

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM LAURENS COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2019-000948

Robert Harbuck,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THE LAURENS COUNTY CLERK OF
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STATE OF SOUTH CAROLINA
 COUNTY OF LAURENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,	)	CASE NO.: 2015-GS-30-1618
	)	2015-GS-30-1619
PLAINTIFF,	)	2015-GS-30-1620
	)	2015-GS-30-1621
	)	2015-GS-30-1710
-VS-	)	
	)	TRANSCRIPT OF RECORD
ROBERT CLINTON HARBUCK,	)	
	)	
DEFENDANT.	)	
_____	)	

AUGUST 24-26, 2016
 LAURENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE

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

ATTORNEY FOR PLAINTIFF:

DALE SCOTT, ASSISTANT SOLICITOR
 JIM TODD, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

THOMAS J. QUINN, ESQUIRE

TARA T. SCOTT, CVR
 CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
State's 1	Photo		X
State's 2	DVD		X
State's 6	Photo		X
State's 11	911 Call		X
State's 12	Dash cam video		X
State's 13	Photo		X
Court's 1	Medical Record	X	
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1 TRIAL DAY 1-08/24/16

2 THE COURT: Ladies and gentlemen of the jury panel, we
3 will be starting the case of the *State of South Carolina vs.*
4 *Robert Clinton Harbuck*. And, Mr. Harbuck, if you would
5 please stand. Face the jury panel just very briefly.

6 (Whereupon, the Defendant stands.)

7 THE COURT: Thank you very much. You can have a seat.
8 I have before me six indictments. Now, you remember I
9 explained to you, and I'm going to explain again because
10 it's very important, the fact that Mr. Harbuck has been
11 indicted with six indictments in this case is not evidence
12 at all of guilt in this case. The indictments merely
13 contain allegations concerning various criminal offenses.
14 And as I told you, and will tell you again, it's up to the
15 State. It's their burden to prove these allegations
16 contained in the indictments beyond a reasonable doubt
17 standard. So the fact that Mr. Harbuck has been indicted is
18 of no significance to you other than it's just an indication
19 to you that we have some documents that get us to the point
20 that we're at today. That being the trial of this case.
21 But so you will know a little bit about what this case is
22 about, I'm going to publish to you these indictments. There
23 are four indictments for attempted murder, there is one
24 indictment for assault on an officer while resisting arrest,
25 and there's one indictment for failure to stop for a blue

1 light.

2 The first indictment -- I'm going to read the four
3 attempted murder indictments first. "That Robert Clinton
4 Harbuck did on or about September 6, 2015 in Laurens County
5 willfully and unlawfully with the intent to kill and with
6 malice aforethought attempted to kill Denise Hamby in
7 violation of Section 16-3-29. The next would be worded the
8 same and it involves Darrell Dwayne Raines, Jr. The third
9 indictment alleges the same thing, where Mr. Harbuck is
10 charged with attempting to kill Jason Dwayne Stephenson.
11 And that's spelled with a P-H. And fourthly, the fourth
12 attempted murder indictment accuses Mr. Harbuck of
13 attempting to kill South Carolina Highway Patrolman Trooper
14 S -- the initial S -- I'm not sure what his first name is:

15 MR. SCOTT: Steven, Your Honor.

16 THE COURT: Steven. That's what I thought. Lindler.
17 The indictment for assault on an officer while resisting
18 arrest reads as follows. That Robert Clinton Harbuck did on
19 or about September 6th, 2015 in Laurens County willfully,
20 unlawfully and knowingly assault, beat or wounded a law
21 enforcement officer, to wit, Robert Clinton Harbuck did kick
22 Lieutenant Casey Jones multiple times while resisting an
23 arrest being made by one who the person knew or reasonably
24 should have known was a law enforcement officer, whether
25 under process or not, in violation of Section 16-9-320(b)

1 Code of Laws for South Carolina. And the last indictment is
2 for failure to stop for a blue light. That Robert Clinton
3 Harbuck did on or about September 6, 2015 in Laurens County
4 willfully and unlawfully while driving a motor vehicle on a
5 public highway of South Carolina in the county aforesaid
6 failed to stop when signaling to do so by a law enforcement
7 vehicle by means of a siren or flashing light in violation
8 of Section 56-5-750 Code of Laws for South Carolina.

9 Now, if you remember on Monday, too, I gave you several
10 opportunities, and will give you another opportunity this
11 afternoon to speak with me privately as it relates to any of
12 the questions that I ask you or any other concerns that you
13 may have related to sitting on a jury in this particular
14 case. So understand, if you don't want to respond in front
15 of everybody or you want to speak with me privately, then
16 I'm going to give you that opportunity to do so.

17 Any member of the jury panel related by blood or
18 marriage either now or formerly to either Robert Clinton
19 Harbuck, Trooper Steven Lindler, Jason Dwayne Stephenson,
20 Darrell Dwayne Raines, Jr., or Denise Hamby? If so, please
21 stand.

22 (Whereupon, no jury panel members stand.)

23 THE COURT: Any member of the jury panel have or had in
24 the past a close personal or social relationship with either
25 Robert Clinton Harbuck, Jason Dwayne Stephenson, Darrell

1 Dwayne Raines, Jr., Denise Hamby? If so, please stand. Or
2 Trooper Steven Lindler? If so, please stand.

3 (Whereupon, no jury panel member stands.)

4 THE COURT: I left out one other individual, so let me
5 go back to my first question. Is anyone on the jury panel
6 related by blood or marriage, either now or formerly, to
7 Lieutenant Casey Jones, or had a close, personal or social
8 relationship with now or formerly with Lieutenant Casey
9 Jones? If so, please stand.

10 (Whereupon, no jury panel member stands.)

11 THE COURT: All right. I'm going to publish a list of
12 potential witnesses in this case. The potential witnesses
13 are as follows. Denise Hamby, Darrell Raines, Jason
14 Stephenson, Steven Lindler, Terry Hunter, Casey Jones,
15 Scotty Peay, Jaworski Shelton, Nicholas Moye, Gina Harbuck.
16 Even though some of those names have already been asked in
17 these questions, anyone on the jury panel related by blood
18 or marriage either now or formerly to those individuals that
19 I've just listed, or anyone on the jury panel have or had in
20 the past a close personal or social relationship with any of
21 those individuals? If so, please stand.

22 (Whereupon, no jury panel member stands.)

23 THE COURT: I'm going to give an opportunity at this
24 time for the lawyers to introduce themselves. And as the
25 case in the first trial, we have excellent lawyers on both

1 sides in this case.

2 Solicitor, you want to go first?

3 MR. SCOTT: Thank you, Your Honor. Good afternoon, I'm
4 Dale Scott, Deputy Solicitor of the Eighth Circuit,
5 primarily in charge of Newberry and Laurens County. Of
6 course, I'm trying a case in front of you guys in Laurens
7 this week. I'm going to be assisted by Investigator Walter
8 Bentley, formerly of the Laurens Police Department. I've
9 got Jim Todd who's an Assistant Solicitor of our Laurens
10 Office. And then sitting with us is a new employee awaiting
11 Bar results, Jerry Simmons. Thank you.

12 THE COURT: Thank you. Mr. Quinn.

13 MR. QUINN: Ladies and gentlemen, my name is Tom Quinn.
14 I'm an attorney in private practice. I'm honored to have
15 the opportunity to represent Mr. Harbuck.

16 THE COURT: Any member of the jury panel ever been
17 represented by any of the attorneys involved in this case,
18 or anyone in their respective offices or law firms? If so,
19 please stand.

20 (Whereupon, no jury panel member stands.)

21 THE COURT: Any member of the jury panel related by
22 blood or marriage either now or formerly, or have had or
23 currently have a close personal or social relationship with
24 any of the attorneys involved in this case or anyone in
25 their respective offices or law firms? If so, please stand.

1 (Whereupon, no jury panel member stands.)

2 THE COURT: Has any member of the jury panel formed or
3 expressed any opinion about any issue or matter involved in
4 this case? If so, please stand.

5 (Whereupon, a jury panel member stands.)

6 THE COURT: Mr. MacDonald, I'll speak with you
7 privately. Okay?

8 Any member of the jury panel aware of any bias or
9 prejudice towards either the State or the Defendant in this
10 case? If so, please stand.

11 (Whereupon, no jury panel member stands.)

12 THE COURT: Any member of the jury panel who is a
13 member of or contributor to any group which has as its
14 primary concern the promotion of law enforcement or victim's
15 rights? These groups would include, but certainly not
16 limited to, I'll give you the acronyms, MADD, SADD or CAVE.
17 If so, please stand.

18 (Whereupon, no jury panel member stands.)

19 THE COURT: Any member of the jury panel know of any
20 reason whatsoever why he or she should not serve as a juror
21 in this case with particular emphasis being placed on your
22 ability to be fair and impartial to both the State and the
23 Defendant? If so, please stand.

24 (Whereupon, no jury panel member stands.)

25 THE COURT: Now, any member of the jury panel, other

1 than Mr. MacDonald, would like to speak with me privately?
2 If so, with assistance of the Bailiffs we'll form a line in
3 the aisle and we'll take you one at a time. We've got one.

4 (Sidebar out of the hearing of the jury panel.)

5 Potential Juror: I write for the Clinton Chronicle and
6 I'm almost positive I've written about this case. I need to
7 check my records, but I'm afraid it might form a bias.

8 THE COURT: Let's be on the safe side and excuse you.
9 Stay with us, but take him off the list. Thank you. Does
10 the State have any exceptions to the Court's voir dire or
11 any additional questions?

12 MR. SCOTT: No exceptions, no additions, Your Honor.

13 THE COURT: Mr. Quinn?

14 MR. QUINN: No exceptions or additions.

15 THE COURT: Thank you so much. If everybody be at ease
16 for just a few moments. The Clerk is also having computer
17 issues. So not only am I, but -- so we're going to have to
18 deal with that. So just please be patient and we'll try to
19 get moving along as best we can.

20 (Whereupon, a brief pause was held.)

21 THE COURT: Okay, ladies and gentlemen. Again, if your
22 name is called out bring whatever belongings that you have
23 with you, come down to the front, turn around, face out
24 towards the door. And I'll just remind you as I told you
25 all Monday, you know, if you're brought down but not

1 selected, don't take it personally. Okay?

2 Madam Clerk, if you would proceed, please. Wait a
3 minute. Let's make sure we have an understanding about --
4 let me see the lawyers for just a second about how many
5 strikes.

6 (Whereupon, a sidebar was held.)

7 THE COURT: Madam Clerk, if you would proceed, please.

8 MADAM CLERK: Juror No. 119, Emerson Clay O'Rear. What
9 says the State?

10 MR. SCOTT: Judge, may we approach? One other issue.

11 THE COURT: Sure. Mr. O'Rear, if you'd just have a
12 seat back where you are and then we can call you back up
13 again.

14 (Whereupon, a sidebar was held.)

15 THE COURT: All right. You may proceed.

16 MADAM CLERK: Juror No. 92, Beverly A. Kline. What
17 says the State?

18 MR. SCOTT: Please excuse the juror from this case.

19 MADAM CLERK: Juror No. 53, Mitchell G. Finley. What
20 say the State?

21 MR. SCOTT: Please excuse the juror from this case.

22 MADAM CLERK: Juror No. 71, Christy Grant. What say
23 the State?

24 MR. SCOTT: Please present the juror.

25 MADAM CLERK: What say the Defense?

1 MR. QUINN: Please swear Ms. Grant.

2 (Whereupon, the juror took a seat in the jury box.)

3 MADAM CLERK: Juror No. 122, Cheryl H. Harris. What
4 say the State?

5 MR. SCOTT: Please present the juror.

6 MADAM CLERK: What says the Defense?

7 MR. QUINN: Please excuse the juror from this trial.

8 MADAM CLERK: Juror No. 115, Joshua K. Moon. What says
9 the State?

10 MR. SCOTT: Please present the juror.

11 MADAM CLERK: What says the Defense?

12 MR. QUINN: Please swear Mr. Moon.

13 (Whereupon, the juror took a seat in the jury box.)

14 MADAM CLERK: Juror No. 80, Patricia M. Huggins. What
15 says the State?

16 MR. SCOTT: Please present the juror.

17 MADAM CLERK: What says the Defense?

18 MR. QUINN: Please swear Ms. Huggins.

19 (Whereupon, the juror took a seat in the jury box.)

20 MADAM CLERK: Juror No. 114, Cale L. Moon. What says
21 the State?

22 MR. SCOTT: Please excuse the juror.

23 MADAM CLERK: Juror No. 22, Autumn N. Berryhill. What
24 says the State?

25 BY MR. SCOTT: Please present the juror.

1 MADAM CLERK: What says the Defense?

2 MR. QUINN: Please swear Ms. Berryhill.

3 (Whereupon, the juror took a seat in the jury box.)

4 MADAM CLERK: Juror No. 38, Lisa B. Cash. What says
5 the State?

6 MR. SCOTT: Please excuse the juror.

7 MADAM CLERK: Juror No. 66, Barbara A. Gagnon. What
8 says the State?

9 MR. SCOTT: Please present the Juror.

10 MADAM CLERK: What says the Defense?

11 MR. QUINN: Please swear Ms. Gagnon.

12 (Whereupon, the juror took a seat in the jury box.)

13 MADAM CLERK: Juror No. 54, Frank W. Hudgins. What
14 says the State?

15 MR. SCOTT: Please excuse the juror.

16 MADAM CLERK: Juror No. 171, Michelle N. Strong. Would
17 the State challenge for cause?

18 MR. SCOTT: Please present the juror.

19 MADAM CLERK: What says the Defense?

20 MR. QUINN: Please swear Ms. Strong.

21 (Whereupon, the juror took a seat in the jury box.)

22 MADAM CLERK: Juror 46, Lorisha J. Copeland. Would the
23 State challenge for cause?

24 MR. SCOTT: Please present the juror.

25 MADAM CLERK: What says the Defense?

1 MR. QUINN: Please swear Ms. Copeland.

2 (Whereupon, the juror took a seat in the jury box.)

3 MADAM CLERK: Juror No. 201, Kimberly J. Weathers.

4 Would the State challenge for cause?

5 MR. SCOTT: Please present the juror.

6 MADAM CLERK: What say the Defense?

7 MR. QUINN: Please swear the juror.

8 (Whereupon, the juror took a seat in the jury box.)

9 MADAM CLERK: Juror No. 3, Leonard T. Abrams. Would
10 the State challenge for cause?

11 MR. SCOTT: Please present the juror.

12 MADAM CLERK: What says the Defense?

13 MR. QUINN: Please excuse Mr. Abrams from this trial.

14 MADAM CLERK: Juror No. 78, Jaqueline C. Hill. Would
15 the State challenge for cause?

16 MR. SCOTT: Please present the juror.

17 MADAM CLERK: What says the Defense?

18 MR. QUINN: Please swear Ms. Hill.

19 (Whereupon, the juror took a seat in the jury box.)

20 MADAM CLERK: Juror No. 20, Timothy A. Bedenbaugh.

21 Would the State challenge for cause?

22 MR. SCOTT: Please present the juror.

23 MADAM CLERK: What says the Defense?

24 MR. QUINN: Please excuse Mr. Bedenbaugh from this
25 trial.

1 MADAM CLERK: Juror No. 113, Sandy S. Mills. Would the
2 State challenge for cause?

3 MR. SCOTT: No, ma'am. Please present the juror.

4 MADAM CLERK: What says the Defense?

5 MR. QUINN: Please swear Ms. Mills.

6 (Whereupon, the juror took a seat in the jury box.)

7 THE COURT: Could I see the lawyers for just a moment,
8 please.

9 (Whereupon, a sidebar was held.)

10 MADAM CLERK: Juror No. 160, Gina B. Shealy.

11 MR. QUINN: I'm sorry, Madam Clerk. That number again?

12 MADAM CLERK: 160.

13 MR. QUINN: Thank you.

14 MADAM CLERK: Does the State challenge for cause?

15 MR. SCOTT: Please present the juror.

16 MADAM CLERK: What says the Defense?

17 MR. QUINN: Please swear Ms. Shealy.

18 (Whereupon, the juror took a seat in the jury box.)

19 MADAM CLERK: Juror No. 102, Kathy Y. Martin. Does the
20 State challenge for cause?

21 MR. SCOTT: Please present the juror.

22 MADAM CLERK: What says the Defense?

23 MR. QUINN: Please swear Ms. Martin.

24 (Whereupon, the juror took a seat in the jury box.)

