. In *Bailey v. State*, 440 A.2d 997 (Del. 1982) the court noted that “Closing argument is ‘an aspect of a fair trial which is implicit in the Due Process Clause of the Fourteenth Amendment.’” *Id.* at 1004 (internal citations omitted). The court further held, “Application of these authorities to the facts at hand compels us to reverse and remand the case for a new trial on the ground that the Trial Court abused its discretion in permitting the State to utilize the inherently prejudicial “sandbagging” trial strategy.” *Id.* In South Carolina, “sandbagging” by a prosecutor is not only approved but is actually legalized.

The majority of states and the federal courts require the prosecutor to open fully on the law and the facts. *See, e.g.* Fed. Rul Cr. Proc. 29.1; Ark. Code Ann . 16-89-123; Ga. Code Ann. § 17-8-71; Nev. Rev. Stat. Ann 175.141; Tenn. Rules of Crim. Proc. Rule 29.1; In RE AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE-FINAL ARGUMENTS, 957 So.2d 1164 (Fla. 2007) *but see*, *Degadillo v. State* , 262 S.W.3d 371 (Tex. Ct. App. (2008)). The treatise writers also support the requirement that the state open fully on the law and evidence. *See*, Jacob Stein, Closing Arguments 2d, § 1:6 (2010) and 75A Am. Jur. 2d *Trial* § 448 (2010). In revising its rules as to closing argument the Florida Supreme Court noted

“The statute provides that in accord with the common law, the prosecuting attorney shall open the closing arguments, defendant or his or her attorney may reply, and the prosecuting attorney may reply in rebuttal.” *In re AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE- FINAL ARGUMENTS*, 957 So.2d at 1166.⁴

South Carolina should break with a practice that has no support in logic or the law and require that the State be required to open fully on the law and the facts. The current procedure in South Carolina simply permits the State to legally “sandbag” its argument and not afford the defense the opportunity to reply to new arguments that the State used in its closing. The inherent logic of this position has been acknowledged by our Court of Appeals concerning reply briefs and oral argument. “An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant's brief.” *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989). The reason of this rule in the appellate court is a party should have a fair chance to respond to matters raised by counsel in their briefs. The rule should also be applied to arguments before a jury.

IT IS SO MOVED.

Respectfully submitted,

By: _____



E. Charles Grose, Jr.
The Grose Law Firm, LLC.
404 Main Street
Greenwood, SC 29646
(864) 538-4466

Counsel for the Defendant

May 26, 2015
Greenwood, South Carolina

⁴ The Florida Supreme Court also noted that forty-seven states follow the common law.

Request to Charge No. 4**Involuntary Intoxication**

“There are two types of intoxication, voluntary and involuntary. Involuntary intoxication may result from innocently consuming an intoxicant, through being tricked into it by another, or being forced to take it, or perhaps through unanticipated side effects of a prescription drug taken on orders of a physician. If you find the defendant was given drugs or alcoholic beverages without his knowledge, and as a result, he lost his ability to exercise independent judgment and volition while committing the crimes alleged against him, then it would be your duty to find the defendant not guilty.”

Ralph King Anderson, Jr., *South Carolina Requests to Charge - Criminal*, 2007, § 6-4 Involuntary Intoxication (citing P.S. Watson & W.S. McAninch, *Guide to South Carolina Criminal Law and Procedure* 165-66 (3d ed. 1990); 21 Am. Jur. 2d Criminal Law §§ 108-09 (1998)).

ARREST WARRANT

2014A3020400344

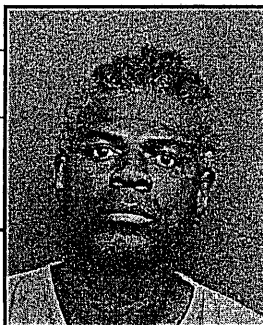
STATE OF SOUTH CAROLINA

County/ ☒ Municipality of

LAURENS

THE STATE

against



STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAURENS

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618Personally appeared before me the affiant MPTL HAL MARTIN whobeing duly sworn deposes and says that defendant PRESTON SHANDS JRdid within this county and state on 07/20/2014 to 07/20/2014 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LAURENS)

in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0029 / ATTEMPTED MURDER

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

MPTL HAL MARTIN STATES UNDER OATH BASED ON THIS INVESTIGATION OF SGT. MICHAEL GAINEY THAT PRESTON SHANDS DID COMMIT THE CRIME OF ATTEMPTED MURDER. PRESTON SHANDS HAVING MALICE AFORETHOUGHT DID ATTEMPT TO MURDER THE VICTIM. PRESTON SHANDS DID STAB THE VICTIM MULTIPLE TIMES IN THE HEAD AND TORSO WITH TWO PRONG FORK. THE VICTIM RECEIVED MULTIPLE LACERATION AND PUNCTURE WOUNDS. THIS INCIDENT OCCURRED AT STREET IN THE CITY LIMITS OF LAURENS.

WITNESSES: SGT. GAINEY, T.C.

J.S.

AND OTHERS

VICTIMS: SHARON SHANDS

Signature of Affiant

Affiant's Address 250 W LAURENS STLAURENS SC 29360Affiant's Telephone 864-984-3532

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAURENS

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 07/20/2014 defendant PRESTON SHANDS JR

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of LAURENS) as set forth below:DESCRIPTION OF OFFENSE: MURDER / ATTEMPTED MURDER

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 07/21/2014)C.W. Wier II (L.S.))

C W WIER II

Judge Code: 8079Judge's Address 250 W LAURENS STLAURENS SC 29360Judge's Telephone 864-984-3532Issuing Court: ☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

Case: 2014-3075

PRESTON SHANDS JR

Address:

LAURENS SC 29360

Phone: 683-1526SSN: [REDACTED]Sex: M Race: B Height: 6-1 Weight: 198DL State: SC DL #: [REDACTED]DOB: [REDACTED] Agency ORI#: SC0300100Prosecuting Agency: LAURENS POLICE DEPARTMENTProsecuting Officer: SGT. M. GAINEYOffense: ATTEMPTED MURDEROffense Code: 3410Code/Ordinance Sec. 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant PRESTON SHANDS JR

on 7/21/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

LAURENS MUNICIPAL COURT

250 W. LAURENS ST

LAURENS, SC 29360

864-984-3532

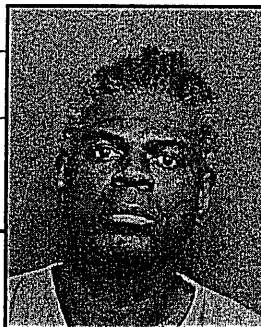
LAURENS COUNTY
CLERK OF COURT
2014 JUL 23 PM 4:04
LYNN W. LANCASTER

A. 294

ARREST WARRANT

2014A3020400345

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of
LAURENSTHE STATE
against

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
LAURENSPersonally appeared before me the affiant MPTL HAL MARTINbeing duly sworn deposes and says that defendant PRESTON SHANDS JRdid within this county and state on 07/20/2014 to 07/20/2014State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LAURENS

in the following particulars:

DESCRIPTION OF OFFENSE: 16-23-0490 / WEAPONS POSSESSION DURING A VIOLENT CRIMEI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:MPTL HAL MARTIN STATES UNDER OATH BASED ON THE INVESTIGATION OF SGT. MICHAEL GAINEY THAT PRESTON
SHANDS DID COMMIT THE CRIME OF WEAPONS POSSESSION DURING A VIOLENT CRIME. PRESTON SHANDS DID HAVE IN
HIS POSSESSION A TWO PRONGED FORK, IN WHICH HE USED A CUTTING INSTRUMENT TO ATTEMPT TO MURDER THE
VICTIM. THIS INCIDENT OCCURRED AT STREET IN THE CITY LIMITS OF LAURENS.

WITNESSES: SGT. GAINEY, T.C.

J.S.

, AND OTHERS.

VICTIM: SHARON SHANDS

Signature of Affiant

Affiant's Address 250 W LAURENS STLAURENS SC 29360Affiant's Telephone 864-984-3532

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
LAURENS

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/20/2014 defendant PRESTON SHANDS JR

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of LAURENS) as set forth below:DESCRIPTION OF OFFENSE: WEAPONS / POSS. WEAPON DURING VIOLENT CRIME, IF NOT ALSO
SENTENCED TO LIFE WITHOUT PAROLE OR DEATHHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 07/21/2014)C. Wier (L.S.))

C W WIER II

Judge Code: 8079Judge's Address 250 W LAURENS STLAURENS SC 29360Judge's Telephone 864-984-3532Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 2014-3075

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

A-295

LYNN W. LANCASTER
2014 JUL 23 P 4 05
LAURENS COUNTY
CLERK OF COURT

PRESTON SHANDS JR

Address: LAURENS SC 29360Phone: 683-1526 SSN: [REDACTED]Sex: M Race: B Height: 6-1 Weight: 198DL State: SC DL#: [REDACTED]DOB: [REDACTED] Agency ORI#: SC0300100Prosecuting Agency: LAURENS POLICE DEPARTMENTProsecuting Officer: SGT. M. GAINEYOffense: WEAPONS POSSESSION DURING AVIOLENT CRIME Offense Code: 0549Code/Ordinance Sec. 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant PRESTON SHANDS JRon 7/21/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

LAURENS MUNICIPAL COURT

250 W. LAURENS ST

LAURENS, SC 29360

364-984-3532

ARREST WARRANT

2014A3020400346

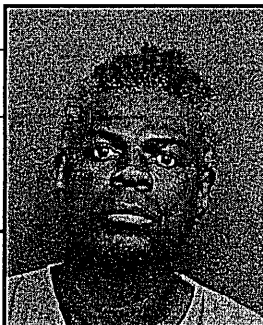
STATE OF SOUTH CAROLINA

County/ ☒ Municipality of

LAURENS

THE STATE

against



PRESTON SHANDS JR

Address:

LAURENS SC 29360

Phone: 683-1526

SSN: [REDACTED]

Sex: M Race: B Height: 6-1 Weight: 198

DL State: SC DL#: [REDACTED]

JOB: [REDACTED] Agency ORI#: SC0300100

Prosecuting Agency: LAURENS POLICE DEPARTMENT

Prosecuting Officer: SGT. M. GAINNEY

Offense: ASSAULT 1ST DEGREE

Offense Code:

3412

Code/Ordinance Sec. 16-03-0600 (C) (1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
s to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant PRESTON SHANDS JR

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

LAURENS MUNICIPAL COURT

250 W. LAURENS ST

LAURENS, SC 29360

364-984-3532

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAURENS

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

Personally appeared before me the affiant MPTL HAL MARTIN who

being duly sworn deposes and says that defendant PRESTON SHANDS JR

did within this county and state on 07/20/2014 to 07/20/2014 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LAURENS

in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0600 (C) (1) / ASSAULT 1ST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

MPTL HAL MARTIN STATES UNDER OATH BASED ON THE INVESTIGATION OF SGT. MICHAEL GAINNEY THAT PRESTON SHANDS DID COMMIT THE CRIME OF ASSAULT AND BATTERY OF THE FIRST DEGREE. PRESTON SHANDS DID, IN THE COMMISSION OF BURGLARY, BRANDISH A KNIFE; AND BEGAN SLASHING AT THE VICTIM. THIS INCIDENT OCCURRED AT STREET IN THE CITY LIMITS OF LAURENS.

WITNESSES: SGT. GAINNEY, SHARON SHANDS, J.S.

, CLARENCE KOON, AND OTHERS.

VICTIM: T.C.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAURENS

Affiant's Address 250 W LAURENS ST

LAURENS SC 29360

Affiant's Telephone 864-984-3532

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/20/2014 defendant PRESTON SHANDS JR

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of LAURENS) as set forth below:

DESCRIPTION OF OFFENSE: ASSAULT / ASSAULT & BATTERY 1ST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 07/21/2014)

C W WIER II (L.S.)

Judge Code: 8079

Judge's Address 250 W LAURENS ST

LAURENS SC 29360

Judge's Telephone 864-984-3532

Issuing Court: ☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

Case: 2014-3075

A. 296

LYNN W. LANCASTER
2014 JUL 23 P 4: 05
CLERK OF COURT
LAURENS COUNTY

ARREST WARRANT

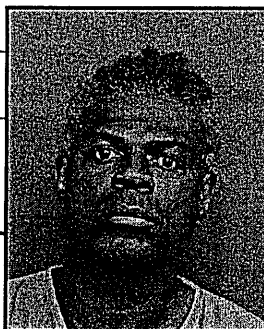
2014A3020400348

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of
LAURENS

THE STATE

against

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

AFFIDAVIT

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LAURENS

Personally appeared before me the affiant MPTL HAL MARTIN who
being duly sworn deposes and says that defendant PRESTON SHANDS JR
did within this county and state on 07/20/2014 to 07/20/2014 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LAURENS
in the following particulars:
DESCRIPTION OF OFFENSE: 16-11-0311 / BURGLARY 1ST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

MPTL HAL MARTIN STATES UNDER OATH BASED ON THE INVESTIGATION OF SGT. MICHAEL GAINNEY THAT PRESTON
SHANDS DID COMMIT THE CRIME OF BURGLARY IN THE FIRST DEGREE. PRESTON SHANDS DID UNLAWFULLY ENTER THE
RESIDENCE BY BREAKING A WINDOW. PRESTON SHANDS ENTERED THE RESIDENCE WITH THE INTENT OF ASSAULTING A
VICTIM, WHO SEEKED REFUGE WITHIN THE RESIDENCE, WITH A KNIFE. THIS INCIDENT OCCURRED AT _____ STREET
IN THE CITY LIMITS OF LAURENS.

WITNESSES: SGT. GAINNEY, T.C.

J.S.

, SHARON SHANDS, AND OTHER

VICTIM: CLARENCE KOON

Signature of Affiant

Affiant's Address 250 W LAURENS ST
LAURENS SC 29360
Affiant's Telephone 864-984-3532

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/20/2014 defendant PRESTON SHANDS JR

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of LAURENS) as set forth below:**DESCRIPTION OF OFFENSE:** BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 07/21/2014)

C W WIER-II

Judge Code: 8079

Judge's Address 250 W LAURENS ST
LAURENS SC 29360

Judge's Telephone 864-984-3532Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 2014-3075

ORIGINAL

PRESTON SHANDS JR

Address: LAURENS SC 29360
Phone: 683-1526 SSN: [REDACTED]
Sex: M Race: B Height: 6-1 Weight: 198
DL State: SC DL #: [REDACTED]
DOB: [REDACTED] Agency ORI#: SC0300100
Prosecuting Agency: LAURENS POLICE DEPARTMENT
Prosecuting Officer: SGT. M. GAINNEY
Offense: BURGLARY 1ST DEGREE
Offense Code: 0079
Code/Ordinance Sec. 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

_____. The accused
is to be arrested and brought before me to be
dealt with according to law.

_____. (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant PRESTON SHANDS JR

on 7/21/14

[Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

LAURENS MUNICIPAL COURT
250 W. LAURENS ST
LAURENS, SC 29360
864-984-3532

LAURENS COUNTY
CLERK OF COURT
2014 JUL 23 P 1:05
LYNN W. LANCASTER

ROA 298

ARREST WARRANT
2014A3020400363

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LAURENS

THE STATE
against

PRESTON SHANDS JR

Address: LAURENS SC 29360
Phone: 683-1526 SSN: [REDACTED]
Sex: M Race: B Height: 6-1 Weight: 198
DL State: SC DL#: [REDACTED]
DOB: [REDACTED] Agency ORI#: SC0300100
Prosecuting Agency: LAURENS POLICE DEPARTMENT
Prosecuting Officer: DET. TONY LYNCH
Offense: KIDNAPPING/ KIDNAPPING
Offense Code: 0095
Code/Ordinance Sec. 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☒ Municipality of
LAURENS SC. The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant PRESTON SHANDS JR
on 7/29/14

H. Black
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

LAURENS MUNICIPAL COURT
250 W. LAURENS ST
LAURENS, SC 29360
864-984-3532

GS
8-29-14
9:00AM

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LAURENS

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 616

Personally appeared before me the affiant TONY LYNCH who
being duly sworn deposes and says that defendant PRESTON SHANDS JR
did within this county and state on 07/20/2014 to 07/20/2014 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LAURENS)
in the following particulars:
DESCRIPTION OF OFFENSE: 16-03-0910 / KIDNAPPING/ KIDNAPPING

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

DET. TONY LYNCH STATES UNDER OATH THAT PRESTON SHANDS JR. DID COMMIT THE CRIME OF KIDNAPPING BY
UNLAWFULLY SEIZING, CONFINING, KIDNAP AND HOLD AGAINST THE WILL OF ONE SHARON COPELAND SHANDS ON JULY
20TH 2014. THIS OFFENSE OCCURRED AT # STREET AND WITH IN THE LAURENS CITY LIMITS.

Signature of Affiant

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LAURENS

Affiant's Address 201 W MAIN ST, SUITE B
LAURENS SC 29360
Affiant's Telephone 864-984-3532

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/20/2014 defendant PRESTON SHANDS JR
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of LAURENS) as set forth below:
DESCRIPTION OF OFFENSE: KIDNAPPING / KIDNAPPING

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on July 29, 2014
Lynn W. Lancaster (S.)
Signature of Issuing Judge

Judge Code: 6980

Judge's Address

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 2014-3075

ORIGINAL

A TRUE COPY OF ORIGINAL
Lynn W. Lancaster
Laurens County CCCP & GS

A. 298

WITNESSES

Hal Martin
Laurens Police Department

WARRANT NUMBER

2014A3020400344

*Ture Bitt**Walter E. Danner*

Foreman of the Grand Jury

Date: *10/3/14*

VERDICT

*Guilty**Rehine Digger*
Foreman *5/20/15*

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2014

Indictment # 14GS30- *1477*

THE STATE

vs.

Preston Shands Jr

INDICTMENT FOR

Attempted Murder
§16-03-0029

CDR: 3410

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

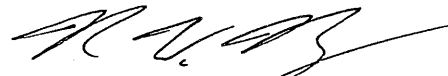
COUNTY OF LAURENS

Attempted Murder
§16-03-0029

At a Court of General Sessions, convened on the 3rd day of October, 2014, the Grand Jurors of Laurens County present upon their oath:

That Preston Shands Jr did, on or about July 20, 2014, in Laurens County, willfully and unlawfully, with the intent to kill and with malice aforethought, attempt to kill Sharon Shands, in violation of Section 16-3-29 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Assistant Solicitor

WITNESSES

Al Martin
Laurens Police Department

WARRANT NUMBER

2014A3020400345

Ture Bill
Walter E. Dyer
Foreman of the Grand Jury

Date: *10/3/14*

VERDICT

Guilty
Robert Dyer
Foreman
5/27/15

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2014

Indictment # 14GS30- *1478*

THE STATE

vs.

Preston Shands Jr

INDICTMENT FOR

Possession of Weapong during Violent Crime

§16-23-0490

CDR: 0549

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

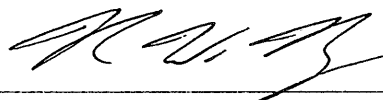
COUNTY OF LAURENS

Possession of Weapon During Violent Crime
§16-23-0490

At a Court of General Sessions, convened on the 3rd day of October, 2014, the Grand Jurors of Laurens County present upon their oath:

That Preston Shands Jr did, on or about July 20, 2014, in Laurens County, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Attempted Murder, Kidnapping, and/or First Degree Burglary, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Assistant Solicitor

WITNESSES

Hal Martin
Laurens Police Department

WARRANT NUMBER

2014A3020400346

*Ture Bell**Walter E. [Signature]*

Foreman of the Grand Jury

Date: *10/3/14*

VERDICT

*Guilty**[Signature]*
Foreman *5/27/15*

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2014

Indictment # 14GS30- *1479*

THE STATE

vs.

Preston Shands Jr

INDICTMENT FOR

Assault & Battery

§16-03-0600

CDR: 3412

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

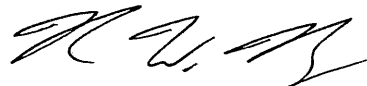
COUNTY OF LAURENS

Assault & Battery
§16-03-0600

At a Court of General Sessions, convened on the 3rd day of October, 2014, the Grand Jurors of Laurens County present upon their oath:

That Preston Shands Jr did, on or about July 20, 2014, in Laurens County, willfully and unlawfully injure another person, to wit: T.C. , and the act occurred during the commission of a robbery, burglary, kidnapping, or theft, or he did offer or attempt to injure another person with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury, or occurred during the commission of a robbery, burglary, kidnapping, or theft, in violation of the provisions of Section 16-3-600 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Assistant Solicitor

WITNESSES

Hal Martin
Laurens Police Department

WARRANT NUMBER

2014A3020400347

Ture Bell

Foreman of the Grand Jury

Date: *10/3/14*

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2014

Indictment # 14GS30- 1480

THE STATE

vs.

Preston Shands Jr

Nolle Pros

5/28/15

Wamen [Signature]

INDICTMENT FOR

Assault & Battery
§16-03-0600

CDR: 3412

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF LAURENS

Assault & Battery
§16-03-0600

At a Court of General Sessions, convened on the 3rd day of October, 2014, the Grand Jurors of Laurens County present upon their oath:

That Preston Shands Jr did on or about July 20, 2014, in Laurens County, willfully and unlawfully injure another person, to wit: J.S. and the act occurred during the commission of a robbery, burglary, kidnapping, or theft, or he did offer or attempt to injure another person with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury, or occurred during the commission of a robbery, burglary, kidnapping, or theft, in violation of the provisions of Section 16-3-600 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Assistant Solicitor

WITNESSES

Hal Martin
Laurens Police Department

WARRANT NUMBER

2014A3020400348

*Ture Bell**Willie E. Denson*

Foreman of the Grand Jury

Date: *10/3/14*

VERDICT

*Guilty**Regina Digg*
Foreman *5/23/15*

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2014

Indictment # 14GS30- *1481*

THE STATE

vs.

Preston Shands Jr

INDICTMENT FOR

Burglary
§16-11-0311

CDR: 0079

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

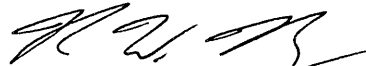
COUNTY OF LAURENS

Burglary
§16-11-0311

At a Court of General Sessions, convened on the 3rd day of October, 2014, the Grand Jurors of Laurens County present upon their oath:

That Preston Shands Jr did, on or about July 20, 2014, in Laurens County, willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in immediate flight there from, he or another participant in the crime; was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Clarence Koon, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Assistant Solicitor

WITNESSES

Tony Lynch

Laurens Police Department

WARRANT NUMBER

2014A3020400363

Foreman of the Grand Jury

Date: 10/3/14

VERDICT

GUILTY
Belinda Biggs
Foreman 5/27/15

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2014

Indictment # 14GS30-1482

THE STATE

vs.

Preston Shands Jr

INDICTMENT FOR

Kidnapping

§16-03-0910

CDR: 0095

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF LAURENS

Kidnapping
§16-03-0910

At a Court of General Sessions, convened on the 3rd day of October, 2014, the Grand Jurors of Laurens County present upon their oath:

That Preston Shands Jr did, on or about July 20, 2014, in Laurens County, willfully and unlawfully with criminal intent, seize, confine, inveigle, decoy, kidnap, abduct or carry away Sharon Shands without authority of law, in violation of Section 16-3-910 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Assistant Solicitor

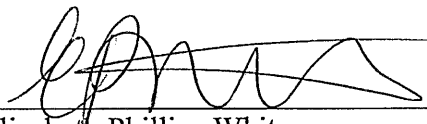
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
State of South Carolina	)	
	)	Warrants: 2014A3020400344-348;
	)	2014A3020400363
v.	)	
	)	NOTICE OF INTENT TO SEEK LIFE
Preston Shands, Jr.	)	WITHOUT PAROLE
	)	

Pursuant to S.C. Code Ann. § 17-25-45 (H), the State of South Carolina hereby notifies Defendant Preston Shands, Jr. that he is charged with Attempted Murder, First-degree Burglary, and Kidnapping. These are defined as "most serious" offenses in S.C. Code Ann § 17-25-45 (C)(1).

On January 27, 1976, Defendant was convicted of First-degree Murder, Conspiracy to Rob, and Robbery. Upon information and belief, Florida's First-degree Murder statute would be classified as a "most serious" offense under Sections 17-25-45(A) and (C)(1).

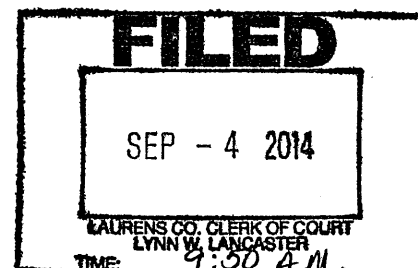
The State further gives notice that, upon a conviction for Attempted Murder, First-degree Burglary, and/or Kidnapping, the State intends to seek a term of imprisonment for life without the possibility of parole pursuant to Section 17-25-45 (A).

Respectfully submitted,



Elizabeth Phillips White
Assistant Solicitor
Eighth Judicial Circuit
P.O. Box 516
Greenwood, South Carolina 29648
(864) 942-8828

September 4, 2014
Laurens, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF Laurens
STATE VS.Preston Shands Jr

AKA:

Race: AFRICAN AME Sex: M Age: 58DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Laurens, SC 29360DL#: [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: Murder / Attempted Murder

IN THE COURT OF GENERAL SESSIONS

ROA 312

INDICTMENT/CASE#: 14GS30-1477A/W#: 2014A3020400344Date of Offense: 7/20/2014S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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

White, Elizabeth2/1/82
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 LIFE WITHOUT PAROLE 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 State Department of Corrections. 311 DAYS☐ 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

PTUP _____

_____ 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, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2130Sentence Date: 5-27-15

A. 312

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
 STATE VS.
Preston Shands Jr

AKA: _____
 Race: AFRICAN AME Sex: M Age: 58
 DOB: [REDACTED] SS#: [REDACTED]
 Address: _____
 City, State, Zip: Laurens, SC 29360
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Weapons/Poss Weapon During Violent Crime, if not also sentenced to life with

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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: [Signature] 7/1/12
White, Elizabeth SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon 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 State Department of Corrections. 311 DAYS
☐ 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Lynn W. Lancaster
Goy Holston

IN THE COURT OF GENERAL SESSIONS

ROA 313

INDICTMENT/CASE#: 14GS30-1478

A/W#: 2014A3020400345

Date of Offense: 7/20/2014

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

☐ §17-25-45
 w/minor 1st or Lewd Act)

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: [Signature] 7/1/12
White, Elizabeth SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon 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 State Department of Corrections. 311 DAYS
☐ 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

PTUP _____
 _____ 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,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2130

Sentence Date: 5/27/15

[Signature]
2130
5/27/15
A. 313

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
 STATE VS.
Preston Shands Jr

AKA: _____
 Race: AFRICAN AME Sex: M Age: 58
 DOB: [REDACTED] SS# [REDACTED]

Address: _____
 City, State, Zip: Laurens, SC 29360

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Assault / Assault & Battery, 1st degree

IN THE COURT OF GENERAL SESSIONS

ROA 314

INDICTMENT/CASE#: 14GS30-1479

A/W#: 2014A3020400346

Date of Offense: 7/20/2014

S.C. Code § : 16-03-0600

CDR Code #: 3412

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0600 of the S.C. Code of Laws, bearing CDR Code # 3412
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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: [Signature] 7/18/2
White, Elizabeth 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 10 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 State Department of Corrections. 311 Days

☐ 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 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

PTUP _____

_____ 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,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (03/2011)

Presiding Judge

Judge Code: _____

Sentence Date: _____

A. 314

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
 STATE VS.
Preston Shands Jr

AKA: _____
 Race: AFRICAN AME Sex: M Age: 58
 DOB: [REDACTED] SS#: [REDACTED]
 Address: _____
 City, State, Zip: Laurens, SC 29360
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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: [Signature] 7/18/2
White, Elizabeth 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 LIFE WITHOUT PAROLE 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 State Department of Corrections. 311 Days
☐ 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 (Criminal
 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	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

IN THE COURT OF GENERAL SESSIONS
ROA 315

INDICTMENT/CASE#: 14GS30-1481

A/W#: 2014A3020400348

Date of Offense: 7/20/2014

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ 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,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (03/2011)

Presiding Judge

Judge Code: _____

Sentence Date: _____

A. 315

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
 STATE VS.
Preston Shands Jr

AKA: _____
 Race: AFRICAN AME Sex: M Age: 58
 DOB: [REDACTED] SS#: [REDACTED]
 Address: _____
 City, State, Zip: Laurens, SC 29360
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Kidnapping

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC § 17-25-45 w/minor 1st or Lewd Act)

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: [Signature] 7/1/12
White, Elizabeth 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 LIFE WITHOUT PAROLE 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 State Department of Corrections. 30 DAYS
☐ 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 (Criminal 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 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114 (BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCCA Surcharge) \$5 \$ 5
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

IN THE COURT OF GENERAL SESSIONS
ROA 316

INDICTMENT/CASE#: 14GS30-1482

A/W#: 2014A3020400363

Date of Offense: 7/20/2014

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ 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,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (03/2011)

Presiding Judge

Judge Code: _____

Sentence Date: _____

A. 316

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

Court of Appeals Case No. 2015-001199

The State, ... Respondent

v.

Preston Shands, Jr., ... Appellant.

Rule 210(g), SCACR Certification

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material

Respectfully Submitted

By 

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

Attorney for Appellant

August 29, 2016
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

RECEIVED

JAN 14 2016

SC Court of Appeals

Court of Appeals Case No. 2015-001199

The State, ... Respondent

v.

Preston Shands, Jr., ... Appellant.

Petition to Transfer Appeal to the Supreme Court

Pursuant to Rule 204(a), SCACR, the appellant, Preston Shands, Jr., respectfully petitions this Court issue an order transferring this appeal from the Court of Appeals to the Supreme Court.

Question VIII in Mr. Shands Initial Brief of Appellant, filed on January 11, 2016, presents the following issue for review:

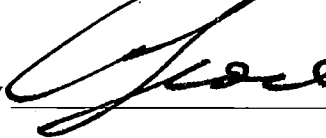
Did the trial judge err by denying Mr. Shands' motion for a directed verdict on the kidnapping charge because the kidnapping statute, as applied to Mr. Shands, is unconstitutionally vague and overbroad because it did not put him on notice of what conduct is prohibited?

Pursuant to 203(d)(1)(A)(ii), SCACR, because this issue involves a challenge to the constitutionality of a state statute, the Supreme Court must consider Mr. Shands' appeal.

Mr. Shands, therefore, respectfully requests this Court issue an order transferring
this appeal to the Supreme Court.

IT IS SO MOVED.

Respectfully Submitted

By 

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

Attorney for Appellant

January 12, 2016
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JAN 14 2016

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

SC Court of Appeals

Court of Appeals Case No. 2015-001199

The State, ... Respondent

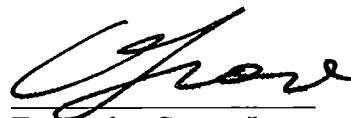
v.

Preston Shands, Jr., ... Appellant.

PROOF OF SERVICE

I certify that I have served the petition to transfer this appeal to the Supreme Court by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

J. Benjamin Aplin, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211



E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

January 12, 2016
Greenwood, South Carolina

RECEIVED

JAN 20 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Edward W. Miller, Circuit Court Judge
Appellate Case No. 2015-001199

THE STATE,

Respondent,

vs.

PRESTON SHANDS, JR.,

Appellant.

**RETURN TO PETITION
TO TRANSFER APPEAL
TO THE SUPREME COURT**

Respondent now makes its return to Appellant's motion to transfer this appeal to the Supreme Court under the authority of Rules 203(d)(1)(A)(ii), SCACR and 204(a), SCACR based on his challenge to the kidnapping statute, S.C. Code 16-3-910, as unconstitutionally vague and overbroad. But see State v. Smith, 275 S.C. 164, 268 S.E.2d 276 (1980) (finding section 16-3-910 is not unconstitutionally vague and finding the defendant lacked standing to challenge the statute as overbroad).

In the instant case, the evidence shows the victim announced she was leaving the house after Appellant started cursing at her, Appellant kept closing the garage door while victim tried to open it, and Appellant pulled victim's hair to keep her from leaving. Trial transcript pp. 58-59;

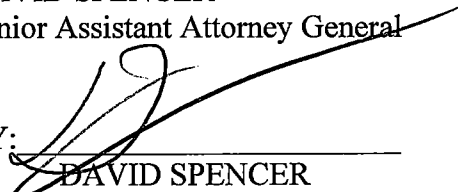
pp. 66-67. Therefore, due to the previous determination the statute is not vague, and the evidence showing Appellant lacks standing based on his conduct to challenge the statute as overbroad, the issue is not a significant one. Smith.

However, based on the plain language of these rules, it would appear to Respondent that this Court is constrained to transfer this case as a ministerial duty. However, Respondent respectfully reserves the right to move before the Supreme Court for transfer of this case back to this Court under its authority to transfer cases to this Court where it determines the issue raised is not a significant one. Rule 203(d)(1)(A)(ii), SCACR.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 20, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal From Laurens County
Honorable Edward W. Miller, Circuit Court Judge

JAN 20 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

vs.

PRESTON SHANDS, JR.,

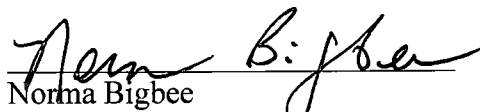
APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the Return To Petition To Transfer Appeal To The Supreme Court on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to Ernest Charles Grose, Jr., Esquire, 404 Main St., Greenwood, SC 29646.

I further certify that all parties required by Rule to be served have been served.

This 20th day of January, 2016.


Norma Bigbee
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Respondent,

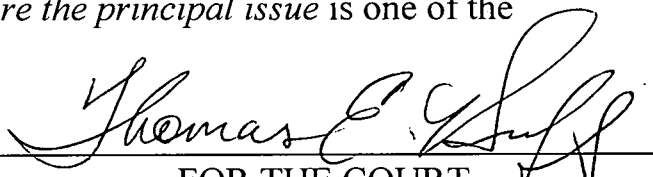
v.

Preston Shands Jr., Appellant.

Appellate Case No. 2015-001199

ORDER

Appellant's motion to transfer this appeal to our Supreme Court is denied. See Rule 203(d)(1)(A)(ii), SCACR (providing that the notice of appeal shall be filed with the Clerk of our Supreme Court in a case involving a challenge to the constitutionality of a state law *where the principal issue* is one of the constitutionality of the law).



FOR THE COURT

Columbia, South Carolina

cc:

E Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
David Spencer, Esquire

FILED
2/19/16

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

Court of Appeals Case No. 2015-001199

RECEIVED

SEP 26 2016

SC Court of Appeals

The State, ... Respondent

v.

Preston Shands, Jr., ... Appellant.

Final Brief of Appellant

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
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(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Appellant Preston Shands, Jr.

STATEMENT OF ISSUES ON APPEAL

Question I

Did the trial court judge err by not applying the third step of *Batson's* comparative juror analysis when the Solicitor struck three men based on their prior criminal convictions but sat a similarly situated female who also had a criminal conviction?

Question II

Did the trial court judge err by not quashing the indictment because the grand jury presentment process in Laurens County, including in Mr. Shands' case, violates state law and Equal Protection?

Question III

Did the trial judge err by allowing the Solicitor to impeach Mr. Shands by asking him if he had been previously convicted of a violent felony, suggesting to the jurors that Mr. Shands is a violent person, when he was on trial for multiple violent felony charges?

Question IV

Did the trial judge err by not instructing the jurors about the law of involuntary intoxication when Mr. Shands' testimony supported providing the instruction?

Question V

Did the trial judge, after sustaining Mr. Shands objection to the Solicitor's improper closing argument, err by not striking that argument from the record and instructing the jurors to disregard it?

Question VI

Did the the trial judge err by charging the jurors they could infer malice from the use of a deadly weapon when that instruction is contrary to *State v. Belcher* and was an impermissible comment on the facts of the case?

Question VII

Did the trial judge err in failing to require the State to open fully on the law and the facts of the case and replying only to new arguments of defense counsel when the defendant was deprived of a fair trial in violation of the due process clause of Article I § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment to the Constitution of the United States of America by his counsel not being able to respond to the arguments made by the State in its rebuttal closing argument?

Question VIII

Did the trial judge err by denying Mr. Shands' motion for a directed verdict on the kidnapping charge because the kidnapping statute, as applied to Mr. Shands, is unconstitutionally vague and overbroad because it did not put him on notice of what conduct is prohibited?

STATEMENT OF CASE

On July 21, 2015, the State charged the appellant, Preston Shands, Jr., with first-degree burglary, kidnapping, attempted murder, first-degree assault and battery, and possession of a knife during the commission of a violent crime. Record on Appeal (hereinafter “R.”) 294-98. The Laurens County Grand Jury indicted Mr. Shands for these charges on October 3, 2014. R. 299-310.

On September 4, 2014, the State served notice of intent to seek imprisonment for life without the possibility of parole, pursuant to S.C. Code § 17-25-45(A), if Mr. Shands ultimately was convicted for first-degree burglary, kidnapping, and/or attempted murder. R. 311.

The State tried Mr. Shands before the Honorable Edward W. Miller and a jury on May 26-27, 2015. Elizabeth White and Warren Mowry, both of the Eighth Circuit Solicitor’s Office, represented the State. Charles Grose represented Mr. Shands. The jurors convicted Mr. Shands as charged. Judge Miller sentenced Mr. Shands to life imprisonment without the possibility of parole for first-degree burglary, kidnapping, and attempted murder. Judge Miller also imposed sentences of ten years for first-degree assault and battery and five years for possession of a knife during the commission of a violent crime. R. 267, ll. 6-14.

On May 28, 2015, Mr. Shands filed his notice of appeal. This brief follows.

ARGUMENT

Factual Background

On Sunday, July 20, 2014, Sharron Copeland Shands had been married to Preston Shands, Jr. for ten years. Mr. Shands watched the couple's two minor children, T.C. and J.S.,¹ while his wife went to church. That evening, Mr. and Ms. Shands got into an argument. Ms. Shands left the house through the garage. The garage door was half closed. Mr. Shands pulled Ms. Shands by the hair. She went next door to the home of Clarence ("Bill") and Martha Koon. Mr. Shands broke a sliding glass door, entered the Koons' home, and cut Ms. Shands. Ms. Shands was treated for her injuries at Greenville Memorial Hospital. R. 55-67. T.C., J.S., Bill Koon, and Martha Koon also testified about these facts. R. 71-78, 81-84, 86-94, 98-100. Bill Koon testified that Mr. Shands' was cut and covered in blood, but did not see how it occurred. R. 95, l. 95, l. 19 – 96, l. 11. T.C. also got cut, which was the basis of the first-degree assault and battery charge. R. 7, l. 22 – 78, l. 16.

Ms. Shands and T.C. agreed that, while Mr. and Ms. Shands had argued before, this evening was the first time that Mr. Shands had ever violently assaulted Ms. Shands. R. 70, ll. 2-9; 79, l. 20 – 80, l. 11. J.S. testified that Mr. Shands' conduct was "out of the ordinary" and he had "never seen [Mr. Shands] in that kind of state of mind before." R. 85, ll. 16-25. Bill Koon testified Mr. Shands is a "real nice guy," a "good neighbor," and that their children played together. He too had never seen Mr. Shands act this way before. R. 96, l. 15 – 97, l. 7. Martha Koon testified Mr. Shands was a "good neighbor," "very friendly, very polite," and "seemed like a good guy."

¹ T.C. is Ms. Shands son from a prior relationship. Mr. Shands helped Ms. Shands raise T.C. J.S. is Mr. and Ms. Shands son together. R. 67, l. 19 – 68, l. 10.

Mr. Shands testified he does not have a memory of the incident but, after reviewing the evidence, realized his conduct was responsible for his wife's injuries. He testified about the events, which he could remember, leading up to the incident. After Mr. Shands cooked breakfast for the family, Ms. Shands went to church. Mr. Shands took care of the two boys. They cleaned house. Mr. Shands helped T.C., who has a learners permit, practice driving. Mr. Shands had one Bud Light. Mr. Shands had bought some "homemade moonshine" at work. He started drinking it. It was too strong to drink straight, so he mixed it with Coca Cola. Normally, Mr. Shands goes to sleep when he drinks alcohol, but this time he had a different reaction. "This had some effect that took me slap clean out of my mind." R. 188-96. Travis McBeth testified that Ms. Shands acknowledged to him the possibility that Mr. Shands had been poisoned. R. 210, l. 15 – 211, l. 18. Mr. Shands contended at trial that he lacked criminal intent, and he requested a juror instruction on involuntary intoxication.

Question I

Did the trial court judge err by not applying the third step of *Batson's* comparative juror analysis when the Solicitor struck three men based on their prior criminal convictions but sat a similarly situated female who also had a criminal conviction?

The trial court judge conducted *voir dire*. Only two potential jurors—numbers 118 and 122—responded to any of the trial judge's questions. R. 13, l. 9 – 14, l. 11. All potential jurors affirmed they could be fair to both the prosecution and Mr. Shands. R. 11, l. 13 – 15, l. 18. Jury selection proceeded as follows (R. 16-22):

Juror #	Gender	State	Defense	Jurors
85	Female		1	
157	Male		2	
1	Female		3	
17	Female			1

126	Female	1		
162	Male			2
15	Female			3
118	Female		4	
36	Female			4
125	Male	2		
108	Female			5
54	Female			6
182	Female		5	
91	Male		6	
5	Female			7
115	Male	3		
114	Female		7	
156	Male	4		
82	Female			8
53	Male			9
69	Male			10
121	Female		8	
170	Female			11
44	Male		9	
68	Female			12
99	Female		A-1	
127	Female			A

During jury selection, the prosecutor exercised four of her possible five preemptory challenges to remove jurors 126 (a female), 125 (a male), 115 (a male) and 156 (a male). The resulting jury consisted of nine women and three men.² R. 16, l. 20 – 22, l. 1.

Pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), Mr. Shands challenged the prosecutor striking jurors 125, 115, and 156 (all men) based on gender. R. 22, l. 2 – 23, l. 4. See also *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994) (held that intentional discrimination on the basis of gender by state actors in use of preemptory strikes in jury selection violates equal protection clause).

² The alternate was also a woman. R. 21, l. 22 – 22, l. 1.

The Solicitor explained her strikes. Jurors 125 and 156 had convictions for criminal domestic violence. She pointed out, “[T]his is a case involving domestic violence.” Juror 115 had “convictions for lottery law violations.” The Solicitor, however, acknowledged seating juror 54, a female, with a fraudulent check conviction. The Solicitor had a strike available to her when she sat juror 54.³ R. 23, ll. 5-23.

Mr. Shands argued, “[T]here is really no way to separate juror number 54 which is the sixth juror [sat] who is a black female who does have a conviction for [a] fraudulent check. . . . If you are going to use criminal record as a reason to strike somebody then you have got to be consistent otherwise.” R. 23, l. 24 – 24, l. 10.

The trial judge was confused because the initial motion was based on the prosecutor striking men, and Mr. Shands then pointed to juror number 54, a female. Counsel tried to explain that the State seating a similarly situated female juror pertained to the third step of the *Batson* analysis. The trial court denied Mr. Shands’ *Batson* motion. R. 24, l. 12 – 26, l. 3. Mr. Shands renewed his objection prior to the trial court swearing the jurors. R. 32, ll. 9-12.

In *Batson*, the United States Supreme Court outlined a three-step process for evaluating claims that peremptory challenges have been exercised in a manner violative of the Equal Protection Clause. First, the opponent of the peremptory challenge must make a *prima facie* showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the proponent of the challenge to provide a race neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the opponent of the

³ The Solicitor also identified two “other jurors who had contact with law enforcement.” Juror 53 (a male) had “a pending simple possession charge,” and juror 170 (a female) had arrests for unlawful neglect and simple possession. R. 23, ll. 5-23.

challenge has proved purposeful discrimination. The ultimate burden always rests with the opponent of the challenge to prove purposeful discrimination.

State v. Giles, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014) (internal citations omitted), cert. denied *Giles v. South Carolina*, 134 S. Ct. 2888 (2014).

Here, the trial court did not properly apply the third step of *Batson*. “In the third step, the opponent of the strike must show that the race-neutral explanation given was mere pretext.” *Payton v. Kearse*, 329 S.C. 51, 55, 495 S.E.2d 205, 208 (1998). Pretext “generally is established by showing the party did not strike a similarly-situated member of another race or gender.” *State v. Stewart*, 413 S.C. 308, 314, 775 S.E.2d 416, 419 (Ct. App. 2015). Mr. Shands pointed to the Solicitor seating juror 54, a female, who had a fraudulent check conviction. The trial judge, however, operated under the mistaken belief that the trial court could not consider a similarly situated female juror because Mr. Shands challenged the Solicitor striking male jurors.

Stewart is instructive for two reasons. First, much like this case, *Stewart* reviewed the trial court’s error by not correctly applying the third step of *Batson*. Second, *Stewart* involved a prosecutor attempting to justify preemptory strikes based on jurors’ criminal history. In *Stewart*, the State struck African-American jurors with prior involvement with law enforcement while seating Caucasian jurors that also had prior involvement with law enforcement. The Court of Appeals held, “[E]ven though the State offered a racially-neutral explanation for striking the African American jurors, the State negated the reason by seating similarly-situated Caucasian jurors.” *Stewart*, 413 S.C. at 317, 775 S.E.2d at 421. See *Miller-El v. Dretke*, 545 U.S. 231, 241 (2005) (“If a prosecutor’s proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove

purposeful discrimination to be considered at *Batson* 's third step.”); *State v. Oglesby*, 298 S.C. 279, 281, 379 S.E.2d 891, 892 (1989) (finding the solicitor negated his neutral reason when he seated a white female juror who was similarly situated). Just as it did in *Stewart*, the State in this case negated the gender-neutral reason for striking three men by seating a similarly situated female juror.

Finally, in addition to seating a similarly situated female juror, the totality of the circumstances militates in favor of ordering a new trial. See *State v. Scott*, 406 S.C. 108, 113, 749 S.E.2d 160, 163 (Ct. App. 2013) (“Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record.”) (citing *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001)). During jury selection in this case, the Solicitor had twenty-seven decisions on whether to exercise one of her preemptory strikes. She struck three of the nine men (33%) presented to her. She struck just one of the eighteen women (about 5.5%) presented to her. The Solicitor, therefore, was six times more likely to strike men than women. As will be seen in Question V, *infra*, the Solicitor directed her closing argument towards the female jurors, including arguing that Mr. Shands considered his wife property.

This Court should order a new trial.

Question II

Did the trial court judge err by not quashing the indictment because the grand jury presentment process in Laurens County, including in Mr. Shands’ case, violates state law and Equal Protection?

Mr. Shands filed a written motion to quash the indictment. R. 269-85. The trial court convened a hearing on this motion, during which the Solicitor’s Office confirmed the essential facts. In Laurens County, an Administrative Assistant in the Solicitor’s

Office prepares indictments. The Administrative Assistant lists the law enforcement officer that was the affiant on the warrant as the sole witness to be called before the Grand Jury. The indictments are then reviewed and signed by an Assistant Solicitor. When the Grand Jury meets, a police officer from the arresting agency obtains copies of the indictments from the Solicitor's Office and presents them to the grand jurors. The testifying police officer, who is not the same law enforcement officer listed on the indictment, does not have any personal knowledge of the case. The Solicitor's Office **does not** keep a record of the identity of the person **actually** testifying before the Laurens County Grand Jury. R. 26, l. 8 – 29, l. 23.⁴ The State followed this procedure in Mr. Shands' case. *See also* warrants, R. 294-98, and indictments, R. 299-310.

A. Constitutional Right to a Challenge a Defective Grand Jury Process.

The right of an accused to have a grand jury review the charges against him is a Constitutional right enumerated in the Fifth Amendment to the United States Constitution as well as in Article I, §11 of the South Carolina Constitution. "It is the right of the accused to have the question of his guilt decided by two competent juries before he is condemned to punishment." *State v. Rector*, 158 S.C. 212, 236, 155 S.E. 385, 394 (1930) (quoting *Crowley v. United States*, 194 U.S. 461, 473 (1904)).

It has long been recognized that when an indictment is presented, the accused "may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly

⁴ Mr. Shands renewed his objection prior to the trial court swearing the jurors. R. 32, ll. 9-12.

and properly determined.” *State v. Faile*, 43 S.C. 52, 20 S.E. 798 (1895). *See also*, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). Our Supreme Court has recognized that questions about the fairness and impartiality of the grand jury are “so closely analogous” to questions regarding the qualification of jurors, that questions of the latter have bearing on considering questions related to the former. *Rector*, 158, S.C. at 240, 155 S.E. at 395 (citing *State v. Richardson*, 149 S.C. 121, 146 S.E. 676 (1928)).

A defendant must challenge the legality and sufficiency of the process of the grand jury *before* the jury renders a verdict in order to preserve the error for direct appellate review. *See Evans v. State*, 363 S.C. 495, 509 (2005) (citing *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005)).

“Grand jury proceedings are presumed to be regular unless clear evidence indicates otherwise.” *State v. Moses*, 390 S.C. 502, 521, 702 S.E.2d 395, 405 (Ct. App. 2010) (citing *State v. Thompson*, 305 S.C. 496, 501, 409 S.E.2d 420, 424 (1991)). Our Supreme Court has recognized the incredible burden this standard places on defendants. “It is usually difficult for a defendant to make such a claim . . . [because] speculation about ‘potential’ abuse of grand jury proceedings cannot substitute for evidence of *actual* abuse as grounds for quashing an otherwise lawful indictment. Fortunately, given the nature of State Grand Jury proceedings, there is a complete record available for analysis.” *State v. Thrift*, 312 S.C. 282, 302-303, 440 S.E.2d 341, 352 (1993) (quoting *State v. Thompson*, 305 S.C. at 502, 409 S.E.2d at 424 (emphasis in the original)). Mr. Shands’ case, however, was not a State Grand Jury case.

Pursuant to *Gentry*, Mr. Shands challenged the indictments and the grand jury process before his trial jury was sworn. The law also gives him the burden of proving actual irregularity or abuse by clear evidence pursuant to *Thrift* and *Evans*. During the *State v. Carrier* oral argument,⁵ our Supreme Court made it clear that failure to present and preserve evidence on the record was fatal to a defendant wishing to make one of the very same arguments Mr. Shands made at trial when he challenge the indictment itself as well as the perfunctory process that produced the indictment. Here, the Solicitor's Office stipulated to the procedures followed in this case and other cases in Laurens County. R. 26, l. 8 – 29, l. 23.

B. Correcting Abuse of the Grand Jury Process in South Carolina.

In 1981, the South Carolina Supreme Court began an almost 12-year journey addressing how the State was allowed to go about presenting indictments to grand juries. *State v. Capps* began that journey by finding that “the practice of using a solicitor or *other officer of the State*, as the sole witness before the grand jury, to provide only a summary of the evidence could be abused and we strongly suggest it be abandoned unless no alternative is available.” 276 S.C. 59, 62, 275 S.E.2d 872, 873 (1981) (emphasis added).

Chief Justice Lewis authored a vigorous dissent in *Capps* in which he noted that the Court's previous call for a comprehensive study and ultimate revision in some respects to the current grand jury system had gone unheeded. He, therefore, felt that not only was the Court “compelled in the interests of justice” to reevaluate the

⁵ S.C.S.Ct. Memorandum Opinion No. 2014-MO-043 (filed October 22, 2014). Oral argument found at <http://media.sccourts.org/videos/2012-212777.mp4> (last viewed May 24, 2015).

system, but also that it was their duty given the "significance of the right involved" to "give this constitutional provision meaning." *Capps*, 276 S.C. at 63-64, 275 S.E.2d at 847. Chief Justice Lewis saw a "pressing need for change as is evidenced by the further deteriorating nature of the proceedings." *Capps*, 276 S.C. at 64-65, 275 S.E.2d at 874.

Chief Justice Lewis' greatest concern arose over the use of hearsay evidence to obtain indictments. Drawing on the Court's decision in *State v. Williams*, an opinion that he had authored, Chief Justice Lewis argued that the Court had not intended to create "a limitless haven" for the routine use of hearsay in grand jury presentments. He noted that the "deliberate use of hearsay testimony is a questionable practice which seriously erodes the function of the grand jury." *Capps* 276 S.C. at 67-68, 275 S.E.2d at 876, referencing *State v. Williams*, 263 S.C. 290, 210 S.E.2d 298 (1974) and *U.S. v. Gramolini*, 301 F.Supp. 39 (D. R.I. 1969).

Chief Justice Lewis further found that the routine acquisition of indictments based solely on hearsay testimony requires that the indictment be dismissed. He reasoned:

In order to provide more than lip service to the constitutional provision here in question, I would hold that an indictment cannot, as a matter of course, be acquired solely on oral hearsay testimony. The routine practice of one individual appearing before the proceeding to give his "third hand" capsule version of facts which he has no direct knowledge without some other competent evidence, is insufficient.

The drafters of Article I, §11 as well as those citizens who voted for its implementation clearly intended the right to a grand jury indictment to be meaningful because they incorporated it into such a solemn document, our State constitution. The disposition I propose seeks to rekindle the

spirit with which it was created.

Capps 276 S.C. at 67-68, 275 S.E.2d at 876.

Despite the strong warning the *Capps* court issued, cases continued to come before the appellate courts of South Carolina raising issues about what was acceptable and adequate evidence to present to grand juries. In *State v. Anderson*, prosecutors argued that while our Supreme Court had “frowned upon” an assistant solicitor being the only witness to appear before a grand jury, the Court had not prohibited the practice. In referencing *Capps*, the State's argument was “that case did not say we could not do it, they said they didn't like it.” *State v. Anderson*, 312 S.C. 185, 187, 439 S.E.2d 835 (1993). The *Anderson* Court rejected this position and explicitly prohibited the practice of prosecutors appearing as the sole witness before the grand jury. In doing so, the *Anderson* Court specifically cited Chief Justice Lewis' dissent in *Capps*.

Capps dealt with more than *solicitors* testifying to the grand jury. The *Capps* Court also explicitly warned of the potential for abuse of using *any* “**other officer of the State**,” as the sole witness before the grand jury....” *Capps*, 276 S.C. at 62, 275 S.E.2d at 873 (emphasis added).

The lone case touching on the “other officer” issue is *State v. Whitted*, 279 S.C. 260, 305 S.E.2d 245 (1983). The defendant in *Whitted* challenged her indictment on the grounds that a sheriff's deputy was the sole witness who testified before her grand jury, arguing that *Capps* prohibited the sheriff's deputy from being the sole witness to testify before the grand jury. The *Whitted* Court said that *Capps* “did not contemplate and should not be construed to prohibit **the investigative officers**, such as the sheriff's deputy was in this case, from appearing as the sole witness before

the grand jury” and found no error. *Whitted* at 262, 246 (emphasis added).

As our Supreme Court made clear in *Anderson*, *Capps* was meant to be more than a warning. It was meant to stop “the practice of using a solicitor *or other officer of the State*, as the sole witness before the grand jury....” *Capps*, 276 S.C. at 62, 275 S.E.2d at 873 (emphasis added). Mr. Shands believes the circumstances of his case show that the State continues to engage in the type of grand jury presentment practices our Supreme Court has been warning of since *Capps*.

As the State stipulated, the witnesses identified in the indictments did not testify before the grand jury. This practice creates three problems. First, if a witness not listed on the indictment testified before the Grand Jury, his appearance before the grand jury violates S.C. Code §14-7-1550, which provides:

The foreman of the grand jury or acting foreman in the circuit courts of any county of the State may swear the witnesses whose names shall appear on the bill of indictment in the grand jury room. No witnesses shall be sworn except those who have been bound over or subpoenaed in the manner provided by law.

Second, if the witness was not subpoenaed or bound over to appear in front of the grand jury, then the grand jury did not recognize his appearance as “unauthorized” and report it as a “clearly improper” attempt to influence their decision. These actions were compelled by the charge given to the grand jury. The pertinent part of that charge provides:

On the back of the indictments, the names of the witnesses for the State will be listed. You may call the witnesses before you for questioning ...The Foreperson of the Grand Jury will swear witnesses whose names appear on the bill of indictment. No witness may be sworn except those who have been bound over or subpoenaed

in the manner provided by law. . . .

The presence of anyone other than Grand Jurors, witnesses under examination, and, at certain times, the Solicitor, during the sessions of the Grand Jury is unauthorized. Thus, any attempt to influence your decision is clearly improper and should be reported to me or the presiding judge.

S.C. Judicial Website, Sample Jury Charges, Chapter II: Grand Jury, pp. 5-6.

Third, if the witness was neither an investigating officer, nor an actual witness, his testimony could have only been “a deliberate use of hearsay” by the State when there were clear alternatives, in violation of *Capps*, *Anderson*, and *Whitted*. It is easy to envision a scenario in which a witness, having held no personal knowledge as a witness and having had no role in the investigation, merely appeared before the Grand Jury and read from the indictment prepared and signed by the Solicitor. Such a presentment would be exactly what *Capps* and *Anderson* prohibit. In that situation, the testimony would be akin to allowing “a solicitor to merely ‘tell his story’ by giving a summary of the evidence,” a result Chief Justice Lewis warned would lead to grand jury soon being “viewed by a justifiably skeptical public as a mere plaything for prosecutors.” *Capps*, 276 S.C. at 67, 275 S.E.2d at 875.

The journey towards completing the process of correcting abuse of the grand jury process in South Carolina is not complete. This Court should declare unconstitutional the grand jury practice followed by the Solicitor’s Office in Laurens County and require the State to present witnesses with actual knowledge of the case.

C. Denying Defendants Indicted By A County Grand Jury The Same Due Process Safeguards As Those Indicted By A Statewide Grand Jury Violates The Fifth and Fourteenth Amendments To The United States Constitution, As Well As Article I, Sections 3 and 11 of The Constitution of South Carolina.

Mr. Shands' case illustrates a fundamental inequality within the grand jury process in South Carolina: defendants indicted under the statewide grand jury system are afforded different protections under the law than defendants who are indicted under the county grand jury system. A defendant's rights to an indictment, due process, and equal protection under the law are secured through the Fifth and Fourteenth Amendments to the United States Constitution, as well as through Article I, Sections 3 and 11 of the Constitution of South Carolina. Unfortunately, the current grand jury process in South Carolina denies defendants some of those rights and, therefore, violates equal protection.

In South Carolina, two types of grand juries issue indictments: a county grand jury or a statewide grand jury. Articles 13 and 15 of Chapter 7, Title 14 of the South Carolina Code contain the statutory authority controlling the grand jury systems in South Carolina. Article 13 deals with the county grand jury system. Article 15 addresses the statewide grand jury system.

The best example of the disparity between the two systems can be found in S.C. Code §14-7-1700, which is titled "Record of testimony and other proceedings of grand jury; furnishing of copy to defendant; transcripts, reporter's notes and all other documents to remain in custody and control of attorney general." That statute provides:

A court reporter shall record, either stenographically or by use of an electronic recording device, all proceedings

except when a state grand jury is deliberating or voting. Subject to the limitations of Section 14-7-1720(A) and (D) and Rule 5, South Carolina Rules of Criminal procedure, a copy of the transcript of the recorded testimony or proceedings requested by the Attorney General or his designee shall be provided to the defendant by the court reporter, upon request, at the transcript rate established by the Office of Court Administration. An unintentional failure of any recording to reproduce all or any portion of the testimony or proceedings does not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom and all books, papers, records, correspondence, or other documents produced before a state grand jury must remain in the custody and control of the Attorney General or his designee unless otherwise ordered by the court in a particular case.

This language illustrates the inequality that a defendant indicted by a county grand jury faces compared to a defendant indicted by a statewide grand jury: statewide grand jury proceedings must be recorded. There is no corresponding requirement that county grand juries be recorded. Thus, a defendant indicted by a statewide grand jury *does* have a record from which to obtain evidence of irregularity, while a defendant indicted by a county grand jury *does not*. In *State v. Thrift*, our Supreme Court noted the difficulty defendants like Mr. Shands face attacking the grand jury process, specifically finding that Thrift was fortunate his grand jury proceedings were statewide grand jury proceedings, thus providing a complete record for analysis. *Thrift*, 312 S.C. at 302-03, 440 S.E.2d at 352. By commenting on the good fortune Thrift received by virtue of being indicted by a statewide grand jury (and by implication, the *misfortune* of those defendants, like Mr. Shands, who are indicted by country grand juries without a record), the *Thrift* Court implicitly acknowledged the inequality of our current grand jury system. Thus, if a defendant, like Mr. Shands,

indicted by a country grand jury, can not force the recording of the grand jury proceedings or access testimony regarding the proceedings, he is effectively prohibited from challenging the propriety of those proceedings unlike the defendant who is fortunate enough to be indicted by the statewide grand jury which provides defendants with the evidence needed to mount such challenges. Such discriminatory treatment of defendants is prohibited by the equal protection clauses of the South Carolina and United States Constitutions.

D. Relief Requested.

This Court should declare unconstitutional the Laurens County Grand Jury process, quash the indictments, and order the State provide Mr. Shands with a meaningful grand jury process where a witness with actual knowledge of the investigation presents the indictment. To ensure compliance with the new procedure, the Court should require that the testimony presented to a grand jury be recorded by a court reporter.

The Court should order a new trial.

Question III

Did the trial judge err by allowing the Solicitor to impeach Mr. Shands by asking him if he had been previously convicted of a violent felony, suggesting to the jurors that Mr. Shands is a violent person, when he was on trial for multiple violent felony charges?

Prior to trial, Mr. Shands filed a written motion, pursuant to Rule 609, SCRE, to exclude his prior conviction in Florida for murder occurring over forty years ago when he was a juvenile. R. 286-88. Mr. Shands called the trial judge's attention to the written motion before he had to decide whether or not to testify. He pointed out that he had been released from confinement on parole in 2003, arguing that this took the conviction

outside the parameters of Rule 609(b), SCRE. Counsel also argued that the Court, under Rule 609(a), SCRE, must weigh the probative value of admitting evidence against the prejudicial effect to Mr. Shands. Counsel contended a conviction “that far in the past would have little if any relevance, no probative value in our opinion and the prejudicial impact would be extraordinarily high if he were to take the stand and be asked about that.” R. 135, l. 2 – 140, l. 7.

The trial court ultimately ruled that, pursuant to Rule 609(b), “the end of confinement refers to termination of parole or probation.” Under Rule 609(a), the trial judge ruled the prosecution could ask Mr. Shands if he had been convicted of any violent felonies. The judge also ruled that Mr. Shands would not have to object when the prosecutor asked the question. R. 173, l. 3 – 176, l. 9.

During the State’s cross-examination, the Solicitor asked, “Mr. Shands, you have been convicted before of a violent felony, right?” Mr. Shands responded, “Yes, ma’am.” R. 204, l. 24 – 205, l. 1. In addition to not knowing the nature of the charge, the jurors did not know that it occurred forty (40) years ago when Mr. Shands was a juvenile.

During the charge conference, counsel reminded the trial judge, “[W]hen I did not object during cross-examination of Mr. Shands about the prior record, that was based on discussion that we had earlier.” The trial judge agreed counsel “didn’t have to” object again. R. 217, ll. 15-24.

Rule 609(a)(1), SCRE provides:

For the purpose of attacking the credibility of a witness, . . .
evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.”

(emphasis added).

Mr. Shands' conviction for murder—occurring almost forty (40) years ago—had absolutely no probative value in this case. Admitting evidence of this conviction created “the risk that a jury will convict for crimes other than those charged—or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment—creates a prejudicial effect that outweighs ordinary relevance.” *Old Chief v. United States*, 519 U.S. 172, 181 (1997). The conviction occurred when Mr. Shands was a juvenile. Not only did he make parole, Mr. Shands worked for over a decade and supported his family, without incident.

Rule 609(b) additionally provides:

Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Mr. Shands was released from confinement more than ten years prior to trial. The prosecution, moreover, had not noticed its intent to introduce this conviction as required by Rule 609(b).

More importantly, the similarity of Mr. Shands' prior conviction for murder to the current charge of attempted murder is more reason for this Court to exclude evidence of the prior conviction. Allowing the prosecutor to refer to the conviction as a “violent felony” did nothing to reduce the prejudice to Mr. Shands when he was on trial for allegedly committing several violent felonies. Our Supreme Court has

decline[d] to hold similar prior convictions inadmissible in all cases. Trial courts must weigh the probative value of the prior convictions against their prejudicial effect to the accused and determine, in their discretion, whether to admit the evidence. The following factors, along with any other relevant factors, should be considered:

1. The impeachment value of the prior crime.
2. The point in time of the conviction and the witness's subsequent history.
3. The similarity between the past crime and the charged crime.
4. The importance of the defendant's testimony.
5. The centrality of the credibility issue.

Green v. State, 338 S.C. 428, 433-34, 527 S.E.2d 98, 101 (2000) (citing *State v. Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000)).

Allowing the prosecution to impeach Mr. Shands with evidence of the prior conviction of a “violent felony”—occurring almost forty (40) years ago—was extremely prejudicial and interfered with the jurors’ evaluating Mr. Shands’ testimony, the credibility of which was central to his defense. *See also State v. Black*, 400 S.C. 10, 732 S.E.2d 880 (2012) (defense witness's prior convictions for manslaughter that were approximately 20 years old were inadmissible to impeach witness's credibility).⁶

The error is not harmless. Mr. Shands’ credibility was essential to his defense. Our appellate courts consistently find error prejudicial when the defendant’s credibility is

⁶ The witness in *Black* was “was given concurrent prison sentences of fifteen years on each count of manslaughter and a consecutive seven years on shooting/throwing a deadly missile. He was released from confinement by Florida authorities on March 1, 1993, after serving approximately six years of his twenty-two year sentence.” *Black*, 400 S.C. at 15-16, 732 S.E.2d at 883. The *Black* Court did not seem concerned with whether he witness’ parole extended beyond his release from confinement.

at issue. *E.g. State v. Anderson*, 413 S.C. 212, 219, 776 S.E.2d 76, 79 (2015) (error in qualifying witness as an expert not harmless when the “case turned solely on the credibility of the minor and of Appellant”); *Gilchrist v. State*, 350 S.C. 221, 228, 565 S.E.2d 281, 285 (2002) (Solicitor’s improper vouching from State’s witness, Ethridge, was prejudicial “because Gilchrist essentially presented a ‘mere presence’ defense, believing Ethridge was the only way the jury could convict Gilchrist.”); and *State v. Bryant*, 316 S.C. 216, 221, 447 S.E.2d 852, 855 (1994) (“[T]e improper questioning pitted the officer’s testimony against Bryant. Credibility was a critical issue in this case as Bryant and the officer were the only two witnesses present during the entire incident. We find that Bryant was unfairly prejudiced by the improper cross-examination.”).