25 MADAM CLERK: Juror No. 24, Sarah R. Bolt. Does the

1 State challenge for cause?

2 MR. SCOTT: Please present the juror.

3 MADAM CLERK: What says the Defense?

4 MR. QUINN: I'm sorry. I may have to count them. I
5 thought we had 12 jurors. I thought this was the first
6 alternate. Did I count wrong? I'm sorry. Please excuse
7 Ms. Bolt from this trial.

8 MADAM CLERK: Juror No. 164, Billy R. Smith. Does the
9 State challenge for cause?

10 MR. SCOTT: Please present the juror.

11 MADAM CLERK: What says the Defense?

12 MR. QUINN: Please swear Mr. Smith.

13 (Whereupon, the juror took a seat in the jury box.)

14 THE COURT: And we're going to go with two alternates.

15 MADAM CLERK: Juror No. 109, Vickie H. Medland. What
16 says the State?

17 MR. SCOTT: Please present the alternate.

18 MADAM CLERK: What says the Defense?

19 MR. QUINN: Please excuse Ms. Medland from this trial.

20 MADAM CLERK: Juror No. 180, Christopher A. Beil. What
21 says the State?

22 MR. SCOTT: Please present the juror.

23 MADAM CLERK: What says the Defense?

24 MR. QUINN: Please swear Mr. Beil.

25 (Whereupon, the juror took a seat in the jury box.)

1 MADAM CLERK: Juror No. 112, Kayla A. Miller. What
2 says the State?

3 MR. SCOTT: Please present the alternate.

4 MADAM CLERK: What says the Defense?

5 MR. QUINN: Please excuse Ms. Miller from this trial.

6 MADAM CLERK: Juror No. 88, Judith Johnson-Wadsworth.
7 What say the State?

8 MR. SCOTT: Please present the alternate.

9 MADAM CLERK: What says the Defense?

10 MS. QUINN: Please swear Ms. Johnson-Wadsworth.

11 (Whereupon, the juror took a seat in the jury box.)

12 THE COURT: Okay, ladies and gentlemen.
13 Congratulations. What we're going to do is -- I guess
14 you'll put them in the Grand Jury room?

15 THE BAILIFF: Well, I'll put them in -- I've got the
16 other jury in the Grand Jury room.

17 THE COURT: Oh, you do?

18 THE BAILIFF: But I have another jury room I can take
19 them to.

20 THE COURT: Right. What I'm going to want you to do is
21 follow Mr. Bolt. Go back to one of the jury rooms that we
22 have. Take a few minutes to introduce yourselves and get to
23 know each other a little bit. And then we'll get you back
24 out with further instructions on how we will proceed. I
25 will instruct you now that don't start any discussions about

1 this case. I know you know very little. But anything that
2 you've heard or observed there is to be absolutely no
3 discussions among yourselves until I instruct you to begin
4 your deliberations at the conclusion of this case. Okay?

5 So with that said, if you'll go back, follow Mr. Bolt,
6 and then we'll get you back out shortly. Okay?

7 (Whereupon, the jury exited the courtroom.)

8 THE COURT: Other than the two matters we discussed at
9 sidebar does the State have any exceptions or objections to
10 jury selection?

11 MR. SCOTT: No, Your Honor.

12 THE COURT: Other than the two matters we discussed at
13 sidebar, Mr. Quinn, does the Defense have any objections or
14 exceptions to jury selection?

15 MR. QUINN: No, Your Honor.

16 THE COURT: Ladies and gentlemen, you're the ones left
17 standing and I've got some good news, or some of you may
18 take it as good news. Some of you may not. But that is it
19 for the week. We'll finish this case either tomorrow or
20 Friday and we will have no further business where we need
21 the help from you. I hope that you'll have an opportunity
22 sometime in the future to come back to this courtroom and be
23 selected on whether a jury in criminal court or civil court.
24 And I mentioned to you on Monday, and I firmly believe this,
25 that serving on a jury is just an awesome responsibility,

1 civic responsibility, and again, many consider it to be the
2 second highest civic responsibility that we have second only
3 to serving in the military. And in talking with jurors who
4 have sat on juries in criminal and civil cases the vast
5 majority of them said it was a good experience. A very
6 difficult experience. A very hard experience. But
7 nonetheless one that they enjoyed. They felt like they
8 learned a lot. And so, that's why I sincerely hope sometime
9 in the future you can have -- for those of you who have not
10 ever sat on a jury before, that you'll have an opportunity
11 to do that. You're free to hang around and watch this
12 trial, hang around this afternoon, come back tomorrow. This
13 is open -- this courtroom is open to the public. And so, if
14 you can't make it this week but want to come another time,
15 we would love to have you at another time. So -- but if you
16 can't stay with us, then I'm telling you that you are free
17 to go and you are good for the rest of the week. Best of
18 luck to everybody.

19 (Whereupon, the remainder of jury panel was released.)

20 THE COURT: Let's put on the record concerning jury
21 selection. Juror No. 119, Emerson Clay O'Rear. We had a
22 discussion at sidebar and Solicitor Todd is familiar with
23 Mr. O'Rear. The Court is familiar with Mr. O'Rear. And I
24 don't want to disparage him, but we believe that because of
25 some -- maybe some mental type of issues, I had indicated

1 that more than likely -- even though I did qualify him in
2 the initial qualification process, felt like probably he
3 would not make a good juror for both sides of this case, and
4 I think everyone was in agreement to go ahead and strike him
5 for cause by the Court.

6 Now, the second issue with the juror -- and this is
7 over the objection of the Defense. Let's see. Juror No.
8 113, Debbie Mills. I was reminded that during qualification
9 she came up and spoke with the Court privately with the
10 attorneys wherein she indicated that her -- I can't remember
11 the exact words she used, but something to the effect that
12 her religious preferences does not allow her to judge
13 individuals. I did not excuse her at that time, but felt
14 like upon further reflection once she was selected that she
15 possibly she could not be fair and impartial, even though
16 that was not asked of her at the time she gave me her
17 beliefs about not being able to judge people. But the Court
18 felt like she could not be fair and impartial to both sides.
19 Because of that, and over the objection of Mr. Quinn for the
20 Defense, I struck her for cause as well.

21 Mr. Quinn, do you want to put anything else on the
22 record?

23 MR. QUINN: If I might, Judge.

24 THE COURT: Sure.

25 MR. QUINN: First as to Mr. O'Rear. Additionally the

1 Court was informed that Mr. Todd may have had some personal
2 relationship with Mr. O'Rear.

3 THE COURT: That's right.

4 MR. QUINN: That was one reason we didn't raise an
5 objection --

6 THE COURT: Sure.

7 MR. QUINN: -- because I didn't know the nature of that
8 relationship. As to Ms. Mills, it is unclear to me, because
9 I was not here for jury selection for the earlier trial
10 involving Mr. Cheek and Mr. Ariail, if that same juror, Ms.
11 Mills was presented as a potential juror there. Apparently
12 she was not. The Clerk of Court is indicating by shaking
13 her head that she was not. Today when she was presented as
14 a juror the State said they had no challenge for cause --

15 THE COURT: Right.

16 MR. QUINN: -- and she was, in fact, seated. And the
17 Court then intervened and struck her after she had been
18 accepted as a juror by both sides.

19 THE COURT: Right.

20 MR. QUINN: I object to that.

21 THE COURT: Sure.

22 MR. QUINN: I also object because the Court then did
23 not ask the qualifying questions of the potential juror
24 could you set those beliefs aside, followed by instructions.
25 The normal questions that the Court will ask. So the Court

1 -- my position is that the Court, without asking those
2 questions, striking the juror was improper and denies us the
3 right to a fair trial, and I'd move for a mistrial at this
4 time.

5 THE COURT: All right. So noted and denied. Thank
6 you, Mr. Quinn. All right. Off the record.

7 (Whereupon, an off the record discussion ensued.)

8 THE COURT: Let's take about a 15 minute break in this
9 case and figure out what we're going to do about the other
10 one.

11 (Whereupon, a brief recess was held.)

12 THE COURT: Let me just first state that we've agreed,
13 the lawyers, that we're not going to start this case until
14 in the morning at 9:30. Mr. Harbuck, you're presently out
15 on bond. I have not been informed of there being any issues
16 while you've been out on bond. I therefore have to assume
17 that you've done everything that you're supposed to do. I
18 do have the authority, since we're starting this trial, to
19 revoke your bond and have you held in the detention center
20 for the remainder of the trial. However, since I've not
21 been informed of any issues, then I'm going to let you stay
22 out on bond. However, you've got to make sure that whenever
23 Mr. Quinn tells you to be here, then you be here as he
24 instructs you. Okay?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Very good. Thank you. Mr. Bolt, if you'll
4 get the Harbuck -- the second trial jury out here, please.

5 (Whereupon, the jury entered the courtroom at 3:59
6 p.m.)

7 THE COURT: Ladies and gentlemen, what we're going to
8 do -- and I appreciate your patience and, you know,
9 sometimes these things cause us to have to leave juries back
10 in the jury room maybe a little longer than we like. We're
11 juggling two juries. You, the jury in this Harbuck case,
12 and then the jury in the first case. They're still
13 deliberating. And we've had some things we've had to deal
14 with. Bottom line, we're not going to start this case until
15 in the morning at 9:30. Be back promptly at 9:30 and we
16 will get -- we'll get started. Mr. Bolt will show you
17 exactly where to report to when you get here in the morning.

18 A couple of instructions. Of course, I've already told
19 you -- and this is a continuing instruction as far as not
20 discussing this case among yourselves. And I'll continue to
21 repeat that. When you get home this evening, or wherever
22 you go after you leave the courthouse, you can't have any
23 discussions with anybody that you come into contact with,
24 whether it's family, friends, whoever. You know, even
25 though you don't know much about this case, you know a

1 little bit, but you can't have any discussions with anybody
2 about it. If they try to quiz you on it just say the judge
3 has told me I can't talk about it. You can say I've been
4 picked on a jury, period, and leave it like that.

5 Secondly, and I'll repeat this again in the morning,
6 you may be tempted to go on the Internet and try to conduct
7 some research on your own about this case or the nature of
8 the charges or that sort of thing. Do not do that. And the
9 reason for that is you can't be influenced by anything
10 outside of this jury room, because your verdict, once you
11 get to that stage to start deliberating on a verdict, it has
12 to be based 100 percent on what is presented in this
13 courtroom by way of testimony of witnesses, any exhibits or
14 documents that are put into the evidence, and the law as I
15 instruct you what the law is. So however tempting it may
16 be, don't go on the Internet, don't go on social media,
17 anything of that nature to try to find out something related
18 to this case. Do not do it. Okay?

19 Get you a good night's rest tonight and we'll see you
20 in the morning, 9:30. Have a great evening.

21 (Whereupon, the jury was released at 4:01 p.m.)

22 THE COURT: Do the lawyers anticipate any pretrial
23 motions, Solicitor?

24 MR. SCOTT: None from the State, Your Honor.

25 MR. QUINN: No, I do not.

1 THE COURT: All right. We'll get started in the
2 morning about 9:30 then.

3 (Whereupon, the proceeding was adjourned at 4:03 p.m.)

4 TRIAL DAY 2-08/25/16

5 THE COURT: We're on the record in the *State vs. Robert*
6 *Harbuck*. Anything, Solicitor, Mr. Quinn, that we need to
7 put on the record before we bring the jury out and get them
8 sworn?

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

10 (Whereupon, an off the record discussion ensued.)

11 THE COURT: Mr. Bolt, if you'll bring the jury out,
12 please.

13 (Whereupon, the jury entered the courtroom at 10:05
14 a.m.)

15 THE BAILIFF: All present, Your Honor.

16 THE COURT: Thank you, Mr. Bolt. So noted. Good
17 morning, ladies and gentlemen. I hope you had a good
18 restful evening and ready to get to work today. We have a
19 couple housekeeping matters. The first thing, we need to
20 have you sworn in as the trial jury. So, Madam Clerk, if
21 you'll take care of that for me, please.

22 (Whereupon, the jury was sworn in at 10:30 a.m.)

23 THE COURT: The second item of business, I need to
24 appoint a foreperson of the jury. Now, if it is a male, it
25 is a foreman. If it is a female, it's a forelady. And the

1 foreperson of the jury wears several different hats. One
2 responsibility the foreperson has it that I need a
3 spokesperson between the jury and the Court. If there is a
4 concern or an issue that is raised, or if once you start
5 your deliberations there's a question that the jury needs
6 responded to, then I need a spokesperson to communicate with
7 the Court. Also the -- even though it's everybody's
8 responsibility to make sure that all of my instructions are
9 followed, but I need someone primarily to make sure that
10 everybody doesn't -- if a juror has violated my
11 instructions, for example, talking about the case
12 prematurely, then I need someone to report that to the
13 Court. And thirdly, when I do give you the case to begin
14 your deliberations then I needed someone to oversee and
15 organize your deliberations for the purposes of reaching a
16 verdict in the case. And I'm confident that all 14 of you
17 would make excellent forepersons, but I can only have just
18 one. So I have decided on Mr. Billy Smith. I think that's
19 you, sir. You are the foreman of this jury. Now, when you
20 come back in after the next break you will always maintain
21 that front seat right there. The two alternates, you are in
22 the correct seats and you'll always maintain those two seats
23 throughout the trial. Everybody else you can sit wherever
24 you like in those seats. Sometimes jurors like to sit in
25 the same seat, and if you want to do that, that's your

1 right, but you don't have to.

2 Now, let me explain to you the role of the alternates.
3 Even though in this case we don't anticipate taking
4 extremely long to go through, it's not unusual for there to
5 be, for one of the 12, someone gets sick, someone has an
6 emergency at home, reasons such as that and they have to be
7 excused, and then I need someone who has sat through and
8 have witnessed the trial and have heard everything and seen
9 everything that's done during the trial to step in and fill
10 the shoes of that excused juror. Therefore, the alternate
11 position is an extremely vital part of the jury. So your
12 role is important and your presence is much needed.

13 Now, let me explain one thing to you. It is very
14 important that you be on time and be prompt in coming.
15 Which juror was running late? About a half hour late, I
16 think?

17 (Whereupon, juror raises hand.)

18 THE COURT: All right. I understand, sir, that you
19 were out paying bills. Is that what you were doing, sir?

20 THE JUROR: Yeah.

21 THE COURT: Okay. Well, that's not -- that's not an
22 excuse. And so, it is extremely important that you allow
23 yourself enough time to be here when you're directed to and
24 allow yourself enough time to take care of whatever matters
25 you need to take care of and anything that may be unexpected

1 that arises in your particular situation. Very, very
2 important. Okay? Because without having everybody here we
3 can't proceed. Okay?

4 I'm going to give you a preliminary instruction and
5 just tell you a few things to kind of help you better
6 understand what we will be doing today. This trial probably
7 will be different from what you might expect. And, you
8 know, most people really don't have the chance to ever
9 observe, much less participate in a trial as you are doing
10 sitting on this jury today. Many people think from watching
11 television and movies and reading books that trials are
12 always full of high drama and intense action and riveting
13 circumstances, and while all of these things may be true at
14 times, this trial is not for entertainment. It is a
15 fundamental part of our democracy, a search for the truth
16 and an effort to make sure that justice is done between the
17 parties before the Court searching for the truth, and making
18 sure that making sure that justice is done is often slow,
19 deliberate, repetitive at times. The opposite of what you
20 may have seen on television or movies or read in books.

21 Ladies and gentlemen, this courtroom is a place of
22 honor dedicated to the protection and preservation of
23 citizen's rights to what many have called -- and I think I
24 have already mentioned this to you. We have the greatest
25 justice system in this entire world. Attorneys appearing

1 before you are advocates for the parties they represent, but
2 first and foremost they are officers of the Court sworn to
3 uphold the integrity of fairness of our judicial system and
4 to help you in the search for the truth. You should expect
5 them to be professional, competent and ethical in the
6 representation of their client's interests, and I'm
7 confident that they will be. And you are also expected to
8 be professional, reasonable and ethical as well. Let me
9 formally and official thank you for accepting this important
10 responsibility of jury service and for your contribution
11 today to our justice system.

12 Now, these preliminary remarks that I'm making are not
13 a charge on the law in this case. At the conclusion of this
14 case I will tell you and instruct you of the applicable law
15 that is involved in this case for you to use in your
16 deliberations.