This Court should order a new trial.

Question IV

Did the trial judge err by not instructing the jurors about the law of involuntary intoxication when Mr. Shands’ testimony supported providing the instruction?

Mr. Shands testified that the “homemade moonshine” “had some effect that took me slap clean out of my mind.” All witnesses agree that Mr. Shands had never acted like this before. J.S. testified that Mr. Shands’ conduct was “out of the ordinary” and he had “never seen [Mr. Shands] in that kind of state of mind before.” This testimony indicted that, unbeknownst to Mr. Shands, the moonshine had been spiked with something other than alcohol. Based on all of this testimony, Mr. Shands’ requested the trial court instruct the jurors about involuntary intoxication:

There are two types of intoxication, voluntary and involuntary. Involuntary intoxication may result from innocently consuming an intoxicant, through being tricked into it by another, or being forced to take it, or perhaps

through unanticipated side effects of a prescription drug taken on orders of a physician. If you find the defendant was given drugs or alcoholic beverages without his knowledge, and as a result, he lost his ability to exercise independent judgment and volition while committing the crimes alleged against him, then it would be your duty to find the defendant not guilty.

Request to Charge No. 4, R. 293, which relied on Ralph King Anderson, Jr., *South Carolina Requests to Charge - Criminal*, 2007, § 6-4 Involuntary Intoxication (citing P.S. Watson & W.S. McAninch, *Guide to South Carolina Criminal Law and Procedure* 165-66 (3d ed. 1990); 21 Am. Jur. 2d Criminal Law §§ 108-09 (1998)).

The trial judge convened a charge conference, during which Mr. Shands' request to charge involuntary intoxication was discussed, and the trial judge denied his request. The Solicitor requested the trial judge "charge voluntary intoxication." Mr. Shands objected to that request "without the charge on involuntary intoxication that goes with it." R. 213, l. 19 – 215, l. 20

During the State's argument on the facts, the Solicitor argued, "[V]oluntary intoxication is not a Defense." R. 234, l. 19 – 235, l. 18.

At the request of the State, the trial judge instructed the jurors

that voluntary intoxication is not a Defense to a crime. A person who voluntarily becomes intoxicated is just as responsible for the acts committed while intoxicated as when a person is not intoxicated.

R. 243, ll. 10-13.

After the trial judge instructed the jurors, Mr. Shands renewed the "request to charge number four on involuntary intoxication. And also renew[ed the] prior objection to charging voluntary intoxication without [the] corresponding involuntary intoxication charge." Counsel also pointed out that deleting the involuntary intoxication portion of

the charge while including the voluntary intoxication portion “rises to a comment on the facts in the case,” which violates Art. V; Section 21 of the South Carolina Constitution. R. 253, ll. 18-25.

“The law to be charged to the jury is determined by the evidence presented at trial. . . . , [and] a trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). “The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict.” *State v. Blurton*, 352 S.C. 203, 207-08, 573 S.E.2d 802, 804 (2002). Here, an instruction on “involuntary intoxication” was necessary to aid the jurors in their deliberations. Instructing on “voluntary intoxication,” while omitting an instruction on “involuntary intoxication,” had the effect of the judge expressing an opinion on Mr. Shands’ testimony and defense in violation of Art. V; Section 21 of the South Carolina Constitution.

This Court should order a new trial.

Question V

Did the trial judge, after sustaining Mr. Shands objection to the Solicitor’s improper closing argument, err by not striking that argument from the record and instructing the jurors to disregard it?

During the State’s final argument to the jurors, the prosecutor argued:

But things started going downhill and he said he started drinking. And what happens, his is an almost 60-year-old-man with a 38-year-old wife and she is beautiful and his is a good woman and she was taking care of him but it wasn’t good enough for him. He starts getting controlling. Bill Koon told y’all, he could be jealous if you tried to talk to her in the neighborhood. He starts getting jealous and controlling. And it gets worse and he is arguing and he is fussing and he is drinking and Sharon said we were on pins and needles. So this, he may not have put his hands on her

before that but this is a relationship that is going downhill fast. And what happens on July 20th, 2014, she finally says, you know what, I am leaving, I am leaving, I am going. Come on kids, get in the car. And that is when he snaps. He is not, his wife and his kids that he provides for and he works for that are his property, she is not leaving him, she is not taking the kids, no, no, no, no. Grabs her by the hair, grabs the first thing he can get his hands on and starts going at her. This isn't about he was drinking something that day, this is a jealous, controlling husband who was not going to let his property leave that house.

Mr. Shands objected "to the characterization, outside of the evidence." The trial judge sustained the objection by instructing the Solicitor, "Let's keep it to the facts." Mr. Shands move to strike. The trial judge did not grant this request. R. 231, l. 12 – 232, l. 14.

As this Court has observed:

When an objecting party is sustained, the trial court has rendered a favorable ruling, and therefore, it becomes necessary that the sustained party move to cure, or move for a mistrial if such a cure is insufficient, in order to create an appealable issue. Moreover, as the law assumes a curative instruction will remedy an error, failure to accept such a charge when offered, or failure to object to the sufficiency of that charge, renders the issue waived and unpreserved for appellate review.

State v. Wilson, 389 S.C. 579, 583, 698 S.E.2d 862, 864 (Ct. App. 2010).

Here, the trial judge should have granted Mr. Shands' motion to strike and instructed the jurors to disregard the comment. A "trial judge's failure to give a curative instruction" can be reversible error. *State v. Pickens*, 320 S.C. 528, 531, 466 S.E.2d 364, 366 (1996). As seen in Question III, Mr. Shands' credibility was essential to his defense. *See also Anderson, Gilchrist and Bryant, supra.*

This Court should order a new trial.

Question VI

Did the the trial judge err by charging the jurors they could infer malice from the use of a deadly weapon when that instruction is contrary to *State v. Belcher* and was an impermissible comment on the facts of the case?

During the State's opening argument on the law, the Solicitor argued, "implied malice can be inferred from the circumstances surround[ing the event], *using a deadly weapon, trying to stab someone in the head with it*. That is implied malice." R. 221, ll. 2-5 (emphasis added).

While charging the elements of attempted murder,⁷ the trial judge instructed the jurors, "Inferred malice may also arise when the deed is done with a deadly weapon." The judge then defined the term "deadly weapon" and provided the jurors with examples of "deadly weapons," including "a knife." R. 244, l. 14 – 245, l. 7.

Mr. Shands objected to this instruction based on *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), which applies anytime the defense argues "the absence of criminal intent." Mr. Shands argued that the error could not "be cured under the facts of this case" and moved for a mistrial. Mr. Shands also objected to the instruction as a comment on the facts of the case, citing to *State v. Hughey*, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000) *overruled on other grounds by Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009). The trial judge, however, seemed to believe that *Belcher* applies only when the defendant claims self-defense. Counsel responded, "[I]t is not just self-

⁷The trial court's instruction on attempted murder was confusing at best. The judge instructed the jurors, "A specific intent to kill is not an element of attempted murder but there must be a general intent to commit serious bodily injury." R. 245, ll. 8-10. After Mr. Shands objected based on *State v. King*, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015), R. 254, l. 11 – 255, l. 9 and 256, l. 6 – 257, l. 8, the trial judge corrected the error and instructed the jurors "that a specific intent to kill is an element of attempted murder." R. 258, ll. 8-21 and 259, ll. 6-12.

defense. It is any time that criminal intent in an issue.” The trial judge disagreed, denied the mistrial motion, and did not cure the error. R. 253, l. 25 – 255, l. 11 and 257, l. 8 – 258, l. 6.⁸

Belcher held, “[T]he ‘use of a deadly weapon’ implied malice instruction has no place in a murder (or assault and battery with intent to kill) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing (or the alleged assault and battery with intent to kill).” 385 S.C. at 610, 685 S.E.2d at 809.⁹ Here, the offense of attempted murder could be reduced, mitigated, or excused for two reasons. First, based on the agreement of counsel, the trial court charged assault and battery of a high and aggravated nature as a lesser-included offense of attempted murder. Second, Mr. Shands’ entire defense was that the prosecution could not prove criminal intent beyond a reasonable doubt.

The Court in *Belcher* decided that appeal “under the common law” and elected not to address S.C. Const. Art. V, § 21, which provides, “Judges shall not charge juries in respect to matters of fact, but shall declare the law.” *Belcher*, 385 S.C. at 602, 685 S.E.2d at 804. As seen, Mr. Shands also objected to this jury instruction as a comment on the facts because the Court provided the jurors with an example of inferred malice. *Hughey, supra* (trial judge properly denied request specific examples of legal provocation for voluntary manslaughter as “instruction on the facts”).

⁸ After the trial court judge corrected other errors in the jury instructions, Mr. Shands renewed his “previous objections.” R. 260, ll. 6-9.

⁹ In 2010, our General Assembly abrogated the common law offense of assault and battery with intent to kill and created the offense of attempted murder. 2010 Act 273, Section B; S.C. Code Ann. § 16-3-29.

This improper instruction prejudiced Mr. Shands because it diluted his defense that he lacked criminal intent, eliminated the likelihood that the jurors would consider assault and battery of a high and aggravated nature, and directed them towards a conviction for attempted murder.

This Court should order a new trial.

Question VII

Did the trial judge err in failing to require the State to open fully on the law and the facts of the case and replying only to new arguments of defense counsel when the defendant was deprived of a fair trial in violation of the due process clause of Article I § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment to the Constitution of the United States of America by his counsel not being able to respond to the arguments made by the State in its rebuttal closing argument?

Prior to trial, Mr. Sands filed a written motion requesting an order from the trial court requiring the State to open fully on the law and the facts and then reply only to new matters raised by defense counsel in his closing argument. R. 289.

During the directed verdict motion, Mr. Shands noted that the kidnapping indictment did not contain any “factual allegation . . . to tell us what exactly was done in the course of these events for Mr. Shands to have to defend.” R. 170, l. 17 – 171, l. 10.

Prior to closing arguments, Mr. Shands called the trial judge’s attention to the written motion “asking that the State be required to open in full on the law and the facts.” Counsel noted, “Due process requires that we have a full opportunity to respond to their entire argument. And then they would have a chance to respond to new matters that were raised in the response.” R. 217, l. 25 – 218, l. 11.

The trial judge ruled, “[M]aybe the Supreme Court will want to change [the procedure, but] I decline to do so.” Counsel verified that the trial judge had reviewed the

arguments in the written motion. Mr. Shands had moved for the State to open on the law, subject to the previous motion to require the State to open fully on the law and facts. R. 218, ll. 12-14.

After the trial judge denied Mr. Shands' motion, the State opened on the law, R. 220, l. 6 – 233, l. 16. The Solicitor argued, without any additional explanation, “[T]his isn’t a traditional kidnapping.” R. 222, ll. 7-9.

Mr. Shands argued in full. R. 223, l. 17 – 230, l. 9. During Mr. Shands’ argument, counsel noted:

As it has kind of already been eluded to this is going to be my last opportunity to address you and I am at a little bit of a handicap because our rules and or procedures don’t allow me to hear what they are going to say about the facts before they make their argument. So one point that I would like to make at the onset is, is I have no idea how they are going to explain kidnapping to you under this evidence. And the reason that I have no idea about that is because all they have told you in opening¹⁰ and just a minute ago in closing is that it is not something that you traditionally think of.

And, “I don’t get a chance to respond to what their [is] theory under the facts.” R. 224, l. 8 – 225, l. 2.

The prosecutor next argued the facts. R. 230, l. 10 – 238, l. 11. Mr. Shands objected twice about the Solicitor arguing facts outside the record. R. 231, l. 12 – 232, l.

¹⁰ In the State’s opening statement, the Solicitor said:

Again, a lot of time you hear kidnapping. What do you think of, kidnapping for ransom, kidnapping something [sic], holding a child for ransom. Again, that is not what South Carolina requires. But you hold or contain somebody or even move them a short distance against their will and this is kidnapping and you will hear facts in this case that we submit will justify a conviction on that crime.

R. 43, l. 21 – 44, l. 3.

14; 235, ll. 2-9. During her final argument, the Solicitor also revealed to the jurors for the first time the State's theory about the kidnapping charge:

Kidnapping, Mr. Grose brought up that he didn't know what our position was going to be on kidnapping. It is pretty obvious, she wanted to leave, he closed the garage door, she opened it, he closed it again until it was half-way open. She can't get out. He grabs her by the hair and pulls out a great big chunk of it and won't let her leave. Can she leave when he has got her by the hair. Can she leave when he has got this fork stabbing her with it. She can't get away, she has to be rescued by her own teenage son, she couldn't get away on her own. There is the kidnapping, ladies and gentlemen.

R. 234, ll. 5-16. As will be discussed in more detail in Question VIII, *infra*, the actual testimony of the witnesses did not support submitting the kidnapping charge to the jurors.

After closing arguments, trial counsel noted for the record what he "would have done if [he] had been able to respond" to the Solicitor's closing argument:

I would have responded to what I considered to be somewhat of an emotional attack on Mr. Shands both in some of how it was delivered but in particular the language that was used. We would have particularly responded to comments about jealous, controlling, manipulative and viewing his family as property. We would have responded about what they said about kidnapping, we would have responded to what they said about placing the police on trial, that was not our purpose. And we would have responded to the evidence about, the argument made about Sharon leaving that day as well as a number of things that I think that they said that exceeded the bounds of what the evidence really was, Your Honor.

R. 255, l. 9 – 256, l. 5.

In South Carolina, no Rule of Criminal Procedure addresses the question of the order of argument to the jury.¹¹ The practice of the State opening only on the law and

¹¹ The South Carolina Supreme Court has received comments on proposed Rule

then closing fully on the facts after the defendant has given the closing argument is long on tradition but short on law to support that tradition. The early practice in South Carolina was for the state to open fully on the law and the facts. In *State v. Atterberry*, 129 S.C. 464, 124 S.C. 648 (1924), the Supreme Court held that the failure to require the state to open fully on the law and facts was reversible error. At that time Circuit Court Rule 59 provided, "The party having the opening in argument shall disclose his entire case and on his closing shall be confined strictly to a reply to the points made, and authorities cited by the opposite party."¹² In reversing the conviction of the defendant the Court said, "The defendant moved the court to require the solicitor to make the opening speech to the jury before the defendant's attorney's were required to make their arguments. This was refused. This was error." *Atterberry*, 129 S.C. at ___, 124 S.E. at 651. In his concurring opinion Acting Associate Justice Aycock stated the principle best when he said, "It is but fair that the party who has the advantage of the last address to a jury should be required to open and apprise the opposing party of his views as to his entire case." *Id.* at ___, 124 S.E. at 651. As a matter of legal history, the State in South Carolina was required to open fully on the law and the facts.

The more recent practice developed when the Circuit Court Rules were changed. This change was noted in *State v. Lee*, 255 S.C. 309, 178 S.E.2d 652

21 S.C.RCrim.P, which would require the prosecution to proceed in the manner requested in this motion. Proposed Rule 21 can be found at <http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=1013> (last viewed May 23, 2015).

¹² Rule 59 in 1924 was part of the Code of Civil Procedure. The concurring opinion by Acting Associate Justice Aycock makes reference to the fact that nothing in the Code of Civil Procedure limits the application to civil cases. Rule 1 of the South Carolina Rules of Civil Procedure today does limit their application to civil cases.

(1971). Again the defense counsel requested that the state be required to open fully on the law and the facts. The trial judge denied this request. The Court noted that since the decision in *Atterberry*, Rule 59 of the Circuit Court Rules had been changed to Rule 58 and the rule then read, “The party having the opening in an argument shall disclose fully the law upon which he relies if demanded by the opposite party.” The Court in *Lee* concluded, “It follows that the trial judge, under the changed rule, was correct in holding that a solicitor is no longer required to make an opening argument to the jury on issues of fact.”¹³ *Lee*, at 318, 178 S.E.2d at 656. Thus began the more recent, but incorrect, practice of requiring the state to open only on the law and not the facts.

Today Rule 43(j) of the South Carolina Rules of Civil Procedure controls the order of argument in civil cases. This rule now provides that the plaintiff shall have the right to open and close at the trial of the case. The rule then concludes, “The party having the right to open shall be required to open in full, and in reply may respond in full but may not introduce any new matter.” With Rule 43(j) of the South Carolina Rules of Civil Procedure, the long practice in civil cases of plaintiff’s lawyers “sandbagging” and saving their real argument for their last argument, came to an end. But the practice, without any support in the law, continues in the general sessions courts not based upon the law or logic, but upon misapplication of the civil rules.

The practice of “sandbagging” in a closing argument was a basis for reversal of a criminal conviction in Delaware. In *Bailey v. State*, 440 A.2d 997 (Del. 1982) the court noted that “Closing argument is ‘an aspect of a fair trial which is implicit in the Due Process Clause of the Fourteenth Amendment.’” *Id.* at 1004 (internal citations

¹³ Again this was a change in the Code of Civil Procedure, which the court had no problem applying to a criminal case.

omitted). The court further held, “Application of these authorities to the facts at hand compels us to reverse and remand the case for a new trial on the ground that the Trial Court abused its discretion in permitting the State to utilize the inherently prejudicial “sandbagging” trial strategy.” *Id.* In South Carolina, “sandbagging” by a prosecutor is not only approved but is actually legalized.

The majority of states and the federal courts require the prosecutor to open fully on the law and the facts. *See, e.g.* Fed. Rul Cr. Proc. 29.1; Ark. Code Ann. § 16-89-123; Ga. Code Ann. § 17-8-71; Nev. Rev. Stat. Ann 175.141; Tenn. Rules of Crim. Proc. Rule 29.1; *In Re AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE-FINAL ARGUMENTS*, 957 So.2d 1164 (Fla. 2007) *but see, Degadillo v. State*, 262 S.W.3d 371 (Tex. Ct. App. (2008)). The treatise writers also support the requirement that the state open fully on the law and evidence. *See, Jacob Stein, Closing Arguments* 2d, § 1:6 (2010) and 75A Am. Jur. 2d *Trial* § 448 (2010). In revising its rules as to closing argument the Florida Supreme Court noted “The statute provides that in accord with the common law, the prosecuting attorney shall open the closing arguments, defendant or his or her attorney may reply, and the prosecuting attorney may reply in rebuttal.” *In re AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE- FINAL ARGUMENTS*, 957 So.2d at 1166.¹⁴

South Carolina should break with a practice that has no support in logic or the law and require that the State be required to open fully on the law and the facts. The current procedure in South Carolina simply permits the State to legally “sandbag” its argument and not afford the defense the opportunity to reply to new arguments that the State used

¹⁴ The Florida Supreme Court also noted that forty-seven states follow the common law.

in its closing. The inherent logic of this position has been acknowledged by our Court of Appeals concerning reply briefs and oral argument. “An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant’s brief.” *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989). The reason of this rule in the appellate court is a party should have a fair chance to respond to matters raised by counsel in their briefs. The rule should also be applied to arguments before a jury.

This Court should order a new trial.

Question VIII

Did the trial judge err by denying Mr. Shands’ motion for a directed verdict on the kidnapping charge because the kidnapping statute, as applied to Mr. Shands, is unconstitutionally vague and overbroad because it did not put him on notice of what conduct is prohibited?

At the end of the State’s case, Mr. Shands moved for a directed verdict on the kidnapping charge based on the sufficiency of the evidence and additionally argued:

[T]he kidnapping statute is unconstitutionally vague and overbroad because we have not really heard any evidence in this case that would put someone on notice that they had committed a kidnapping crime and come to defend the case at trial. And I would note that there is really no factual allegation in this indictment to tell us what exactly was done in the course of these events for Mr. Shands to have to defend. And we think the State’s proof has failed on this issue and if this evidence is somehow construed that it has not then the statute is unconstitutionally vague and overbroad and based on the facts of this case Mr. Shands has standing to challenge that statute.

R. 170, l. 12 – 171, l. 10.

The Solicitor contended:

[S]everal people have testified that she was grabbed by the hair as she was attempting to leave, pulled back into the

doorway of the house. There is testimony that she lifted the garage door and closed it and sort of ended up in kind of a halfway state where she would not have been able to get her car out and leave. That is confining for the purpose of the statute.

R. 171, ll. 12-22. The Solicitor did not point to any other facts in the case that supported submitting the charge to the jurors. The trial judge denied Mr. Shands' motions for a directed verdict. R. 172, ll. 10-17. Mr. Shands renewed his motions at the close of all evidence. R. 213, ll. 1-8.

Ms. Shands and her two children were the only witnesses that could have observed Mr. Shands' conduct related to the garage door and pulling his wife's hair. Ms. Shands actual testified, "[W]e tried to get out of the garage. It was halfway so we couldn't get out." And, "I remember him pulling my by my hair to try to get me back in the backdoor." R. 58, l. 14 – 59, l. 12. At this point, she did not testify that Mr. Shands did anything to close an open garage door or actually restrained her by her hair. Later on, Ms. Shands testified, I was trying to open it and he was trying to close it." R. 66, l. 23 – 67, l. 5. But, she still never testified that Mr. Shands restrained her. T.C. testified that Mr. Shands "tried to close the garage" door, but never testified that he actually did. R. 74, l. 10 – 75, l. 12. T.C. did not offer any testimony about Mr. Shands pulling his wife's hair. J.S. did not offer any testimony about the garage door. J.S. testified that his father "got my mom by the hair," R. 83, l. 15, but never said his father actually restrained his mother.

Our Supreme Court has explained the standard for ruling on a directed verdict motion:

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of

evidence, not its weight. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. When reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the state. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.

State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 477-78 (2004) (internal citations omitted). *And see* Rule 19(a), SCRCrimP.

“Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law . . . is guilty of” kidnapping. S.C. Code Ann. § 16-3-910. In this case, the testimony of the State’s witnesses did not establish the elements of kidnapping, and the trial judge should have directed the verdict in favor of Mr. Shands. This testimony, additionally, did not establish that Mr. Shands “possessed the requisite intent to commit [a] kidnapping.”

State v. East, 353 S.C. 634, 638, 578 S.E.2d 748, 751 (Ct. App. 2003).

If this testimony is construed to constitute a kidnapping, then § 16-3-910 is not constitutional.

The void-for-vagueness doctrine rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. The constitutional standard for vagueness is whether the law gives fair notice to those persons to whom the law applies. A statute is not unconstitutionally vague if a person of ordinary intelligence seeking to obey the law will know, and is sufficiently warned of, the conduct the statute makes criminal. This concept has been explained as follows, [a] law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application. One to whose conduct the law

clearly applies does not have standing to challenge it for vagueness.

State v. Neuman, 384 S.C. 395, 402-03, 683 S.E.2d 268, 271-72 (2009) (internal quotations and citations omitted).

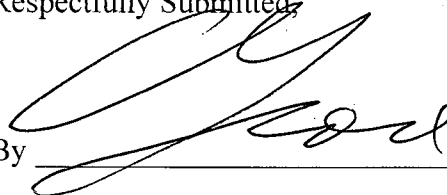
This Court should reverse the trial court.

CONCLUSION

For the foregoing reasons, this Court should reverse Mr. Shands' convictions and sentences and order a new trial.

Respectfully Submitted,

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September 19, 2016
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

General Session Case No. 2014-GS-30-1477-82

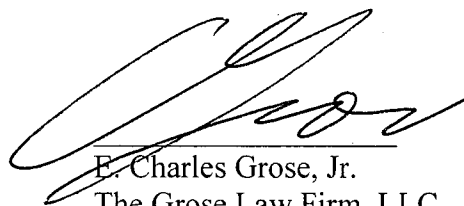
The State, ... Respondent

v.

Preston Shands, Jr., ... Appellant.

Rule 211, SCACR Certification

I certify that this Final Brief of Appellant complies with Rule 211(b), SCACR.


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September 19, 2016
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County
Edward W. Miller, Circuit Court Judge

THE STATE,

Respondent,

vs.

PRESTON SHANDS, JR.,

Appellant.

Appellate Case No. 2015-001199

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court did not err in denying Appellant's Batson motion because the prosecution stated a gender neutral reason for striking jurors – the criminal records of the three males struck by the prosecution. The female juror with a stale, isolated conviction who was seated on the jury was not similarly situated as the struck male jurors.

II.

The grand jury process in Laurens County does not violate state law or due process, and Appellant failed to establish a record to determine if the alleged violations of the grand jury process occurred. There is no prohibition on hearsay testimony being presented to the grand jury, an investigative and accusing body, to determine if probable cause exists to issue a true bill indictment. Grand jury secrecy is an integral and necessary part of the process. No equal protection violation occurs simply because a different process exists for the state grand jury than the county grand jury. Appellant failed to establish actual prejudice from the asserted violations in his case, and providing Appellant a fair trial remedied any feasible violation. No fifth amendment violation occurred in this case – Appellant was provided adequate notice of the charges and facts surrounding his charges.

III.

The trial court did not err in admitting Appellant's prior conviction under Rule 609(a)(1), SCRE, because Appellant was on parole for that offense when he committed the crimes in the instant case, and because Appellant put his character into issue. Appellant was not prejudiced because his credibility was not critical since he agreed he committed the offenses, the evidence was overwhelming, and the trial court gave a proper limiting instruction to the jury.

IV.

Evidence did not support an instruction on involuntary intoxication and evidence supported an instruction on voluntary intoxication. The instruction on voluntary intoxication was not a charge on the facts.

V.

The trial court did not err in denying Appellant's motion to strike the prosecutor's argument that was not even objectionable. The argument was based on evidence in the record. Further, Appellant failed to move for a new trial, so the issue is not preserved and his argument is conclusory. The trial court did not abuse its discretion.

VI.

The implied malice charge was proper since no evidence was presented reducing, mitigating, excusing, or justifying the charge from attempted murder. The repeated stabbings occurred during the commission of a kidnapping. The instructions were a charge on the law and not the facts of the case. Any error is harmless beyond a reasonable doubt based on the abundant evidence of Appellant's malice beyond just his use of a barbecue fork to stab his victim.

VII.

The trial court did not err in failing to force the State to open on law and facts and reply only to "new" arguments of defense counsel; and the current procedure does not violate due process of the federal constitution or South Carolina Constitution.

VIII.

The kidnapping statute is not unconstitutionally vague and not overly broad as applied to Appellant; Appellant held Victim by her hair and trapped her in the garage when she wanted to leave; the evidence is sufficient to survive directed verdict.

STATEMENT OF THE CASE

Appellant Shands was indicted by the Laurens County grand Jury for first degree burglary, kidnapping, attempted murder, first degree assault and battery, and possession of a knife during the commission of a violent crime. Shands proceeded to jury trial on May 26-27, 2015 before the Honorable Edward W. Miller. Shands was found guilty of first-degree burglary, kidnapping, attempted murder, first-degree assault and battery, and possession of a knife during the commission of a crime. Judge Miller sentenced Shands to life without parole.

STATEMENT OF FACTS

Shands' wife decided to leave their house; Shands would not let her. Shands detained and then violently attacked his wife (Victim), repeatedly stabbing her with a barbecue fork. Shands smashed the windows of a neighbor's house and chased Victim out of the neighbor's house with a knife he took from the neighbor's kitchen.

Shands and Victim were married and lived with their eight year-old son, Jalen, and Victim's sixteen year-old son, Trey. Victim testified she arrived home at 6:30 p.m. on Sunday. Victim changed her clothes and started watching television when Shands asked her why she would not talk to him. He started cursing. She told Shands she was going to leave and told the sons to come with her. R. pp. 55-59. When Victim was trying to leave, she tried to open the garage door, but then Shands would close the door each time. R. pp. 66-67. Shands closed the car door on her leg. Victim recalled seeing Shands

on top of her son, Trey. Victim tried to leave but the garage door was half-way open. Jalen and Trey followed her in the garage, but Trey ran back in the house. Shands pulled Victim by the hair to try and get her back in the house. R. p. 59.

Trey came back, and Victim remembered Trey telling her to run. Victim and Jalen made it under the garage door. They went across the street to a neighbor's house. The neighbor was Bill Koon. R. p. 59. While inside Koon's house, she remembered glass shattering. Victim remembered trying to keep Shands from stabbing her. R. pp. 59-60. Victim suffered a number of wounds and scars. She did not know how many times she was stabbed, but she needed about forty to fifty stitches. R. pp. 62-65.

On cross-examination, Victim admitted nothing like this happened before. R. p. 70. Counsel asked Victim, "but the way Preston was acting that night, he was more agitated than usual right?" R. p. 70, lines 20-21. Victim answered, "I guess a little because he did stuff all the time." R. p. 70, line 22. Victim admitted Shands never physically harmed her before. R. pp. 70-71. However, on cross-examination, she testified in the months leading to the assault, he was "[c]ontrolling, we walked on pins and needles every day, we just didn't know what to expect." R. p. 71, lines 13-16. Victim did not smell alcohol on Shands. R. p. 69, lines 18-23.

Trey testified he was home earlier in the day with Shands. He saw Shands drinking a beer, but he did not know how much Shands drank. R. p. 73. Trey denied seeing Shands drinking from a clear glass containing cola. R. p. 80. When Victim arrived home, Victim and Shands started arguing after Shands asked why she would not talk to him. Victim told Trey and his brother they were leaving. Trey testified Shands shut the garage door to try to keep Victim from leaving. Shands also kicked the car door into her leg. R. pp. 73-75. Trey fell and Shands got on top of him. R. p. 75.

Trey managed to run back into the house and over to Koon's house. He told Koon to call 911

and ran back to his own house. Shands got off Victim long enough for her to run under the garage door towards Koon's house. However, Shands tackled Victim in front of Koon's house and started stabbing her. Trey grabbed Shands' hand to stop him from stabbing Victim. Shands left and returned with a hammer and started busting Koon's windows. Shands entered Koon's house and grabbed a knife. He chased Victim out of the house, but law enforcement arrived. R. pp. 75-77. Trey testified he thought Victim was going to die. R. p. 78.

Jalen confirmed an argument broke out between Shands and Victim. Jalen further confirmed Shands kicked the car door into Victim's leg while she was trying to leave. Trey told Jalen to call the police – that is when Shands got the fork. Jalen testified Shands held Victim by her hair and was trying to stab Victim's throat with the fork, but the fork was bent up. R. pp. 82-83.

Clarence "Bill" Koon, the neighbor, testified Trey was banging on his door, and when Koon opened the door, Trey told him Shands was stabbing Victim. Victim and the children ended up running to his house, soon followed by Shands. Shands and Victim struggled on the front-room floor. R. p. 87.

Koon described the melee:

He was trying to, he looked to me he was trying to cut her throat with some kind of object wrapped around his hand, I couldn't tell at the time what it was. But when I finally got to see the handle, it was white or it looked white. And it was wrapped around his hand like a pair of steel nooks. And he was trying to use the bottom end of it, the broke end part and he was trying to go across her throat with it.

R. p. 88, lines 1-8. Victim was covered with so much blood that Koon testified, "I didn't even see no part of her, all I saw was blood." R. p. 88, lines 12-13.

Koon went into the bathroom to tell his wife, but she was in the shower. Victim was screaming for Koon to help her. Koon grabbed his phone and called 911 from inside the shower. Returning from

the bathroom, Koon saw the two boys holding Shands' hand to keep him from stabbing Victim. Koon started back for the bathroom, turned around, and they were gone. R. pp. 88-89.

The temporary reprieve ended when Shands returned with a hammer. Shands started smashing the front windows and went to the back of the house. Koon went to the back door and locked it. He told Shands to "cool off" but Shands busted two more windows in the back of the house and demanded Koon let him in. Shands threw his hammer through the sliding glass door and entered the house. R. pp. 89-90. Shands grabbed a knife from the kitchen and headed out the front door just as a law enforcement officer pulled up to the house and drew his weapon. Shands dropped his knife under the officer's command. R. p. 90. Koon testified the house looked like a tornado went through it. Koon explained, "It took us a long time to get the blood off the floor and off the furniture. It was a nightmare." R. p. 94, lines 11-18 Koon told the jury, "that man was trying to kill that woman." R. p. 94, lines 19-22.

Counsel asked Koon if the events were out of character for Shands. Koon replied he did not know if it was out of character or not. R. p. 97. On redirect, the prosecutor asked, "How would Mr. Shands react if someone tried to speak to Ms. Shands?" Koon answered, "**He could get sometimes a little jealous** at times. I mean he would say something to her and get her attention." R. p. 97, lines 10-14 (emphasis added).

Martha Koon, Koon's wife, also testified. She was in the shower when she heard the screams. She came out and saw Shands on top of Victim. She did not see the weapon, but saw Shands holding something and was going for Victim's throat. Victim incessantly screamed and blood was everywhere. The older son tried to pull Shands off Victim. R. pp. 99-100. Martha went back to the bathroom to dress, and Shands was gone when she returned. But Shands returned with the hammer. When Shands

demanded Koon let him in, Koon told him no. Shands entered the house anyhow, smashing the sliding glass door. Shands went straight to the kitchen, took a knife, and started towards Victim. But the police arrived and he went outside. R. p. 100. Martha agreed Shands was always friendly and polite, except for that day of course. R. p. 103.

Sergeant Michael Gainey of the Laurens City Police Department responded to a 911 call about a neighbor trying to stab his wife. R. p. 105. Approaching the house, he heard Koon yelling “[H]elp, he is going to kill her.” R. p. 106, lines 21-22. Sergeant Gainey saw Victim running out of the house, she ran towards his vehicle. A teenager also ran out of the house. Then Shands came out of the house with Jalen. His left hand was on Jalen’s shoulder, his right hand held the knife. Sergeant Gaines pointed his revolver at Shands and told him to let Jalen go. Shands complied. Sergeant Gainey further demanded Shands drop his knife. Shands did. Shands also complied with Sergeant Gainey’s request to get to the ground. Sergeant Gainey did not smell any alcohol on Shands. R. pp. 107-112.

Sergeant Gainey verified Shands suffered superficial injuries – he was treated for some lacerations on his hand. R. p. 118; p. 123. Sergeant Tony Lynch investigated the crime scene and recovered a knife, a hammer, and a broken fork with blood on it. He also found droplets of blood on the path between the two houses. R. pp. 147-152.

Andrew Heiney, a paramedic for the Laurens County EMS treated Victim, who appeared dazed. Her clothing was ripped, and blood was about her head, arms, and torso. The paramedics brought her into the ambulance where the lighting was better, and Heiney observed the blood was still wet. She was briskly bleeding from a laceration on her head; the hair was matted with blood. R. pp. 129-30. There were multiple stab wounds on her arms. R. p. 131. Victim was in pain and experienced difficulty breathing. R. p. 132. Heiney opined the wounds were life threatening. R. p. 132. EMS

decided, based on the severity of Victim's injuries, to transport Victim by helicopter rather than ambulance to the hospital. R. pp. 133-34.

Julie Medlin, also with the Laurens County EMS, was called by the defense, but on cross-examination confirmed Shands was alert and oriented at the time he was transported for medical treatment and explained, "that means he knew who he was, he knew where he was, he knew the events leading up to why we were called and just everything that was going on around him, like what day and time it is." R. p. 186, lines 9-12. Shands did not appear disoriented or intoxicated. R. p. 186, lines 13-16.

Shands was covered with small glass shards. P. 186, lines 17-19. Shands' injuries were "a laceration to the right hand, fifth digit; . . . a laceration to the outside of his left calf and an abrasion to the back of the left shoulder." R. p. 186, lines 20-24.

Shands testified in his own defense to claim he was intoxicated while he committed the brutal crimes. Shands started with a beer, but spilled it. So he found "this stuff I had bought at work." R. p. 191, line 21 - 192, line 2. Shands explained, "It was stuff that people told me was homemade moonshine. You couldn't smell it but you knew it was alcohol in it when you tasted it." R. p. 192, lines 8-13. Shands never drank moonshine before, but he started drinking it. It was so strong that when he tasted it straight, he spit it out of the cup. Shands mixed the moonshine with ice and two liters of coke. It still tasted strong. R. pp. 192-93.

Shands claimed he usually just goes to sleep when he drinks. R. p. 193, lines 14-24. Shands claimed the moonshine did not affect him this way though, instead it "took me clean out of my round." R. p. 194, lines 11-13. Shands speculated the moonshine "wasn't just alcohol" but "was something more strong and powerful in there, that they put in there other than alcohol. Because normally alcohol

just makes me drunk and fall out and go to sleep.” R. p. 194, lines 13-22. Therefore, Shands concluded, the moonshine must have contained some drug. R. p. 194, lines 19-25.

Shands admitted he was responsible for what happened to Victim. He claimed he did not remember anything from the incident. R. pp. 195-96. Shands admitted that although the marriage was good at first, he became jealous and controlling when he started drinking. R. p. 199, line 22 – p. 200, line 2.

On cross-examination, Shands described the moonshine further:

Q: So, tell me about this moonshine, is this something you bought from somebody you work with?

A: Yes, ma’am.

Q: So it is not something, now they sell moonshine in the liquor stores.

A: I don’t know if it is real moonshine, I don’t know, I never tried it, it is my first time trying it.

Q: But this is something you bought, do you know actually who made it?

A: No, it is just the guys told me, before you quit drinking why don’t you try the granddaddy of all, the cremator of all whiskey. It is the granddaddy, until you tasted the granddaddy you can never say you drunk anything.

Q: So, you were home alone with two children and you decided to drink something that you had no idea where it came from?

A: Yes, ma’am.

Q: And you had no idea what was in it and you had no idea how you were going to react to it. That is what you are telling us?

A: Yes, ma’am.

R. p. 201, lines 2-22.

Shands admitted he drank the moonshine of his own freewill, no one forced him to drink it. Shands admitted he knew it was stronger than normal alcohol. Even with the cola mixed in, it still tasted strong. R. p. 202. Shands did not deny his violent acts, he claimed, “I know I did it but I don’t understand it; I don’t understand what happened that night.” R. p. 204, lines 9-10.

ARGUMENT

I.

The trial court did not err in denying Appellant’s Batson motion because the prosecution stated a gender neutral reason for striking jurors – the criminal records of the three males struck by the prosecution. The female juror with a stale, isolated conviction who was seated on the jury was not similarly situated as the struck male jurors.

Shands claims the trial court erred by not granting his Batson motion challenging the prosecution’s decision to strike three male jurors. However, the prosecution gave gender neutral reasons for striking three males: two were previously convicted of criminal domestic violence and the third had four prior lottery violation charges. A female juror with a stale, isolated conviction for check fraud was seated, but she was not similarly situated as the three male jurors.

The Supreme Court held in Batson v. Kentucky, 476 U.S. 79 (1986) that the equal protection clause prohibits a prosecutor from striking jurors solely on account of their race. The prohibition applies to both parties in criminal cases. Georgia v. McCollum, 505 U.S. 42, 59 (1992). The rule was further extended to prohibit gender discrimination in jury selection. J.E.B. v. Alabama, 511 U.S. 127, 130-31 (1994) (“Today we reaffirm what, by now, should be axiomatic: intentional discrimination on the basis of gender by state actors violates the Equal Protection Clause . . .”).

A three-step procedure should be followed when an opponent raises a claim that a jury strike was exercised in violation of the Equal Protection Clause. First, the moving party must make a prima

facie showing the challenge was based on race or gender. Provided an adequate showing was made, the trial court must require the challenged party to provide a race or gender neutral explanation for the challenge. Last, the trial court must determine if the moving party has proven purposeful discrimination. State v. Giles, 407 S.C.14, 18, 754 S.E.2d 261, 263 (2014).

For the second step of the procedure, the explanation must be a “a clear and reasonably specific explanation of [the] legitimate reasons for exercising the [jury strike].” Miller-El v. Dretke, 545 U.S. 231, 239 (2005). However, the explanation need not be persuasive or even plausible. Giles, 407 S.C. at 21, 754 S.E.2d at 265.

At the third step, the moving party must show the facially race or gender neutral reason was actually mere pretext to engage in purposeful discrimination. State v. Cochran, 369 S.C. 308, 315, 631 S.E.2d 294, 298 (Ct. App. 2006). This Court explained this step as follows:

The opponent of the strike carries the ultimate burden of showing purposeful discrimination and must demonstrate the pretextual nature for the stated reason for the strike. . . . This burden is generally established by showing similarly situated members of another race were seated on the jury.

Id. (internal citations and quotation marks omitted). The burden of persuasion during a Batson motion remains at all times on the moving party. State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007).

In the instant case, the State struck two white males, a black male and a female. The defense struck seven females and three males. The jury was ultimately composed of nine women and three men. R. pp. 16-22. After Shands raised a Batson motion based on gender, the State offered its reasons for striking the three males. Juror 125 had a CDV conviction. The prosecutor noted the present case involved acts of domestic violence. Juror 156 likewise had a CDV conviction. Juror 115 violated the

lottery law four different times. R. p. 23.

The prosecutor also explained not objecting to other jurors that had contact with law enforcement. Juror 5, a female, was charged with “false info” but showed no disposition from 2004. Juror 54, a female, had a fraudulent check conviction from 2003, but the prosecutor noted that was from eleven to twelve years ago. Juror 53, a male, had a pending simple possession charge, but was not convicted yet. Juror 170, a female, had a nolle prossed unlawful neglect charge and a dismissed simple possession charge. R. p. 23.

Shands’ challenge to this explanation was essentially an argument that all convictions are equal, so the State should have struck juror 54. R. p. 24. The State noted, though, a significant distinction between “someone who accidentally overdrew their bank account and someone who struck a household member, threatened to strike a household member. They are not similarly situated.” R. p. 25, lines 3-7. The trial court denied the motion. However, Shands argued **after** the ruling¹ that the lottery charges and a fraudulent check conviction were similarly situated. R. p. 25, line 21 – p. 26 line 3.

A juror’s criminal conviction is considered a neutral reason to strike. State v. Casey, 325 S.C. 447, 453, 481 S.E.2d 169, 172 n.2 (Ct. App. 1997). Shands argues the State’s reasons for striking the jurors were pretextual because the State did not strike the female with an eleven year-old check conviction. “However, the uneven application of a neutral reason does not automatically result in a finding of invidious discrimination if the strike’s proponent provides a race or gender neutral explanation for inconsistency.” Id. at 454, 181 S.E.2d at 173. The defendant bears the burden of proving the State’s neutral reasons for striking the juror is pretext. State v. Kelley, 319 S.C. 173, 176,

¹ See Rule 18(a), SCRCrimP: “Counsel shall not attempt to further argue any matter after he has been heard and the ruling of the court has been pronounced.”

460 S.E.2d 368, 370 (1995).

The trial court's finding of purposeful discrimination rests on its evaluation of demeanor and credibility. State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009). As our Supreme Court has explained:

Typically the decisive question becomes whether counsel's race-neutral explanation for a peremptory challenge should be believed. . . . [T]here is seldom much evidence in the record bearing on that issue, and the trial court's findings regarding purposeful discrimination necessarily will rest largely on the evaluation of demeanor and credibility of counsel. Therefore, those findings are given great deference and will not be set aside unless clearly erroneous.

Evins, 373 S.C. at 415-16, 645 S.E.2d at 909-10 (quoting State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006)).

In the instant case, the prosecutor explained the differences between the three male jurors she struck and the female juror with the conviction. Two of the jurors had criminal domestic violence convictions. Obviously, due to the extremely aggravated domestic violence in this case, striking the jurors who also committed domestic violence was a foregone conclusion. Further, the remaining male juror, with four incidents of violating a lottery law, was not similarly situated with a juror with one lone, stale conviction for check fraud. That male juror, after multiple clashes with the justice system, was understandably not as suitable as a juror whose isolated conviction occurred over a decade ago. Accordingly, evidence supports the trial court's ruling as the State provided gender neutral reasons for its strikes, and Shands failed to show the reasons provided were mere pretext.

II.

The grand jury process in Laurens County does not violate state law or due process, and Appellant failed to establish a record to determine if the alleged violations of the grand jury process occurred. There is no prohibition on hearsay

testimony being presented to the grand jury, an investigative and accusing body, to determine if probable cause exists to issue a true bill indictment. Grand jury secrecy is an integral and necessary part of the process. No equal protection violation occurs simply because a different process exists for the state grand jury than the county grand jury. Appellant failed to establish actual prejudice from the asserted violations in his case, and providing Appellant a fair trial remedied any feasible violation. No fifth amendment violation occurred in this case – Appellant was provided adequate notice of the charges and facts surrounding his charges.

Shands argues his due process, equal protection, and Fifth Amendment rights were violated based on conjecture that the witness appearing before the grand jury was not the same person listed on the indictment or that the witness was an officer not involved in the case. Shands references an unpublished opinion and oral argument in State v. Carrier, Op. No. 2014-MO-043 (S.C. Sup. Ct. filed October 22, 2014), then claims he made an adequate record to review this issue. Shands, however, relies on conjecture the same way Carrier did in an attempt to establish his alleged violations.

Solicitor's proffer

Shands sought a proffer from the prosecution on the grand jury process in Laurens County. Deputy Solicitor Mowry advised the trial court about the process. Deputy Mowry explained the prosecutor assigned the case drafts an indictment and signs the indictment. When the grand jury is in session, a representative from each law enforcement agency will present the indictments for that agency. R. p. 27, line 24 – p. 28, line 11. Mowry advised the trial court he did not know the identity of any witnesses who testified before the grand jury. R. p. 28, lines 14-17. Mowry also advised the trial court that the Solicitor's Office does not keep track of who takes the cases before the grand jury. R. p. 28, lines 18-23. The Solicitor assured the trial court that no one from the Solicitor's Office appeared before the grand jury, and Shands' counsel advised the trial court he was not alleging a representative from the Solicitor's Office appeared before the grand jury. R. pp. 30-31.

Shands inaccurately claims in his brief that the prosecution proffered, “The testifying police officer, who is not the same law enforcement officer listed on the indictment, does not have any personal knowledge of the case.” App. Br. p. 10. Shands later claims the State stipulated the witnesses listed on the indictments did not testify. These statements are the foundation of Shands’ argument and are wholly inaccurate. As mentioned before, the prosecutor advised the trial court that he did not know who went before the grand jury, and nothing in the record indicates whether Hal Martin or Tony Lynch, whose names appear on indictments, or instead one of the other officers who testified at trial, or another officer from Laurens Police Department, appeared before the grand jury. Shands presented no evidence to prove that Martin or Lynch did not in fact testify before the grand jury, even though he was aware from Carrier of the evidentiary requirements necessary to present this claim to this Court.

Presumption of regularity

“Proceedings of the grand jury are presumed to be regular unless there is clear evidence to the contrary.” State v. Thompson, 305 S.C. 496, 501, 409 S.E.2d 420, 424 (Ct. App. 1991). “Speculation about ‘potential’ abuse of grand jury proceedings cannot substitute for evidence of actual abuse as grounds for quashing an otherwise lawful indictment.” Id. at 502, 409 S.E.2d at 424; see State v. Griffin, 277 S.C. 193, 196, 285 S.E.2d 631, 633 (1981) (citing 42 C.J.S. Indictments and Information §§ 38, 39 (1944) and noting it has been held grand jurors are presumed to have been sworn even when the indictment’s caption does not indicate they were sworn) *overruled on other grounds by* State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

Carrier argument and opinion

Shands next references oral argument in Carrier, which is not a proper citation for any proposition of law. Nonetheless, Shands mistakenly asserted at trial and now on appeal that the

deficiencies of proof present in Carrier were cured in the instant case to review his substantive issues.

During oral argument in Carrier, Justice Kittredge remonstrated that Carrier's claims were unsupported by anything other than trial counsel's assertions. (2:00-2:15). Further, Chief Justice Toal noted that no attempt was made to determine if the witness named in the indictment, Haden, was present or not before the grand jury at the time the second indictment was presented. Chief Justice Toal bemoaned trial counsel's attempts to elevate his own assertions to an evidentiary basis. Noting trial counsel's experience, she commented that trial counsel could have used the separate proceeding to put up actual evidence and it was simply not done. (10:25-11:40). Chief Justice Toal later noted she has seen in her twenty-eight years of experience that evidence could be presented for the issue being determined, that evidence could be presented to show what the grand jury did or did not do. (11:50-12:40). Finally, Chief Justice Toal noted Carrier was represented by experienced counsel who deliberately and carefully determined how to present an issue, and noted the trial court was presented only with arguments and not evidence. (15:00-15:15).

In the instant case, contrary to Shands' argument, Shands presented no evidence showing any irregularity in the grand jury proceedings. No evidence was presented that neither Hal Martin nor Tony Lynch appeared before the grand jury for presentment of the indictments. There is also no evidence an officer without knowledge of the case presented evidence to the grand jury. Shands declined to present any evidence to determine the existence of any irregularity suggested by Shands now on appeal even though Shands' counsel very carefully and deliberately presented his argument to the trial court. The proffer made by the solicitor likewise did not provide a sufficient record for Shands' claims.

Hearsay allowed before grand jury/grand jury secrecy/grand jury role as an accusing and investigative body.

Shands complains about the possibility of hearsay being presented to the grand jury. The predominate view is that an indictment is proper even if entirely based on hearsay evidence. See State v. Tressler, 503 S.W.2d 13 (Mo. 1973) (finding indictment based only on hearsay is acceptable, in keeping with the predominate view of the states); Casey v. State, 491 S.W.2d 90, 92 (Tenn. Cr. App. 1972) (indictment may be based solely on hearsay); King v. State, 139 N.E.2d 547, 551 (Ind. 1957); State v. Matthews, 218 So.2d 743 (Miss. 1969) (error to quash indictment merely because it is based on hearsay testimony); State v. Blake, 305 A.2d 300, 303 (N.H. 1973) (rejecting claims that indictment should be quashed because it was based solely on hearsay testimony consisting of four written statements by complainants and their mothers, along with police reports and the testimony of only one police officer); State v. Wall, 159 S.E.2d 317 (N.C. 1968) (indictment sufficient although testimony was from officer who had no independent knowledge of the facts); Commonwealth v. Dessus, 224 A.2d 188 (Penn. 1966) (finding it was well-settled law in Pennsylvania that an indictment may be based on hearsay; “a contrary rule would revolutionize the practice of criminal law and would introduce into the administration of the criminal law a novel and vicious practice”); Douglass v. State, 163 So.2d 477, 489 (Ala. Ap. 1963) (indictment may be based on hearsay alone) *rev’d on other grounds*, 380 U.S. 415 (1965); State v. Parks, 437 P.2d 642 (Alaska 1968) (same); Commonwealth v. Walsh, 151 N.E. 300 (Mass. 1926) (finding no merit to contention that indictment should be quashed because sole witness had no independent knowledge of crime, the court will not inquire into whether competent evidence was heard); People v. Gable, 647 P.2d 246 (Colo. App. 1982) (finding the bulk of information presented to the grand jury or at the preliminary hearing may well be based on hearsay); United States v. Zielesinski, 740 F.2d 727, 729 (9th Cir.1984) (“Grand juries can properly indict suspects on the basis of hearsay”); see also State v. Carruthers, 35 S.W.3d 516, 532-33 (Tenn. 2000) (“It has long been the

rule in this State that the sufficiency and legality of the evidence considered by the grand jury is not subject to judicial review. Where an indictment is valid on its face, it is sufficient to require a trial of the charge on the merits to determine the guilt or innocence of the accused, regardless of the sufficiency or legality of the evidence considered by the grand jury.”).

Of course, South Carolina follows this view also. State v. Williams, 301 S.C. 369, 392 S.E.2d 181 (1990); State v. Williams, 263 S.C. 290, 210 S.E.2d 298 (1974); State v. Boyd, 20 S.C.L. 288 (1834) (refusing to inquire into the character of evidence presented where the complaint appeared to be that written statements were submitted by witnesses instead of evidence being presented viva voce); see also Rule 1101(d)(2), SCRE (rules of evidence inapplicable to grand jury proceedings).

“A grand jury is an inquisitorial, informing, and accusing body, and it is not a trial body.” 38A C.J.S. Grand Juries § 2 (including citation to State v. Bramlett, 166 S.C. 323, 164 S.E.837 (1932) at n. 17). The grand jury system originated in England and proved popular, despite its secrecy, as a fair method of instituting criminal proceedings, as aptly noted in Costello v. United States, 350 U.S. 359, 362 (1956). Costello observed the historical workings of the grand jury as follows:

Grand jurors were selected from the body of people and their work was not hampered by rigid procedural or evidential rules. In fact, grand jurors could act on their own knowledge and were free to make their presentments or indictments on such information as they deemed satisfactory.

Id. Our Supreme Court observed that in England “at the time of settlement of this country, [the grand jury was] an informing and accusing body only. . .” Bramlett, 164 S.E. at 875 (citation and internal quotation marks omitted).

Former Attorney General Daniel R. McLeod sought permission from the Supreme Court to appear on behalf of the State and have a stenographer present to take testimony. The Supreme Court

denied both requests, proclaiming, “No principle has been followed more closely than that which protects the secrecy of the proceedings of the grand jury . . .” Ex Parte McLeod, 272 S.C. 373, 377, 252 S.E.2d 126, 128 (1979).

In Douglass, the Alabama court observed the inability of an opposing party to confront witnesses is the bedrock rationale for excluding hearsay during a trial: “Before a grand jury, the suspect is given no opportunity to be represented. Hence, the hearsay exclusion would be without the adversary means to implement it.” Douglass, at 489-90.

Refusing to inquire into the nature of the evidence presented to the grand jury, a Connecticut Superior Court observed:

Proceedings before a grand jury are preliminary and ex parte and are only to establish probable cause. To establish such a rule would entail an unnecessary invasion of the secrecy which is essential to the nature of the grand jury proceedings and which is required by oath. Finally, an accused is not entitled to a rule which would result in delay and adds nothing to the assurance of a fair trial.

State v. Stallings, 206 A.2d 277, 278 (Conn. Super. Ct. 1964).

The United States Supreme Court found in Costello that an indictment could properly be found solely on hearsay. Id. Judge Hand observed in the Second Circuit opinion that, “Indeed, we conduct our most serious affairs upon the strength of [hearsay]; it would be impossible to carry on a day’s business without it.” Costello, 221 F.2d at 678.

The hearsay rule is not based on the precept that hearsay statements are without probative value or supply a logical basis for conclusions of fact. Parks, at 644. It is only inadmissible if objected to at trial, otherwise once admitted, the jury may properly consider the hearsay in their determinations. Id., accord State v. Frank, 262 S.C. 526, 205 S.E.2d 827 (1974) (failure to object to testimony renders

evidence competent and may be considered to the extent it is relevant). “Since hearsay evidence has probative force and may furnish a logical basis for conclusions of fact, it cannot be said that because evidence presented to the grand jury was hearsay it did not rationally establish the facts sought to be established.” Parks at 644.

In the instant case, the secrecy of the proceedings prevents this Court or the parties to know what substantive evidence was presented to the grand jury, but obviously, from the trial court record, competent evidence supports the conviction beyond a reasonable doubt.² Therefore, evidence existed to meet the lower probable cause threshold. Merely because an officer, perhaps unconnected to the investigation, relayed statements of the victims and eyewitnesses, as opposed to an investigating officer or the officer that secured various warrants, does not render the charging decision of the grand jury unfair.

On point is State v. Matthews, 218 So.2d 743 (Miss. 1969). In that case, the sole witness was a police officer with no direct knowledge of the testimony given by him, but instead he testified from police department and FBI files. The court reversed the dismissal of the indictment, noting the sufficiency of evidence before a grand jury cannot be challenged, only an allegation of undue influence was tenable.

Shands relies heavily on Chief Justice Lewis’ dissent in State v. Capps, 276 S.C. 59, 275 S.E.2d 872 (1981). However, in that case, which dealt with the propriety of a prosecutor being a witness

² The Supreme Court rejected the appellant’s argument that the trial court should have required the State to disclose whether evidence favorable to the appellant was presented to the grand jury: “Changing the fundamental principle of [grand jury] secrecy should come as the result of a comprehensive study and evaluation of all facets of the question and not through a process of judicial erosion.” State v. Whitted, 279 S.C. 260, 262, 305 S.E.2d 245, 246 (1983) (citation and internal quotation marks omitted).

before the grand jury, Justice Lewis' chief concern appears to be with the solicitor's role as an attorney rather than his role in law enforcement. Consider the following from his dissent:

It is the duty of a solicitor not to convict, but rather to see that justice is done; however, it is also the duty of the solicitor to prosecute vigorously. . . . It is partly because of this role as advocate that he cannot also be a witness in a grand jury proceeding.

Id. at 874-75 (internal citation omitted).³ Justice Lewis noted the rules of professional responsibility provide "the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively." Id. (citation omitted).

While Justice Lewis obviously was seeking changes to the grand jury system well beyond the question of whether a prosecutor should testify, it is obvious the gravamen of his concerns was the simple proposition that a prosecutor should not serve as both advocate and witness on the same case. An investigator or other law enforcement agency representative does not implicate the same concern.

An investigative officer may be the sole witness before the grand jury. State v. Whitted, 279 S.C. 260, 305 S.E.2d 245 (1983) *overruled on other grounds by* State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998). Rather than admit Whitted controls the result, Shands argues Whitted stated a requirement a law enforcement officer must have participated in the investigation of the case to be a witness before the grand jury. However, Shands does not explain what nexus is required or how such a rule would be workable without making grand jury proceedings a full blown, first-round trial rather than simply a determination of probable cause.

³ The Court did not agree with Chief Lewis' proposition that a prosecutor could never be a witness before the grand jury, but instead "strongly" suggested the practice should "be abandoned unless no alternative is available." Capps, 276 S.C. at 62, 275 S.E.2d at 873. For several years, the Supreme Court "also stated that this does not necessarily mean that it is error for a solicitor to be a sole witness before the grand jury." State v. Dawkins, 297 S.C. 386, 390, 377 S.E.2d 298, 300 (1989).

Fifth Amendment

Shands claims the Fifth Amendment as authority for his arguments. This is only a conclusory assertion and so this Court should not consider the matter. State v. Colf, 332 S.C. 313, 332, 504 S.E.2d 360, 364 (Ct. App. 1998) (finding a conclusory two-paragraph argument citing no authority other than an evidentiary rule was deemed abandoned on appeal) *aff'd as modified*, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000). Further, his argument runs counter to State v. Duncan, 274 S.C. 379, 264 S.E.2d 421 (1980), which held the following:

This court has previously noted that the fifth amendment requires only that the indictment be returned by a legally constituted and unbiased grand jury and that the indictment must be valid on its face. State v. Williams, 263 S.C. 290, 210 S.E.2d 298 (1974). The fifth amendment requirements implicitly recognized the traditional view that the deliberations of a grand jury must remain secret and inviolate. We adhere to that view. From the record before us, we cannot agree that the indictment should have been quashed. The length of time spent deliberating a matter, even if it could be established, does not control the effectiveness of the deliberation. The requirements of the fifth amendment were met.

Id. at 381, 264 S.E.2d at 422.

Equal protection

Shands further claims the legislative scheme for county grand juries violates the equal protection clause because of how it differs from the state grand jury statutes. However, a rational basis exists for the differing grand jury systems due to the special enhanced powers of the prosecution in the State Grand Jury system that requires more checks on prosecutorial power, unlike the county grand jury system, where the prosecution has hands off involvement.

Shands must overcome a strong presumption of constitutionality to successfully attack the constitutionality of a statute. The Supreme Court has declared:

This Court has a very limited scope of review in cases involving a constitutional challenge to a statute. All statutes are presumed constitutional and will, if possible, be construed so as to render them valid. A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt.

State v. Harrison, 402 S.C. 288, 292-293, 741 S.E.2d 727, 729 (2013) (internal citations omitted).

The Equal Protection Clause of the United States Constitution provides: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. The South Carolina Constitution provides no “person shall be denied the equal protection of the laws.” S.C. Const. art. I, § 3. “The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment.” Grant v. S.C. Coastal Council, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995).

Not all classifications are unconstitutional, however, for “[t]he equal protection clause only forbids irrational and unjustified classifications.” Bodman v. State, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013). If the statute “does not implicate a suspect class or abridge a fundamental right, the rational basis test is used” to determine whether the classification falls into the prohibited group. Id. (citing Denene, Inc. v. City of Charleston, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004)). “A classification does not violate the Equal Protection Clause if: (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis.” Curtis v. State, 345 S.C. 557, 574, 549 S.E.2d 591, 599-600 (2001) (citing Whaley v. Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, 524 S.E.2d 404 (1999)). “A classification will survive rational basis review when it bears a reasonable relation to the legislative purpose sought to be

achieved, members of the class are treated alike under similar circumstances, and the classification rests on a rational basis.” Bodman, 403 S.C. at 69, 742 S.E.2d at 367.

As the Supreme Court recently explained in Bodman:

We give great deference to the General Assembly's decision to create a classification. Consequently, those who challenge the validity of one under rational basis review must “negate every conceivable basis which might support it.” Furthermore, “it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.” The classification also does not need to completely achieve its purpose to withstand constitutional scrutiny. Moreover, “[t]he fact that the classification may result in some inequity does not render it unconstitutional.”

Id. at 69-70, 742 S.E.2d at 367-368 (internal citations omitted). “Accordingly, [the Court’s] entire equal protection inquiry revolves around interplay between the specific classification created and the purported basis for it, with a challenger coming under rational basis review facing a steep hill to climb.”

Id. at 70, 742 S.E.2d at 368.

The State Grand Jury System is a fairly recent development, enacted in 1987 and becoming effective in February 1989. 1987 Act No. 150 § 1. The legislature announced its intent in passing the act was “to enhance the grand jury system and to improve the ability of the State to detect and eliminate criminal activity.” S.C. Code § 14-7-1610 (A).

An important purpose of the State Grand Jury is its ability to detect and investigate drug trafficking with multi-county significance. The State’s ability to detect and investigate this illicit commerce is enhanced by a grand jury with authority to cross county lines. Section 14-7-1610(A). Likewise, the statutory scheme is designed to improve the investigation and prosecution of criminal gang activities (§ 14-7-1610 (B)), public corruption (§ 14-7-1610(C)), child obscenity (§ 14-7-1610 (D)); election fraud (§ 14-7-1610(E)), and environmental crimes (§ 14-7-1610(F)), on the basis that

enhanced grand jury powers were necessary for investigation and prosecution of those particular crimes.

The limited role of the prosecutor in county grand jury proceedings was greatly expanded in the State Grand Jury framework. In enacting Article 15, the legislature required the Attorney General or his designees to attend sessions of the State Grand Jury, to act as legal advisor to the State Grand Jury, to examine witnesses, present evidence, and draft indictments and reports under the direction of the State Grand Jury. S.C. Code § 14-7-1650 (A). The Attorney General is empowered with the ability to notify the presiding judge that the State Grand Jury is expanding its scope of inquiry. S.C. Code § 14-7-1690. Additionally, the Attorney General is able to require the Clerk of the State Grand Jury to issue subpoenas to appear before the State Grand Jury. S.C. Code § 14-7-1680.

Enactment and evolution of the State Grand Jury followed and overlapped with the “journey” to Anderson⁴ described by Shands. When Attorney General McLeod proposed providing a representative from this office to examine and cross-examine witnesses before the county grand jury and for a stenographer to record the proceedings of the county grand jury, the Supreme Court sternly refused. The Supreme Court explained, “Adherence to the foregoing long established public policy has prohibited the prosecuting attorney from entering the grand jury room for the purpose of presenting evidence through the examination and cross-examination of witnesses.” Ex parte McLeod, 272 S.C. 373, 377, 262 S.E.2d 126, 128 (1979).

In rejecting the request for the stenographer, the Supreme Court also soundly rejected the call by the Attorney General to revise the county grand jury despite that it might “in certain limited respects

⁴ State v. Anderson, 312 S.C. 185, 439 S.E.2d 835 (1993) (announcing a prosecutor is prohibited from being a witness before the grand jury).

have some appeal.” Id. at 378, 262 S.E.2d at 128. The Supreme Court soundly explained: “If, however, the fundamental principle of secrecy in grand jury proceedings as long followed in our prior decisions is to be changed, it should come as the result of a comprehensive study and evaluation of all facets of the question and not through a process of judicial erosion.” Id.

Two years later, Chief Justice Lewis, in his dissent in State v. Capps, 276 S.C. 59, 275 S.E.2d 872 (1981), advocated “retreating” from the Supreme Court’s holding in McLeod by allowing the prosecutor to participate as an advocate (but not as a witness) and allow a stenographer to record the proceedings. Addressing the concern of a prosecutor being an attorney-witness, Chief Justice Lewis warned “the environment of one-sided proceedings before the grand jury increases the potential for abuse of the relationship and further heightens my concern.” Id. at 67, 275 S.E.2d at 875.

As Shands notes, prosecutors were discouraged and ultimately barred from appearing before a county grand jury as a witness. State v. Anderson, 312 S.C. 185, 439 S.E.2d 835 (1993). In reaching this result, the Supreme Court cited favorably Chief Justice Lewis’ reasoning in his dissent in Capps that “considering the authoritative nature of the relationship between a solicitor and the grand jury, the lone testimony of the solicitor as a representative of the State would be too potent to allow as the general rule.” Anderson, at 187, 439 S.E.2d at 837.

Viewing the expansion of the prosecutors’ role in State Grand Jury proceedings, in which they were allowed to examine witnesses, it is understandable the legislature wanted to counter this expansion of prosecutorial power in the setting of a unilateral proceeding by requiring a record of the proceeding be preserved as a check against potential (hypothetical) abuse by the State.

On the other hand, the legislature sought to preserve the long-held principals of grand jury secrecy in county grand jury proceedings as the prohibition against the solicitor examining or cross-

examining witnesses was maintained.

Thus, a rational basis exists between maintaining grand jury secrecy in county grand jury proceedings, but requiring a recording of the more expansive State Grand Jury proceedings. Therefore, the fact Shands chose to commit crimes without multi-county significance and otherwise outside the statutorily enumerated class of crimes leading to empanelment of a State Grand Jury investigation does not amount to a violation of his rights under the equal protection clauses.