17 The first matter that I need to tell you is that you
18 are not permitted to take any notes. Consequently that
19 means this. That you have to be very attentive, very clear
20 minded, very observant to everything that goes on in this
21 case, because when you begin your deliberations at the
22 conclusion of this case you're going to have to rely on your
23 memory. So if you have not been attentive and clear minded,
24 you're not going to have a good memory and you need a good
25 memory in order to discuss this case and your ultimate

1 verdict in the case.

2 Now, as I told you yesterday, the Defendant has been
3 indicted and charged with several crimes. We have six
4 indictments. There are four indictments for attempted
5 murder, one indictment for assault on an officer while
6 resisting arrest, and one indictment for failure to stop for
7 a blue light. Once again, the fact that the Defendant has
8 been indicted in this case is not evidence in any sense, in
9 any manner of the allegations that the indictments contain.
10 The indictments serve only as the charging papers to get us
11 into trial where we are today. The Defendant has exercised
12 his constitutional right and has pled not guilty to these
13 six indictments. Therefore, the burden has now been placed
14 on the State to prove each and every element of each crime
15 beyond a reasonable doubt. And it will be your duty, Mr.
16 Foreman and ladies and gentlemen, to decide whether or not
17 the state has met that burden of proof. Your purpose as
18 jurors is to find and determine the facts. You are the sole
19 judge of the facts. If at any time during the course of
20 this trial I make any comment regarding the facts, you must
21 disregard any comments that I may make. You are to
22 determine the facts from the testimony you hear and the
23 other evidence introduced in Court. It is up to you to
24 determine the inferences which you feel may properly been
25 drawn from the evidence. It is especially important that

1 you perform your duty in determining the facts diligently
2 and contentiously because ordinarily there's no way to
3 correct an erroneous determination of the facts by a jury.
4 Now, on the other hand, and with equal emphasis, the same
5 law that makes you the sole judge of the facts makes me the
6 sole judge of the law. The law as given by the Court is the
7 only law that you can consider. You must accept and follow
8 it even though you may disagree with it. I can't tell you
9 what the facts are, and you can't disagree with me about
10 what the law is or what the law ought to be. Your job will
11 be to take the law as I give it to you and apply it to the
12 facts as you find them from the testimony of the witnesses
13 and any other evidence that is introduced. In doing that,
14 you will be able to render your verdict, a verdict under the
15 solemn oath that you just took a moment ago as jurors. And
16 once again, as I've already told you, before I tell you that
17 you can start your deliberations you cannot discuss this
18 case with anyone, including your fellow jurors, friends,
19 family members, anyone involved in the case, or anybody else
20 that you may come into contact with. During your
21 deliberations you may only discuss this case in the jury
22 room with your fellow jurors because they have seen and
23 heard the same evidence as you have. You must decide this
24 case based solely on the evidence presented here in this
25 courtroom, and that means during this trial you must not --

1 and remember I told you this yesterday before we left. You
2 must not conduct any independent research about this case,
3 the facts of this case, the evidence presented in this case,
4 or the individuals involved. Do not try to find out any
5 information whatsoever from any source outside of this
6 courtroom. As I told you, we have ready access to a wealth
7 of information because of the Internet and the like, and
8 you're not permitted to do any independent research
9 whatsoever. And also, and I don't know if there's any media
10 coverage of this case, but if there is via the newspapers or
11 radio, television, you're not to consider that at all as
12 well. Your verdict that you reach at the conclusion of this
13 case has to be based 100 percent on the evidence presented
14 during this trial in this courtroom.

15 Ladies and gentlemen, it is so very important that you
16 keep an open mind and not decide any issue in this case
17 until all of the evidence has been presented, the parties
18 have made their closing arguments to you and I have
19 instructed you on the law in this case. It is your solemn
20 responsibility as jurors to determine the guilt or innocence
21 of the Defendant and your verdict must be based solely on
22 the evidence as it is presented to you in this trial and on
23 the law as I instruct it to you at the close of this trial.

24 Ladies and gentlemen, there may be times when one of
25 the lawyers may say, Judge, I have an objection, or I have a

1 matter of law to take up with the Court. We will try to
2 resolve that particular issue by talking with the lawyers up
3 here at the bench or over to the side. Sometimes I have to
4 excuse you, or will have to excuse you so I can discuss the
5 particular issue with the lawyers on the record. And the
6 reason why we don't want you in here while I do that is that
7 sometimes I will have to discuss the facts with the lawyers.
8 And again, you are the sole judge of the facts, so I don't
9 want to discuss the facts in your presence. I will try to be
10 as limiting with that as possible, but when necessary I may
11 have to excuse you from time to time.

12 I will ask the State. Does the State have any
13 objections or exceptions to the Court's preliminary charge?

14 MR. SCOTT: No, Your Honor.

15 THE COURT: From the Defense?

16 MR. QUINN: No, Your Honor.

17 THE COURT: Thank you very much. Ladies and gentlemen,
18 the lawyers will now will make their opening statements or
19 opening arguments to you. It is not evidence in this case.
20 It is simply their statement as to what their particular
21 position is in this case and what they expect the evidence
22 to show. So please give them your undivided attention.

23 Solicitor Todd, are you ready, sir?

24 OPENING STATEMENT

25 BY MR. TODD: Good morning. Very seldom do we have a

1 crime that is committed on videotape. Ladies and gentlemen
2 of the jury, this is that case. The Defendant, as you
3 heard, Mr. Robert Clinton Harbuck who's sitting right there,
4 was just charged with attempted murder, four counts,
5 assaulting a police officer while resisting arrest and
6 failure to stop for a blue light. You're going to hear
7 testimony and see video that corroborates those charges with
8 his actions. You're going to hear from three regular South
9 Carolinians driving down I-26, just like we all do, minding
10 their own business until they look into the rearview mirror
11 and they see Mr. Harbuck's gold Chevy Silverado driving
12 through like a NASCAR driver, cutting through traffic, using
13 the emergency lane as a speed lane. Doing whatever he
14 pleases. You're going to hear Ms. Hamby, a passenger in
15 that vehicle's frantic 911 call telling about these actions.
16 Further, you're going to hear from Trooper Lindler who was
17 dispatched from the 911 call who reported to the scene and
18 engaged Mr. Harbuck. You're going to also see where Mr.
19 Harbuck uses his truck as a 4,000 pound sledgehammer ramming
20 his vehicle into the three innocent drivers who reported the
21 call. You're also going to hear and see Officer Trooper
22 Lindler's dash cam video of Mr. Harbuck, after ramming the
23 passengers in that first vehicle, seeing the blue lights
24 behind him -- you know, someone would think, okay, the gig
25 is up. I'm surrendering. What's he do? Reverse lights

1 come on. Tires smoking. He's aiming -- chasing Mr. Lindler
2 -- Trooper Lindler up an on ramp. In and out of traffic.
3 70 mile per hour cars incoming traffic on I-26. He's
4 zooming past them, somehow dodging while he's in reverse.
5 Then you're going to see the moment. A collision that's so
6 violent that it snaps the dash cam video completely off
7 Trooper Lindler's patrol car. Further you're going to hear
8 the testimony from a few Clinton Police Department officers
9 who were called in on backup after they heard Trooper
10 Lindler's frantic pleas for help as he's asking for backup,
11 because he doesn't know what this man is going to do next.
12 You're going to hear how Trooper -- excuse me, Officer
13 Scotty Peay and Casey Jones were at the scene, and actually
14 had to be brought in because they had a cage in the car
15 which they needed to load Mr. Harbuck in there. You're
16 going to hear how he was handcuffed and driven down the
17 road, just a few miles later to hear another frantic call
18 for help from the officer transporting him to the jail as
19 Mr. Harbuck is trying to shimmy out of his handcuffs to get
20 back out. The officers then report again to that scene and
21 confront Mr. Harbuck and try to get him back in that patrol
22 car. What's he do? He assaults them. He assaults Casey
23 Jones.

24 Now, as you heard earlier, my name is Jim Todd and I'm
25 an assistant solicitor here with the Laurens County

1 Solicitors office. And my partner here is Dale Scott and
2 he's the Deputy Solicitor here. We are the State's
3 attorneys. As you heard the Judge, you're the finders of
4 fact and we're charged with the burden of proving all the
5 things I just said and in the indictments beyond a
6 reasonable doubt. And I feel confident after we show you
7 what we have, and after you see on video what we have,
8 you're going to be firmly convinced that you're going to
9 return a verdict of guilty.

10 Thank you for your service. Thank you for your time.

11 THE COURT: Thank you, Solicitor. Mr. Quinn, are you
12 ready, sir?

13 MR. QUINN: Yes, sir. Thank you. If it please the
14 Court.

15 OPENING STATEMENT

16 BY MR. QUINN: Ladies and gentlemen of the jury, good
17 morning. I know you all don't want to be here. And as the
18 Judge has thanked you and the Solicitors thanked you, I want
19 to thank you, too. I know you all have other things to do.
20 I know you didn't volunteer for this. But it's been said,
21 as the Judge mentioned earlier, jury service, next to
22 military service, is the highest service you can provide to
23 your country, because we know we are taking you out of your
24 normal every day lives, forcing you to be here and asking
25 you to make a decision about another citizen. Asking you to

1 make a life changing decision, perhaps, about another
2 person. And we know that's difficult. And we tell you
3 there's a set of rules you have to follow. You can only
4 hear certain things. You have to be here at certain times.
5 We recognize that that's an imposition, and we do thank you.
6 We know none of you have volunteered to be here. But I'm
7 going to ask certain things of you. The most important
8 thing I'm going to ask at this point, because I'll get a
9 chance to talk to you again at the end of the case, when
10 you've heard the evidence and when you see the videos and
11 when you have more information about the case, we'll get a
12 chance to talk again. But at this point I'm going to ask
13 you just to do two things. One is to be patient. Wait
14 until the Defense has the opportunity to present their case.
15 Give us the opportunity, and I think it will be today
16 likely, to speak with you. To put our witnesses up and have
17 you hear the entirety of what was going on out there that
18 day. So I'm going to ask you to do that. To be patient
19 with us. Because the State goes first in everything.
20 They've spoken to you first. They'll do that again
21 throughout the entire trial.

22 The second thing I'm going to ask you to do is to
23 follow the Judge's instructions. And the one instruction
24 that is applicable here at this point is what's called the
25 presumption of innocence. Every person that comes into

1 court is presumed innocent. As Mr. Harbuck sits there he's
2 accused of all kinds of things, but he's not guilty of
3 anything. And if any of you think the's guilty at this
4 point simply because he's been accused, you should tell the
5 Judge because you have violated your oath as a juror because
6 he's presumed innocent. And what that presumption means is
7 two things. It means, first of all, sitting here before
8 we've begun, like any other citizen, he's innocent. And
9 secondly it means, and you've heard this before in real
10 life, that he gets the benefit of the doubt. Any issue that
11 comes before you during this trial that you can resolve
12 against Mr. Harbuck or for Mr. Harbuck he gets the benefit
13 of that doubt, because the State has to prove him guilty
14 beyond a reasonable doubt. So if there's any doubt, it goes
15 to Mr. Harbuck. So I'm going to ask you to do those two
16 things. Apply the presumption of innocence, because it
17 applies right now and throughout the trial. And to be
18 patient. To give us the opportunity to tell you the entire
19 part of this story. Because there won't be a lot of
20 questions. This case -- we're going to zip through this.
21 You're going to be stunned how quickly we're going to go
22 through witnesses, because I agree that Mr. Harbuck did a
23 whole lot of what the Solicitor is saying he did. Drove
24 like a madman. You're going to see a video where he crashed
25 into two cars. Caused damage to two vehicles. One of them

1 being the Trooper and one of them being a citizen's vehicle
2 containing three citizens of the state. You're going to
3 hear, thankfully, that the only person injured at all was
4 Officer Lindler and you'll hear the extent of his injuries,
5 because Mr. Harbuck is charged with attempted murder.
6 Murder. So listen and see what the injuries are and the
7 manner in which this happened. The State's going to be able
8 to answer lots and lots of questions. Who did these things.
9 Who was driving. What day it happened on, what time it
10 happened on, and where it happened on I-26. They've got
11 pictures of the exit they're going to show you from the
12 helicopter. But they're going to show you, and that's where
13 it happened. You know, and I can make fun of the pictures,
14 but that's where it happened. The question I want you to
15 hold in your minds is why. Why did this happen. Because
16 that's one of the questions you always want to know; who,
17 what, where, when and why. Those are the five questions
18 they teach you in law school that you've got to be able to
19 answer in every criminal case. So I want you to listen for
20 the why. I want you to listen when they search his vehicle
21 what they find. I want you to listen when they search his
22 record to see if there's warrants outstanding for him, what
23 they found. I want you to listen and see why he would have
24 done all of these things if he was intending in his right
25 mind to kill people. If he was intending to hurt an

1 officer. Listen for that question. We'll go through these
2 witnesses quickly. The three people in the vehicle did
3 nothing wrong. They didn't do anything to deserve being
4 assaulted by him crashing his car into them. They didn't do
5 anything wrong. Officer Lindler didn't do anything wrong.
6 You're going to hear on the video Officer Lindler is
7 probably a whole lot more reasonable than most people when
8 they're out there saying, "Son, it's over. Just relax.
9 Just stop. It's over. Just relax."

10 I ask your patience. I ask you to keep in mind that
11 question about why. That's the question the Defense is
12 going to answer for you. And then when you have the entire
13 picture and you go back to deliberate you're going to
14 determine if there is no criminal intent in this case. In
15 South Carolina it has to be that you did something and you
16 intended to it. The Judge is going to tell you the law at
17 the end of the case and we'll discuss that when we get to
18 that point. But you're going to find there is no intent to
19 kill anybody in this case. There is no intent to injure any
20 officer in this case. So I ask your patience and we'll get
21 to speak again. Thank you.

22 THE COURT: Thank you, Mr. Quinn. Solicitors Scott and
23 Todd, you may call your first witness.

24 MR. SCOTT: We are, Your Honor. If it please the
25 Court, the State calls Denise Hamby.

1 DENISE HAMBY, having first been
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q Thank you, Ms. Hamby. Where did you come from today to
6 be here?

7 A From Greenville.

8 Q Is that where you live?

9 A Yes.

10 Q But you work all throughout the State?

11 A Yes.

12 Q And tell me, what is it that you do for a living?

13 A I'm a general manager for Capella Carolinas, and we
14 have 19 bingo halls in South Carolina.

15 Q So all over the State --

16 A Yes.

17 Q -- you travel on a regular basis? Do you remember
18 September 6th, 2015?

19 A I do.

20 Q Where were you headed that day?

21 A To Columbia. I was coming to Columbia to go to work.

22 Q About what time were you headed to work?

23 A It was probably -- it was late. I would say between
24 4:00 and 6:00 maybe. It could have been a little later than
25 that. I'm not really sure.

DENISE HAMBY-DIRECT EXAMINATION

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- 1 Q And were you with anybody?
- 2 A Yes.
- 3 Q Who was with you?
- 4 A Jason Stephenson was driving.
- 5 Q Is that --
- 6 A He's sitting right there.
- 7 Q -- the second row with the black shirt on?
- 8 A Uh-huh. And Darrell Raines.
- 9 Q And so, where were you sitting?
- 10 A I was in the front right passenger seat.
- 11 Q So Darrell was in the back and you said Jason was
- 12 driving?
- 13 A Uh-huh.
- 14 Q What were you all driving that day?
- 15 A A burgundy Ford Expedition.
- 16 Q Tell me -- I guess you'd go down 385 and then 26 to get
- 17 to Greenville?
- 18 A Yes, sir.
- 19 Q I guess let's cut to the chase. At some point on 26
- 20 eastbound did something catch your eye?
- 21 A I was actually looking at my phone and Jason brought to
- 22 my attention, and he said do you have your seatbelt on. And
- 23 I said, yeah, why. And about that time a vehicle passed us,
- 24 and he was at very high speeds, in and out of traffic.
- 25 Weaving in between cars. Using the emergency lane to pass

DENISE HAMBY-DIRECT EXAMINATION

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1 vehicles. Driving at a very high speed.

2 Q What did you guys do?

3 A We called Highway Patrol.

4 Q And then what?

5 A Well, after we called Highway Patrol they had asked us
6 did we know the exit that he was at, approximately our
7 location. And at that time when we were on the phone we
8 were going down the highway, so it was hard for them to get
9 an exact location on this guy because of the fact that he
10 was traveling at high speeds. And we stayed on the phone
11 with Highway Patrol for a little while.