III.

The trial court did not err in admitting Appellant's prior conviction under Rule 609(a)(1), SCRE, because Appellant was on parole for that offense when he committed the crimes in the instant case, and because Appellant put his character into issue. Appellant was not prejudiced because his credibility was not critical since he agreed he committed the offenses, the evidence was overwhelming, and the trial court gave a proper limiting instruction to the jury.

Shands claims the trial court erred in allowing the State to impeach Shands with his 1976 murder conviction. However, Shands was on parole for the conviction at the time he assaulted Victim, and the conviction was probative under Rule 609, SCRE. The prosecution limited the danger of unfair prejudice by asking him if he had a prior conviction for a violent offense. Further, Shands put his character into evidence by eliciting testimony from family and neighbors that he never acted that way before the assault, therefore, the State was allowed to rebut this character evidence with the fact of his conviction under Rule 404(a), SCRE, since Shands opened the door to this testimony. Accordingly, the trial court did not err. Further, any error was harmless in light of the overwhelming evidence of guilt.

The admission or exclusion of evidence is left to the sound discretion of the trial court, whose decision will not be reversed on appeal absent an abuse of discretion. State v. Morris, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008); State v. Howard, 396 S.C. 173, 177, 720 S.E.2d 511, 514 (Ct.

App. 2011). An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support. State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012); Howard at 178, 720 S.E.2d at 514. To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice. Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005); Howard at 178, 720 S.E.2d at 514.

Rule 609, SCRE

Pursuant to Rule 609(a)(1), SCRE, prior convictions punishable by more than one year's imprisonment "shall be admitted" for impeaching the credibility of a defendant who testifies if "the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused." The South Carolina Supreme Court has approved the five-factor analysis generally employed by the federal courts for weighing the probative value for impeachment of prior convictions against the prejudice to the accused. State v. Colf, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000). Prior convictions similar to the one for which the defendant is being tried are not automatically inadmissible; instead, "[t]rial courts must weigh the probative value of the prior convictions against their prejudicial effect to the accused and determine, in their discretion, whether to admit the evidence." Green v. State, 338 S.C. 428, 433, 527 S.E.2d 98, 101 (2000). The following factors, along with any other relevant factors, should be considered by the trial court: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. Colf at 627, 525 S.E.2d at 248.

Shands' prior conviction was within time limits of Rule 609 because Shands was on parole

and under the State's supervision at the time of the assault.

Rule 609 provides:

Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Rule 609(b), SCRE.

Shands was convicted of murder in 1976 in Florida and sentenced to life imprisonment. He was paroled in 2003, and still serving parole at the time of the offense: Shands was supervised by Laurens County. R. p. 135, lines 23-25. Shands argues he was not in custody while on parole and, therefore, the conviction was more than ten years old pursuant to Rule 609(b). In State v. Scott, 326 S.C. 448, 484 S.E.2d 110 (Ct. App. 1997), the defendant was tried before the rules of evidence were adopted. He was tried in 1995, and the State sought to impeach a defense witness, Brock, with Brock's 1977 robbery conviction. Brock received a nine year sentence and was released on parole in 1980. The parole terminated in 1986. This Court, relying on Jones v. Cunningham, 371 U.S. 236, 243 (1963), held Brock was in custody while on parole, and therefore, was in custody until 1986, only nine years prior to the trial. Scott, at 451-52, 484 S.E.2d at 112.

In State v. Ellis, 397 S.C. 576, 726 S.E.2d 5 (2012), in addressing a sentence calculation, the Supreme Court found a probationary sentence did not start until the conclusion of parole for another offense, noting a "defendant's release from a sentence does not mean his mere release from physical custody." Id. at 583-84, 726 S.E.2d at 8-9. In the instant case, Shands was still in custody by virtue of being on parole, he needed to be supervised by the State; therefore, the ten year limit was not

implicated.

Generalized impact on credibility

Admittedly, murder is not a crime of dishonesty. However, that does not mean the offense, requiring malice, does not impact credibility. It is precisely the generalized impact on credibility which is contemplated by Rule 609(a)(1), SCRE. Merely because an offense is not a crime of “dishonesty or false statement” under Rule 609(a)(2), does not mean the offense lacks probative value for truthfulness. Otherwise Rule 609(a)(1) would not exist under the rules of evidence. In the instant case, the offense carried an impact on credibility that supports the trial court’s ruling.

In State v. Black, 400 S.C. 10, 732 S.E.2d 880 (2012), the Supreme Court’s analysis centered on the higher standard in Rule 609(b) pertaining to admission of remote convictions rather than the standard in Rule 609(a)(1) pertaining to convictions within ten years. Black, 400 S.C. at 18, 732 S.E.2d at 885. Although there was an extensive discussion regarding the impeachment value of prior convictions, that discussion must be taken in the context of the statutory presumption against the admission of remote convictions unless the trial court finds the probative value “substantially outweighs” its prejudicial effect. Indeed, in Black the Supreme Court noted that even though a conviction for a crime of violence is not particularly probative of the specific trait of truthfulness, its impeachment value is merely “limited.” Id. at 23, 732 S.E.2d at 887. The Court did not hold the impeachment value was nonexistent.

This is because if the crime is “not probative of truthfulness,” its probative value would **never** outweigh its prejudicial effect. Such a ruling would eviscerate the Rule and only allow impeachment with crimes of dishonesty or false statement. As a result, the judicial limitations on the exception contained in Rule 609(a)(2) would swallow the rule contained in Rule 609(a)(1) in its entirety. This

was clearly not the result contemplated by the Supreme Court in State v. Bryant, 369 SC. 511, 633 S.E.2d 152 (2006); after finding Bryant's prior firearms convictions "do not involve dishonesty," the Court nevertheless stated "their probative value should have been weighed against their prejudicial effect." Bryant at 517, 633 S.E.2d at 156. In State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015), the Supreme Court further clarified this interpretation. In other words, a balancing test pursuant to Rule 609(a)(1), SCRE, is always proper, even where the prior conviction and the current charge are identical.

In the instant case, the probative value of the prior conviction and its impact on credibility was heightened by Shands' cross-examination of several witnesses about his character. For instance, Shands asked Victim, "This is the first time he has ever done something like this, isn't it?" R. p. 70, lines 7-8. Shands also asked Victim, "But he never did anything like this before?" R. p. 70, line 23. Likewise, Shands asked Trey, "And other than this one incident [Shands] has never done anything like this that you have seen, has he?" R. p. 80, lines 6-7. Shands followed this question by asking, "But he, he could fuss and get irritable but he has never had stabbed anybody like this, has he?" R. p. 80, lines 9-10.

Shands cross-examined Jalen as follows:

Q: Now, you said you were scared that night and I can understand that. This is the first time you have ever seen your dad do something like that with a fork, isn't it?

A: Yes, sir.

Q: And it was kind of out of the ordinary?

A: Yes.

Q: And you have never seen him in that kind of state of mind before, have you?

A: No.

R. p. 85, lines 16-25.

Shands asked Koon the following:

Q: And this was entirely out of character for Preston?

A: Well, see I don't know if that was out of character or not. I know he has been a neighbor to us.

Q: Right, he had always been a good neighbor to you?

A: Yes, sir.

Q: And you had never witnessed anything like this?

A: No sir, I have not.

R. p. 96, line 25 – p. 97, line 5. Shands also elicited testimony from Martha Koon that they were neighbors with Shands for several years and until that night, Shands was a good neighbor. Martha agreed “he seemed like a good guy.” R. p. 102, line 15 – p. 103, line 3.

In the instant case, Shands' defense was an imperfect defense of intoxication and to this end he presented evidence that he was acting out of character the day of the assault. Therefore, the impeachment value⁵ of his past murder conviction, described as “a violent felony,” was enhanced beyond the usual probative worth of violent crimes because Shands' defense was premised on the idea that he was grossly intoxicated, and but for the gross intoxication, this would not have happened because it was out of character. Moving on to the remainder of the Colf factors, the murder conviction may have occurred years ago, but as discussed above, Shands' sentence had not ended as he was still on

⁵ “[I]mpeaching must mean that which is outside the evidence already given, and impeaches that evidence; it may be by attacking the character, the motives, the integrity, or veracity of those who gave the testimony.” Johnston v. Belk-McKnight Co. of Newberry, 188 S.C. 149, 158, 198 S.E. 395, 399 (1938).

parole and monitored by Laurens County. The danger of unfair prejudice was limited by the fact that the jury was not told that the conviction was murder, a similar offense to attempted murder, but instead was told the conviction was a violent felony.

As to the final two elements of the Colf factors, Shands made the argument to the trial court for the State's benefit. He conceded his testimony was important and the credibility issue was essential to his defense. Shands remonstrated it would "devastate his credibility." R. p. 138. That purpose enhances, rather than decreases, the legitimate probative value of the challenged evidence because the purpose of admitting the evidence is to attack Shands' credibility and the danger of unfair prejudice would stem from the possibility of the jury considering the conviction for propensity purposes, which is minimized here due to the offense being referred to merely as a violent offense.

Shands put his character into evidence and opened the door to his prior conviction.

Additionally, Shands put his character in issue – repeatedly – as discussed above. Shands' counsel elicited testimony from Victim and her sons that Shands was acting out of the ordinary. Shands' counsel even asked Koon if Shands had acted out of character. These questions put Shands' character for peacefulness into play, and the prosecution was allowed, pursuant to Rule 404(a), SCRE, to counter Shands' assertions of good character. Under Rule 404(a):

Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except: (1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same; . . .

"When a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." State v. McEachern, 399 S.C. 125, 137, 731

S.E.2d 604, 610 (Ct. App. 2012).

An appellant cannot complain of prejudice from evidence he has brought before the jury. State v. Brown, 344 S.C. 70, 543 S.E.2d 552 (2001). A party will be unsuccessful in opposing the admission of evidence if that party was the one who opened the door. State v. Robinson, 305 S.C. 469, 409 S.E.2d 404 (1991).

“[T]he central purpose of a criminal trial is to decide the factual question of the defendant’s guilt or innocence.” Delaware v. Van Arsdall, 475 U.S. 673, 681 (1986) (citing United States v. Nobles, 422 U.S. 225 (1975)). “To this end it is important that both the defendant and the prosecutor have the opportunity to meet fairly the evidence and arguments of one another.” United States v. Robinson, 485 U.S. 25, 33 (1988).

Shands put his character into evidence early and often to establish that he was acting out of character. The State was allowed to counter this assertion of character with evidence rebutting the character trait he chose to put into evidence. Accordingly, it was not error for the trial court to allow Shands to be impeached with his prior conviction.

Any error is harmless since Shands never formulated a legitimate defense.

Further, any error is harmless. “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). “Harmless error rules . . . ‘serve a very useful purpose insofar as they block setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial.’” State v. White, 410 S.C. 56, 59, 762 S.E.2d 726, 728 (Ct. App. 2014) (quoting Chapman v. California, 386 U.S. 18, 22 (1967)).

Shands' only defense was a sham involuntary intoxication defense where, beyond his own self-serving testimony, Shands could not even prove intoxication, and no evidence actually supported his contention the supposed intoxication was involuntary. Further, Shands clearly could control his actions once he was confronted with an armed officer instead of helpless victims. Shands admitted to the assaults and his assertion he was acting out of character was also rebutted by testimony that he had become controlling and jealous. Any error is harmless beyond a reasonable doubt.

IV.

Evidence did not support an instruction on involuntary intoxication and evidence supported an instruction on voluntary intoxication. The instruction on voluntary intoxication was not a charge on the facts.

Shands argues the trial court erred in failing to instruct the jury on involuntary intoxication and claims evidence supported the instruction. He further makes an offhand claim that the instruction on voluntary intoxication amounted to a charge on the facts. Shands voluntarily drank moonshine, and no evidence supporting a claim of involuntary intoxication was presented to the jury. Further, the instruction on voluntary intoxication was an instruction on the law, not on the facts. Shands' claim of involuntary intoxication was based on his claim of how alcohol usually affects him, but Shands admitted the moonshine was particularly strong and he never tried it before.

The South Carolina Supreme Court held that voluntary intoxication is never a defense to a crime unless it produced permanent insanity. State v. Vaughn, 268 S.C. 119, 125, 232 S.E.2d 328, 330 (1977). As the Supreme Court has explained:

Reason requires that a man who voluntarily renders himself intoxicated be no less responsible for his acts while in such condition. To grant immunity for crimes committed while the perpetrator is in such a voluntary state would not only mean that many offenders would go unpunished but would also transgress the principle of personal

accountability which is the bedrock of all law. The effect of drunkenness on the mind and on men's actions is a fact known to everyone, and it is as much the duty of men to abstain from placing themselves in a condition from which such danger to others is to be apprehended as it is to abstain from firing into a crowd or doing any other act likely to be attended with dangerous or fatal consequences.

Id. at 125-26, 232 S.E.2d at 330-31 (citation, ellipses, and internal quotation marks omitted).

Shands' musing that the moonshine must have been spiked was insufficient to produce evidence of involuntary intoxication. In Cribb v. State, 45 S.E. 396 (Ga. 1903), the Georgia Supreme Court rejected a claim that the defendant's ale was drugged, holding:

There was no evidence on which to charge as to the effect of drugging the ale alleged to have been used by the defendant, nor can the courts establish a precedent which would authorize a chemical investigation as to whether the liquor was good or bad, pure or impure, drugged or containing only malt, spirituous, or vinous qualities. Drunkenness voluntarily produced by one sort of liquor is no more an excuse for crime than that caused by any other kind of intoxicating drink.

Id. at 397.

California's Court of Appeals found a jury instruction on involuntary intoxication was not warranted based on the claim the defendant was unaware the marijuana cigarette he smoked was laced with PCP. People v. Velez, 175 Cal.App. 3d 785 (Cal. Ct. App. 1985). The court held "a reasonable person has no right to assume that a marijuana cigarette furnished to him by others at a social gathering will not contain PCP, nor may such a person assume such a marijuana cigarette will produce any predictable intoxicating effect." Id. at 796.

Further, evidence does not support an instruction on involuntary intoxication based on a claim the moonshine might have been doctored. Only rank speculation, not evidence, was offered on this point. For instance, in State v. Barr, 102 S.W.2d 629 (Mo. 1937), the defendant drank a considerable

amount of whiskey. He claimed he then took a drink from another person's bottle, it tasted bitter, and he began to feel funny. The defendant further claimed he blacked out, and when he regained consciousness, he was lying in bed at home and "had never felt that way before or since, though he had been drunk many times." Id. at 634. The Missouri Supreme Court found simply because the bottle of whiskey he shared with another person tasted funny was too vague to justify finding it was drugged and further rejected the assertion that the subsequent hangover established that the liquor was doctored: "Absent evidence we cannot take judicial notice that a headache 'in the cold gray dawn of the morning after' constitutes evidence tending to prove that one has imbibed drugged liquor." Id.

In People v. White, 264 N.E.2d 228 (Ill. App. Ct. 1970), the defendant testified he drank a couple of beers over a two hour period at a Legion bar, then two more beers at another bar. He went to the washroom, leaving a half full glass of beer at his seat, and returned to find his seat taken. He took his beer and moved elsewhere. Finishing his beer, he left the bar and later claimed he blacked out as he walked outside. When he came to, he was home. He was arrested for murder on his way to work and taken to a hospital because he had a bloody knee. The defendant claimed he requested a blood test at the hospital, although the treating medical personnel denied hearing this. Id. at 229-30.

The Illinois court rejected a claim the trial court should have instructed the jury on involuntary intoxication, finding, "The only evidence which was presented was the request for a blood test, which defendant stated he made, or the testimony of defendant that he left a glass of beer for about five minutes at the bar. We do not believe that this constituted sufficient evidence that defendant was drugged." Id. at 231.

As the Kentucky Court of Appeals observed, "Clearly, where one drinks of his own free will, the mere fact that he misjudges his own capacity, or the intoxicating effect of the particular beverage,

will not render his intoxication involuntary.” Tackett v. Commonwealth, 266 S.W. 26, 27 (Ky. Ct. App. 1924).

In the instant case, Shands admitted he never drank moonshine before and merely surmised it was drugged because alcohol normally causes him to fall asleep.⁶ This and the vague evidence he acted out of character is too speculative to support a jury instruction on involuntary intoxication. See State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008); State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) (instructions are determined from evidence at trial). The appellant must show the failure to give an instruction is both erroneous and prejudicial. Gaines. No evidence supports the requested instruction. Further, the failure to give the instruction was not prejudicial in light of the fact that no evidence corroborated Shands’ claim he was intoxicated, much less involuntarily so.

Shands also claims the instruction on voluntary intoxication was a charge on the facts. However, it is a statement of law. See Vaughn. Shands’ assertion otherwise is unsupported by authority and should be considered too conclusory to review on appeal. State v. Colf, 332 S.C. 313, 332, 504 S.E.2d 360, 364 (Ct. App. 1998) (finding a conclusory two-paragraph argument citing no authority other than an evidentiary rule was deemed abandoned on appeal) *aff’d as modified*, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000).

Judges shall not charge juries with respect to matters of fact, but shall declare the law. S.C. Const. Art. V, § 21. Generally, the trial judge must refrain from all comment which tends to indicate an opinion regarding the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of the

⁶ Of course Shands’ own testimony demonstrated that the moonshine was not an ordinary drink, but the “cremator of all whiskey.” R. p. 201. Shands’ testimony merely shows he miscalculated the intoxicating effect of the moonshine. Further, none of the witnesses even noticed his attested intoxication.

accused, or facts in controversy. State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996). In the instant case, the trial court merely declared the law – voluntary intoxication is not a defense to any crime. Williams v. Southeastern Life Ins. Co., 197 S.C. 171, 171, 14 S.E.2d 895, 897 (1941) (“In our opinion, the proposition of law requested did not infringe upon the facts. It was nothing more than a statement of a legal conclusion which would result if the jury found certain facts alleged in the complaint to exist.”). “Numerous cases uphold the proposition that a charge stating the legal conclusions which would result from the establishment of certain facts is not necessarily subject to objection as a charge on the facts, or as assuming the truth of the facts as stated.” Id.

Further, Shands was not prejudiced by the lack of an involuntary intoxication charge. Shands’ sons did not see him drink moonshine and none of the witnesses noticed his purported intoxication. Shands was sufficiently aware to drop his knife and drop to the ground at the officer’s commands. Shands’ testimony proves at most voluntary intoxication and he agreed he committed the offenses. The appellant must be prejudiced in order to reverse an appellant’s verdict on the basis of an erroneous jury charge. State v. Lee-Grigg, 374 S.C. 388, 415, 649 S.E.2d 41, 55 (Ct. App. 2007). Shands was not prejudiced and the alleged error does not warrant reversal. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008) (noting to warrant reversal, a trial court’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant).

V.

The trial court did not err in denying Appellant’s motion to strike the prosecutor’s argument that was not even objectionable. The argument was based on evidence in the record. Further, Appellant failed to move for a new trial, so the issue is not preserved and his argument is conclusory. The trial court did not abuse its discretion.

Shands argues he should get a new trial because the trial court “sustained” his objection during

closing argument but refused his request to strike the prosecutor's comments. The closing argument was proper and based on evidence in the record. Further, Shands was not prejudiced by the comments.

"A trial judge is allowed broad discretion in dealing with the range and propriety of closing argument to the jury." State v. Condrey, 349 S.C. 184, 562 S.E.2d 320, 325 (Ct. App. 2002). The prosecution "may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony." State v. New, 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999). A solicitor's closing argument is permissible where it stays within the record and reasonable inferences to it. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002).

In the instant case, Shands fails to argue on appeal why the argument was improper and objectionable. The issue is simply waived. State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (finding that the argument on appeal was so conclusory that it was deemed abandoned); Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to grope in the dark to ascertain the precise point at issue."); see also State v. Black, 319 S.C. 515, 521, 462 S.E.2d 311, 315 (Ct. App. 1995) ("The proper course to be pursued when counsel makes an improper argument is for opposing counsel to immediately object and to have a record made of the statements or language complained of and to ask the court for a distinct ruling thereon").

In his brief, Shands lays out a long block quote of the prosecution's argument leading up to the objection; but even on appeal, it is unclear what portion of the argument was objectionable or why. The last sentence prior to the objection was the prosecution's argument that, "This isn't about he was drinking something that day, this is a jealous, controlling husband who was not going to let his property leave that house." R. p. 232, lines 6-9. Counsel objected to "the characterization" and claimed the

assertion was outside the record. The trial court replied, “Let’s keep it to the facts.” R. p. 232, lines 10-12. The prosecutor’s argument is supported by the record, particularly from cross-examination of Shands. The prosecutor asked Shands, “And you got pretty jealous and kind of controlling, right?” Shands answered, “**Yeah**, I started drinking.” R. p. 199, line 25 – p. 200, line 2 (emphasis added). So the argument was proper because Shands agreed with the prosecutor that he was jealous and controlling. Of course, Shands treated his victim like his property by pulling her hair to make her stay. The prosecutor’s argument was a fair statement based on the evidence and was not remotely objectionable.

Further, the record does not support that the trial court’s warning to “keep it to the facts” was actually sustaining Shands objection. This is evidenced by the trial court’s decision to forgo striking any part of the argument. State v. Bamberg, 270 S.C. 77, 82, 240 S.E.2d 639, 640-41 (1977) (finding whether or not an argument is improper is a matter left to the trial judge’s discretion).

Additionally, Shands was not prejudiced by the comment. “Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Humphries, 351 S.C. at 373, 570 S.E.2d at 166. Shands committed the vicious assaults and agreed he committed the vicious assaults. Shands was not prejudiced by the characterization of his actions.

Further, assuming Shands’ claim the judge sustained his objection is correct, Shands never made a motion for mistrial. “One may not preserve a vice until he learns what the result will be and then take advantage of the error on appeal.” State v. Penland, 275 S.C. 537, 273 S.E.2d 765, 766 (1981) (not preserved due to failure to move for mistrial until after the verdict). An issue must be raised to and ruled upon by the circuit court in order to be considered on appeal. State v. Lopez, 352

S.C. 373, 378, 574 S.E.2d 210, 213 (Ct. App. 2002).

Finally, any error is harmless beyond a reasonable doubt in light of the abundant evidence of guilt, lack of a legitimate defense to the charges, and the extremely limited amount of prejudice from the prosecutor's comments. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial).

VI.

The implied malice charge was proper since no evidence was presented reducing, mitigating, excusing, or justifying the charge from attempted murder. The repeated stabbings occurred during the commission of a kidnapping. The instructions were a charge on the law and not the facts of the case. Any error is harmless beyond a reasonable doubt based on the abundant evidence of Appellant's malice beyond just his use of a barbecue fork to stab his victim.

Shands alleges the trial court erred in instructing the jury it could infer malice from the use of a deadly weapon, relying on State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). Shands further argues the instruction was a charge on the facts. The trial court did not err in charging the jury the implied malice instruction as no evidence was presented tending to reduce, mitigate, or justify the attempted murder. The instruction is simply an instruction on the law, not the facts. Further, Shands was not prejudiced by the instruction, and any error was harmless beyond a reasonable doubt.

The trial court gave the following instruction:

Inferred malice may also arise when the deed is done with a deadly weapon.

Now, deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. The following are examples of instruments which may be deadly weapons. A pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a sling shot, metal knuckles, a razor, gasoline, fire

bomb, a Molotov cocktail. And a gun may be a deadly weapon even when it is not operating. Ordinary objects may become deadly weapons when the facts show that they have been used to inflict serious bodily harm or death. If that's all proven beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction this inference would simply be an evidentiary fact to be considered by you along with all the other evidence in the case and you may give it the weight that you decide it should receive.

R. p. 244, line 14 – p. 245, line 7. Note the trial court did not instruct the jury that a barbecue fork could be a deadly weapon.

A jury charge instructing malice may be inferred from the use of a deadly weapon is improper when evidence is presented that would reduce, mitigate, excuse, or justify the offense. Belcher, 385 S.C. 597, 685 S.E.2d 802, 803-804 (2009) (holding an inferred malice instruction was improper where evidence of self-defense was sufficient to reduce, mitigate, or justify the killing). On the other hand, if there is no evidence to reduce, mitigate, excuse, or justify the offense, an instruction on the inference of malice from the use of a deadly weapon is permitted. State v. Price, 400 S.C. 110, 732 S.E.2d 652, 654 (Ct. App. 2012). Even if a court errs in charging the jury on an inferred malice instruction, the error is subject to harmless error analysis, and harmless error may arise when evidence of malice is not limited to the use of a deadly weapon. State v. Stanko, 402 S.C. 252, 741 S.E.2d 708, 714 (2013).

In Price, this Court held the trial court did not err in instructing the jury malice could be inferred from the use of a deadly weapon. Price, 400 S.C. at 114-15, 732 S.E.2d at 654. The defendant was charged with ABWIK, and the trial court instructed the jury “malice may be inferred from the conduct of a person if that conduct shows a total disregard for human life,” and it “may arise when the deed is done with a deadly weapon.” Id. The trial court also charged ABHAN as a lesser-included offense. Id.

On appeal, the defendant argued his theory that the shooting was part of a drug deal gone wrong

and therefore, the evidence precluded the deadly weapon inference charge. In rejecting that contention, this Court determined the instruction on ABHAN was not warranted and further found no evidence tended to reduce, mitigate, excuse, or justify the crime, explaining:

It is undisputed that someone shot Deon in the neck, causing him serious injury. The shooter raised the gun, pointed it at Deon, approached him, and shot him at close range as he stood with his hands up. There was no evidence to the contrary. There may have been conflicting evidence as to who did these things, but it is not possible to interpret the evidence to support any conclusion other than that the person who shot Deon committed ABWIK. Therefore, if the jury believed Price is the person who shot Deon, Price is necessarily guilty of ABWIK.

Id.

In Stanko, the defendant argued the trial court erred in instructing the jury it could infer malice from the use of a deadly weapon when the defendant had presented an insanity defense. Stanko, 741 S.E.2d at 711. The Supreme Court held the defendant's evidence of insanity was sufficient to preclude the deadly weapon inference charge, but found the error in giving it was harmless. Id. at 264-65, 741 S.E.2d at 713-14. In reaching its harmless error conclusion, the Court distinguished Belcher:

The State presented uncontested evidence that Appellant shot the Victim, his elderly and unarmed friend, in the back using a pillow as a silencer. Appellant then robbed the Victim, and for the next several days used his automobile to travel across the state, where he engaged in social activities and drinking. Authorities apprehended Appellant in possession of the Victim's vehicle and the gun used in the murder. Thus, the evidence of malice in this case is not limited to Appellant's use of a deadly weapon. See Belcher, 385 S.C. at 612, 685 S.E.2d at 810 ("It is entirely conceivable that the only evidence of malice was Belcher's use of a handgun.").

Id.

The Court also analyzed the trial court's jury instructions as a whole and found they were consistent with the evidence presented. The court observed:

The trial court instructed the jury that inferred malice may arise when the "deed is done with a deadly weapon." **The trial court also stated that malice "can be inferred from conduct showing total disregard for human life."** Appellant only contests the "deadly weapon" language. However, if the jury rejected Appellant's insanity defense, which it did, **the jury could also find that Appellant's conduct showed a total disregard for human life.** Thus, Appellant could not have suffered prejudice from any separate inference that his use of a deadly weapon also gave rise to an inference of malice.

Id. at 715 (emphasis added).

In the instant case, like Price, no evidence actually supported an instruction on the lesser included offense of ABHAN. Shands pulled victim's hair to keep her from leaving. She freed herself and ran across the street to a neighbor's house, but Shands tackled her in front of the house and proceeded to stab her repeatedly with a barbecue fork. The sons stopped Shands from stabbing Victim, but Shands retrieved a hammer, busted the windows in the front of the neighbor's house and entered through the sliding glass door in the back of the house, which he also smashed with the hammer. Shands retrieved a knife from the neighbor's kitchen and chased Victim to the front of the house where he was finally apprehended by law enforcement, although initially he was holding his own son hostage. Shands did not challenge this evidence when he testified; instead he claimed he did not remember the events due to his purported intoxication.

Further, as previously discussed, no evidence supported his contention that he was involuntarily intoxicated. Accordingly, no evidence supports the conclusion that he lacked the requisite mental state for malice. Moreover, an involuntary intoxication defense would negate all intent if believed, and therefore, the jury would not base its decision on an implied malice charge regarding the use of a deadly

weapon. As in Price, no evidence reduces, mitigates, excuses, or justifies the crime, so the trial court did not err in providing the inferred malice instruction.

Additionally, like Stanko, plenty of other evidence separate from his use of a barbecue fork supports a finding of malice. The violent incident starts with Shands cursing, pulling Victim's hair, fighting with the son, and tackling Victim on the neighbor's front porch. Shands committed the assault during a kidnapping and committed a burglary to pursue Victim, arming himself with the neighbor's kitchen knife. As in Stanko, plenty of evidence supports a finding of malice and any error is harmless. There was no other interpretation of the evidence except that Shands was attempting to kill Victim. See State v. Middleton, 407 S.C. 312, 319, 755 S.E.2d 432, 436 (2014) (finding error in failing to charge lesser included offense of assault and battery in the first degree was harmless beyond a reasonable doubt: "[T]he only conclusion established by the evidence is that Appellant was guilty of attempted murder [T]here is no other way to construe the evidence in this case but that Appellant was attempting to kill [the victims].").

Moreover, an instruction on a lesser offense is precluded because Shands stabbed Victim repeatedly during the commission of a kidnapping. State v. McCall, 304 S.C. 465, 405 S.E.2d 414 (Ct. App. 1991) *overruled on other grounds by* Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) (finding defendant was not entitled to an instruction on involuntary manslaughter because the homicide occurred during the commission of the felonies of robbery and kidnapping); State v. Avery, 333 S.C. 284, 294, 509 S.E.2d 476, 481 (1998) ("If a person intentionally kills another during the commission of a felony, malice may be inferred.") (citation omitted). Under the felony murder rule, he would not be entitled to an instruction on a reduced charge.

Shands also claims the implied malice instruction is an instruction on the facts. It is not, it is

merely an instruction on the law. Judges shall not charge juries with respect to matters of fact, but shall declare the law. S.C. Const. Art. V, § 21. Generally, the trial judge must refrain from all comment which tends to indicate an opinion regarding the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of the accused, or facts in controversy. State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996).

In the instant case, the trial court was merely advising the jury that malice could be inferred from the use of a deadly weapon, an accurate statement of law. See Williams v. Southeastern Life Ins. Co., 197 S.C. 171, 171, 14 S.E.2d 895, 897 (1941) (“In our opinion, the proposition of law requested did not infringe upon the facts. It was nothing more than a statement of a legal conclusion which would result if the jury found certain facts alleged in the complaint to exist.”). “Numerous cases uphold the proposition that a charge stating the legal conclusions which would result from the establishment of certain facts is not necessarily subject to objection as a charge on the facts, or as assuming the truth of the facts as stated.” Id.

On point and controlling is Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004). In Sheppard, the defendant argued that portions of the implied malice instruction constituted a comment on the facts, including the portion of the trial court’s charge that, “[u]nder the law of our State a pistol is a deadly weapon.” Id. at 663-64, 594 S.E.2d at 472. The Supreme Court rejected this argument because “under the law of South Carolina, a pistol is a deadly weapon.” Id. at 664, 594 S.E.2d at 472. In the instant case, the trial court did not instruct the jury that a barbecue fork was a deadly weapon, but only gave other examples of deadly weapons, which, as in Sheppard, really were deadly weapons under South Carolina law. Accordingly, the trial court’s instruction was not a comment on the facts. Sheppard.

VII.

The trial court did not err in failing to force the State to open on law and facts and reply only to “new” arguments of defense counsel; and the current procedure does not violate due process of the federal constitution or South Carolina Constitution.

Shands claims the trial court should have created a new rule of procedure and forced the State to open on the law and facts, and be allowed only a reply argument to defense counsel’s closing argument. Historically, the right to the final closing argument has followed the party with the burden of proof. Stein Closing Arguments § 1:6: Right to open and close; order of argument (2011-2012 ed.) (“Generally, the right to make opening and closing follows the person having the burden of proof.”); Nicole Velasco, Taking the “Sandwich” Off of the Menu: Should Florida Depart from Over 150 years of Its Criminal Procedure and Let Prosecutors Have the Last Word?, 29 Nova L.Rev. 99, 112 (2004) (“At common law, the widely accepted rule in the United States is that the party with the burden of proof has the right to open and conclude final argument before the jury.”).

In criminal trials in South Carolina, a solicitor is entitled to open and close the closing arguments to the jury unless the defendant has not offered any evidence. State v. Rodgers, 269 S.C. 22, 24, 235 S.E.2d 808, 809 (1977). The initial closing argument must include a discussion of the law if demanded by the defendant; however, the solicitor is not required to open his initial closing with any argument on the facts although he may do so as a matter of discretion. State v. Lee, 255 S.C. 309, 318, 178 S.E.2d 652, 656 (1971) *overruled on other grounds by* State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (S.C. Oct 12, 2009); Rodgers, 269 S.C. at 25, 235 S.E.2d at 809.