12 Q Do you remember approximately what exit it was that you
13 first saw the car?

14 A Around Love's gas station right there at exit 77.

15 Q 76 maybe?

16 A 76, 77, something like that.

17 Q Is that Newberry?

18 A Yes.

19 Q Tell me -- describe the car, if you remember what the
20 car was that you saw driving like that.

21 A It was a pickup truck.

22 Q Do you remember the color?

23 A No.

24 Q So you called Highway Patrol and you described what you
25 were seeing?

DENISE HAMBY-DIRECT EXAMINATION

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1 A Yes. We explained to Highway Patrol that he was going
2 to kill someone.

3 Q And that was a concern of yours?

4 A Yes. Because we had seen two elderly people beside us
5 that he almost -- that he almost hit.

6 Q And what did you guys do? Did you follow the car or
7 what?

8 A We stayed behind him a distance and followed him and
9 stayed on the phone with Highway Patrol giving his location,
10 for the safety of other people that was on the interstate.

11 Q Did you stay eastbound towards Columbia, or how long
12 did you all --

13 A We did stay towards Columbia. And then when he exited
14 off, we exited off behind him, and he turned around at a gas
15 station parking lot and we did as well, and got back on the
16 interstate headed back toward Greenville. And we were
17 trying to make sure he didn't actually hurt someone. We
18 were giving the location to the police so that they could
19 apprehend them.

20 Q So you first seen him at exit 76 and then you said you
21 all were continuing towards Columbia eastbound traffic on
22 26, and then he turned around. Do you remember what exit
23 that was?

24 A I want to say it was around exit 51.

25 Q Hold up. Don't they go -- get higher as you go towards

DENISE HAMBY-DIRECT EXAMINATION

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1 Columbia?

2 A I'm not sure. It was a very long -- it was a long
3 ways.

4 Q Do you remember the town?

5 A No.

6 Q At any rate, you all at some point proceed towards
7 Columbia, and then he gets off at an exit and then gets back
8 on the interstate heading back to Greenville?

9 A Yes.

10 Q And so, you all did the same thing. What happened
11 next?

12 A We tried to stay behind him at a distance to where he
13 wouldn't recognize that we were actually trying to keep up
14 to -- and we weren't speeding. We were trying to stay away
15 from him, just so we could let them know where he was.

16 Q Now, tell me -- you were describing some things you saw
17 him doing. Did you say he was driving on the shoulder to
18 pass people?

19 A Yes, in the emergency lane.

20 Q And were you able to -- I mean, did you all pace him?
21 Were you able to tell how fast he was going, or was it --

22 A At times he was going 100 plus miles per hour.

23 Q And what else did he do? You said he was driving
24 between --

25 A Yes. In the two lanes -- in the two lanes on 26 --

DENISE HAMBY-DIRECT EXAMINATION

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1 when you get off 385 to 26 there's two lanes right there,
2 around exit 76, 77 where the Love's gas station is. There
3 was two vehicles side by side and he went between them.

4 Q In a pickup truck?

5 A Yes, he did.

6 Q So they're driving side by side on the interstate and
7 he splits them on the dotted line?

8 A Yes, he did. And the car on the left-hand side was a
9 white small like Toyota Corolla with two elderly people in
10 the vehicle.

11 Q Did you ever get close enough to his vehicle to observe
12 him inside?

13 A Yes.

14 Q What was he doing?

15 A Acting crazy. I mean, he acted like someone that was
16 on drugs. I actually made a comment to Jason and to Darrell
17 that I believed he was on something, because he was
18 literally in the front seat of his truck going from one side
19 to the other side of the vehicle. Like jumping back and
20 forth and -- I mean, it was just the craziest -- it was
21 something out of a movie almost.

22 Q Jumping back and forth --

23 A Yes, sir.

24 Q -- from the passenger to the driver's seat --

25 A Yes, sir.

DENISE HAMBY-DIRECT EXAMINATION

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1 Q -- while he's going over 100 miles an hour down the
2 interstate?

3 A Yes, sir.

4 Q And you said driving on the shoulder, splitting cars --
5 MR. QUINN: Your Honor, I'd object to the leading.

6 A Yes, sir.

7 THE COURT: Try to rephrase, Solicitor, if you would,
8 please.

9 Q Well, repeat everything he was doing again, because I
10 can't lead you.

11 MR. QUINN: It's asked and answered.

12 THE COURT: What's the question?

13 MR. TODD: What was he doing to -- she was talking
14 about what he was doing, his actions on the interstate. I'm
15 asking her to describe them.

16 A He was putting innocent people at jeopardy the way he
17 was driving. I have four little boys at home, and he
18 terrified me with his driving.

19 Q Now, you all are still heading -- now, this is
20 westbound -- westbound lane of travel. Towards Greenville,
21 I guess, or towards Spartanburg we're talking about now. At
22 some point did the law show up?

23 A We were coming down the interstate and we were on the
24 phone still with Highway Patrol, and she had directed us
25 that a police office was at an exit ramp and that he was

DENISE HAMBY-DIRECT EXAMINATION

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1 going to get onto the interstate, and that when he got on
2 that we should go on about our route, for our safety. Well,
3 that's what we did. When we seen the police officer in our
4 rearview mirror we got off -- we got in front of Mr. Harbuck
5 and we exited off the exit ramp.

6 Q Do you remember what exit that was?

7 A I don't.

8 Q But I guess it was y'all's intent then to head back
9 towards Columbia?

10 A Yes. We were getting back on the interstate to head
11 back to Columbia, because at that point I was late for work.

12 Q Do you know how long y'all had been following him
13 around waiting for the troopers to show up?

14 A About an hour. I'd say between an hour and hour and a
15 half.

16 Q But eventually you said a car did show up? A trooper?

17 A Yes.

18 Q And tell me what you all did again? Y'all were able to
19 get in front of him?

20 A As soon as we seen him visible that we knew he was
21 there we went on about our route. We got off the exit and
22 we were taking a left-hand turn across the interstate to get
23 back on the interstate heading towards Columbia.

24 Q Tell me what happened next.

25 A As we were exiting off of the exit to get into -- back

1 onto the interstate Jason says, oh, shit. He's following
2 us. And I said no, he's just pulling over for the officer.
3 We turn left, get back onto the interstate. And as we're
4 getting on the interstate we notice that he's not stopping
5 for the officer. At that point he was still behind us. And
6 the officer was behind him with his blue lights on.

7 Q Then what did you all do?

8 A We was going to pull over to the shoulder of the road
9 to let him pass us, because at that point we thought he was
10 just going to try to outrun the police officer. But
11 instead, Mr. Harbuck, in his pickup truck, got in behind my
12 vehicle and pulled in behind us. And at first I thought he
13 was just stopping for the officer, and then he rammed our
14 car.

15 Q What reaction did you have when he rammed the car?

16 A My first reaction was -- I was scared. I was terrified
17 at this point. I didn't know what -- what was wrong with
18 him. What made -- had made him do what he was doing, or
19 what frame of mind he was in. What kind of intent he had.
20 I mean, I didn't know if this guy had a gun on him or if he
21 -- you know, what type of mind frame he was in. If he was
22 drugged, intoxicated or what -- you know, what he was going
23 to do. And once he rammed our vehicle extremely hard, I was
24 fine -- I was staying calm and in the vehicle until I seen
25 him put his truck in reverse and start chasing the officer

DENISE HAMBY-DIRECT EXAMINATION

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1 up the on ramp and ramming the police officer. I called 911
2 terrified for the officer's life.

3 Q Did you see him? Did he ultimately ram the patrol car?

4 A Yes, he did.

5 Q And you saw that?

6 A He was -- he was trying to hurt the officer to prevent
7 him from being arrested.

8 Q And I know the Defense, they're going to get up here
9 and ask you if you were hurt. Were you hurt when he rammed
10 your car?

11 A I was more in shock at that point and hysterical. I
12 was not hurt in any way. I was just emotional and really,
13 really upset.

14 Q Did you perceive -- did it seem to be an accident when
15 he struck your car?

16 A No, sir. It was not no accident.

17 Q After you say he chased the trooper back up the ramp --
18 in reverse? Is that what you said?

19 A Yes. He was in reverse.

20 Q After he struck the patrol car what happened next?

21 A After he struck the police officer's car he put his car
22 back in drive and was coming back towards us and he went
23 around us into the front of my vehicle. And the officer
24 took his police car and he drove his vehicle and he put it
25 between my car and Mr. Harbuck's truck to prevent him from

DENISE HAMBY-DIRECT EXAMINATION

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1 ramming us again.

2 Q Did it work?

3 A Yes, it did.

4 Q So the trooper was able to regain control of his car?

5 A Yes, he did.

6 Q What did you see happen next?

7 A That is when a lot of police officers showed up, and

8 they were trying to help the officer to apprehend Mr.

9 Harbuck. And they -- they were having a hard time doing so.

10 Q And you saw them trying to arrest him?

11 A Yes, and he was not having that.

12 Q What was he doing?

13 A He was trying to resist. He was fighting them back.

14 THE COURT: What was your last answer, ma'am? I did

15 not hear you.

16 THE WITNESS: He was trying to resist. He was fighting

17 the officers back.

18 (Whereupon, State's Exhibit No. 11 was marked for

19 identification.)

20 Q State's No. 11. Do you recognize this?

21 A Yes, I do.

22 Q And what is it?

23 A It's the 911 call of myself calling 911.

24 MR. TODD: The State officers No. 11 for admission into

25 evidence, Your Honor.

DENISE HAMBY-CROSS EXAMINATION

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1 THE COURT: What says the Defense?

2 MR. QUINN: May we approach?

3 THE COURT: Sure.

4 (Whereupon, a sidebar was held.)

5 THE COURT: The Exhibit No. 11 is into evidence for the
6 State without objection from the Defense at this time.

7 (Whereupon, State's Exhibit No. 11 was admitted into
8 evidence.

9 MR. TODD: I guess we'll publish it now, Your Honor.

10 (Whereupon, State's Exhibit No. 11, audio recording of
11 911 call, was published for the jury.)

12 Q So that was, I guess, your voice? The female voice?

13 A Yes.

14 Q And I guess it was fairly frantic at that time?

15 A Yes, sir.

16 Q And the other male voice, who was that?

17 A It was Jason.

18 MR. TODD: Denise, thank you. Answer any questions Mr.
19 Quinn has, please.

20 THE WITNESS: Yes, sir.

21 THE COURT: Cross-examination, Mr. Quinn?

22 MR. QUINN: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. QUINN:

25 Q Ms. Hamby, you say that Mr. Harbuck was driving at

1 sometimes upwards of 100 miles an hour?

2 A Yes, sir.

3 Q And you never lost sight of him? He never got away
4 from your vehicle?

5 A No.

6 Q And so, and I know you weren't driving. But was your
7 vehicle also speeding to try to keep up with him?

8 A I'm not sure. I wasn't driving.

9 Q And I believe you say that this obviously was very
10 terrifying. I think that's exactly the words you used,
11 terrifying; is that right?

12 A Yes.

13 Q And that you were doing this, trying to stay close to
14 get the license plate number, so you could tell the police
15 the license plate number?

16 A No. That's not what I said.

17 Q I'm sorry. I thought you did at one point. So you
18 were just keeping him in view so you could let --

19 A To give dispatch the exact location to where he was.

20 Q And so, were you able to provide the license plate
21 number at some point?

22 A No.

23 Q But you were close enough that you could see into the
24 car and see what he was doing inside the car?

25 A At certain times we could.

DARRELL RAINES-DIRECT EXAMINATION

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1 Q And when he turned around to come back toward
2 Greenville away from Columbia you turned around with him?

3 A Yes.

4 Q And you say this was ongoing for an hour to an hour and
5 a half?

6 A Approximately.

7 MR. QUINN: I don't have any other questions. Thank
8 you, Ms. Hamby.

9 THE WITNESS: Thank you.

10 THE COURT: Any redirect, Solicitor?

11 MR. TODD: No, Your Honor.

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

13 (Whereupon, the witness stepped down from the witness
14 stand.)

15 THE COURT: Any objections to Ms. Hamby being excused?

16 MR. TODD: No, Your Honor.

17 MR. QUINN: No, Your Honor. I don't have objections to
18 any witness.

19 THE COURT: Ma'am, you are free to leave or you're
20 welcome to remain with us.

21 MR. SCOTT: Darrell Raines, Your Honor.

22 DARRELL RAINES, having first been
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SCOTT:

DARRELL RAINES-DIRECT EXAMINATION

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1 Q Darrell, do you know Denise Hamby?

2 A I do.

3 Q And Jason Stephenson, do you know him?

4 A I do.

5 Q How do you guys know each other?

6 A Denise Hamby has been my boss for approximately the
7 last eight years.

8 Q So you work with the company that manages the bingo
9 parlors?

10 A Yes, sir.

11 Q Do you remember the night, September 6th of last year?

12 A I do.

13 Q That's something you'll ever forget?

14 A I never will.

15 Q So you were in the expedition?

16 A I was. I was in the back passenger seat.

17 Q Tell me what direction you all were traveling? Where
18 were you all headed to?

19 A We were coming down 385, got on 26 heading towards
20 Columbia.

21 Q At some point do you remember the pickup truck?

22 A I remember looking back and there was this Silver --
23 Silverado flying up the road. At first we thought it was a
24 copy trying to get to someone. When he zoomed past us it
25 looked like he was about to wreck about four or five other

DARRELL RAINES-DIRECT EXAMINATION

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1 cars. He was jumping in and out of lanes. Going in between
2 two cars. Jumping to the outside, coming back in. Jumping
3 to this side, coming back in and going directly in between
4 other cars.

5 Q And what did you all do? Did you all follow the car?

6 A We started to follow the car. We had called -- Denise
7 Hamby had called 911 and was trying to get an officer out
8 there because of the situation that was going on. He could
9 have killed people.

10 Q So safe to say you were concerned?

11 A Very.

12 Q And how far in the eastbound lane of traffic on 26 did
13 you all follow him?

14 A All the way from the time he passed us anywhere between
15 exit 52 and 56 all the way down -- it was way down towards
16 eight 80. Somewhere down through there.

17 Q And you don't remember the town or exit number?

18 A I don't remember the town, the exit. No, I cannot
19 remember that at this moment.

20 Q But at some point he got off 26 and --

21 A Yes, sir.

22 Q -- at some exit. And then what did he do?

23 A He pulled into a gas station. If I'm not mistaken we
24 were still on the phone with the cops at that time telling
25 them that he had pulled into a gas station and was trying to

DARRELL RAINES-DIRECT EXAMINATION

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1 get an officer there.

2 Q Did he get out of the car?

3 A He never got out. He parked, backed up, and then went
4 to get back on the interstate again.

5 Q Same direction of travel towards Columbia?

6 A No. He started heading back towards Greenville.

7 Q And what did you guys do?

8 A We were following.

9 Q What did you all observe? I guess he's heading back
10 westbound?

11 A I mean, he was bouncing back and forth in the seats as
12 it was, speeding. Just -- easiest way to put it, it looked
13 like he was on drugs. Looking like he was out to harm
14 someone.

15 Q And at some point -- you said you all were calling
16 Highway Patrol at some point. Do you remember seeing an
17 officer show up?

18 A Yes. We had gotten back up to exit 50 something. 60
19 -- 50, 60 something. And then Officer -- they told us where
20 the officer was and we finally seen the officer. And
21 dispatch had, you know, told us what to do. Told us to go
22 ahead and veer off and let the officer blue light him and go
23 on about our way, and that's what we were doing.

24 Q So you all got off on an exit. Do you remember what
25 exit that was?

DARRELL RAINES-DIRECT EXAMINATION

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1 A I honestly do not remember what exit it was. I was too
2 shaky at that point and too much adrenaline rush to really
3 pay attention to the exit numbers or anything else. I was
4 worried about the safety of other people at that moment.

5 Q And were you able to keep your eye on the truck? The
6 pickup truck?

7 A Yeah. I was able to keep my eyes on the pickup truck.

8 Q And what did it do?

9 A When we got pulled over?

10 Q When you all got off on that exit.

11 A When we had gotten off on the exit he followed, because
12 the officer flipped the blue lights on as we was getting
13 ready to take the exit. He followed. We get to the end of
14 the exit and we go to turn left to go back across the bridge
15 to get back on 26 towards Columbia. He follows. At that
16 point Jason Stephenson pulled over just in case this turned
17 into something violent so no one would get hurt.

18 Q To let the pickup truck pass by?

19 A To let the pickup truck pass by. And if the cop had to
20 chase, the cop could chase.

21 Q Did the pickup truck pass by?

22 A No, he did not. It never passed by us. It rammed into
23 us at that moment.

24 Q And you were in the backseat?

25 A Yes, sir.

DARREL RAINES-CROSS EXAMINATION

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1 Q Were you hurt?

2 A At the time I didn't know if I was hurt or what was
3 going on. Honestly I thought I was in a horror movie
4 somewhere.

5 Q Were you able to turn around and look at the truck
6 after it hit you?

7 A When it hit us I actually looked at the back window.
8 It looked like he was reaching for something. I couldn't
9 tell. I ducked down in between the seats, because I didn't
10 know if he had a gun in the vehicle and was going to start
11 shooting us or what.

12 Q So did you observe anything after he rammed your car?

13 A I did. Denise and Jason were stating he started
14 backing up. So I raised up and looked back and you could
15 see him ram the cop. Then he put it back in drive, come
16 back towards us. Then put it back in reverse and chased the
17 cop all the way up the ramp in reverse.

18 Q Did you see him strike the --

19 A I did.

20 Q -- trooper? What happened next after he hit the --

21 A After he hit the trooper we seen him start coming back
22 towards us. I was terrified he was fixing to ram us and
23 knock us over into the building. But he went in front of
24 us. It looked like he stopped for a brief second, and the
25 truck started coming back towards us again. When that

DARREL RAINES-CROSS EXAMINATION

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1 happened the officer had swerved in front of us to keep him
2 from hitting us again and keep us from getting any more
3 damage done.

4 Q So the trooper kind of shielded you all?

5 A He did.

6 Q Did you see anything else after that?

7 A After that it was like a swarm of cops showed up.
8 They'd gotten him in handcuffs. He was still trying to
9 fight, still trying to get away. It looked like he was
10 trying to rush the vehicle we was in.

11 Q So is that pretty much it?

12 A They finally got him down and got him in the cop car.

13 MR. SCOTT: Darrell, thank you very much. Answer any
14 questions Mr. Quinn has for you.

15 THE WITNESS: Will do.

16 THE COURT: Cross-examination, Mr. Quinn?

17 MR. QUINN: Yes, sir. Thank you.

18 CROSS-EXAMINATION

19 BY MR. QUINN:

20 Q Mr. Raines, how long were the officer's blue lights on?

21 A From which point?

22 Q Well, that's what I'm asking you. I'm sorry. As I
23 understand your testimony, you all were getting off at this
24 exit --

25 A Uh-huh.

DARREL RAINES-CROSS EXAMINATION

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1 Q -- where the officer is and he turns his blue lights on
2 as you're going back over the bridge, or where?

3 A He turned his blue lights on as we were getting on the
4 off ramp. As we were getting ready to exit off we observed
5 him turning on the blue lights.

6 Q And so, across the highway from where your car was
7 struck?

8 A No. The Silverado was behind us. The cop was behind
9 him when the lights came on. We were getting off the exit.

10 Q So when you see -- you're saying the exit, where you
11 were getting back on the highway where the car -- where your
12 car was struck is where the officer turned his blue lights
13 on?

14 A No.

15 Q Okay. That's what I'm trying to get.

16 A The blue lights came on. We were getting off of the
17 interstate so we could go back the other direction.

18 Q Yeah, let's do it that way. Tell me which -- when you
19 were getting off you were still heading toward Greenville
20 and you were getting off?

21 A Uh-huh.

22 Q Are the officer's lights on at that point?

23 A Yes.

24 Q Were they turned on before the exit or --

25 A Before the exit.

DARREL RAINES-CROSS EXAMINATION

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1 Q Do you remember about how long before the exit?

2 A No, I do not.

3 Q Did EMS come to the scene at the on ramp?

4 A After the incident, yes.

5 Q And did they attend to you?

6 A They asked if we were all right. I told them we were
7 shaken up. I had an adrenaline rush. My mind was racing.

8 Q And I believe you said you could see into the vehicle
9 also and see that he was bouncing back and forth on the
10 seat?

11 A Yes, sir.

12 Q Did you notice, was he playing with the radio?

13 A Couldn't tell that due to the fact it looked like he
14 was holding the steering wheel with this arm and bouncing
15 like a child from seat to seat jumping like this back and
16 forth, back and forth, back and forth.

17 Q Were you able to attribute that to anything? What he
18 was doing and why he was doing it?

19 A I have no clue.

20 Q Was he smoking, could you tell?

21 A Not that I could tell.

22 Q On the telephone, anything like that?

23 A I don't --

24 THE COURT: You need to verbally respond, sir.

25 A I could not tell.

DARREL RAINES-CROSS EXAMINATION

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1 Q Now, where the -- where he struck your vehicle, how did
2 his vehicle get stopped finally? Did he stop it or did the
3 officer disable it, or how was that done?

4 A What happened, after he rammed us in the back, chased
5 the officer up the on ramp, hit the officer, the officer got
6 in front of us. The officer got out of his car to get in
7 front of us and loaded his gun. And that's when he had
8 stopped.

9 Q And so, he didn't drive away at that point?

10 A Not that I know of, he never tried to pull back off.

11 Q So the officer gets out and they engage and you said he
12 struggled -- they engaged in this struggle and the officer
13 was able to place him under arrest?

14 A Yes, when -- once everyone had gotten there, the other
15 officers and everything, had been detained for the most
16 part, except for he struggled to get loose.

17 Q And were you and your friends ever able to continue
18 your business, or what happened that day?

19 A After the incident, after the police statements and
20 everything else, we went to Columbia. We was finally able
21 to get to Columbia. After the adrenaline and everything
22 wore off I did seek medical attention.

23 MR. QUINN: I don't have any other questions. Thank
24 you.

25 THE COURT: Anything on redirect?

JASON STEPHENSON-DIRECT EXAMINATION

65

1 MR. SCOTT: No, Your Honor.

2 THE COURT: Thank you, sir. You can step down. If
3 there's no objection you can -- you're free to leave or
4 you're welcome to remain with us.

5 (Whereupon, the witness stepped down from the witness
6 stand.)

7 THE COURT: Solicitor, let's take a 10 minute morning
8 break. Ladies and gentlemen, we're going to take a short
9 little break. Again, I remind you, don't begin any
10 discussions among yourselves about this case and we'll get
11 you back out shortly. I also have got you some candy for
12 your jury room back there. It is all sugar free candy, for
13 those of you who may be watching your weight or cannot eat
14 anything with sugar in it. So I hope you enjoy that. And
15 we'll get you back out shortly. Okay?

16 (Whereupon, the jury exited the courtroom at 10:59
17 a.m.)

18 (Whereupon, a recess was held from 10:59 a.m. to 11:24
19 a.m.)

20 (Whereupon, the jury entered the courtroom at 11:24
21 a.m.)

22 THE BAILIFF: All the jury is present, Your Honor.

23 THE COURT: Thank you, Mr. Bolt. So noted for the
24 record. Solicitor, are you ready to call your next witness?

25 MR. TODD: Your Honor, the State would like to call

JASON STEPHENSON-DIRECT EXAMINATION

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1 Jason Stephenson.

2 JASON STEPHENSON, having first been
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TODD:

6 Q Mr. Stephenson, what do you do for a living?

7 A I'm a maintenance man for the bingo, and also a runner.

8 Q Let's go ahead and jump right into it. September 6th,
9 2015 where were you all going?

10 A We was headed to Columbia to do some work.

11 Q What initially drew you to the attention of Mr.
12 Harbuck?

13 A We was approximately at mile marker 76 and I was in --
14 I was looking in the rearview mirror and I saw a -- saw a
15 vehicle speeding and hit the emergency lane, I guess you
16 would call it. At first I thought maybe it was an officer
17 or something. And I said, does everyone have their
18 seatbelts on. But after he went by us -- after he went
19 around he came up and he jumped all the way over to the fast
20 lane and went down for a minute. And then he jumped back
21 over into the emergency lane, and just driving erratically,
22 man.

23 Q Were you driving?

24 A Yes, sir.

25 Q Do you recall having to do an evasive maneuvers?

JASON STEPHENSON-DIRECT EXAMINATION

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1 A No, I didn't have to do any evasive maneuvers. I might
2 have slowed down thinking that he might have come onto me or
3 something. But, you know, he was flying, so...

4 Q Did you have a chance to observe him as he passed by?

5 A I really didn't get to see him. But, you know, I saw
6 the truck driving erratically, so...

7 Q And you said -- where did you actually pick up -- where
8 did you see him in the rearview mirror at that initial
9 point?

10 A I saw him in the emergency lane when I looked in the
11 rearview mirror.

12 Q Do you remember an exit number or --

13 A 76. Because I remember we was right by Love's gas
14 station, and we usually most -- a lot of times we'll stop
15 off at Love's to get something to drink or whatever. So I
16 recall Love's and being at 76, so...

17 Q And where did you follow him?

18 A We followed him all the way down to exit 91.

19 Q Where's that?

20 A Chapin. Is that the Chapin exhibit?

21 Q What did you all do after that?

22 A He pulled into a gas station. I guess he saw us pull
23 in behind him. As soon as we pulled in, you know, I kind of
24 parked -- or was getting ready to park, and he left the gas
25 station and went back out. And I pulled out behind him and

1 started following him again. And he turned to get back on
2 26 toward Greenville.

3 Q What was the point of you following him?

4 A I was scared that he would hurt somebody.

5 Q And what did you do to prevent that?

6 A We -- I had Denise call, you know, and try and get a
7 trooper there as fast as they could, or whoever they could
8 get there.

9 Q So you said you took the exit 91 ramp and went back
10 onto the interstate --

11 A Yes, sir.

12 Q -- correct?

13 A Yes, sir.

14 Q Where did you follow him to?

15 A We made it to exit 54. It was about exit 56, 58 when
16 the trooper got behind him. And after the trooper got
17 behind him he had slowed down to about 55, 60, you know.
18 And I steadily cruise on 26 at 85 and I was ready to, you
19 know, get on my way and get back to work and stuff. So once
20 the trooper got behind him I went on and pulled out and went
21 around him to get off on the next exit, and it was 54. So
22 got off on 54. And right before -- right as we were getting
23 off on 54 the trooper had turned his lights on and, you
24 know, and I guess he went -- I thought maybe he was getting
25 off to stop for the officer, and we kept going. We turned

JASON STEPHENSON-DIRECT EXAMINATION

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1 left to go over the bridge and he followed -- he stayed
2 behind us and kept going. Turned left to get back on 26,
3 and he also followed. And there was -- I didn't know if he
4 was following us or getting ready to run but, you know, I
5 wasn't going to get back on the interstate and get up to any
6 type of speed with this guy behind me, or possibly anything
7 could happen, so I went ahead and pulled over. And when I
8 pulled over he came up onto my bump, so I pulled up some
9 more. He came back again. I pulled up again and he came
10 back. And then I pulled up one more time. I think it was
11 like three or four times. And that last time I didn't pull
12 up anymore and he went ahead and rammed us, you know. And
13 after he rammed us he took off after the cop.

14 Q And where was this again?

15 A On the on ramp for 26 at exit 54.

16 Q Was incoming traffic going by you?

17 A Yeah. There was steady traffic.

18 Q What were your concerns then when he rammed you?

19 A I was pretty fearful. It was -- it's something scary
20 after someone rams you and then takes off after a cop, you
21 know. Especially after he was driving erratically. You
22 don't know what kind of state of mind these people are in.
23 So I was -- I was pretty terrified.

24 Q And you said you were going 85 miles an hour. Were you
25 having to keep up with him at any point?

1 A No. At some points I did, you know, break about 90,
2 95. But -- you know, just to keep him in eyesight. But,
3 you know, nothing to run up on him or nothing. Until we got
4 back on 26 and he wasn't doing the same speed, but he was
5 still going a pretty good speed, up until, I don't know,
6 about 74 something and he kind of slowed down to 55, 60.
7 But I wanted to stay behind him and make sure that the
8 trooper got there, you know, to see what was going on with
9 this guy.

10 Q So why did you want to kind of follow him at those
11 rates for? What was the reason for that?

12 A He was -- he was -- I can't -- I don't know if he was
13 jumping around in the vehicle, because I couldn't tell, but
14 Denise and them said he was all over the vehicle and stuff.
15 But I was just scared he was going to kill somebody, man.
16 It was --

17 Q And where did you travel from today to come here and
18 testify?

19 A Greenville County.

20 MR. TODD: I beg the Court's indulgence. Answer any
21 questions --

22 THE COURT: Cross-examination?

23 MR. QUINN: I don't have any questions of Mr.
24 Stephenson.

25 THE COURT: Thank you, sir. You can step down. With

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1 no objection you're free to leave or you're welcome to
2 remain with us.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 MR. SCOTT: The State calls Steven Lindler, Your Honor.

6 CORPORAL STEVEN LINDLER, having
7 first been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SCOTT:

10 Q Lance Corporal or --

11 A I'm a Corporal now, sir.

12 Q Corporal Lindler?

13 A Yes, sir.

14 Q How long have you been with the Highway Patrol?

15 A January will be 18 years, sir.

16 Q And September 6th, 2015. Do you remember that day?

17 A I wish I could forget it.

18 Q Has anything like that ever happen to you before?

19 A No, sir.

20 Q In 18 years how long have you worked in this region?

21 A Probably almost 10 years.

22 Q So are you familiar with that stretch of I-26?

23 A I've lived in Laurens County pretty much all my life,
24 so I'm very familiar with it.

25 Q But in the profession of working for the Highway

STEVEN LINDLER-DIRECT EXAMINATION

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1 Patrol, I mean, do you typically patrol that area?

2 A Yes, sir. I've been out there a good bit.

3 Q And, I guess, just describing like that stretch of 26
4 between Clinton, Chapin, or else the southern bound portions
5 of Newberry County, what would you describe the traffic like
6 on that stretch?

7 A Just like any other interstate. It can get heavy at
8 times or it can be desolate at times. It depends on, you
9 know, what time of the day it is and, you know, whether it's
10 vacation traffic or weekend traffic coming out through
11 there. It can be real heavy or real light.

12 Q Would you describe it as well traveled though?

13 A It's very well traveled.

14 Q Have you had the occasion to work automobile wrecks,
15 accidents along that stretch of I-26?

16 A Yes, sir. Pretty much on a daily basis almost.

17 Q Have you ever seen people hurt as a result of car
18 accidents?

19 MR. QUINN: Objection, relevance.

20 THE COURT: Well, I think he's just kind of laying a
21 foundation for Trooper Lindler's experience. Without going
22 into much detail, I'll overrule the objection.

23 Q So you've seen people hurt in car wrecks?

24 A Yes, sir. Unfortunately I have.

25 Q And killed as a result of cars hitting one another?

STEVEN LINDLER-DIRECT EXAMINATION

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1 A Yes, sir. I have.

2 Q So September 6th. I want to talk around 7:30 p.m.,
3 somewhere in there. Were you on patrol?

4 A Yes, sir. I was.

5 Q Did you have occasion to respond to calls for help
6 along 26?

7 A Yes, sir.

8 Q What was the nature of those calls? What were you
9 looking for?

10 A I was looking for an impaired driver. That's what
11 dispatch give the call out.

12 Q Did you receive -- I mean, were you aware personally of
13 more than one call for this particular driver?

14 A Yes, sir. I was. Unfortunately I couldn't get to it
15 sooner due to the distance. I was off, and the shortage of
16 manpower that they had that day. As soon as the first call
17 came out I started heading towards the interstate, because I
18 knew it wasn't going to be good because, you know, the
19 people followed him for a good distance and, you know, I
20 knew eventually, you know, we needed to try to stop this
21 fellow.

22 Q Well, I guess that's the question. There was some
23 testimony that they had to follow him somewhere around 76
24 down to 91 and then --

25 A Yes, sir.

STEVEN LINDLER-DIRECT EXAMINATION

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1 Q It took some time for you guys to get out there. What
2 was the reason for that?

3 A I was -- I actually was in Cross Hill. So you know
4 where that's at. It takes a good while to get to the
5 interstate.

6 Q And were there any other troopers on patrol in the area
7 at that time?

8 A There were, I think, two other troopers on duty. But I
9 think one was in the Fountain Inn area, and I'm not sure
10 where the other one was at.

11 Q So were you getting different locations of where this
12 driver was being seen?

13 A I was. The last -- shouldn't say the last. But they
14 give it out as they were entering the -- getting around the
15 76 to the 91 mile marker. And I believe I told them to go
16 ahead and give it to Lexington County, to be on the look out
17 for him and see if they had anybody closer. And then we was
18 advised by dispatch that the subject had actually turned
19 around and was coming back westbound.