Unlike the vast majority of jurisdictions, current South Carolina practice sets the order of closing arguments in criminal cases according to the evidence received at trial. See State v. Brisbane, 2

Bay 451 (S.C. 1802) (As a matter of practice, when a criminal defendant calls no witnesses, he has “the **privilege** of concluding to the jury.”) (emphasis added); see also State v. Gellis, 158 S.C. 471, 471, 155 S.E. 849, 855 (1930) (“It is evident from the more recent decisions of this court that the rule is that if a defendant offers any evidence on trial of the case, the state is not deprived of its general right to the opening and concluding arguments.”); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379, 384 (1972) (same); State v. Mouzon, 321 S.C. 27, 467 S.E.2d 122, 125 (Ct. App. 1995) (same).

In rejecting an equal protection challenge, the Florida Supreme Court explained the rationale of their rule that is similar to the practice in South Carolina:

In all criminal proceedings, the prosecution takes the offensive at the outset, building through its witnesses a “case” for defendant’s guilt. In most instances, defense counsel is limited to the defensive tactic of cross-examination to show the weakness of the State’s evidence, and to create a reasonable doubt in the minds of the jury. Occasionally the defense will be in a position to take the offensive itself by calling witnesses to build its own case for innocence. In those instances where such an offensive tactic is possible, the defense receives a more balanced exposure before the jury, and is more adequately able to offset the impression created in the minds of the jurors by the prosecution’s presentation. . . . In our judgment it was precisely to counterbalance the weight of the State’s offensive in such cases that the Legislature, and later this Court, created an exception to the common law rule that the party with the burden of proof is entitled to the concluding argument before the jury.

Preston v. State, 260 So.2d 501, 504 (Fla. 1972).⁷

Totally denying a criminal defendant the opportunity for closing argument constitutes a denial of the defendant’s basic right to make his defense. Herring v. New York, 422 U.S. 853, 858-859

⁷ In 2007, Florida changed its rules to eliminate a defendant’s right to make a final closing argument. See In re Amendments to the Florida Rules of Criminal Procedure—Final Arguments, 957 So.2d 1164, 1167 (Fla. 2007) (“In all criminal trials, excluding the sentencing phase of a capital case, at the close of all the evidence, the prosecuting attorney shall be entitled to an initial closing

(1975). While the right to make a closing argument cannot be circumvented, the order of argument is vastly different, particularly since argument is not evidence. See, e.g., Ex parte Morris, 367 S.C. 56, 624 S.E.2d 649, 653 (2006) (quoting S.C. Dept. of Transp. v. Thompson, 357 S.C. 101, 590 S.E.2d 511, 513 (Ct. App. 2003) (“[a]rguments made by counsel are not evidence”)); Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22, 24 (1987) (“the solicitor’s closing argument is not evidence”). There is no constitutional **right** to a certain order or scope of argument.

The order of closing arguments is a matter of state procedural rule or practice rather than substantive law. State v. Huckie, 22 S.C. 298, 299 (1885) (alleged error in denying defendant final closing argument was “not a matter of error as to express law, but of practice”). The United States Supreme Court has consistently held the States are free to shape their own rules of procedure. See, e.g., United States v. Scheffer, 523 U.S. 303, 316 (1998) (“we thus stressed that the ruling [in Chambers v. Mississippi] did not ‘signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures.’” *quoting* Chambers v. Mississippi, 410 U.S. 284, 302 (1973)).

In the instant case, Shands was not deprived of last closing argument, but made a strategic choice to present a defense and forgo last closing argument. See Herring, 422 U.S. at 857-64 (a *total denial* of the opportunity to present a closing argument to the trier of fact is a denial of the basic right of the accused to make his defense).

As previously discussed, the **order** of closing arguments is a matter of state procedural preference which does not offend any constitutional right. Sheffer. Therefore, the trial court did not err in relying on well-established precedent and a longstanding practice – a practice that never deprives any argument and a rebuttal closing argument before the jury or the court sitting without a jury.”).

defendant of the opportunity to present a closing argument.

Our Supreme Court previously concluded that denial of the right to last closing argument “is not the kind of error that would affect the entire conduct of the trial from beginning to end” and is “subject [to a] harmless error analysis.” State v. Mouzon, 326 S.C. 199, 485 S.E.2d 918 (1997). In Mouzon, the Supreme Court concluded that pursuant to state procedure the defendant was entitled to the right to last closing because he in fact did not present evidence. Further, the Court concluded the error was not harmless as Mouzon concentrated “on the murder charge and was acquitted of murder; he did not focus on the conspiracy charge and was convicted.” Id. at 205, 485 S.E.2d at 922. The Court noted the prosecution “devoted a significant amount of attention to the issues of drug dealing and conspiracy. If Mouzon had been allowed to argue last, then he could have more adequately addressed the issue of conspiracy to distribute crack cocaine.” Id.

Shands claimed surprise in a number of areas or claimed he would have countered on various points made by the prosecution, but in all instances, the prosecutor’s arguments were straight forward and easy to predict. Shands’ most absurd claim is counsel was unable to respond to the prosecutor’s arguments about kidnapping. R. p. 255. The prosecutor made her theory of the evidence supporting kidnapping clear when responding to Shands’ directed verdict motion:

Your Honor, as far as the evidence, Ms. Shands testified, actually several people have testified that she was grabbed by the hair as she was attempting to leave, pulled back into the doorway of the house. There is testimony that she lifted the garage door and closed it and sort of ended up in kind of a halfway state where she would not have been able to get her car out and leave. That is confining her for purposes of the statute. . . .

R. p. 171, lines 12-19. Accordingly, Shands was disingenuous with the jury when he claimed during closing argument he did not know what evidence the State was going to rely on to prove kidnapping.

R. p. 224. Shands' decision to not present an argument on kidnapping, but feign ignorance, was a strategic decision to sacrifice a discussion of the evidence for the sake of creating a superficially beneficial record for this Court. Shands' sophistic play does not hide that he was well aware of the evidence supporting kidnapping and could easily anticipate the prosecution's arguments on the subject. In sum, Shands' explanation of prejudice is underwhelming even assuming the trial judge erred. See State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 385, 388 (1947) ("It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him.").

Further, even assuming error, any error was harmless beyond a reasonable doubt. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990) (noting error is harmless when it could not reasonably have affected the result of the trial). Shands advised the jury he did not deny the acts alleged but claimed intoxication. Of course, voluntary intoxication is not a defense and no evidence of involuntary intoxication was presented. Evidence was simply overwhelming regardless of the order of closing arguments.

VIII.

The kidnapping statute is not unconstitutionally vague and not overly broad as applied to Appellant. The evidence is sufficient to survive directed verdict.

Shands claims the trial court erred in denying the motion for directed verdict, and further, the kidnapping statute is unconstitutional as applied to Shands. Evidence readily meets the standard to survive Shands' directed verdict motion: Shands pulled Victim's hair, held her down while stabbing her, and kept her from leaving in her car by keeping her from opening the garage door. Further, the statute is constitutional and is not overbroad as applied to Shands.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). The task of the trial court is to simply determine “whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016).

Under S.C. Code §16-3-910: “Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of [kidnapping].” Kidnapping is a continuous offense commencing when the victim is wrongly deprived of freedom and continuing until freedom is restored. State v. Tucker, 334 S.C. 1, 13, 512, S.E.2d 99, 105 (1998). Restraint of a victim during another crime still constitutes kidnapping, even if incidental to the commission of that other crime. State v. Hall, 280 S.C. 74, 77-78, 310 S.E.2d 429, 431 (1983) (finding defendant’s restraint of rape victim’s liberty during sexual assaults constituted a separate crime of kidnapping).

In the instant case, after Victim announced she was leaving and attempted to open the garage door, Shands prevented her from fully opening the garage door keeping Victim from driving away. Additionally, Shands pulled Victim by her hair to attempt bringing her back into the house. Further,

Shands held her down while trying to stab her with the barbecue fork. Shands begrudgingly acknowledges this evidence but seems to claim Victim needed to use the special term “restrained” for the State to prove its case. The argument strains credulity. Victim was not property, and Shands had no right to keep her from leaving the house by pulling her hair and blocking her car in the garage.

Shands further presents a conclusory argument that if the evidence were construed to constitute a kidnapping, the statute would then be vague and overbroad as applied to Shands. See Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (“[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”). Our Supreme Court already found the statute is not vague. State v. Smith, 275 S.C. 164, 268 S.E.2d 276 (1980) (finding section 16-3-910 is not unconstitutionally vague and finding the defendant lacked standing to challenge the statute as overbroad). In so finding, the Supreme Court explained as follows: “The terms of this statute are clear and unambiguous. It proscribes the forceful seizure, confinement or carrying away of another against his will without authority of law.” Id. at 166, 268 S.E.2d at 277 (internal citation omitted). The Supreme Court further found that since Smith’s “conduct fell squarely within the statute’s terms,” Smith lacked standing to claim the statute was overbroad. Id.

Any citizen could reasonably understand simple terms like “seize,” “confine,” and “abduct or carry away.” Shands seized Victim when pulling her by the hair and later seized her by tackling her and holding her down to stab her. Shands confined Victim when he kept her from leaving in her car by keeping her from opening the garage door. Shands pulled her by the hair to keep her from leaving or to force her back into the house, in other words, by abducting her. Shands’ conduct squarely falls within the statute’s terms. Smith.

CONCLUSION

For the above reasons, the judgment and conviction of the lower court should be affirmed.

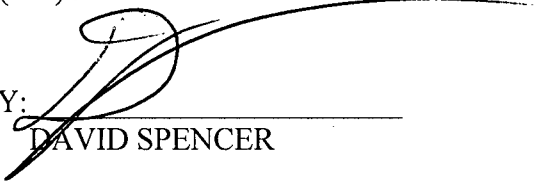
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September 16, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County
Edward W. Miller, Circuit Court Judge

RECEIVED
SEP 16 2016
SC Court of Appeals

THE STATE,

Respondent,

vs.

PRESTON SHANDS, JR.,

Appellant.

Appellate Case No. 2015-001199

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

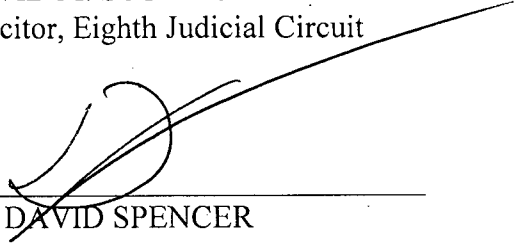
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September 16, 2016

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SC Court of Appeals

THE STATE,

RESPONDENT,

v.

PRESTON SHANDS, JR.,

APPELLANT.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that the Final Brief of Respondent in the above-referenced case has been served upon Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his counsel of record, E. Charles Grose, Jr., Esquire, 404 Main Street, Greenwood, South Carolina 29646, this 16th day of September, 2016.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
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SC Court of Appeals

The State, ... Respondent

v.

Preston Shands, Jr., ... Appellant.

Final Reply Brief of Appellant

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ARGUMENT IN REPLY

Question I

Did the trial court judge err by not applying the third step of *Batson's* comparative juror analysis when the Solicitor struck three men based on their prior criminal convictions but sat a similarly situated female who also had a criminal conviction?

The State acknowledges that the prosecutor used criminal history to strike male jurors while also seating a female juror with a criminal conviction and additional female jurors with contacts with law enforcement. Respondent's Brief, p. 12-13. In his initial brief, at pp.8-9, Mr. Shands argued "the State negated the reason by seating similarly-situated [female] jurors." *State v. Stewart*, 413 S.C. 308, 317, 775 S.E.2d 416, 421 (Ct. App. 2015). *Stewart*, of course, involved a prosecutor using criminal history for striking jurors based on race and controls here. Since Mr. Shands filed his initial brief, our Supreme Court, on May 19, 2016, denied the State's petition for a writ of certiorari to review this Court's holding in *Stewart*.

This Court should order a new trial.

Questions II

Did the trial court judge err by not quashing the indictment because the grand jury presentment process in Laurens County, including in Mr. Shands' case, violates state law and Equal Protection?

The State's contends, "Shands presented no evidence to prove that Martin or Lynch did not testify before the grand jury." Respondent's Brief, p. 15. Counsel, however, presented evidence that the ordinary procedure followed in Laurens County is for someone other than the person listed on the witness on the indictment to testify in front of the grand jury. Counsel further inquired of the Solicitor whether Martin or

Lynch testified in front of the grand jury, but the Solicitor could not answer the questions because records are not kept. R. 26-28. This procedure is contrary to law that requires the witnesses testifying before the grand jury to be listed on the indictment. S.C. Code §14-7-1550. This Court should not allow the State to benefit from creating a procedure that makes it impossible for an accused to learn the identity of the witnesses testifying before the grand jury. Our Supreme Court had to ban the practice of solicitors testifying as the sole witness before the grand jury before solicitors would discontinue the practice. *State v. Anderson*, 312 S.C. 185, 187, 439 S.E.2d 835 (1993).

This Court should order a new trial.

Questions III

Did the trial judge err by allowing the Solicitor to impeach Mr. Shands by asking him if he had been previously convicted of a violent felony, suggesting to the jurors that Mr. Shands is a violent person, when he was on trial for multiple violent felony charges?

Although recognizing the authority of *Green v. State*, 338 S.C. 428, 433-34, 527 S.E.2d 98, 101 (2000) and *State v. Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000), the State brief does not accurately apply the five factors set forth in those cases. All of the *Colf* factors militate in favor of excluding reference to Shands' prior conviction for a "violent felony." First, other than a vague discussion about "generalized impact on credibility," Respondent's Brief, p. 30, the State never identifies the impeachment value of the 40 year old conviction. Second, the conviction is remote, and Shands has not been in similar trouble while confined or after being released into the community. Third, the prejudice from the similarity of the crime was enhanced when the trial judge allowed the State to portray Shands as a violent felon without any mention of the remoteness of the

conviction. Fourth, the defendant's credibility was important to his defense. Fifth, credibility was the central issue in the case.

The State's argument that "Shands put his character into evidence and opened the door to his prior conviction is without merit. Respondent's Brief, pp. 33-34. Although Shands did present evidence that he had never acted in this manner around his wife and the children, this evidence was admissible under Rule 404(a)(2), SCRE. If the prosecution had evidence to rebut these character traits, its presentation would be limited to evidence of the "pertinent trait of character." The State did not present contrary evidence because none existed. This fact further highlights the prejudice to Shands.

Contrary to the State's argument, at pp. 35-36 of its brief, the error was not harmless because Mr. Shands' credibility was essential to his defense. Our appellate courts consistently find error prejudicial when the defendant's credibility is at issue. *E.g. State v. Anderson*, 413 S.C. 212, 219, 776 S.E.2d 76, 79 (2015) (error in qualifying witness as an expert not harmless when the "case turned solely on the credibility of the minor and of Appellant"); *Gilchrist v. State*, 350 S.C. 221, 228, 565 S.E.2d 281, 285 (2002) (Solicitor's improper vouching from State's witness, Ethridge, was prejudicial "because Gilchrist essentially presented a 'mere presence' defense, believing Ethridge was the only way the jury could convict Gilchrist."); and *State v. Bryant*, 316 S.C. 216, 221, 447 S.E.2d 852, 855 (1994) ("[T]he improper questioning pitted the officer's testimony against Bryant. Credibility was a critical issue in this case as Bryant and the officer were the only two witnesses present during the entire incident. We find that Bryant was unfairly prejudiced by the improper cross-examination.").

This Court should order a new trial.

Question IV

Did the trial judge err by not instructing the jurors about the law of involuntary intoxication when Mr. Shands' testimony supported providing the instruction?

The State acknowledges Shands' testimony about his involuntary intoxication but argues he is not entitled to a jury instruction in the issue. The State, however, overlooks the standard of review. In determining whether the evidence requires a charge of [a lesser included offense], the Court views the facts in a light most favorable to the defendant." *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "If there is *any* evidence warranting a charge on involuntary manslaughter, then the charge must be given." *State v. Reese*, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006) (emphasis added) *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). "To warrant a court's eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." *Knoten*, 347 S.C. at 302, 555 S.E.2d at 394. *See also State v. Brayboy*, 387 S.C. 174, 691 S.E.2d 482 (Ct. App. 2010) (reversible error not to charge involuntary manslaughter).

This Court should order a new trial.

Question V

Did the trial judge, after sustaining Mr. Shands objection to the Solicitor's improper closing argument, err by not striking that argument from the record and instructing the jurors to disregard it?

The State argues that the prosecutor's closing argument was not objectionable, and the trial judge did not sustain Shands' objection. These arguments are without merit. First, the prosecutor's statement, "[T]his is a jealous, controlling husband who was not

going to let *his property* leave that house,” is highly inflammatory and not based on evidence. The trial judge very clearly admonished the prosecutor to confine her arguments to the evidence.

The State also argues this issue is not preserved for appeal because Shands did not explain in his opening brief why the argument was objectionable. Shands was not required to offer such an explanation because his objection was sustained and the issue for appeal is the prejudice resulting from the denial of a curative instruction.

This Court should order a new trial.

Question VI

Did the trial judge err by charging the jurors they could infer malice from the use of a deadly weapon when that instruction is contrary to *State v. Belcher* and was an impermissible comment on the facts of the case?

The State’s argues that there was no evidence to mitigate the crime of attempted murder to a lesser offense because the assault was committed during the commission of a kidnapping. The State relies on the felony murder rule in homicide cases. *See e.g.* Respondent’s Brief, p. 46. This argument overlooks the fact that attempted murder is a specific intent crime under S.C. Code Ann. § 16-3-29. And compare *State v. King*, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015) (specific intent to commit murder is an element of attempted murder) with *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996) (held that conviction for assault and battery with intent to kill does not require showing of specific intent to kill).

Under the facts of this case, reasonable jurors could conclude there was not a specific intent to kill even if they concluded the assault was committed with malice. *See State v. Pilgrim*, 326 S.C. 24, 482 S.E.2d 562 (1997) (absence of malice was not element

of common law offense of assault and battery of high and aggravated nature, so it was error to equate that offense to voluntary manslaughter). *And see* S.C. Code Ann. § 16-3-600(C)(1) (allowing for conviction for first-degree assault and battery when the injury “occurred during the commission of a robbery, burglary, kidnapping, or theft”).

As discussed in the opening brief, at p. 28, *Belcher* left undecided whether this instruction constitutes a charge on the facts of the case. Telling jurors that an inference of malice arises from the use of a deadly weapon cannot be reconciled with our Supreme Court’s admonition in *State v. Hughey*, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000) *overruled on other grounds by Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009) that trial judges not give specific examples of provocation when instructing jurors about voluntary manslaughter.

This Court should order a new trial.

Question VII

Did the trial judge err in failing to require the State to open fully on the law and the facts of the case and replying only to new arguments of defense counsel when the defendant was deprived of a fair trial in violation of the due process clause of Article I § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment to the Constitution of the United States of America by his counsel not being able to respond to the arguments made by the State in its rebuttal closing argument?

The State remains entrenched in the common law rule that allows prosecutors to “sandbag” when a defendant presents evidence. The State, no doubt, is empowered by the General assembly rejecting proposed Rule 21, SCRCrimP. Although the General Assembly rejected Proposed Rule 21, the South Carolina Supreme Court seems inclined to change the rule though the common law. *See* Oral Argument in *State v. Stephanie Greene*, Appellate Case No. 2014-000764 (found at

<http://media.sccourts.org/videos/2014-000764.mp4> (last viewed June 19, 2016)). See also *United States v. Maloney*, 755 F.3d 1044 (9th Cir. 2014) (held that prosecutor's improper comment during rebuttal warranted reversal of conviction). The oral argument in *Maloney* is enlightening and can be viewed at <https://www.youtube.com/watch?v=HgafGnA4Eow&feature=youtu.be> last viewed June 23, 2016).

The State argues Shands cannot claim surprise because of the prosecutor's argument in opposition to his directed verdict motion on the kidnapping charge. Respondent's Brief, pp. 51-52. But, there was guarantee the prosecutor would make those same arguments during her closing argument. The jurors had not heard such an argument from the prosecutor. It is fundamentally unfair to require the defense to predict the prosecutor's closing argument. What if counsel predicts inaccurately? It is equally unfair not to allow one party to respond the other party's best argument.

This Court should order a new trial.

Question VIII

Did the trial judge err by denying Mr. Shands' motion for a directed verdict on the kidnapping charge because the kidnapping statute, as applied to Mr. Shands, is unconstitutionally vague and overbroad because it did not put him on notice of what conduct is prohibited?

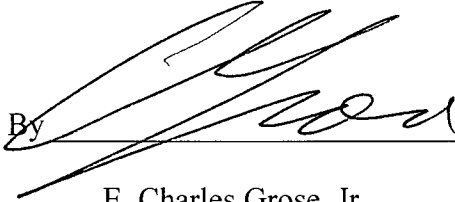
In support of its argument that our state's kidnapping statute is not unconstitutionally vague and overbroad, the State relies on our Supreme Court's logic in *State v. Smith*, 275 S.C. 164, 166, 268 S.E.2d 276, 277 (1980): "The terms of this statute are clear and unambiguous. It proscribes the forceful seizure, confinement or carrying away of another person against his will without authority of law." If the kidnapping statute is construed in this manner, then the State's proof failed.

This Court should reverse the conviction for kidnapping.

CONCLUSION

For the reasons set forth in his opening brief and this reply brief, this Court should reverse Mr. Shands' convictions and sentences and order a new trial.

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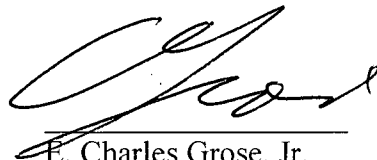
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Rule 211, SCACR Certification

I certify that this Final Reply Brief of Appellant complies with Rule 211(b),
SCACR.



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September 19, 2016
Greenwood, South Carolina

817 S.E.2d 524
Court of Appeals of South Carolina.

The STATE, Respondent,
v.
Preston SHANDS, Jr., Appellant.

Appellate Case No. 2015-001199

Opinion No. 5569

Heard November 8, 2017

Filed June 13, 2018

Rehearing Denied August 16, 2018

Synopsis

Background: Defendant was convicted in the Circuit Court, Laurens County, Edward W. Miller, J., of first-degree burglary, kidnapping, attempted murder, first-degree assault and battery, and possession of a weapon during the commission of a violent crime. Defendant appealed.

Holdings: The Court of Appeals, Thomas, J., held that:

[1] state's peremptory strikes were not based on purposeful discrimination;

[2] as a matter of first impression, probation and parole do not constitute confinement for purposes of the ten-year limit under the rule governing admissibility of a prior conviction for impeachment purposes;

[3] defendant opened the door to admission of his 40-year old conviction;

[4] evidence did not support issuance of involuntary intoxication instruction;

[5] prosecutor's emotionally charged closing comments and reference to kidnapping charges not discussed in initial closing argument did not prejudice defendant;

[6] instruction that malice could be inferred from the use of a deadly weapon in prosecution for attempted murder prejudiced defendant, and thus was reversible error;

[7] evidence supported finding that defendant restrained and confined his wife as required for a kidnapped prosecution.

Affirmed in part and reversed in part.

West Headnotes (42)

[1] Criminal Law

🔑 Summoning, impaneling, or selection of jury

Criminal Law

🔑 Jury selection

Generally, the trial court's findings regarding purposeful discrimination by a party in the exercise of peremptory strikes are accorded great deference and will be set aside on appeal only if clearly erroneous.

Cases that cite this headnote

[2] Criminal Law

🔑 Summoning, impaneling, or selection of jury

When the assignment of error is the failure to follow the Batson hearing procedure, the Court of Appeals must answer a question of law, for which the standard of review is plenary.

Cases that cite this headnote

[3] Constitutional Law

🔑 Peremptory challenges

Constitutional Law

🔑 Peremptory challenges

The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States prohibits the striking of a potential juror based on race or gender. U.S. Const. Amend. 14.

Cases that cite this headnote**[4] Jury** Peremptory challenges

When one party strikes a member of a cognizable racial group or gender, the trial court must hold a Batson hearing to review its constitutionality if the opposing party requests one. U.S. Const. Amend. 14.

Cases that cite this headnote**[5] Constitutional Law** Equal protection**Constitutional Law** Peremptory challenges**Constitutional Law** Peremptory challenges

In evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause, first, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race or gender; if a sufficient showing is made, the trial court will move to the second step in the process, which requires the proponent of the challenge to provide a neutral explanation for the challenge; if the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the opponent of the challenge has proved purposeful discrimination. U.S. Const. Amend. 14.

Cases that cite this headnote**[6] Jury** Peremptory challenges

To prove purposeful discrimination by a party exercising peremptory strikes, the opponent of the strike must show the race or gender neutral explanation was mere pretext, which generally is established by showing the party did not strike a similarly situated member of another race or gender.

Cases that cite this headnote**[7] Jury** Peremptory challenges

The burden of persuading the court that a Batson violation has occurred remains at all times on the opponent of the strike. U.S. Const. Amend. 14.

Cases that cite this headnote**[8] Jury** Peremptory challenges

Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record. U.S. Const. Amend. 14.

Cases that cite this headnote**[9] Jury** Peremptory challenges

On a Batson claim, a prior criminal conviction is a neutral reason to strike a potential juror.

Cases that cite this headnote**[10] Jury** Peremptory challenges

State's peremptory strikes on three male and one female with prior convictions were not based on purposeful discrimination in prosecution for attempted murder and first-degree assault and battery based on domestic violence, as required for a Batson violation, despite three of the four prospective jurors being men, where prospective female juror was not similarly situated to the two male jurors who had convictions for criminal domestic violence, it was understandable that State would want to strike jurors with convictions for domestic violence, female juror was not similarly situated to the third prospective male juror who had multiple convictions for violating the lottery law, and having multiple convictions was different than

having only one conviction that is over a decade old.

Cases that cite this headnote

[11] Indictment and Information

🔑 Evidence

Defendant did not adequately present evidence that there was any grand jury abuse as grounds for quashing the otherwise lawful indictment, where defendant claimed that officer who testified at his grand jury hearing was not listed on his indictments and had no personal knowledge of his case, there was no recording of who testified, and defendant's claim was pure speculation.

Cases that cite this headnote

[12] Indictment and Information

🔑 Grounds

When a defendant timely moves to quash an indictment, the trial court must determine whether the defendant's constitutional right to have the criminal allegations against him weighed by a properly constituted grand jury has been violated.

Cases that cite this headnote

[13] Indictment and Information

🔑 Validity in General

Proceedings before the grand jury are presumed to be regular unless there is clear evidence to the contrary.

Cases that cite this headnote

[14] Indictment and Information

🔑 Evidence

Speculation about potential abuse of grand jury proceedings cannot substitute for evidence of actual abuse as grounds for quashing an otherwise lawful indictment.

Cases that cite this headnote

[15] Witnesses

🔑 Prejudice or unfairness;balancing probative value

In determining whether the probative value of a prior conviction outweighs its prejudicial effect, the trial courts should consider: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. S.C. R. Evid. 609(a)(1), 609(b).

Cases that cite this headnote

[16] Witnesses

🔑 Accusation or Conviction of Crime

Probation and parole following a prison term do not constitute "confinement" under the rule of evidence permitting admission of a prior conviction for impeachment purposes unless ten years has elapsed from the witness's release from confinement on the prior conviction; confinement ends when a defendant is released from actual imprisonment. S.C. R. Evid. 609(b).

Cases that cite this headnote

[17] Pardon and Parole

🔑 Parole

The term "parole" means a conditional release from imprisonment.

Cases that cite this headnote

[18] Witnesses

🔑 Time of prior conviction;remoteness

Evidence of defendant's prior conviction for purposes of impeachment was too remote in prosecution for first-degree burglary, kidnapping, attempted murder, first-degree assault and battery, and possession of a weapon during the commission of a violent crime, and thus was presumptively

inadmissible, where defendant was a free citizen released on parole and not confined for his prior conviction of a violent felony over ten years prior to his trial. S.C. R. Evid. 609(b).

Cases that cite this headnote

[19] Witnesses

🔑 Prejudice or unfairness;balancing probative value

Probative value of defendant's remote prior conviction for a violent felony did not substantially outweigh its prejudicial effect, where defendant was convicted over 40 years ago and was released from prison over ten years ago, and defendant was being charged for a similar violent felony. S.C. R. Evid. 609(b).

Cases that cite this headnote

[20] Criminal Law

🔑 Evidence Admissible by Reason of Admission of Similar Evidence of Adverse Party

Defendant opened the door to admission of his 40-year old conviction for a violent felony which was presumptively inadmissible in prosecution for first-degree burglary, kidnapping, attempted murder, first-degree assault and battery, and possession of a weapon during the commission of a violent crime, where defendant elicited testimony during the cross-examination of numerous witnesses to show that he had never reacted violently before, defendant's counsel also elicited testimony from defendant's two sons about whether they had ever seen defendant act in a similar manner, defendant's counsel asked neighbor if defendant's behavior on the night of the incident was entirely out of character, and State was entitled to rebut his assertions of non-violent behavior with evidence of his prior conviction for a violent felony. S.C. R. Evid. 609(b).

Cases that cite this headnote

[21] Criminal Law

🔑 Evidence Admissible by Reason of Admission of Similar Evidence of Adverse Party

Otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence.

Cases that cite this headnote

[22] Criminal Law

🔑 Admission of evidence

A party cannot complain of prejudice from otherwise inadmissible evidence to which he opened the door.

Cases that cite this headnote

[23] Criminal Law

🔑 Intoxication

Voluntary intoxication or use of drugs does not constitute a defense to a crime.

Cases that cite this headnote

[24] Criminal Law

🔑 Intoxication

Homicide

🔑 Involuntary intoxication

Evidence did not support issuance of involuntary intoxication instruction in prosecution for first-degree burglary, kidnapping, attempted murder, first-degree assault and battery, and possession of a weapon during the commission of a violent crime; defendant admitted he voluntarily drank homemade moonshine, an illegal, unregulated liquor, and did not know who made it, he knew the moonshine was stronger than a typical alcoholic beverage because his coworkers told him that the moonshine was the granddaddy of all, the cremator of all whiskey, that he could not say had drunk anything until he tasted the granddaddy, defendant admitted he had no idea what was in the moonshine, he had no idea how he was going to react to it, but he

decided to drink it anyway, and he could not assume the moonshine would have a predictable intoxicating effect. S.C. Code Ann. § 61-6-4010(A).

Cases that cite this headnote

[25] Criminal Law

🔑 Inferences from and Effect of Evidence

In its closing argument, the State may argue its version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony.

Cases that cite this headnote

[26] Criminal Law

🔑 Appeals to sympathy or prejudice; argument as to punishment

Prosecutor's closing comments referring to defendant as a jealous, controlling husband who was not going to let his property leave the house did not prejudice defendant in prosecution for first-degree burglary, kidnapping, attempted murder, first-degree assault and battery, and possession of a weapon during the commission of a violent crime; defendant responded affirmatively when State asked if he got jealous and controlling and if things started falling apart, wife who defendant stabbed multiple times said defendant was controlling in the months leading up to the incident and she walked on pins and needles every day, neighbor recalled defendant got a little jealous at times if someone tried to talk to wife and defendant would try to get her attention, and defendant did not allow wife to leave the house.

Cases that cite this headnote

[27] Homicide

🔑 Malice

In prosecution for attempted murder, the implication of malice may arise from the use of a deadly weapon.

Cases that cite this headnote

[28] Homicide

🔑 Presumptions and inferences

The use of a deadly weapon implied malice instruction has no place in a murder or assault and battery with intent to kill prosecution when evidence is presented that would reduce, mitigate, excuse, or justify the killing or the alleged assault and battery with intent to kill.

Cases that cite this headnote

[29] Weapons

🔑 Dangerous or deadly weapons in general

"A deadly weapon" is generally any article, instrument, or substance that is likely to produce death or great bodily harm.

Cases that cite this headnote

[30] Criminal Law

🔑 Attempts

In prosecution for an attempt crime, "specific intent" means that the defendant consciously intended the completion of acts comprising the completed offense.

Cases that cite this headnote

[31] Indictment and Information

🔑 Charge of homicide

Assault and battery of a high and aggravated nature is a lesser-included offense of attempted murder.

Cases that cite this headnote

[32] Assault and Battery

🔑 Instructions

An assault and battery of a high and aggravated nature charge is appropriate when the evidence demonstrates the defendant lacked the requisite intent to kill.

Cases that cite this headnote

[33] Assault and Battery

🔑 Aggravated assault

Assault and battery of a high and aggravated nature is the unlawful act of violent injury to another accompanied by circumstances of aggravation.

Cases that cite this headnote

[34] **Assault and Battery**

🔑 Aggravated assault

Sex Offenses

🔑 Degrees and aggravated sex offenses in general

Circumstances of aggravation for an assault and battery of a high and aggravated nature charge include the infliction of serious bodily injury, great disparity in the ages or physical conditions of the parties, a difference in sexes, the purposeful infliction of shame and disgrace, taking indecent liberties or familiarities with a female, and resistance to lawful authority.

Cases that cite this headnote

[35] **Criminal Law**

🔑 Instruction as to evidence

Homicide

🔑 Presumptions and inferences

Jury instruction that malice could be inferred from the use of a deadly weapon in prosecution for attempted murder prejudiced defendant, and thus was reversible error, despite the number of times defendant stabbed wife with a barbecue fork and the nature of the attack, where if the jury did not believe defendant had the specific intent to kill his wife, he would have been guilty of the lesser-included offense of assault and battery of a high and aggravated nature instead, and a jury could have found defendant only had a general intent to kill instead of the higher mens rea of specific intent to kill.