20 Q So back into your jurisdiction again?

21 A Yes, sir.

22 Q Whereabouts was he when you finally caught up with him?

23 A I was stationed there at the 60 mile marker westbound
24 when I saw the vehicle come by.

25 Q Stationary. So you were pulled over on the side?

STEVEN LINDLER-DIRECT EXAMINATION

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1 A I was pulled over on the side of the road. And I had a
2 good description of the vehicle. And they actually told me,
3 from the witnesses on 911, that he was coming by me. And I
4 saw the vehicle and I fell in behind it.

5 Q What did you observe when you first saw the truck?

6 A I observed the truck. I got close enough to him to
7 give dispatch the tag. The tag number. I gave them that.
8 And I basically just stayed back and observed. And I cut my
9 video camera on to try to get some documentation of the
10 driving of the subject. But I was close enough to see
11 inside the cab of the vehicle and I only saw one occupant in
12 the vehicle who was later identified as Mr. Harbuck. But
13 during the time I was following him, I mean, he was -- he
14 was inside the vehicle just -- I'd say bouncing around. I
15 didn't see -- he was just real fidgety. He wasn't playing
16 with the phone. He wasn't playing with the radio or
17 anything. He was just moving around erratically in the car.
18 And the first thing that went through my mind, I mean, it's
19 got to be some kind of impairment to cause this subject to
20 do this.

21 Q How was he driving whenever you fell in behind him?

22 A When I fell in behind him he was -- he would drive off
23 the right side in the shoulder and then come back, drive
24 across the center lane. He slowed down in speed and then
25 he'd speed up, slow down. I mean, it's what I call normal

1 behavior for an impaired driver.

2 Q Impaired driver?

3 A Yes, sir.

4 Q And so, at some point -- well, let me ask you this.

5 Did you have in mind where you would stop him?

6 A Yeah. I guess -- you know, I've been doing this for a
7 while, but I still rely a lot on my training. And I can
8 remember, you know, in the academy, you know, everybody and
9 the instructors would say, if you feel like something's
10 wrong, the hair on the back of your neck stands up, just
11 kind of hold back and wait. And this was one of those very
12 few situations where I had -- it was just a gut feeling that
13 something was wrong, and that's -- and I knew if I could get
14 him up to the 54 mile marker, which was the next exit, and
15 activate my blue lights, I knew that help would get there if
16 I needed it in a hurry.

17 Q That's what I was going to ask you. Why not pull him
18 over on the side of 26. That didn't seem safe to you? Is
19 that what you're saying?

20 A Well, no. You know, I already had it in my mind that I
21 was going to have to do a sobriety test and everything on
22 the subject. I mean, everybody's traveled I-26. You don't
23 want to be standing out there with an impaired subject
24 trying to give him a sobriety test with cars going by you at
25 70 and 80 miles an hour. It's just unsafe for everybody.

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1 Myself and the subject.

2 Q Yeah, that makes sense. But 54 was the next exit, you
3 said?

4 A Yes, sir.

5 Q And that is the Clinton exit; is that right?

6 A Yes, sir.

7 Q That's the one with Fatz Café --

8 A Yes.

9 Q -- you can see from the interstate? So -- by the way,
10 did you know what the three people who had been following,
11 did you know what they were driving?

12 A No, I did not.

13 Q So when did you hit the blue lights?

14 A I waited probably about -- I want to say maybe a tenth
15 to a quarter of a mile before we got to the ramp, cause I
16 wanted him to get off. And, you know, I activated the blue
17 lights and he did exactly what I wanted him to do. I mean
18 --

19 Q Did he get off that exit?

20 A He got off at the exit and proceeded up to the stop
21 sign.

22 Q And did he pull over?

23 A He stopped at the stop sign, put his signal on and made
24 a left turn. You know, in mind I'm thinking, well, cool.

25 He's doing -- maybe he's going to pull over in the Citgo gas

STEVEN LINDLER-DIRECT EXAMINATION

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1 station. That way we can get, you know, out from around
2 other traffic and, you know, we can conduct business at the
3 gas station and, you know, I could do what I needed to do.

4 Q Did he pull over in the Citgo?

5 A No, sir. He did not.

6 Q Let me show you State's No. 1. Do you recognize that?

7 A Yes, sir.

8 Q What does that depict?

9 A This is actually the ramp that he exited on. And
10 that's actually the stop sign where he stopped and made a
11 left turn, and came back across the bridge here. And when
12 he did, we got up to the exit -- or the entrance ramp -- I'm
13 sorry.

14 Q No. I don't want to interrupt you. But what I want
15 to, I just want to -- do you recognize --

16 A Oh, yeah. Yes, sir.

17 Q I'm going to put a big picture of it up here.

18 MR. SCOTT: Your Honor, State does offer State's No. 1
19 for admission.

20 MR. QUINN: No objection.

21 THE COURT: Without objection, No. 1 for the State into
22 evidence.

23 (Whereupon, State's Exhibit No. 1 was admitted into
24 evidence.)

25 Q Is that the picture I just showed you?

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1 A Yes, sir. It is.

2 Q Do you see the Fatz Café we were talking about here?

3 A I do.

4 Q You do?

5 A Yes. It's right over here.

6 Q Right here?

7 A Yes, sir.

8 Q So that's Fatz. Do if you're going that way you're
9 headed up towards where?

10 A Spartanburg.

11 Q And then if you're heading down here you're going
12 towards Columbia?

13 A Yes, sir.

14 Q So this is exit 54. Is that what you're saying?

15 A Yes, sir.

16 Q Now, describe -- you hit the blue lights somewhere down
17 here and he got off. I think that was your testimony.

18 A Yes, sir.

19 Q What did he do when he gets up here to the stop sign?

20 A He turned on his turn signal and made a left turn.

21 Q So he goes back over the bridge?

22 A Yes, sir.

23 Q And then what did he do?

24 A He put on another left turn signal and proceeded down
25 the ramp.

STEVEN LINDLER-DIRECT EXAMINATION

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1 Q This ramp right here?

2 A Yes, sir.

3 Q What happened next?

4 A Well, like I said, I didn't know what vehicle the cars
5 were in, but I did notice that there was an SUV parked on
6 the right shoulder of the road. So he pulls off the ramp
7 there and just pulls in over behind them. So, you know, my
8 first instinct was, well, he's going to stop here and we're
9 going to conduct business on the ramp. And then my second
10 thought was he's fixing to take off and we're going to get
11 into a pursuit down 26.

12 Q Now, where the SUV was and where he pulled over, was
13 that back on the interstate or was that still on the ramp?

14 A I'm not -- I think it was right in -- right before you
15 get on the interstate. It was close. I could see cars
16 coming by us.

17 Q So somewhere in the -- I guess near where this wedge is
18 here?

19 A Yes, sir.

20 Q So you said there was an SUV that pulled over and he
21 pulled in behind him?

22 A Yes, sir.

23 Q And where did you pull in?

24 A I pulled in behind him. Probably about two car lengths
25 behind and give myself a reactionary gap to have some

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1 distance between him and I.

2 Q I probably should have asked you this before. But what
3 were you driving?

4 A I was driving a 2011 Dodge Charger. Fully marked
5 vehicle with a bar light on top of it.

6 Q And you said the blue lights turned on right before you
7 got off the exit?

8 A Yes, sir.

9 Q Is that equipped with, I guess, a camera? In dash
10 camera?

11 A Yes, sir.

12 Q And did you have it running?

13 A It was actually activated when I got behind the subject
14 around the 57, 56 mile marker. Somewhere in that area.

15 Q Is your car one of the ones that the blue lights --
16 when you hit the blue lights the camera automatically cuts
17 on?

18 A It does. And what the camera system that I have it
19 actually backs up like 30 seconds. So you're getting 30
20 seconds of video, and after the 30 second period the audio
21 comes on.

22 Q But do you recall -- well, your camera is activated
23 manually, because you can manually turn them on, too,
24 correct?

25 A I did. That's what I did. I cut -- when I wanted to

1 take some video as evidence that's what I did is I cut it on
2 instead of activating my blue lights. I manually cut the
3 camera on.

4 Q Is there any reason you did that?

5 A Gather evidence.

6 Q Do you always do that when you make a stop manually?

7 A I do it when I'm following what I believe to be an
8 impaired driver I do, because, I mean, the more evidence you
9 can have, the better off you're going to have a court case.

10 Q This exit, is it Laurens County or Newberry County?

11 A This exit is in Laurens County.

12 Q So you're in your marked car. The blue lights are on,
13 the camera is running, and you pull in behind him. What do
14 you observe next?

15 A You mean when he stops on the ramp?

16 Q Yeah. Yeah.

17 A When he stops on the ramp I can see that he's -- he's
18 watching me. He's looking at me in his side mirror.

19 Q You can see his face?

20 A I can see his face clear as day. He's looking at me in
21 his side mirror. He's watching me and I could see him turn
22 his head forward. And I guess he was looking the SUV in
23 front of him. Like I said, I didn't have any idea that
24 that's who was actually calling. But, I mean, there we
25 were. We was just sitting there. I don't know if it was --

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1 I mean, it seems like an eternity, but it was only for a few
2 seconds.

3 Q So you're looking at him, he's looking at you, and then
4 you see him looking at the car. What happens next?

5 A The next thing I know, I see tires spinning and he just
6 -- he rams the rear end of the SUV. I notified dispatch at
7 the time, you know. He's ramming a vehicle out here on the
8 interstate.

9 Q Were you in your car or were you out of your car?

10 A I was still in the car.

11 Q What did you do next?

12 A I kind of waited a second to see what his next reaction
13 was going to be, because, you know, at that point, you know,
14 I didn't know if he was going to roll out of the car and,
15 you know, try to shoot me, or take hostages or -- I didn't
16 know what he was going to do. So I kind of, you know,
17 waited for like a second. And then all of a sudden I seen
18 reverse lights come on. And I said, well, either he's going
19 to reverse and take off or he's going to reverse and come
20 after me. And he put it in reverse and started chasing me.

21 Q Well, what do you mean? Did he immediately hit you or
22 did you -- were you able to put your car in reverse?

23 A I put my car in reverse and I tried to zigzag up the
24 ramp. Tried to, you know, get him, you know, to stop
25 basically. To give up. But he didn't. I could see him in

1 the rearview mirror -- I mean, in his side mirror and he was
2 matching me turn for turn. Every time I turned the car, he
3 turned his truck. And he started accelerating. He was
4 coming back. He was chasing me up the ramp. And I went
5 back as far as I could. And I saw another car coming down
6 the ramp. And, you know, my first thought is to protect the
7 public, and that's what I got to do. That's my job. So I
8 stopped. I stopped and I took the hit.

9 Q So he did hit you?

10 A Yes, sir.

11 Q Is your testimony -- it started down here and you had
12 to back up the ramp to get away from him?

13 A Yes, sir.

14 Q Have you seen the video?

15 A I saw it for the first time yesterday.

16 Q I showed it to you, didn't I?

17 A Yes, sir. You did.

18 Q And State's No. 12. Do you recognize that?

19 A Yes, sir.

20 Q And did it accurately portray what you yourself
21 witnessed that day, September 6th?

22 A Yes, sir. It did.

23 Q How did you feel watching that?

24 A It made me sick. Because, I mean, in my eyes this guy
25 just tried to kill me. I mean, I feared -- it brought back

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1 a lot of emotions. It brought back a lot of bad memories
2 that I was trying to put to the side. I mean, in 18 years
3 this is probably one of the closest times that anybody ever
4 took my life.

5 Q That was your concern at that time, wasn't it?

6 A Well, that was my concern, and concerned with the
7 public, because I didn't want him to hurt anybody else
8 either.

9 Q Now, after -- after he struck your vehicle what did he
10 do next?

11 A He struck my vehicle, and the tailgate -- he was
12 driving a pickup truck. So it was almost like it was
13 attached to the push bumper on my car.

14 Q Now, you call it a push bumper. I heard you say that
15 yesterday. It's like a brush guard?

16 A It's a brush guard. Yes.

17 Q Metal --

18 A I'm sorry.

19 Q It's a metal bumper?

20 A Yes, sir.

21 Q And is that standard for y'all's vehicles?

22 A Yes, sir.

23 Q Had the rear of his truck came up on top of your hood?

24 A Yes, sir.

25 Q What were you hearing at that time?

1 A Well, I mean, in a stressful situation like that it's
2 -- everything just kind of slowed down. It was in slow
3 motion. I mean, it got to the point where the radio traffic
4 on the radio was just (demonstrating). Just horrible. And
5 I learned later that that's just the stress of everything
6 going through your mind and everything. But at the same
7 time I'm making a plan, you know, on my next actions, you
8 know, and what I'm going to do next and how I -- I mean, I
9 got to -- I got to react. I can't just, you know, sit in
10 the car, you know, and wait for him to, you know, take
11 another action toward, you know, ending my life. So I had
12 to do something. So the next thing I did was I got the car
13 in park and I exited the vehicle. And at the time, you
14 know, his truck was still attached. And I came out with my
15 weapon drawn and I basically -- you know, I had two choices,
16 you know. If he came back and was going to try to continue
17 to harm me or end my life, I mean, I was going to have to,
18 you know, try to end his life by shooting him. But luckily,
19 like I -- he's watching me in his side mirror the whole
20 time. And just fortunately for both of us, you know, it was
21 -- in this job, you know, you never want to have to take
22 anybody's life. And that's -- I never wanted to shoot this
23 guy. So fortunately he pulled off. And then, you know, my
24 next reaction is, well, I can't let him go back up here and
25 maybe harm the witnesses again, and I can't let him get back

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1 on the interstate, because he's already proven the fact that
2 he doesn't care if he hurts anybody. He's already rammed
3 two vehicles, you know. So I fell in. He proceeded back
4 down the ramp. And I jumped in the car and took off after
5 him. Luckily my car wasn't immobilized, so I took off after
6 him. And at this point, you know, I'm making a decision,
7 you know. I can't let him get back on the interstate, so
8 I've already made a plan that, you know, I'm going to, you
9 know, PIT his vehicle and try and push him down in the
10 embankment over there. And then all of a sudden he just
11 stops.

12 Q Where?

13 A He stops in front of the SUV.

14 Q Where did you possession your car?

15 A I put it in front of mine, in fear that he was going to
16 -- Well, I put it in front of the SUV behind -- I put it in
17 between the SUV and his truck. Because, I mean, if
18 anybody's going to take the hit, it's going to be me. I
19 don't want him to endanger anybody else. But I pulled my
20 car up and he stops, and he's watching me in the mirror
21 again. And I'm like what's next. I mean, is he going to
22 jump out with a weapon. I mean, is he going -- what's he
23 going to do? Is he going to try and ram me again? But all
24 of a sudden, you know, I ordered him out at gunpoint and he
25 came out. Throw him down on the ground and he pretty much

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1 did what, you know, I told him to do until I got the
2 handcuffs on him.

3 Q Then what did he do?

4 A He started fighting. When I got the handcuffs on him
5 he started to try to kick my knees. Kick my knees out from
6 under me. About that time another trooper pulled up.
7 Trooper Hunter. And I tried to talk to Mr. Harbuck. You
8 know, because I tried to stay as calm as I could during a
9 stressful situation. I told him, I said, look, it's over.
10 Just stop. There's nothing else you can do. You're in
11 handcuffs. Just quit. And it was almost like he had a
12 second of clarity and he just -- he stopped. But then when
13 we was -- I think the cavalry showed up, is what I call
14 them. I mean, Officer Peay, Officer Casey. Casey Jones
15 showed up. And we was walking back to the car and he keeps
16 trying to kick us. And I told him, I said, we're going to
17 have to put him down on the ground. So we just -- we laid
18 him down on the side of the road until somebody with a car
19 with a cage comes. Because I knew just by dealing with him
20 he was -- I felt like he was impaired because of his
21 actions. He was up and down, up and down. I mean, he would
22 go through a minute where he didn't -- he didn't want to
23 fight. He was just -- it was over with. And then he would
24 just -- I mean, just like go into a rage like something was
25 kicking in on him again. And then he would get to kicking

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1 and fighting again. And I told them let's just lay him on
2 the ground until we get a car here that's got a cage in it.
3 Because I knew he was probably going to wind up trying to
4 kick the glass out of the car and all this stuff. So -- and
5 our cars are not equipped with cages.

6 Q Have you observed impaired drivers before?

7 A Too many.

8 Q Dumb question, but were you able to give him a field
9 sobriety test out there?

10 A No, sir.

11 Q Why not?

12 A Because of his actions. I mean, he was violent. It
13 was unsafe for anybody to give him -- try to give him any
14 kind of sobriety test.