Cases that cite this headnote

[36] **Criminal Law**

🔑 Statements as to Facts, Comments, and Arguments

Improper comments do not automatically require reversal for a violation of procedural due process if they are not prejudicial to the defendant. U.S. Const. Amend. 14.

Cases that cite this headnote

[37] **Criminal Law**

🔑 Conduct of trial in general

A defendant challenging improper argument based on a violations of procedural due process has the burden of proving he did not receive a fair trial because of the alleged improper argument. U.S. Const. Amend. 14.

Cases that cite this headnote

[38] **Constitutional Law**

🔑 Prosecutor

The relevant question regarding an improper comment is whether the State's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. U.S. Const. Amend. 14.

Cases that cite this headnote

[39] **Criminal Law**

🔑 Summing up

State's reply closing comments regarding a kidnapping charge not discussed during its initial closing argument did not prejudice defendant, where defendant was aware of State's theory of the charge, State explained what facts it believed supported the charge in response to defendant's directed verdict motion, State indicated the charge was appropriate because defendant grabbed wife to pull her back into the house and would not let her leave, State indicated in its initial closing argument that the kidnapping charge was not of the traditional kind, State explained the kidnapping charge, defendant was aware of State's theory and knew from the initial closing argument that State was focusing on a brief confinement to support

kidnapping charge, State's comments were arguably in reply to defendant's closing argument comment that he did not know how State would explain kidnapping.

Cases that cite this headnote

[40] Kidnapping

🔑 Elements

A kidnapping commences when a victim is lawfully deprived of his or her freedom and continues until freedom is restored. S.C. Code Ann. § 16-3-910.

Cases that cite this headnote

[41] Kidnapping

🔑 Kidnapping

Kidnapping

🔑 Confinement, restraint, or detention

The crime of kidnapping is broad in scope and encompasses restraint regardless of duration. S.C. Code Ann. § 16-3-910.

Cases that cite this headnote

[42] Kidnapping

🔑 Weight and sufficiency

Evidence supported finding that defendant restrained and confined his wife as required for a kidnapped prosecution, even though defendant testified that his attempts to stop wife from leaving the house were ultimately unsuccessful, where wife testified that she tried to leave the house, but defendant kept closing the garage door so she could not escape, and that defendant pulled her by the hair and tried to drag her into the house so she could not leave, and their sons both recalled during testimony defendant grabbing wife by the hair. S.C. Code Ann. § 16-3-910.

Cases that cite this headnote

***528** Appeal From Laurens County, Edward W. Miller, Circuit Court Judge

Attorneys and Law Firms

E. Charles Grose, Jr., of Grose Law Firm, of Greenwood, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Deputy Attorney General David A. Spencer, both of Columbia; and Solicitor David Matthew Stumbo, of Greenwood, all for Respondent.

Opinion

THOMAS, J.:

Preston Shands, Jr., appeals his convictions for first-degree burglary, kidnapping, attempted murder, first-degree assault and battery, and possession of a weapon during the commission of a violent crime. On appeal, Shands argues the trial court erred by (1) improperly applying the *Batson*¹ comparative juror analysis; (2) refusing to quash the *529 indictments; (3) allowing the State to impeach him with a prior conviction; (4) refusing to charge the jury on involuntary intoxication; (5) denying his motion to strike the State's improper comments during closing argument; (6) instructing the jurors they could infer malice from the use of a deadly weapon; (7) failing to require the State to open fully on the law and facts during its initial closing argument; and (8) denying his motion for directed verdict on the kidnapping charge. We affirm in part and reverse in part.

¹ *Batson v. Kentucky*, 476 U.S. 79, 96–98, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986) (adopting a three-step inquiry for evaluating whether a party used a peremptory challenge to strike a juror in a manner that violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution).

FACTS AND PROCEDURAL HISTORY

In October 2014, a Laurens County grand jury indicted Shands for attempted murder, kidnapping, burglary, possession of a weapon during the commission of a violent crime, and two counts of assault and battery arising out of a domestic incident on July 20, 2014. On the day of the incident, Sharon Shands (Sharon) tried to leave the house after Shands began arguing with her. Shands prevented her from leaving by pulling her back into the house by her hair; he then stabbed her multiple times with a barbecue fork. Sharon was able to escape to the neighbor's house,

but Shands followed her and broke into the neighbor's house. The assault ended when police arrived.

Shands testified in his defense and admitted he was responsible for what happened to Sharon. However, he claimed he did not have any memory of the incident because he drank homemade moonshine earlier in the day that must have been laced with a drug. Shands testified he bought the moonshine from someone at work and did not know who made the moonshine or what was in it. Shands believed there “was something more strong and powerful in there ... other than alcohol” because it “had some effect on [him] that took [him] slap clean out of [his] mind.” The jury found Shands guilty of attempted murder, possession of a weapon during the commission of a violent crime, assault and battery, burglary, and kidnapping. The trial court sentenced Shands to life imprisonment without the possibility of parole for first-degree burglary, kidnapping, and attempted murder; ten years' imprisonment for first-degree assault and battery; and five years' imprisonment for possession of a weapon during the commission of a violent crime. This appeal followed.

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only, and is bound by the trial court's factual findings unless those findings are clearly erroneous. State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Thus, on review, this court is limited to determining whether the trial court abused its discretion. Id.

I. BATSON CHALLENGE

Shands argues the trial court did not properly apply the third step of the Batson comparative juror analysis. Shands asserts he proved the State impermissibly struck two jurors on the basis of gender by showing there was a similarly situated female juror on the panel. He contends the trial court “was confused because the initial motion was based on [the State] striking men, and ... Shands then pointed to ... a female[,]” and therefore, the trial court “operated under the mistaken belief [it] could not consider a similarly situated female juror.” We affirm.

[1] [2] [3] [4] [5] [6] [7] [8] Generally, “[t]he trial court's findings regarding purposeful discrimination are accorded great deference and will be set aside on appeal only if clearly erroneous.” State v. Haigler, 334 S.C. 623, 630, 515 S.E.2d 88, 91 (1999). However, “[w]he[n] the

assignment of error is the failure to follow the Batson hearing procedure, [the appellate court] must answer a question of law. When a question of law is presented, [the] standard of review is plenary.” State v. Stewart, 413 S.C. 308, 316, 775 S.E.2d 416, 420 (Ct. App. 2015) (quoting State v. Cochran, 369 S.C. 308, 312–13, 631 S.E.2d 294, 297 (Ct. App. 2006)).

[T]he Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States prohibits the striking of a potential juror based on race or gender. When one party strikes a member of a cognizable racial group or gender, the trial court must hold a Batson hearing if the opposing party requests one.

Id. at 313–14, 775 S.E.2d at 419 (internal citation omitted). “The United States Supreme *530 Court has set forth a three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause.” State v. Inman, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014).

First, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race [or gender]. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the proponent of the challenge to provide a ... neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the opponent of the challenge has proved purposeful discrimination.

State v. Giles, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014) (internal citations omitted). In order to prove purposeful discrimination, “[t]he opponent of the strike must show the race or gender[]neutral explanation was mere pretext, which generally is established by showing the party did not strike a similarly[]situated member of another race or gender.” Stewart, 413 S.C. at 314, 775 S.E.2d at 419. “The

burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike.” *State v. Evins*, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007). “Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record.” *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001).

[9] During jury selection, the State used four of its five peremptory strikes on three men and one woman. The impaneled jury was composed of nine women and three men. Shands objected based on the State striking male jurors, and the court properly held a *Batson* hearing. In response to Shands’s *Batson* motion, the State indicated it struck two of the potential jurors because they had convictions for criminal domestic violence (CDV) and the other potential juror because he had four convictions for violating the lottery law. The State’s explanation for striking the three male potential jurors satisfied the second step of the *Batson* analysis because “a prior criminal conviction is a neutral reason to strike” a potential juror. *See State v. Casey*, 325 S.C. 447, 453 n.2, 481 S.E.2d 169, 172 n.2 (Ct. App. 1997). To meet the third step of the *Batson* analysis, Shands argued the State sat a similarly situated female juror who had a fraudulent check conviction, indicating the State’s gender neutral reason for striking the male potential jurors was pretext. When Shands argued the third step of the *Batson* analysis, the trial court believed that Shands previously based his objection on male jurors being struck but altered his objection because the State sat a female juror. Shands’s counsel reiterated his assertion that the female juror was similarly situated to the males who were struck, which met the third prong of *Batson*. However, the trial court denied the objection, finding the strikes were gender neutral.

[10] Based on the exchange between Shands and the trial court in the record, we find the trial court misapplied the third step of the *Batson* analysis by not properly considering whether the female juror was similarly situated to the potential male jurors. Therefore, this issue presents a question of law for this court because the trial court failed to follow the proper *Batson* hearing procedure. *See Stewart*, 413 S.C. at 316, 775 S.E.2d at 420 (“[When] the assignment of error is the failure to follow the *Batson* hearing procedure, [the appellate court] must answer a question of law. When a question of law is presented, [the] standard of review is plenary.” (quoting *Cochran*, 369 S.C. at 312–13, 631 S.E.2d at 297)).

However, we find Shands did not meet his burden to show the State’s strikes were based on purposeful discrimination. *See Evins*, 373 S.C. at 415, 645 S.E.2d at 909 (“The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike.”). The female juror was not similarly situated to the two potential male jurors who had convictions for CDV. It is understandable that the State would want to strike potential jurors who had convictions for CDV because Shands was being tried for attempting to kill his wife. Further, the female juror was not similarly situated *531 to the third potential male juror who had convictions for violating the lottery law. We agree with the State that having multiple convictions is different than having only one conviction that is over a decade old. Considering the totality of facts in the record, we find Shands did not meet his burden of showing the State’s use of its peremptory strikes was impermissible. *See Shuler*, 344 S.C. at 615, 545 S.E.2d at 810 (“Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record.”).

II. GRAND JURY PROCESS

Shands argues the trial court erred in refusing to quash the indictments because the Laurens County grand jury process is unconstitutional. Shands contends the officer who testified at his grand jury hearing was not listed on his indictments and had no personal knowledge of his case, in violation of section 14-7-1550 of the South Carolina Code (2017).² Shands urges this court to correct “a fundamental inequality within the grand jury process in South Carolina: defendants indicted under the statewide grand jury system are afforded different procedures under the law than defendants who are indicted under the county grand jury system[.]” namely that “statewide grand jury proceedings must be recorded.”

² Section 14-7-1550 states: “The foreman of the grand jury ... may swear the witnesses whose names shall appear on the bill of indictment in the grand jury room. No witnesses shall be sworn except those who have been bound over or subpoenaed in the manner provided by law.”

[11] [12] [13] [14] We affirm the trial court’s denial of Shands’s motion to quash because Shands did not present clear evidence that there was an abuse of the grand jury proceedings in his case. “When a defendant timely

moves to quash an indictment ..., the [trial] court must determine whether the defendant[']s constitutional right to have the criminal allegations against him weighed by a properly constituted grand jury has been violated.” *Evans v. State*, 363 S.C. 495, 510, 611 S.E.2d 510, 518 (2005). “Proceedings before the grand jury are presumed to be regular unless there is clear evidence to the contrary.” *State v. Thompson*, 305 S.C. 496, 501, 409 S.E.2d 420, 424 (Ct. App. 1991). “Speculation about ‘potential’ abuse of grand jury proceedings cannot substitute for evidence of *actual* abuse as grounds for quashing an otherwise lawful indictment.” *Id.* at 502, 409 S.E.2d at 424.

When making his motion to quash the indictments, Shands admitted he may “need to call some witnesses” if the State did not stipulate to the grand jury process because the testimony presented to the grand jury was not recorded. The State explained the Laurens County grand jury process:

Essentially, Your Honor, since Solicitor Stumbo has come into office, each individual assistant will, as he is assigned cases, there is a template for the indictment that is electronically produced and put in our electronic record system. We will go in, we will tailor the indictment to the facts that we have and then those are presented out, each individual assistant or deputy will then sign the indictments. But, essentially, yes, the individual agencies are notified the [g]rand [j]ury is coming, they will send a representative and one representative from each department will present all indictments from that individual department. That has been pretty much standard since I started in 1982.

However, the State indicated it “could not tell” whether either of the two officers listed on Shands's indictments testified in front of the grand jury because it did not have a record of who testified. We are unable to say there was a violation in Shands's case from the record presented. Without any clear evidence, Shands's argument that there was a grand jury abuse in his case is pure

speculation. Furthermore, we disagree with Shands's argument regarding the nature of the county grand jury system because of “the view long held uniformly by courts nationwide that secrecy of grand jury proceedings is desirable and necessary.” *See Evans*, 363 S.C. at 505, 611 S.E.2d at 515; *see also State v. Moses*, 390 S.C. 502, 521, 702 S.E.2d 395, 405 (Ct. App. 2010) (affirming the trial court's denial of the defendant's motion to quash the indictments even though direct evidence “is difficult to provide due to the *532 secretive nature of the grand jury proceedings”).

Therefore, we find the trial court did not abuse its discretion in refusing to quash Shands's indictments.

III. PRIOR CONVICTION

Shands argues the trial court erred in allowing the State to impeach him with his 1976 murder conviction. Shands contends the conviction had no probative value and was highly prejudicial because it was similar to his charge of attempted murder. Shands asserts allowing the State to refer to the conviction as a violent felony did not lessen the prejudice because he was on trial for several violent felonies. Shands also argues he was released from confinement more than ten years prior to trial so the conviction was not admissible. Shands contends he did not open the door to the evidence because his conviction was not contrary to the evidence “that he had never acted in this manner around his wife and the children.”

[15] We agree that Shands's conviction was not admissible under Rule 609, SCRE. Rule 609(a)(1), SCRE, allows “evidence that an accused has been convicted of ... a crime [to] be admitted [for the purpose of attacking the credibility of the accused] if the [trial] court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.” Rule 609(b), SCRE, then limits the admissible convictions to those when no more than “a period of ... ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction.” However, convictions that are over ten years old can be admitted “in the interests of justice” if the trial court determines “that the probative value of the conviction ... *substantially* outweighs its prejudicial effect.” Rule 609(b) (emphasis added). The trial court should consider the following factors in determining whether the probative value of a prior conviction outweighs its prejudicial effect: (1) the impeachment value

of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. Green v. State, 338 S.C. 428, 433–34, 527 S.E.2d 98, 101 (2000).

This case presents the novel issue in South Carolina of whether parole following a prison term constitutes “confinement” for the purposes of the ten-year time limit under Rule 609(b). The trial court found Shands's prior conviction for murder could be used to impeach him because he was still on parole for the conviction when he committed the crimes charged. In State v. Scott, this court held a defendant's 1977 robbery conviction was not too remote to be used to impeach her because, although she received parole in 1980, her sentence was still in effect until 1986. 326 S.C. 448, 451–52, 484 S.E.2d 110, 112 (Ct. App. 1997). However, the trial in Scott was prior to the adoption of the South Carolina Rules of Evidence. Therefore, the Scott court relied on common law to find the defendant's conviction was not too remote and did not interpret the confinement language from Rule 609(b). See id. at 450, 484 S.E.2d at 111. Under the common law rule, “[t]here [wa]s no fixed time in [South Carolina] after which a conviction bec[ame] too remote.” State v. Sarvis, 317 S.C. 102, 105, 450 S.E.2d 606, 608 (Ct. App. 1994). For those reasons, we disagree with the State and find Scott is not controlling in the instant case. We note the majority of jurisdictions³ considering this issue have held that probation and parole do not count as confinement for the purposes of rules and statutes similar to our Rule 609(b). See United States v. Rogers, 542 F.3d 197, 198 (7th Cir. 2008) (“[P]robation does not constitute ‘confinement’ within the meaning of Rule 609(b).”); Bizmark, Inc. v. Kroger Co., 994 F.Supp. 726, 728 (W.D. Va. 1998) (“‘[R]elease from confinement,’ for 609(b) purposes means release from actual imprisonment, and therefore, [] neither parole nor probation constitutes confinement under the rule.”); Allen v. State, 286 Ga. 392, 687 S.E.2d 799, 803 (2010) (“The legislature's distinction of ‘confinement’ from release on parole *533 and suspended and probated sentences, when coupled with the construction of identical statutory language by the federal courts and our sister states, leads us to conclude that probation does not qualify as confinement”); Commonwealth v. Treadwell, 911 A.2d 987, 991 (Pa. Super. Ct. 2006) (“After reviewing the relevant statutory language and the rationale relied upon

in other jurisdictions, we agree with the federal courts and our sister states, and conclude that probation does not qualify as confinement”).

³ Because Rule 609(b) “is identical to the federal rule, federal cases may be persuasive.” See State v. Colf, 337 S.C. 622, 626, 525 S.E.2d 246, 248 (2000).

[16] [17] [18] We follow the majority of jurisdictions in holding that probation and parole do not constitute “confinement” for the purposes of Rule 609(b); confinement ends when a defendant is released from actual imprisonment. Although Rule 609(b) does not define the term confinement, Black's Law Dictionary defines the term as “[t]he act of imprisoning or restraining someone; the quality, state, or condition of being imprisoned or restrained.” Confinement, BLACK'S LAW DICTIONARY (10th ed. 2014). Conversely, “[t]he term parole means a conditional release from imprisonment.” State v. Ellis, 397 S.C. 576, 579–80, 726 S.E.2d 5, 7 (2012). Although Shands was not technically a “free citizen” while he was on parole, we find he was no longer confined because he was not actually imprisoned. See id. at 581, 726 S.E.2d at 7 (recognizing a defendant on parole “was not a free citizen” and had “[a]ll the consequences of the judgement [still] upon him, except that he had leave of absence from prison” (quoting Crooks v. Sanders, Superintendent of State Penitentiary, 123 S.C. 28, 36–37, 115 S.E. 760, 763 (1922))). Therefore, Shands's confinement for his 1976 conviction ended in 2003 when he was released on parole, making his conviction over ten years old and presumptively inadmissible under Rule 609(b). See Colf, 337 S.C. at 626, 525 S.E.2d at 248 (“Rule 609(b) establishes a presumption against admissibility of remote convictions”).

[19] Furthermore, the State did not present sufficient evidence to show the probative value of Shands's conviction *substantially* outweighed its prejudicial effect. See id. at 626–27, 525 S.E.2d at 248 (“[T]he State bears the burden of establishing facts and circumstances sufficient to substantially overcome that presumption.”); Rule 609(b) (explaining a stale conviction is not admissible unless “in the interests of justice” the trial court determines “the probative value of the conviction[,] supported by specific facts and circumstances[,] substantially outweighs its prejudicial effect”). Because Shands was convicted over forty years ago and was released from prison over ten years ago, we believe his conviction had little probative value. See State v. Black, 400 S.C. 10, 26, 732 S.E.2d 880,

889 (2012) (“The genesis of the rule’s ten-year provision was the belief that after ten years, the probative value of the conviction with respect to a person’s credibility has diminished to the point where it should no longer be admissible.”). Moreover, the prejudicial effect was high because of the nature of his charges. Thus, the trial court erred by finding the prior conviction admissible under Rule 609(b).

[20] [21] [22] However, we find the trial court did not err in admitting Shands’s prior conviction because Shands opened the door to such evidence. “[O]therwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence.” *State v. Page*, 378 S.C. 476, 482, 663 S.E.2d 357, 360 (Ct. App. 2008). “A party cannot complain of prejudice from evidence to which he opened the door.” *State v. Culbreath*, 377 S.C. 326, 333, 659 S.E.2d 268, 272 (Ct. App. 2008). At trial, Shands elicited testimony during the cross-examination of numerous witnesses to show that he had never reacted violently before. For example, Shands’s counsel asked Sharon if this was the first time “he ha[d] ever done something like this.” Shands’s counsel also elicited testimony from Shands’s two sons about whether they had ever seen Shands act in a similar manner. Furthermore, Shands’s counsel asked the neighbor if Shands’s behavior on the night of the incident was “entirely out of character.” Because Shands opened the door about his past non-violent actions, the State was entitled to rebut his assertions with evidence of his prior conviction for a violent felony. See *State v. Taylor*, 333 S.C. 159, 175, 508 S.E.2d 870, 878 (1998) (“[B]ecause appellant ‘opened the door’ about his relationship with his wife, *534 the solicitor was entitled to cross-examine him regarding the relationship, even if the responses brought out appellant’s prior criminal domestic violence conviction.”). Therefore, the trial court did not err in admitting Shands’s prior conviction. See *State v. Robinson*, 305 S.C. 469, 474, 409 S.E.2d 404, 408 (1991) (explaining one who opens the door to evidence cannot complain of its admission).

IV. VOLUNTARY INTOXICATION

After resting his case, Shands requested that the trial court charge the jury on involuntary intoxication. The trial court denied Shands’s request but granted the State’s request to charge that voluntary intoxication was not a defense to a crime. On appeal, Shands argues the trial court erred in refusing to charge the jury on involuntary

intoxication because his testimony indicated that the moonshine he drank was unknowingly “spiked with something other than alcohol.” Shands contends the trial court improperly commented on the facts when it charged voluntary intoxication without also charging involuntary intoxication. We disagree.

[23] At trial, “[t]he law to be charged is determined from the facts presented.” *State v. Lewis*, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997).

Involuntary intoxication may result from innocently consuming an intoxicant, through being tricked into it by another, or being forced to take it, or perhaps through unanticipated side effects of a prescription drug taken on orders of a physician. If [a jury] find[s] the defendant was given drugs or alcoholic beverages without his knowledge, and as a result, he lost his ability to exercise independent judgment and volition while committing the crimes alleged against him, then it would be [the jury’s duty] to find the defendant not guilty.

RALPH KING ANDERSON, JR., SOUTH CAROLINA REQUESTS TO CHARGE—CRIMINAL § 6-4 (2012). However, “voluntary intoxication or use of drugs does not constitute a defense to a crime.” *State v. Hartfield*, 300 S.C. 469, 473, 388 S.E.2d 802, 804 (1990).

[24] We find the trial court did not err in refusing to charge involuntary intoxication because Shands voluntarily consumed an illegal intoxicant. See S.C. Code Ann. § 61-6-4010(A) (2009) (making it illegal for a person to “manufacture, store, keep, receive, have in possession, transport, ship, buy, sell, barter, exchange, or deliver alcoholic liquors, except liquors acquired in a lawful manner” or “accept, receive, or have in possession alcoholic liquors for unlawful use”). Shands admitted he voluntarily drank the “homemade moonshine” and did not know who made it. He knew the moonshine was stronger than a typical alcoholic beverage because his coworkers told him the moonshine was “the grand[d]addy of all, the cremator of all whiskey” and he could not “say [he] drunk anything” until he “tasted the grand[d]addy.”

Moreover, Shands admitted he “had no idea what was in [the moonshine] and [he] had no idea how [he] was going to react to it,” but he decided to drink it anyway.

We agree with the reasoning of the California Court of Appeals when it considered whether a defendant was entitled to an involuntary intoxication charge when he voluntarily smoked a marijuana cigarette given to him by others that was unknowingly laced with phencyclidine (PCP). See *People v. Velez*, 175 Cal.App.3d 785, 221 Cal.Rptr. 631, 632 (1985). The California Court of Appeals affirmed the trial court's denial of an involuntary intoxication charge, reasoning

[The defendant's] defense depends on the validity of [the] defendant's assumptions that the cigarette did not contain PCP and would produce a predictable intoxicating effect. However, ... these assumptions are tested not by [the] defendant's subjective belief but rather by the standard of a reasonable person. In this regard, it is common knowledge that unlawful street drugs do not come with warranties of purity or quality associated with lawfully acquired drugs such as alcohol. Thus, ... unlawful street drugs are frequently not the substance they purport to be

Id. at 637. Similarly, in the instant case, Shands knowingly consumed an illegal, unregulated liquor and had no right to assume the moonshine would cause a predictable intoxicating effect. Further, because there was no evidence to support a charge for involuntary *535 intoxication, the trial court did not err in charging voluntary intoxication without an accompanying charge on involuntary intoxication. See *Lewis*, 328 S.C. at 278, 494 S.E.2d at 117 (“The law to be charged is determined from the facts presented at trial.”). Therefore, we find the trial court did not err.

V. COMMENTS DURING THE STATE'S CLOSING ARGUMENT

Shands argues the trial court erred by not striking the State's improper comments during closing argument and not instructing the jurors to disregard the comments.

Shands asserts the State's comment: “This is a jealous, controlling husband who was not going to let his property leave that house,” was “highly inflammatory and not based on the evidence.” We disagree.

In its reply closing argument, the State described its view of the case and evidence:

And what happens, he is an almost 60-year-old man with a 38-year-old wife and she is beautiful and she is a good woman and she was taking care of him but it wasn't good enough for him. He starts getting controlling. [The neighbor] told y'all, [Shands] could be jealous if you tried to talk to [Sharon] in the neighborhood. He starts getting jealous and controlling. And it gets worse and it gets worse and he is arguing and he is fussing and he is drinking and Sharon said we were on pins and needles. So this, he may not have put his hands on her before but this is a relationship that is going downhill fast. And what happens on July 20, 2014, she finally says, you know what, I am leaving, I am going. Come on kids, get in the car. And that is when he snaps. He is not, his wife and his kids that he provides for and he works for that are his property, she is not leaving him, she is not taking those kids, no, no, no, no. Grabs her by the hair, grabs the first thing he can get his hands on and starts going at her. This isn't about he was drinking something that day, this is a jealous, controlling husband who was not going to let his property leave that house.

Shands objected and moved to strike, and the trial court instructed the State to continue.

[25] [26] We find the trial court did not abuse its discretion in denying Shands's motion to strike because the State's comments were not outside of the evidence. See *State v. Penland*, 275 S.C. 537, 539, 273 S.E.2d 765, 766 (1981) (“The control of argument is normally within

the discretion of the trial [court], and we will not disturb [its] ruling whe[n] there is no abuse of discretion.”). In its closing argument, the State “may argue [its] version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony.” *State v. New*, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999). In the instant case, Shands responded affirmatively when the State asked if he “got pretty jealous and kind of controlling” and if “things ... started falling apart.” Sharon testified Shands was “controlling” in the months leading up to the incident, and she “walked on pins and needles every day [because she] didn't know what to expect” from him. The neighbor recalled Shands got “a little jealous at times” if someone tried to talk to Sharon, and Shands “would say something to ... get her attention.” The evidence further showed Shands did not allow Sharon to leave the house when she tried to leave with the children, pulling her by the hair to get her to stay. Furthermore, Shands was not prejudiced by the comments in light of the overwhelming evidence of his guilt, including his testimony that he committed the acts in question and his lack of a viable defense. See *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002) (“Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.”). Therefore, we find the trial court did not err in refusing to strike the State's comments during its closing argument.

VI. INFERRED MALICE JURY INSTRUCTION

Shands argues the trial court erred in instructing the jury that malice could be inferred from the use of a deadly weapon and giving the example of a knife as a deadly weapon. Shands contends the instruction was *536 contrary to *State v. Belcher*⁴ because the attempted murder charge could have been reduced or mitigated by the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN) or Shands's defense that he lacked criminal intent. We agree that the trial court erred in instructing the jury that malice could be inferred from the use of a deadly weapon.

⁴ 385 S.C. 597, 685 S.E.2d 802 (2009).

[27] [28] [29] “The implication of malice may arise from the use of a deadly weapon.” *State v. Campbell*, 287 S.C. 377, 379, 339 S.E.2d 109, 109 (1985) (per curiam). However, “the ‘use of a deadly weapon’ implied malice

instruction has no place in a murder (or assault and battery with intent to kill⁵) [(ABWIK)]) prosecution whe[n] evidence is presented that would reduce, mitigate, excuse[,] or justify the killing (or the alleged [ABWIK]).” *Belcher*, 385 S.C. at 610, 685 S.E.2d at 809 (footnote omitted). “A deadly weapon is generally defined as ‘any article, instrument[,] or substance [that] is likely to produce death or great bodily harm.’ ” *Campbell*, 287 S.C. at 379, 339 S.E.2d at 109 (quoting *State v. Sturdivant*, 304 N.C. 293, 283 S.E.2d 719, 725 (1981)).

⁵ According to the Omnibus Crime Reduction and Sentencing Reform Act, the Legislature abolished the offense of ABWIK and replaced it with attempted murder. See Act No. 273, 2010 S.C. Acts 1949–50. ABWIK was “an unlawful act of violent nature to the person of another with malice aforethought, either express or implied.” *State v. Hinson*, 253 S.C. 607, 611, 172 S.E.2d 548, 550 (1970).

“A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” S.C. Code Ann. § 16-3-29 (2015). In *State v. King*, our supreme court considered the requisite *mens rea* required for attempted murder. See *State v. King*, 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017). The majority opinion, written by Chief Justice Beatty, held attempted murder requires the specific intent to commit murder, which is a higher level of *mens rea* than is required for murder.⁶ *Id.* at 54–64, 810 S.E.2d at 22–27. The court discussed the fact that attempt crimes require the highest level of *mens rea* because “it is logically impossible to attempt an unintended result.” *Id.* at 56, 810 S.E.2d at 23 (quoting 22 C.J.S. *Criminal Law: Substantive Principles* § 156, at 221–22 (2016)). The court explained attempted murder was not a mere codification of ABWIK, a general intent crime, because the General Assembly “purposefully add[ed] the language ‘with intent to kill’ to ‘malice aforethought, either express or implied.’ ”⁷ *King*, 422 S.C. at 61, 810 S.E.2d at 25. After considering the legislative history of the attempted murder statute, the court held a “specific intent to kill” is an element of attempted murder, and the trial court erred in instructing the jury that it was not. *Id.* at 61–64, 810 S.E.2d at 25–27. Although the majority opinion in *King* did not directly address the issue of whether an inferred malice charge was warranted in an attempted murder case, the court indicated its belief in a footnote that malice can

never be implied in an attempted murder case. *See id.* at 64 n.5, 810 S.E.2d at 27 n.5. The court stated:

While we find it unnecessary to address King's additional sustaining ground [that the trial court erred in instructing the jury that malice could be inferred from the use *537 of a deadly weapon], we would respectfully suggest to the General Assembly to re-evaluate the language following "malice aforethought" as the inclusion of the word "implied" in section 16-3-29 is arguably inconsistent with a specific[] intent crime. *See [Keys v. State, 104 Nev. 736, 766 P.2d 270, 273 (1988)]* (stating, "[o]ne cannot attempt to kill another with implied malice because there is no such criminal offense as an attempt to achieve an unintended result" (citation and internal quotation marks omitted)). Moreover, if there is no evidence that one charged with attempted murder had express malice and a specific intent to kill, we believe the crime would involve a lower level of intent[, and] thus, would fall within the lesser degrees of the assault and battery offenses codified in section 16-3-600. *See S.C. Code Ann. § 16-3-600 (2015 & Supp. 2016)* (identifying levels and degrees of assault and battery offenses).

Id.

6 Acting Justices Benjamin and Hayes concurred in the majority opinion. Acting Justice Pleicones concurred in result only and did not write a separate opinion.

7 Justice Kittredge wrote a concurrence to express his belief that the General Assembly intended to codify ABWIK when it enacted the attempted murder statute. *King*, 422 S.C. at 71, 810 S.E.2d at 30 (Kittredge, J., concurring). Justice Kittredge noted the statutory offense of attempted murder had an ambiguity because the language "with intent to kill" was included with the "seemingly contradictory" language of "with malice aforethought, either expressed or implied." *Id.* at 73, 810 S.E.2d at 32 (Kittredge, J., concurring). However, Justice Kittredge believed a specific intent to kill was not required because ABWIK, a general intent crime, included "with intent to kill" in the name of the common law crime. *Id.* at 73–74, 810 S.E.2d at 32 (Kittredge, J., concurring). Justice Kittredge further pointed to "the legislature's use of the verbatim definition of ABWIK in the section 16-3-29 offense of attempted murder." *Id.* at 73, 810 S.E.2d at 32 (Kittredge, J., concurring). Therefore, Justice Kittredge would have affirmed the trial court's

instruction that specific intent to kill was not an element of attempted murder. *Id.* at 73–74, 810 S.E.2d at 32 (Kittredge, J., concurring).

[30] [31] [32] [33] [34] "[S]pecific intent means that the defendant consciously intended the completion of acts comprising the [completed] offense." *State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001) (quoting *State v. Sutton*, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000)). "ABHAN is a lesser-included offense of attempted murder." *State v. Middleton*, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014). "An ABHAN charge is appropriate when the evidence demonstrates the defendant lacked the requisite intent to kill." *State v. Dennis*, 402 S.C. 627, 638, 742 S.E.2d 21, 27 (Ct. App. 2013) (per curiam) (quoting *State v. Coleman*, 342 S.C. 172, 176, 536 S.E.2d 387, 389 (Ct. App. 2000)).

[ABHAN] is the unlawful act of violent injury to another accompanied by circumstances of aggravation. Circumstances of aggravation include the infliction of serious bodily injury, great disparity in the ages or physical conditions of the parties, a difference in sexes, the purposeful infliction of shame and disgrace, taking indecent liberties or familiarities with a female, and resistance to lawful authority. [8]

State v. Green, 327 S.C. 581, 585, 491 S.E.2d 263, 264–65 (Ct. App. 1997) (internal citations omitted).