15 Q Well, as far as being impaired on alcohol, did you find
16 any alcohol or smell alcohol on him?

17 A No, sir.

18 Q Did you all find any drugs or anything in his car?

19 A No, sir.

20 Q But you're saying he appeared impaired to you?

21 A Yes, sir.

22 Q So you get him down -- eventually were they able to get
23 him into one of the caged cars?

24 A Yes, sir.

25 Q And what did they have to do to get him in there?

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1 A We had -- they had to physically pull him into the car.

2 I mean, he's a small guy but he fought like a big guy.

3 Q Took multiple officers?

4 A Yes, sir.

5 Q If you have any knowledge or if you observed it, what
6 happened after he was in the car?

7 A I really don't have any -- last time I saw him was when
8 they put him in the car. At that point in time, I guess I
9 had an adrenaline dump, and I -- I mean, that's when I
10 started feeling sick. I mean --

11 Q You vomited out there, didn't you?

12 A I did. I threw up. I mean, it's pretty stressful when
13 you have somebody try and take your life.

14 Q What injuries did you have?

15 A Well, my blood pressure -- and I'm not a doctor, but
16 everybody tells me it's high. It's like 240 over 190 and it
17 was -- they said it was right at stroke level. And, like I
18 said, to me, you know, the higher the better, but evidently
19 not with blood pressure. But anyway, I had pain in my back.
20 I had to go see a doctor for my back, and I wound up having
21 two herniated discs in my back.

22 Q And you went to the hospital that night?

23 A Yes, sir. I had to be transported by EMS.

24 MR. SCOTT: All right. Well, let's watch the video.

25 State's 12.

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1 THE COURT: How long is the video, Solicitor.

2 MR. SCOTT: Seventeen minutes.

3 THE COURT: Excuse me?

4 MR. SCOTT: Seventeen minutes we were going to cut it
5 off.

6 THE COURT: Okay.

7 MR. QUINN: Your Honor, may we approach while they're
8 preparing it?

9 THE COURT: Sure.

10 (Whereupon, a sidebar was held.)

11 THE COURT: Mr. Foreman, ladies and gentlemen of the
12 jury, I have a legal matter to take up with the lawyers and
13 it's going to require you to return to your jury room.
14 Hopefully not for long. And so, if you will go back to the
15 jury room again. I remind you no discussion about anything
16 related to this case. And hopefully we can get you back out
17 shortly. It's about 12:00. I'll also discuss with the
18 lawyers about when we think we can break for lunch as well.
19 Okay? No discussion about this case.

20 (Whereupon, the jury exited the courtroom at 12:00
21 p.m.)

22 THE COURT: All right. Mr. Quinn, we had a sidebar
23 conference. If you want to just put on the record what your
24 concerns or objections are.

25 MR. QUINN: Your Honor, as a predicate, a discovery

1 motion was properly filed in this matter. Let's see. The
2 first request was to the Eighth Circuit Solicitors Office
3 because the Solicitor had not yet been assigned on September
4 14th of 2015. Then Mr. Scott received the case and a
5 discovery request was sent on October 30th. Since that time
6 there have been emails back and forth between us and at
7 least one email. There have been discussions about that I
8 needed medical records in this case. This is an assault
9 case. The Court is very likely go forward on an attempted
10 murder case. And, of course, I'm guessing, that's all I can
11 do before trial, is very likely to submit not only attempted
12 murder but perhaps other levels of assault. So I wanted to
13 be able to intelligently discuss with the jury and with
14 witnesses what the injuries, if any, they suffered. My
15 understanding was there had not been any injuries except
16 perhaps to the officers because there is a resisting arrest
17 charge. And having then seen the video, which I got on
18 Monday, it was clear that Officer Lindler had suffered some
19 injury because he does -- it's clear from the video that he
20 was in pain. The Solicitor, Mr. Scott, was good enough to
21 provide me on Tuesday of this week 15 pages, I believe is
22 accurate, of discovery concerning Mr. Lindler's medical
23 records which are, I believe, all from September 6th, the
24 date of the incident. If I'm in error, it may have been
25 September 6th and September 7th. But I believe all from

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1 September 6th. There is no mention in the reports of
2 herniated discs. The first I've heard of it is this
3 morning. I am prevented at this point, because we're in the
4 middle of trial, from being able to intelligently
5 cross-examine on the nature of that injury or whether that
6 injury may have existed previously since I don't have the
7 medical personnel here. I see Mr. Scott looking through the
8 reports. He'll find on page two of six of the records from
9 the emergency department a -- I believe it's the clinical
10 impression from an x-ray that says "Compression fractures
11 T-11 and T-12. Age of injury not known." Now, perhaps --
12 and I'm sorry, I'm not a medical personnel. I don't even
13 know if T-11 and T-12 are discs. But to the extent they
14 might be, the report provided to me indicates that they may
15 have been preexisting conditions. So that testimony was
16 presented to the jury that he suffered because of this
17 incident herniated discs. I object to that testimony. And
18 at this point I would ask for a mistrial and that proper
19 information be provided to me so I can get all the medical
20 records and find out if this officer suffered an injury, and
21 it's relevant to the nature of the assault charge. I
22 understand the Solicitor's theory. But the Solicitor
23 doesn't limit what the Court is going to charge, and the
24 Court, I assume, will charge the entire statute, and the
25 statute talks about the nature of the injury. And so, I

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1 object to the testimony and I'd ask for a mistrial and time
2 to get the proper discovery.

3 THE COURT: All right. We'll I'm not going to grant
4 you a mistrial at this time. However, as I indicated to
5 you, I would allow you at this time to engage in some
6 examination of Trooper Lindler as it relates to the
7 existence, or the lack thereof, of the herniated discs and
8 to see if it's a preexisting condition. Depending upon what
9 he testifies to, it may justify the Court in issuing some
10 curative instruction to disregard that testimony. I don't
11 know that, but let's see what he says.

12 Before you start that, Solicitor Scott, do you want to
13 state your position on the record?

14 MR. SCOTT: No, sir. If you're not going to grant the
15 mistrial all I'll say is --

16 THE COURT: I'm not going to grant it at this time. I
17 think I want to hear what's been said. Mr. Quinn, do you
18 want to take the Court up on the offer to engage in some
19 cross-examination outside the presence of the jury?

20 MR. QUINN: Well, I certainly will to try to impress
21 upon the Court the difficulty that I'm going to face in that
22 Officer Lindler, unless he's got medical training which I do
23 not anticipate, he's not really going to be able to answer a
24 whole lot of questions, but I certainly intend to.

25

IN-CAMERA

STEVEN LINDLER-IN CAMERA EXAMINATION

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1 DIRECT EXAMINATION

2 BY MR. QUINN:

3 Q Trooper -- I'm sorry. Corporal Lindler, you were
4 transported the night this happened on September 6th, 2015
5 to the Laurens County Memorial Hospital; is that correct?

6 A Yes, sir. I was.

7 Q And during your time at the hospital you were examined
8 by a physician and you were also -- there were also x-rays
9 taken; is that correct?

10 A Yes, sir.

11 Q The radiologist that would have examined the x-rays,
12 did they ever speak with you?

13 A I don't believe they did. They recommended that I go
14 see a family -- my family doctor.

15 Q And I'm going to jump to the end. I'll come back.
16 When you were released from the hospital that night is it
17 true that you were told to not work today or tomorrow, pain
18 medications were prescribed for your back pain, I believe
19 you were suffering muscle strain, and that you were to
20 follow-up with your personal physician; is that correct?

21 A Yes, sir.

22 Q Have you discussed, or did you discuss with a doctor
23 who saw you at Laurens County Memorial Hospital any
24 difficulties with your back?

25 A At the -- that night?

1 Q Yes, sir.

2 A Yes, sir.

3 Q And was there any discussion about problems with your
4 discs?

5 A I'm like you. I'm not a doctor. I don't know what the
6 discs are or anything like that. But he just told me it was
7 probably like a muscle strain or something.

8 Q Since then have -- with your personal physician has
9 there been any discussion about problems with your discs in
10 your back?

11 A Yes.

12 Q And what -- can you tell me the nature of those
13 discussions?

14 A They did an MRI on my back and come to the conclusion
15 that I have the herniated disc, like I talked about, and
16 then they sent me to Greenwood where -- I don't know the
17 terminology for a back specialist. But they sent me to a
18 specialist where he recommended that I have cortisone shots
19 in my back to alleviate the pain, because evidentially the
20 disc was mashing on my nerve in my back. And the cortisone
21 shots seemed to -- seemed to work.

22 Q And how long was that length of treatment?

23 A It was -- I'm not really sure. It was -- I went to the
24 doctor. And then like maybe a week, week and a half, I saw
25 the specialist and he recommended the shots. I had the

1 shots, and that was it.

2 Q And are you able to tell us if the problems with your
3 discs arose from this incident or if they had existed prior
4 to this incident?

5 A I didn't have the pain that I -- the pain didn't really
6 -- the pain in my back started after Mr. Harbuck rammed me.
7 I guess, is that what you're asking?

8 Q Well, your description was you had a herniated disc?

9 A That's what the doctor told me.

10 Q So you are not able to describe what that means in
11 medical terms, are you?

12 A No, sir.

13 Q And do you know if you have one or two, or how many
14 herniated discs you had?

15 A I was told by the doctor that I had two.

16 Q And do you know are they numbered in some fashion?

17 A I'm sure they are, but I couldn't tell you which one's
18 which.

19 Q And did any doctor tell you they were related
20 specifically to this incident?

21 A No, they didn't say it was related specifically to this
22 incident. No, sir.

23 MR. QUINN: I don't have any other questions at this
24 time.

25 THE COURT: Solicitor, do you have any examination on

1 this limited issue?

2 MR. SCOTT: No, sir.

3 THE COURT: What I'm going to do is I'm going to
4 instruct the jury to disregard the testimony of Corporal
5 Lindler as it relates to the existence of any herniated
6 discs. That they're not to consider that.

7 MR. QUINN: And, Your Honor, while I appreciate the
8 Court's curative instruction, I do take objection to the
9 instruction not being sufficient and I'd ask for a mistrial.

10 MR. SCOTT: Judge, I don't know if I even need to
11 discuss this, but it's not an element of the crime. His
12 injury is not an element of the crime. So I think it's
13 perfectly reasonable for him to testify to that. But a
14 curative instruction, if that's what we're going to do,
15 that's fine. I think, you know, just even considering a
16 mistrial is - It's not even an element of the crime. The
17 guy rammed him with a car which we're saying is a deadly
18 weapon which could have caused great bodily harm or death.
19 We've never said any injuries he sustained were
20 life-threatening.

21 THE COURT: Now, let's just talk a little bit about,
22 we've got the video to play. Is that into evidence? I
23 can't remember.

24 MR. SCOTT: It is.

25 THE COURT: The video to play. And then how much more

1 direct with Corporal Lindler?

2 MR. SCOTT: I was just going to show the video and then
3 turn him over to Tom.

4 THE COURT: So we've got cross-examination. And then
5 how many witnesses do you intend to --

6 MR. SCOTT: As we're going now, Your Honor, just two.
7 Casey Jones, the one he assaulted, and then Scotty Peay who
8 helped get him in the car.

9 THE COURT: What I'm inclined to do is go ahead and
10 let's finish up with Corporal Lindler and then go ahead and
11 break for lunch. I'm trying to squeeze some other matters.
12 So I think that would be the plan. And then after lunch you
13 can finish up with your two witnesses and we'll see what the
14 Defense intends to do. Okay?

15 Mr. Bolt, if you would bring the jury out, please.

16 (Whereupon, the jury entered the courtroom at 12:11
17 p.m.)

18 THE BAILIFF: All jurors are present, Your Honor.

19 THE COURT: Thank you, Mr. Bolt. So noted for the
20 record.

21 Ladies and gentlemen of the jury, prior to the break
22 there was some testimony of Corporal Lindler concerning the
23 existence of herniated discs as a result of this particular
24 incident. I am instructing you, ladies and gentlemen, to
25 disregard that testimony, and that will be stricken from the

1 record in this case.

2 Solicitor, you may proceed with this witness.

3 Q I asked you this before we broke. State's No. 12, do
4 you recognize that?

5 A Yes, sir.

6 Q And you talked about seeing it yesterday.

7 A Yes, sir.

8 Q Is it fairly and accurately represent what you observed
9 September 6th of 2015?

10 A Yes, sir.

11 MR. SCOTT: Your Honor, the State offers No. 12 for
12 admission into evidence.

13 THE COURT: Okay. And what says the Defense?

14 MR. QUINN: I have no objection to the disc. I don't
15 want the envelope surrounding it going in. It has other
16 material.

17 THE COURT: I don't know what's on the envelope. I
18 think we'd do better if we dimmed the lights.

19 Q This is your camera. Is that right, Trooper?

20 A Yes, sir. It is.

21 Q And you can narrate it, if you want to. Tell us when
22 you first see the car.

23 A It's hard to tell on the video, but I can actually see
24 it. And I'm trying to, like I say, keep my distance and,
25 you know, basically gathering evidence.

STEVEN LINDLER-DIRECT EXAMINATION (CONTINUED)

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1 THE COURT: It's going to be hard for him to narrate
2 with the audio portion of it. So --

3 THE COURT: What I'll do, I'll pause it if I think it
4 needs narration, Your Honor. I wasn't thinking.

5 THE COURT: All right. So, Corporal Lindler, don't
6 narrate. And then if Solicitor Scott thinks you need to
7 interject something --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- he'll stop it so we don't hear that
10 audio portion, and then you can --

11 THE WITNESS: Yes, sir.

12 THE COURT: -- say whatever you want to say.

13 THE WITNESS: Thank you, sir.

14 (Whereupon, State's Exhibit No. 12, dash cam video, was
15 published for the jury.)

16 Q Let me ask you though. What is that right there?

17 A It's Mr. Harbuck's vehicle.

18 (Whereupon, video played for the jury.)

19 Q Do you know who's in this vehicle right here?

20 A No, I don't. I mean, at the time I didn't.

21 Q Do you know who it is now?

22 A I do now.

23 Q Who is it?

24 A That's the witnesses.

25 Q The witnesses who had called in?

1 A Yes, sir.

2 Q And is that the SUV you're describing on the side of
3 the road that got rammed?

4 A Yes, sir.

5 MR. SCOTT: Press play.

6 (Whereupon, video played for the jury.)

7 Q All right. Right there, is that when you cut the blue
8 lights on?

9 A Yes, sir. You can actually see the glow from the sign
10 when I activated them.

11 (Whereupon, video played for the jury.)

12 Q State's No. 13. Do you recognize where that is?

13 A Yes, sir. I do.

14 Q And what is that?

15 A That's the entrance ramp to I-26 westbound from the 54
16 mile marker.

17 Q That's the exit where that video was found?

18 A Yes, sir.

19 THE COURT: Mr. Bolt, do we have a concern with the
20 jury?

21 THE BAILIFF: I think we have with one.

22 THE COURT: Yes, sir, Mr. Foreman.

23 THE FOREMAN: I think a juror is getting ill.

24 THE COURT: Ma'am, are you not feeling well?

25 THE JUROR: No, sir.

STEVEN LINDLER-DIRECT EXAMINATION (CONTINUED)

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1 THE COURT: Do you need to take a break? Do you think
2 that would help some?

3 THE JUROR: I just have a really bad cold and a sore
4 throat.

5 THE COURT: Let's do this then, even though I don't
6 like breaking in the middle of a witness's testimony. Let's
7 go ahead and let's break for lunch and let's see if you
8 start feeling better. Give me your name, ma'am.

9 THE JUROR: Lorisha Copeland.

10 THE COURT: Copeland. We're going to take a little
11 longer lunch break than we normally take, to 2:30. I'm
12 trying to work in some other matters. Let's see how you
13 feel. And then if you feel like you still can't really, you
14 know, continue on, you need to let us know and then we've
15 got two alternates. But hopefully you'll feel better.
16 Maybe get something to eat. Take something. So I hope you
17 do feel better. Just go back to your seat, Mr. Foreman.