8 The legislature codified ABHAN in section 16-3-600(B)(1) of the South Carolina Code (2015). However, the codified version's effective date was after the dates of the alleged offenses in this case. Thus, the pre-codified version of ABHAN applies to Shands's case. *See Pierce v. State*, 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000) ("The application of a new or amended criminal statute may prompt a defendant to allege a violation of the Ex Post Facto Clause, arguing the court may not apply a statute enacted or amended after the date of an offense in his case.").

[35] In light of our supreme court's discussion in *King*, we find the State needed to prove Shands acted with express malice *and* the specific intent to kill in order to be found guilty of attempted murder. *See King*, 422 S.C. at 54–64, 810 S.E.2d at 22–27. Therefore, we question whether an implied malice instruction is

proper in any attempted murder trial. However, even if an implied malice instruction was appropriate in an attempted murder case, we do not believe it was appropriate in Shands's case. As Shands and the State recognized at trial, if the jury did not believe Shands had the specific intent to kill, he would have been guilty of the lesser-included offense of ABHAN. Despite the number of times Shands stabbed Sharon and the nature of the attack, a jury could have found Shands only had a general intent to kill instead of the higher *mens rea* of specific intent to kill. See *State v. Kinard*, 373 S.C. 500, 504, 646 S.E.2d 168, 169 (Ct. App. 2007) (“‘General intent’ is defined as ‘the state of mind required for the commission of certain common law crimes not requiring specific intent’ and it ‘usually takes the form of recklessness ... or negligence.’” (quoting BLACK’S LAW DICTIONARY (7th ed. 1999))); *Nesbitt*, 346 S.C. at 231, 550 S.E.2d at 866 (“[S]pecific intent means that the defendant consciously intended the completion of acts comprising the [completed] offense.” (quoting *Sutton*, 340 S.C. at 397, 532 S.E.2d at 285)). Therefore, because there was evidence to reduce Shands's charge, the trial court erred in instructing the jury that malice could be inferred from the use of a deadly weapon. See *Belcher*, 385 S.C. at 610, 685 S.E.2d at 809 (holding the use of a deadly weapon inferred malice instruction is not proper *538 when there was evidence to reduce the crime).

This error requires reversal of Shands's conviction for attempted murder.⁹ However, we find the trial court's error caused Shands no prejudice as to his convictions for first-degree burglary, kidnapping, first-degree assault and battery, and possession of a weapon during the commission of a violent crime, and we affirm those convictions.

⁹ Because Shands's argument regarding the propriety of the inferred malice instruction is dispositive, we do not consider Shands's argument that giving the example of a knife as a deadly weapon was a comment on the facts of the case. See *State v. Henson*, 407 S.C. 154, 167 n.4, 754 S.E.2d 508, 515 n.4 (2014) (declining to reach an additional argument where the resolution of the first issue was dispositive).

VII. CLOSING ARGUMENT PROCEDURE

Shands argues the trial court violated his due process rights¹⁰ by refusing to require the State to open fully on the law and the facts in its initial closing argument so he

would have the opportunity to respond to the State's entire argument in his closing argument. Shands argues the State “revealed to the jurors for the first time [its] theory about the kidnapping charge” in its reply closing argument. Shands also states he would have liked to respond to

what [he] considered to be somewhat an emotional attack on [him] both in some of how it was delivered but in particular[] the language that was used. [He] would have responded about what [the State] said about kidnapping, [he] would have responded to what [it] said about placing the police on trial, that was not [his] purpose. And [he] would have responded to ... the argument made about Sharon leaving that day as well as a number of things that [he thought it] said that exceeded the bounds of what the evidence really was

Shands contends even if some of the evidence fairly arose from the evidence at the trial, “there was [no] guarantee the [State] would make those same arguments during [its] closing argument” and it was “fundamentally unfair to require [him] to predict the prosecutor's closing argument.”

¹⁰ Due process requires that no person shall be deprived of life, liberty, or property without due process of law. U.S. CONST. amend. XIV § 1; S.C. CONST. art. 1, § 3.

In *State v. Beaty*, our supreme court declined to create a rule specifying “the content and order of closing arguments in criminal cases in which a defendant introduces evidence,” noting it did not have the authority “to promulgate a procedural rule for future cases by simply issuing an opinion.” *State v. Beaty*, 423 S.C. 26, 36–37, 39, 46, 813 S.E.2d 502, 507, 509, 512 (2018). The supreme court extensively discussed the history of South Carolina's rules and practices surrounding the procedure of closing arguments in criminal cases. *Id.* at 36–43, 813 S.E.2d at 507–11. The court explained the existing procedure applicable to Shands's case as follows:

[I]n cases in which a defendant introduces evidence of any kind, even through a prosecution witness,

the State has the final closing argument. However, in cases in which the State is entitled to the reply argument, there is no common law or codified rule as to whether the State must open in full on the law, or the facts, or both, or neither, and there is no rule governing the content of the State's reply argument.

Id. at 42, 813 S.E.2d at 510–11. The court, instead, noted it “retain[ed] the authority to determine—on a case-by-case basis—whether a defendant's due process rights have been violated by procedural methods employed during a trial.” *Id.* In *Beatty*, the supreme court found the State's closing arguments did not violate the defendant's procedural due process rights because the State's theories were (1) “arguably a proper response” to the defendant's closing argument, (2) “largely inconsequential to the question” of whether the defendant murdered the victim, (3) supported by evidence in the record, and (4) not prejudicial to the defendant. *Id.* at 43–47, 813 S.E.2d at 511–13.

[36] [37] [38] Therefore, we must determine whether Shands's due process rights were violated in this instance. “[P]rocedural due process contemplates a fair trial.” *539 *Id.* at 43, 813 S.E.2d at 511. “A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.” *Id.* (quoting *State v. Hornsby*, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997)). Our “case law focuses upon allegedly inflammatory or unsupported content of the State's closing argument, not upon whether the State must open in full on the facts and not upon reply arguments which have a basis in the record but to which a defendant is not allowed to respond.” *Id.* “Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” *Humphries*, 351 S.C. at 373, 570 S.E.2d at 166. “The relevant question is whether the [State]’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Id.*

[39] Although Shands argues he did not get a chance to reply to the State's version of the facts, we find he was aware of the State's arguments and could have used his closing argument to respond to them. Shands was aware

of the State's theory of the kidnapping charge because the State explained what facts it believed supported the charge in response to Shands's directed verdict motion. The State indicated the kidnapping charge was appropriate because Shands grabbed Sharon by the hair to pull her back into the house and would not let her leave through the garage. The State indicated in its initial closing argument that the kidnapping in Shands's case was not “the traditional kidnapping” a person usually thinks about when “there is [an] Amber alert and somebody's child is missing.” The State explained: “Kidnapping is confining someone against their will and it doesn't have to be for a long time, there is no set amount of time that you have to confine somebody.” Although the jury had not yet heard the State's full theory for kidnapping, Shands was aware of its theory and knew from the State's initial closing argument that the State was focusing on a brief confinement to support the kidnapping charge. Furthermore, the State's comments in its closing argument regarding kidnapping were arguably in reply to Shands's closing argument comment that he “had no idea how [the State] would explain kidnapping to [the jury] under this evidence.”

Regarding Shands's argument that the State “emotional[ly] attack[ed]” him in its reply closing argument, we believe this matter was inconsequential to the issue of Shands's guilt, and as discussed in Section V, these comments were not prejudicial. Shands further argued he would have responded to the State's comments about him “placing the police on trial.” We believe the State's comments during its reply closing argument were arguably in response to Shands's closing argument highlighting the fact that the police officers never asked him what his side of the story was and stating the lack of information in the case was “the fault of the police officers.” Furthermore, these comments were insignificant to the issues before the jury.

Accordingly, while the State did “not restrict its reply argument to matters raised by” Shands and the trial court did not allow him to respond to the foregoing points, we hold Shands did not suffer prejudice as a result because he was not denied “the fundamental fairness essential to the concept of justice.” See *Beatty*, 423 S.C. at 45, 813 S.E.2d at 512 (quoting *Hornsby*, 326 S.C. at 129, 484 S.E.2d at 873).

VIII. DIRECTED VERDICT

Shands argues the trial court erred in denying his motion for a directed verdict on the kidnapping charge

because the evidence did not show that Shands “actually restrained” Sharon. Shands further argues the kidnapping statute is unconstitutionally vague and overbroad because the facts of his case did not put him on notice that his conduct could constitute kidnapping. We disagree.

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). If the State fails to produce evidence of the charged offense, then the defendant is entitled to a directed verdict. *Id.* “In an appeal from the denial of a directed verdict motion, the appellate *540 court must view the evidence in the light most favorable to the State.” *State v. Cope*, 405 S.C. 317, 348, 748 S.E.2d 194, 210 (2013). “If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [c]ourt must find the case was properly submitted to the jury.” *Id.* (quoting *State v. Curtis*, 356 S.C. 622, 633–34, 591 S.E.2d 600, 605 (2004)).

[40] [41] Kidnapping occurs when one “unlawfully seize[s], confine[s], inveigle[s], decoy[s], kidnap[s], abduct[s.] or carr[ies] away” another person. S.C. Code Ann. § 16-3-910 (2015). “A kidnapping commences when [a victim] is [lawfully] deprived of his [or her] freedom and continues until freedom is restored.” *State v. Kornahrens*, 290 S.C. 281, 287, 350 S.E.2d 180, 184 (1986). “[T]he crime of kidnapping in South Carolina is broad in scope” and “encompass[es] restraint regardless of duration.” *Lozada v. S.C. Law Enf't Div.*, 395 S.C. 509, 513, 719 S.E.2d 258, 260 (2011).

[42] We find Shands's argument regarding the constitutionality of the kidnapping statute is without merit because our supreme court has already held the kidnapping statute is not unconstitutionally vague and overbroad. See *State v. Smith*, 275 S.C. 164, 166, 268 S.E.2d 276, 277 (1980) (“The terms of th[e] statute are clear and unambiguous. It proscribes the forceful seizure, confinement[,] or carrying away of another against his will without authority of law. We hold it is not unconstitutionally vague”).¹¹ Further, we hold the trial court did not err in denying Shands's motion for a directed verdict because, viewing the evidence in the light most favorable to the State, there was evidence

to support the kidnapping charge. Sharon testified she tried to leave the house, but Shands kept closing the garage door so she could not escape. Sharon also testified Shands pulled her by the hair and tried to drag her into the house so she could not leave. The sons both recalled Shands grabbing Sharon by the hair as well. We find this evidence supported the kidnapping charge. Shands appears to argue that because his attempts to close the garage door and pull Sharon inside the house by her hair were not ultimately successful in preventing Sharon from leaving the house, his actions were only *attempts* to restrain, rather than actual restraints. We disagree. The kidnapping statute does not prescribe a duration, and therefore, by preventing Sharon from leaving the house, Shands restrained and confined her for the purposes of the statute. See *Lozada*, 395 S.C. at 513, 719 S.E.2d at 260 (stating that kidnapping “encompass[es] restraint regardless of duration”). Therefore, we affirm the trial court's denial of Shands's motion for a directed verdict on the kidnapping charge.

11 Other than an amendment to the maximum sentence, the kidnapping statute in 1980 was identical to the kidnapping statute in effect at the time of Shands's case. See *Smith*, 275 S.C. at 166, 268 S.E.2d at 277 (“Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, ..., shall be guilty of a felony and, upon conviction, shall suffer the punishment of life imprisonment ...” (quoting S.C. Code Ann. § 16-3-910 (Supp. 1979))).

CONCLUSION

For the foregoing reasons, we affirm Shands's convictions for first-degree burglary, kidnapping, first-degree assault and battery, and possession of a weapon during the commission of a violent crime, and we reverse his conviction for attempted murder.

AFFIRMED IN PART AND REVERSED IN PART.

WILLIAMS and MCDONALD, JJ., concur.

All Citations

817 S.E.2d 524

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

Court of Appeals Case No. 2015-001199

RECEIVED

JUN 28 2018

SC Court of Appeals

The State, ... Respondent

v.

Preston Shands, Jr., ... Appellant.

Petition for Rehearing

Pursuant to Rule 221, SCACR, Preston Shands, Jr. petitions for rehearing because this Court overlooked or misapprehended the following points.

I. Batson Challenge.

This Court agreed with Mr. Shands that the trial judge did not “properly apply the third step of the *Batson* comparative juror analysis.” This Court, however, disagreed with Mr. Shands that the State violated *Batson*. In reaching this conclusion, this Court applied two lines of reasoning. First, this Court held, “It is understandable that the State would want to strike potential jurors who had convictions for CDV because Shands was being tried for attempting to kills his wife.” Second, this Court held that the female juror with a fraudulent check conviction was not similarly situated the make juror with “convictions for violating the lottery law” because it “agree[d] with the State that having multiple convictions is different than having only one conviction that is over a decade old.” Slip

Op. at 3-5. The opinion in this case conflicts with this Court's opinion in *State v. Stewart*, 413 S.C. 308, 314, 775 S.E.2d 416, 419 (Ct. App. 2015), which Mr. Shands relied upon in his Brief, at 5-9, and Reply Brief, at 1. Mr. Shands, in fact, argued:

Stewart is instructive for two reasons. First, much like this case, *Stewart* reviewed the trial court's error by not correctly applying the third step of *Batson*. Second, *Stewart* involved a prosecutor attempting to justify preemptory strikes based on jurors' criminal history. In *Stewart*, the State struck African-American jurors with prior involvement with law enforcement while seating Caucasian jurors that also had prior involvement with law enforcement. The Court of Appeals held, "[E]ven though the State offered a racially-neutral explanation for striking the African American jurors, the State negated the reason by seating similarly-situated Caucasian jurors." *Stewart*, 413 S.C. at 317, 775 S.E.2d at 421. See *Miller-El v. Dretke*, 545 U.S. 231, 241 (2005) ("If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson*'s third step."); *State v. Oglesby*, 298 S.C. 279, 281, 379 S.E.2d 891, 892 (1989) (finding the solicitor negated his neutral reason when he seated a white female juror who was similarly situated). Just as it did in *Stewart*, the State in this case negated the gender-neutral reason for striking three men by seating a similarly situated female juror.

Final Brief of Appellant at 8-9. As Mr. Shands pointed out during the oral argument, the State's argument would have been more persuasive if the prosecutors had limited their strikes, purportedly based on criminal history, to the two male jurors with CDV convictions. The State "negated" the use of criminal history when it struck the male juror with lottery law convictions and sat the female juror with a fraudulent check conviction.

Additionally, this Court failed to examine the totality of the circumstances. Mr. Shands argued:

[I]n addition to seating a similarly situated female juror, the totality of the circumstances militates in favor of ordering a new trial. See *State v. Scott*, 406 S.C. 108, 113, 749 S.E.2d 160, 163 (Ct. App. 2013) ("Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record.") (citing *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001)). During jury

selection in this case, the Solicitor had twenty-seven decisions on whether to exercise one of her preemptory strikes. She struck three of the nine men (33%) presented to her. She struck just one of the eighteen women (about 5.5%) presented to her. The Solicitor, therefore, was six times more likely to strike men than women. As ... seen in Question V, ..., the Solicitor directed her closing argument towards the female jurors, including arguing that Mr. Shands considered his wife property.

Final Brief of Appellant at 9.

This Court should rehear this appeal and grant relief for the reasons set forth in Mr. Shand's brief, at 5-9, and reply brief, at 1.

II. Grand Jury Process.

This Court held that Mr. "Shands did not present clear and convincing evidence that there was an abuse of the grand jury proceedings in his case." Slip Op. at 5. This Court overlooked the Deputy Solicitor's admission that Laurens County has a pattern and practice that does not comply with S.C. Code Ann § 14-7-1550 and the standard instructions provided to the grand jurors at the beginning of every year. *See* Rule 406, SCRE. Mr. Shands, accordingly proved an abuse of the grand jury process in *every* case indicted in Laurens County.

This Court should rehear this appeal and grant relief for the reasons set forth in Mr. Shand's brief, at 9-19, and reply brief, at 1-2.

III. Prior Conviction.

This Court agreed with Mr. Shands that his prior conviction was not admissible under Rule 609, SCRE because (1) Mr. Shands had been released from confinement for more than ten years and (2) "the State did not present sufficient evidence to show the probative value of Shand's conviction *substantially* outweighed its prejudicial effect." Slip Op. at 8-9 (emphasis supplied by this Court). This Court, however, held, "[T]he trial

court did not err in admitting Shand's prior conviction because Shands opened the door to such evidence" by asking whether they had ever witnessed Mr. Shands commit an act of violence. Slip Op. at 9. This Court, however, never identified the court rule under which the evidence was admissible. It appears this Court conflated the analysis under Rule 609, SCRE with the analysis under Rule 404(a), SCRE or Rule 404(b), SCRE. The prosecution tacitly acknowledged Mr. Shand's conviction was not admissible under Rule 404, SCRE as its only theory at trial for admitting the conviction was under Rule 609, SCRE.

This Court, essentially, adopted a rule allowing the prosecution to introduce an otherwise inadmissible prior conviction to impeach an accused's cross-examination of witnesses that gave truthful answers about issues relevant in the case. In future trials, an accused will have to choose between cross-examining witnesses or testifying.

This Court should rehear this appeal and grant relief for the reasons set forth in Mr. Shand's brief, at 19-23, and reply brief, at 2-3.

IV. Voluntary Intoxication.

This Court held, "[T]he trial court did not err in refusing to charge involuntary intoxication because Shands voluntarily consumed an illegal intoxicant." Slip Op. at 10. This Court, however, overlooked the testimony that the drink was "spiked with something other than alcohol." In doing so, this Court encroaches on the role of the jurors as the fact finders.

This Court should rehear this appeal and grant relief for the reasons set forth in Mr. Shand's brief, at 23-25, and reply brief, at 4.

V. Comments During the State's Closing Argument.

This Court held, “[T]he trial court did not abuse its discretion in denying Shand’s motions to strike because the State’s comments were not outside the evidence.” Slip Op. at 12. As pointed out in Mr. Shand’s reply brief, at 4-5, the prosecutor’s statement, “[T]his is a jealous, controlling husband who was not going to let *his property* leave that house,’ is highly inflammatory and not based on evidence.” This Court never addressed this argument. Additionally, this Court overlooked the procedural posture of this issue. The trial judge very clearly sustained the objection and admonished the prosecutor to confine her arguments to the evidence. This Court, accordingly, was reviewing whether it was error not to provide a curative instruction and not whether the prosecutor’s comments were improper.

This Court should rehear this appeal and grant relief for the reasons set forth in Mr. Shand’s brief, at 25-26, and reply brief, at 4-5.

VI. Inferred Malice Jury Instruction.

Mr. Shands agrees with this section of this Court’s opinion.

VII. Closing Argument Procedure.

Neither this Court’s opinion in this case nor our Supreme Court’s opinion in *State v. Beaty*, ___ S.C. ___ 813 S.E.2d 502 (2018) answers the question of whether due process requires the accused to have an opportunity to respond to the prosecution’s best closing argument.¹ Mr. Shands believes it is fundamentally unfair to allow the State to withhold its theory of the case until after it hears the accused’s closing argument. This

¹ Mr. Beaty’s petition for rehearing raised this issue in our Supreme Court.

Court's focus on the argument in this particular case overlooks the larger due process issue.

Additionally, this Court cited *Beatty* for a four-part test to determine whether the state's closing argument violated the accused's due process rights. Our Supreme Court's opinion in *Beatty*, however, did not adopt a rigid four-part test. Rather, our Supreme Court wanted trial judges—and appellate courts—to exercise sound discretion in deciding whether a prosecutor's closing argument violated due process. Under the test adopted by this Court, an accused could never establish a violation. For example, if the prosecutor completely sandbags and reveals nothing about its theory in its initial closing argument, then anything the prosecutor argues in “reply” would be “‘arguably a proper response’ to the defendant’s closing argument.” Slip op. at 18.

This Court should rehear this appeal and grant relief for the reasons set forth in Mr. Shand's brief, at 29-35, and reply brief, at 6-7.

VIII. Directed Verdict & Unconstitutionality of the Kidnapping Statute.

This Court held, “We find Shand's argument regarding the constitutionality of the kidnapping statute is without merit because our supreme court has already held the kidnapping statute is not unconstitutionally vague.” Slip Op. at 20. Mr. Shands takes this opportunity to remind this Court that he petitioned this Court to transfer his appeal to the Supreme Court because this Court lacked the authority to overrule precedent.

Additionally, the precise issue Mr. Shands appealed to this Court was:

Did the trial judge err by denying Mr. Shands' motion for a directed verdict on the kidnapping charge because the kidnapping statute, as applied to Mr. Shands, is unconstitutionally vague and overbroad because it did not put him on notice of what conduct is prohibited?

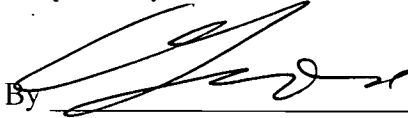
Final Brief of Appellant at 35. This Court never addressed the “as applied” challenge to the statute.

This Court should rehear this appeal and grant relief for the reasons set forth in Mr. Shand’s brief, at 35-38, and reply brief, at 7-8.

Conclusion

For the foregoing reasons, and for the reasons set forth in Mr. Shands’ Final Brief and Final Reply Brief, this Court should rehear this appeal and grant him a new trial.

Respectfully Submitted

By 

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June 27, 2018
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

RECEIVED

JUN 28 2018

SC Court of Appeals

General Session Case No. 2014-GS-30-1477-82

The State, ... Respondent

v.

Preston Shands, Jr., ... Appellant.

PROOF OF SERVICE

I certify that I have served this pleading on the State, by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

David A. Spencer, Esquire
Office of the Attorney General
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January 11, 2016
Greenwood, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Edward W. Miller, Circuit Court Judge

THE STATE,

Respondent,

RECEIVED

vs.

JUN 27 2018

PRESTON SHANDS, JR.,

SC Court of Appeals

Appellant.

Appellate Case No. 2015-001199

STATE'S PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, the Petitioner State now requests a rehearing on the following points that this Court may have overlooked or misapprehended:

I.

This Court reversed Appellant Shands' conviction and sentence for attempted murder while affirming the remaining convictions and sentences. State v. Preston Shands, Jr., Op. No. 5569 (S.C. Ct. App. filed June 13, 2018). This Court found the trial court erred and Shands was prejudiced because the trial court instructed the jury on implied malice from use of a deadly weapon in contravention of State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

The State argued in its brief that although the trial court instructed the jury on ABHAN, there was no error because the evidence did not support an instruction on a lesser included offense. See State v. Price, 400 S.C. 110, 732 S.E.2d 652, 654 (Ct. App. 2012) (finding the trial court did not err by instructing the jury that malice may be inferred from the use of a deadly weapon because although the jury was instructed on a lesser included offense, no evidence supported an instruction on the lesser included offense).

Responding to the State's reliance on Price, this Court relied on State v. King, 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017). In King, which was decided after the parties in the instant case submitted their briefs, the Supreme Court found the statutory offense of attempted murder is a specific intent crime. This Court in the instant case noted the Supreme Court, in dicta, suggested that absent express malice and a specific intent to kill, the crime would involve a lower level of intent. Shands, supra (quoting King, 422 S.C. at 64 n.5, 810 S.E.2d at 27 n.5). This Court interpreted the footnote in King to mean the State must prove both specific intent **and** express malice to prove attempted murder.

This Court questioned whether an implied malice instruction was appropriate in any attempted murder case, but opined, "Despite the number of times Shands stabbed Sharon and the nature of the attack, a jury could have found Shands only had a general intent to kill instead of the higher mens rea of specific intent to kill." Shands, supra (citations omitted). This Court concluded, "Therefore, because there was evidence to reduce Shands's charge, the trial court erred in instructing the jury that malice could be inferred from the use of a deadly weapon." Id.

I.

The State respectfully submits that no evidence was presented suggesting that Shands committed the lesser included offense to the exclusion of the greater offense. A lesser included offense should be charged only where evidence warrants the instruction. State v. Coleman, 342 S.C. 172, 536 S.E.2d 387 (Ct. App. 2000). “It is not error to refuse to charge the lesser included offense unless there is evidence tending to show the defendant was guilty *only* of the lesser offense.” Id., 342 S.C. at 175, 536 S.E.2d at 389 (emphasis in the original).

In the instant case, the uncontroverted evidence of express malice forecloses an instruction on a lesser included offense. In Sheppard v. State, 357 S.C. 646, 662, 594 S.E.2d 462, 471 (2004), the Supreme Court found no error in the trial court’s instruction that, in part, advised the jury, “[M]alice can be expressed where there is manifested a deliberate intention to violently and unlawfully take the life of another human being. For instance with words.” Note the “for instance” modifier clarifies that evidence of express malice is not simply limited to words such as announcements of intent.

King itself relied heavily on a Nevada Supreme Court case, Keys v. State, 766 P.2d 270 (1988). Keys found that attempted murder under Nevada law required a specific intent to kill and that intent could only be proved by express malice rather than implied malice. The Nevada Supreme Court then explained express versus implied malice as follows:

The mens rea requirement denoted by the term *express malice* is different from that of *implied malice*. Express malice, called malice in fact, is the deliberate intention to kill; implied malice, called malice in law, does not relate to a deliberate, intentional killing but is rather a mens rea inferred in law from the “circumstances of the killing.” . . . Proving express malice means proving a deliberate intention to kill; while proving implied malice means proving only the commission of wrongful acts from which,

absent any proof of an actual intent to harm, the archaic but essential “abandoned and malignant harm” can be inferred in law.

Attempted murder can be committed only when the accused’s acts are accompanied by *express malice*, malice in fact. One cannot *attempt* to kill another with implied malice because there “is no such criminal offense as an attempt to achieve an unintended result.” An attempt, by nature, is a failure to accomplish what one *intended* to do. Attempt means to try; it means an effort to bring about a desired result. **Thus one cannot attempt to be negligent or attempt to have the general malignant recklessness contemplated by the legal concept, “implied malice.”** One cannot be guilty of attempted murder by implied malice because implied malice does not encompass the essential specific intent to kill.

Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention to unlawfully kill. This is all there is to it. There is no need for the prosecution to prove any additional elements, such as, say, premeditation and deliberation.

Id. at 740-41 (italics in the original, emphasis in bold added).

In the instant case, manifestations of Shands’s deliberate intent include preparation – his retrieval of a barbecue fork which he utilized as a weapon. Shands armed himself with the barbecue fork after Sharon escaped from the garage and ran to a neighbor’s house. Escalating his attack further, Shands pursued her and stabbed her repeatedly in front of a neighbor’s house. Manifestation of express malice comes not from mere use of the weapon, but from the repetitious nature of the stabbing. When Sharon escaped once more, Shands retrieved a hammer to commit the burglary and retrieved a butcher knife from the neighbor’s house, chasing Sharon outside, actions expressly manifesting his intent to continue the assault despite already stabbing Sharon multiple times and already inflicting significant injury. The preparation and willingness to continue with the assault after having already inflicted injuries constitutes irrefutable express

malice that precludes an instruction on a lesser included offense. There is no evidence that his behavior constituted mere negligence or general malignant recklessness in accordance with implied malice as defined by Keys. Accordingly, no evidence supports the lesser included offenses because the only evidence was that Shands acted with express malice as defined by Keys.

II. Further, this Court did not conduct a harmless error analysis as to the attempted murder conviction. As advanced by the State in its brief, even if a court errs in charging the jury on an inferred malice instruction, the error is subject to harmless error analysis, and harmless error may arise when evidence of malice is not limited to the use of a deadly weapon. State v. Stanko, 402 S.C. 252, 741 S.E.2d 708, 714 (2013).

In Stanko, the defendant argued the trial court erred in instructing the jury it could infer malice from the use of a deadly weapon when the defendant had presented an insanity defense. Stanko, 741 S.E.2d at 711. The Supreme Court held the defendant's evidence of insanity was sufficient to preclude the deadly weapon inference charge, but found the error in giving it was harmless. Id. at 264-65, 741 S.E.2d at 713-14. In reaching its harmless error conclusion, the Court distinguished Belcher:

The State presented uncontested evidence that Appellant shot the Victim, his elderly and unarmed friend, in the back using a pillow as a silencer. Appellant then robbed the Victim, and for the next several days used his automobile to travel across the state, where he engaged in social activities and drinking. Authorities apprehended Appellant in possession of the Victim's vehicle and the gun used in the murder. Thus, the evidence of malice in this case is not limited to Appellant's use of a deadly weapon. *See Belcher*, 385 S.C. at 612, 685 S.E.2d at 810 ("It is entirely conceivable that the only evidence of malice was Belcher's use of a handgun.").

Id.

Like Stanko, plenty of other evidence separate from Shands's use of a barbecue fork supports a finding of malice. The violent incident starts with Shands cursing, pulling Sharon's hair, and fighting with the son. Sharon freed herself and ran across the street to a neighbor's house, but Shands tackled her in front of the house and proceeded to stab her repeatedly with a barbecue fork. The sons stopped Shands from stabbing Victim, but Shands retrieved a hammer, busted the windows in the front of the neighbor's house and entered through the sliding glass door in the back of the house, which he also smashed with the hammer. Shands retrieved a knife from the neighbor's kitchen and chased Victim to the front of the house where he was finally apprehended by law enforcement, although initially he was holding his own son hostage. Shands did not challenge this evidence when he testified; instead he claimed he did not remember the events due to his purported intoxication. Shands committed the assault during a kidnapping and committed a burglary to pursue Victim, arming himself with the neighbor's kitchen knife. As in Stanko, plenty of evidence supports a finding of malice and any error is harmless. There was no other interpretation of the evidence except that Shands was attempting to kill Victim. See State v. Middleton, 407 S.C. 312, 319, 755 S.E.2d 432, 436 (2014) (finding error in failing to charge lesser included offense of assault and battery in the first degree was harmless beyond a reasonable doubt: "[T]he only conclusion established by the evidence is that Appellant was guilty of attempted murder [T]here is no other way to construe the evidence in this case but that Appellant was attempting to kill [the victims].").

III. Further, the State believes King was wrongly decided and reserves the right to argue against precedent in the Supreme Court that attempted murder is a general intent, rather than specific intent crime.

Note the legislature stated in S.C. Code §16-3-29 that malice may be express **or** implied. It is a “well-settled rule of statutory construction, that a court is bound, if possible, to give some place and effect to **every** word found in a statute.” Burns v. Gower, 34 S.C. 160, 13 S.E. 331, 332 (1891) (emphasis added); see also Breeden v. TCW, Inc./Tennessee Exp., 355 S.C. 112, 120, 584 S.E.2d 379, 383 (2003) (finding every “word, clause, and sentence must be given some meaning, force, and effect, if it can be done by any reasonable construction”).

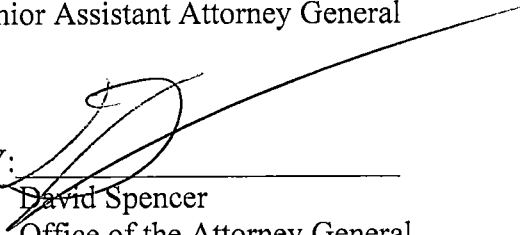
The State would argue, as opined by Justice Kittredge in his dissenting opinion, that S.C. Code section 16-3-29 is the codification of the common law offense of assault and battery with intent to kill (ABWICK) which only requires a general intent to kill. King, 422 S.C. at 73, 810 S.E.2d at 32 (J. Kittredge, dissenting). As Justice Kittredge noted, the legislature chose to use the verbatim definition of ABWIK. Id. (citing State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996) (finding a jury must find only a general intent, not a specific intent to kill to find a defendant guilty of ABWIK).

WHEREFORE, Petitioner/Respondent requests this Court to grant the petition for rehearing and affirm the conviction and sentence for attempted murder.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER/RESPONDENT

June 27, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Laurens County
The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No: 2015-001199

RECEIVED

JUN 27 2018

SC Court of Appeals

THE STATE,

Respondent,

v.

PRESTON SHANDS, JR.,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within State's Petition for Rehearing on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record, E. Charles Grose, Jr., Esquire, Grose Law Firm, 404 Main Street, Greenwood, SC 29646.

I further certify that all parties required by Rule to be served have been served.
This 27th day of June, 2018.


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Legal Assistant

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The South Carolina Court of Appeals

The State, Respondent,

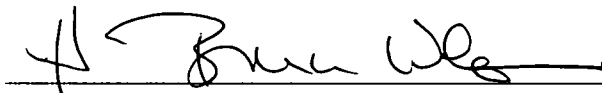
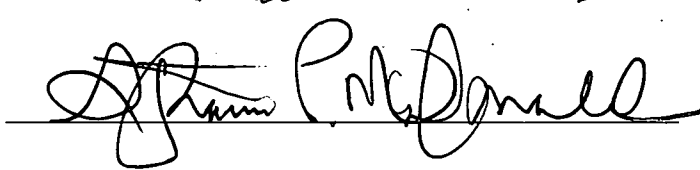
v.

Preston Shands Jr., Appellant.

Appellate Case No. 2015-001199

ORDER

After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

 J.
 J.
 J.

Columbia, South Carolina

cc: E. Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
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