18 Ladies and gentlemen, we're going to go ahead and break
19 for lunch. Now, I'm going to ask you to do a couple of
20 things for me. If you decide to go to a local restaurant to
21 have some lunch, be sure to keep your juror badge on. And
22 the reason for that is, is that some of the lawyers and
23 parties involved in the case may be at the same restaurant
24 as you and don't recognize you necessarily as being on the
25 jury, maybe talking about the case. But if you have your

STEVEN LINDLER-DIRECT EXAMINATION (CONTINUED)

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1 juror button on then they will know we can't talk about it
2 or not talk about it loud enough to where you can hear it.
3 So keep that on. Certainly if you go home over lunch then
4 you don't necessarily need to leave it on at home. If you
5 come into contact with somebody during your lunch break
6 don't discuss anything about this case, and certainly again
7 don't discuss it among yourselves. So we'll take a little
8 bit longer lunch break, until 2:30. Have a good lunch and
9 we'll see you back here. Ms. Copeland, again, I hope you
10 feel better. But if you do not, do you have the number for
11 the Clerk's office to where -- okay. You can call the
12 Clerk's office. Hopefully you'll feel better and you'll be
13 back with us. Have a good lunch. See you back at 2:30.

14 (Whereupon, the jury exited the courtroom at 12:37
15 p.m.)

16 THE COURT: Sorry about that. I don't like breaking in
17 the middle of a witness, but to take care of that juror.
18 And Corporal Lindler, I know you know this but I just need
19 to remind you. You're in the middle of your testimony,
20 therefore you can't talk with the Solicitors or anybody
21 about this case or about your testimony. And I know you'll
22 be good, but I just needed to remind you. Okay?

23 I hope everybody has a good lunch and we'll see you
24 back at 2:30.

25 (Whereupon, a lunch recess was taken from 12:37 p.m. to

STEVEN LINDLER-DIRECT EXAMINATION (CONTINUED)

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1 2:40 p.m.)

2 THE COURT: We're on the record. Just one matter. The
3 juror, Ms. Copeland, who indicated to the Court that she was
4 not feeling well, called Mr. Bolt and informed him that she
5 was not able to come back. Consequently by way of lottery
6 method, Judith Johnson Wadsworth will now be one of the main
7 12.

8 Anything else on the record before we bring the jury
9 out?

10 MR. SCOTT: Nothing from the State, Your Honor.

11 THE COURT: All right. Corporal Lindler, if you'll
12 come back up, please, sir. Is that your little girl with
13 you?

14 THE WITNESS: Yes, sir. That's my daughter.

15 THE COURT: No matter how old they are, they're always
16 a little girl.

17 THE WITNESS: Absolutely.

18 THE COURT: All right. Mr. Bolt, bring the jury out,
19 please.

20 While the jury is coming out, let me see the lawyers
21 for a second.

22 (Whereupon, a sidebar was held.)

23 (Whereupon, the jury entered the courtroom at 2:40
24 p.m.)

25 THE BAILIFF: All jurors present, Your Honor.

STEVEN LINDLER-DIRECT EXAMINATION (CONTINUED)

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1 THE COURT: Thank you, Mr. Bolt. The record is so
2 noted. The juror, Ms. Copeland, who was not feeling well
3 before we broke for lunch, called the Court and indicated
4 that she was not going to be back. So by way of lottery
5 method Ms. -- is it Johnson Wadsworth or Wadsworth Johnson?

6 THE JUROR: Johnson Wadsworth.

7 THE COURT: Johnson Wadsworth. Ms. Johnson Wadsworth,
8 you are now one of the 12 jurors. And so, next time you'll
9 sit over -- you won't maintain that seat. Just whatever's
10 available. Okay?

11 THE JUROR: Okay.

12 THE COURT: Thank you. All right. We're still in the
13 middle of direct examination with Corporal Lindler.
14 Solicitor, you want to proceed?

15 MR. SCOTT: Thank you, Your Honor.

16 Q I'm trying to remember where we were. But State's No.
17 13. Were we talking about that? Do you remember that
18 picture?

19 A Yes, sir.

20 Q And you recognize it?

21 A Yes, sir. I do.

22 Q What is it?

23 A That is the entrance ramp onto I-26 eastbound from the
24 54 mile marker.

25 Q And you see the spot in there where substantially all

STEVEN LINDLER-DIRECT EXAMINATION (CONTINUED)

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1 this action took place?

2 A Yes, sir. I do.

3 MR. SCOTT: Your Honor, the State offers State's No. 13
4 for admission.

5 MR. QUINN: No objection.

6 THE COURT: All right. Without objection, No. 13 into
7 evidence for the State.

8 (Whereupon, State's Exhibit No. 13 was admitted into
9 evidence.)

10 Q When you watched the video did you note this wedge, I
11 guess, right here where the ramp merges onto the interstate?

12 A Yes, sir.

13 Q And, you know, it appeared to me that the first stop is
14 somewhere right around this tree. Is that what your
15 observation was?

16 MR. QUINN: Your Honor, I object to the leading nature
17 of the question.

18 THE COURT: Try to rephrase, Solicitor.

19 MR. SCOTT: Step down. We're going to have to do it
20 this way. If you don't mind stepping down.

21 THE WITNESS: Yes, sir.

22 MR. SCOTT: You got to speak up so the court reporter
23 can hear you.

24 (Whereupon, the witness stepped down from the witness
25 stand.)

STEVEN LINDLER-DIRECT EXAMINATION (CONTINUED)

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1 Q Point your finger on there approximately where Mr.

2 Harbuck's truck first stopped?

3 A It should have been somewhere right in here.

4 Q Can you mark it with your finger?

5 A All right.

6 Q That's fine. This blue spot right here, that's

7 approximately where this car stopped?

8 A Yes, sir.

9 Q And then do you see on there where your car was struck?

10 A I would be -- I would assume it's going to be somewhere

11 up in this area.

12 Q Further up the ramp there?

13 A Yes, sir.

14 Q Which side of the ramp was it on?

15 A It was on -- I think we were kind of in the lane and on

16 the shoulder.

17 Q Which side?

18 A On this side.

19 Q Go ahead and let's mark that with the red. Go ahead

20 and pencil it in there. Somewhere in there?

21 A Yes, sir.

22 MR. SCOTT: You can get back on the stand.

23 (Whereupon, the witness returns to the witness stand.)

24 Q Do you recall whether or not when you're backing away

25 from him that you went into the lane of traffic on the

STEVEN LINDLER-CROSS EXAMINATION

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1 interstate?

2 A I honestly don't recall, because I was trying to stay
3 focused on him and trying to get away from him while he was
4 chasing me. And I was also trying to look in my mirror and
5 see where I was going, you know. But I honestly never
6 looked over to the right. It was just -- I'm sorry. To the
7 left. I guess, you know, at the time with everything going
8 on, I got tunnel vision, you know. My only thought was, you
9 know, getting away from him.

10 Q I guess the area we're facing is -- Columbia is down
11 this way? Is that the direction?

12 A Yes, sir.

13 Q I've got State's No. 6. Do you recognize that?

14 A Yes, sir.

15 Q What is that?

16 A That is a rear picture of Mr. Harbuck's pickup truck.

17 Q What do you observe in that picture?

18 A It appears that the tires are -- he's got his reverse
19 lights on. And it looks like to me the tires are spinning.

20 Q Why does it look like that?

21 A There's smoke coming from them.

22 Q Do you recall seeing that?

23 A Absolutely.

24 Q Do you see Mr. Harbuck here today?

25 A Yes, sir. I do.

1 Q Where is he?

2 A He's the gentleman sitting right there.

3 Q With the shaved head?

4 A Yes, sir.

5 THE COURT: Let the record reflect he's identified the
6 Defendant.

7 MR. SCOTT: Trooper Lindler, answer any questions Mr.
8 Quinn has for you, please.

9 THE WITNESS: Yes, sir. Thank you.

10 THE COURT: Cross-examination?

11 MR. QUINN: One second.

12 MR. SCOTT: Yeah, thank you, Mr. Quinn. I will offer
13 State's No. 6 for admission into evidence, Your Honor.

14 MR. QUINN: No objection.

15 THE COURT: Without objection, No. 6 will be in
16 evidence on behalf of the State.

17 (Whereupon, State's Exhibit No. 6 was admitted into
18 evidence.)

19 CROSS-EXAMINATION

20 BY MR. QUINN:

21 Q Corporal Lindler, I know you said you only had the
22 opportunity before today to see this video once earlier, I
23 think, this week. Is that right?

24 A Yesterday, sir.

25 Q Yesterday. And before the jury saw it you described to

STEVEN LINDLER-CROSS EXAMINATION

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1 them the driving that you say Mr. Harbuck was doing. That
2 he was crossing lanes and speeding up and slowing down, and
3 that you observed that driving.

4 A Yes, sir.

5 Q Is there anything you observed that's not on this
6 video?

7 A Notⁱ that I can recall.

8 Q So, in other words, the video should reflect Mr.
9 Harbuck crossing lanes and speeding up and down?

10 A Well, I mean -- to me -- well, you got one lane and two
11 lanes on the interstate both traveling in the same
12 direction.

13 Q Inside and outside?

14 A Yes, sir. Well, what we call is the number one lane
15 and the number two lane.

16 Q Okay, fine.

17 A I should have clarified that. I'm sorry. The lane --
18 the broken lane in the middle is a divider between those
19 lanes. And when I meant that he was going -- he was going
20 -- drifting over into the number one lane. That will
21 explain what I was talking about.

22 Q And you've had the opportunity to see the video today.
23 Do you believe that that driving is reflected in the video?

24 A I do. Yes, sir.

25 Q Now, when the vehicles ended up in the position where

STEVEN LINDLER-CROSS EXAMINATION

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1 Mr. Harbuck was finally arrested, it would be Mr. Harbuck's
2 vehicle in front. The truck, right?

3 A Yes, sir.

4 Q Then your vehicle. I think you said you were driving a
5 Dodge.

6 A Yes, sir. I was.

7 Q Then the SUV that Ms. Hamby and the other people were
8 in; is that right?

9 A Yes, sir.

10 Q And were the three vehicles nose to tail, or how far
11 apart were they? Can you give me some idea?

12 A Maybe two to three car lengths maybe.

13 Q Between which vehicles?

14 A Probably maybe, like I said, two to three car lengths
15 between Mr. Harbuck's car -- I'm sorry, his truck and the
16 SUV. And that's when I went in between them. So it's
17 probably at least two car lengths in between myself and the
18 other party.

19 Q And do you know if Mr. Harbuck's vehicle was driveable
20 at that point? Had it been incapacitated?

21 A It hadn't been incapacitated by me, and he didn't seem
22 to have any problem getting it in drive and going forward.

23 Q But he does not do that -- when you get out of the
24 vehicle to arrest him, he does not put the vehicle into
25 drive or reverse; isn't that correct?

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1 A The second time, no, sir. He didn't.

2 Q And at that point we can't see on the camera in here,
3 what we can't see, did he pretty much or completely, I don't
4 know, follow your instructions when you arrested him?

5 A When I ordered him out of the vehicle, yes, sir. He
6 complied. All up to the point where I had him out on the
7 ground and handcuffed him.

8 Q And I think your testimony was that he was up and down
9 after that. But the handcuffing apparently set him off
10 again.

11 A Yes, sir.

12 Q And then for a while he'd be compliant, then he'd want
13 to get out of the handcuffs and tussle with you all; is that
14 right?

15 A Yes, sir.

16 Q Now, the Solicitor asked you if the vehicle was
17 searched and if any alcohol was found, and there was no
18 alcohol found; is that right?

19 A No, sir.

20 Q No drugs were found; isn't that right?

21 A No, sir.

22 Q No drug paraphernalia was found?

23 A No, sir.

24 Q No weapons were found in the car, no guns?

25 A No, sir.

1 Q Not legal, not illegal? No guns?

2 A No weapons.

3 Q And did you ask to have Mr. Harbuck's identification,
4 fingerprints and Social Security number, date of birth, run
5 to see if he had records?

6 A I don't recall.

7 Q Were you trying to figure out why all this was going
8 on?

9 A I would like to know why. But I had a pretty good idea
10 why all this was going on.

11 Q And your belief is he was impaired?

12 A I absolutely believe he was impaired.

13 Q Now, on the tape I believe you identify the vehicle
14 that pulls up next to you and passes you as the vehicle
15 driven by Mr. Stephenson; is that right?

16 A That was after the Solicitor's Office pointed it out to
17 me.

18 Q So at the time it was happening, did you wonder why
19 some guy is passing a marked Highway Patrolmen on the
20 interstate?

21 A No, because I think we were only running 55, 50 miles
22 an hour. We were under the speed limit at that time. I
23 feel like Mr. Harbuck knew I was behind him.

24 Q And is it not a surprise to you that somebody might
25 pass a marked Highway Patrol vehicle?

STEVEN LINDLER-REDIRECT EXAMINATION

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1 A Happens every night. Every night.

2 Q And your vehicle, was it put back into service?

3 A Yes, sir. It was repaired. I'm not sure what the
4 damage amount on it, you know, as far as dollar-wise was.
5 But it was repaired.

6 Q And is it your vehicle? I'm sorry. I don't know how
7 they do that. Did they assign it to you specifically?

8 A Yes, sir. It's my -- my office. Yes, sir.

9 MR. QUINN: Thank you. I don't have any other
10 questions.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Any redirect?

13 MR. SCOTT: Just one question.

14 REDIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q Mr. Quinn was asking you does that video contain
17 everything you saw as far as Mr. Harbuck's driving. Could
18 you explain what you meant by that? What your answer meant?

19 A I'm sorry. What --

20 Q You said it did contain everything you saw regarding
21 his driving?

22 A Well, I mean, you know, as far as him going down the
23 road, I mean, he showed signs of impairment failing to
24 maintain his lane and drifting off -- drifting over into the
25 number one lane and drifting off the side of the road and

1 his behavior inside the vehicle that I observed. You know,
2 like I stated before, he was -- you know, it was almost like
3 he was dancing in the seat. I mean, he didn't appear to be
4 playing with the radio or a cell phone or anything like
5 that. I mean, he was just -- honestly he acted like -- you
6 know, and I've dealt with these people time and time before.
7 But he acted like somebody that might have been, you know,
8 impaired on some kind of, you know, stimulant.

9 Q Well, I mean, I guess my point is it didn't show
10 everything.

11 A Oh, no.

12 Q Because you were stationary when you first saw him.
13 Isn't that what you said earlier?

14 A Yes, sir.

15 Q And so, when that video starts you're already driving
16 down the road.

17 A Yes, sir.

18 Q And how long were you behind him before you flipped the
19 camera on him? Do you remember?

20 A Half a mile, maybe a mile.

21 Q So you had half a mile or so to observe him before you
22 flipped the camera on him?

23 A Yes, sir.

24 Q I just wanted to clarify that.

25 A Yes, sir.

CASEY JONES-DIRECT EXAMINATION

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1 MR. SCOTT: That's everything. That's all I have.

2 THE COURT: Anything on recross?

3 MR. QUINN: Just one.

4 RECROSS-EXAMINATION

5 BY MR. QUINN:

6 Q You say he was dancing in the seat. I'm not sure
7 that's your exact words. But fidgeting in the seat?

8 A Fidgeting, jittering around. He wasn't doing what a
9 normal driver would be doing.

10 Q And were his movements limited by the console in the
11 front seat?

12 A He was on top of the console. I think that had a lot
13 to do with why he wasn't speeding anymore. Because, I mean,
14 he -- he wasn't -- I mean, he would be stationary in the
15 seat, and then he would almost jump out of the seat. Like
16 he was going to jump into the passenger seat sometimes.

17 Q But there was a console between the two of them, right?

18 A Yeah.

19 MR. QUINN: Thank you.

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you, Corporal Lindler. You can step
22 down, sir.

23 (Whereupon, the witness stepped down from the witness
24 stand.)

25 THE COURT: The State call it's next witness.

CASEY JONES-DIRECT EXAMINATION

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1 MR. TODD: Yes, Your Honor. The State calls Casey
2 Jones.

3 OFFICER CASEY JONES, having first
4 been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. TODD:

7 Q Mr. Jones, it may fairly obviously. Where are you
8 employed?

9 A I work for the City of Clinton.

10 Q How long have you been there?

11 A Ten years this month.

12 Q What's your rank?

13 A I'm a lieutenant in uniform patrol. I supervisor a
14 night shift crew.

15 Q And were you employed there on September 16, 2015?

16 A Yes, sir. I was.

17 Q On September 6th were you on duty that day?

18 A I was. You know, we had just came on at 7:00 p.m., if
19 I recall.

20 Q Did you have the nature to respond to a call involving
21 an incident on exhibit 54?

22 A Yes, sir. I did.

23 Q What was the nature of that call?

24 A Myself and several other city units were out working a
25 wreck inside the city, and one of my officers advised me

CASEY JONES-DIRECT EXAMINATION

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1 that there was a trooper on the 54 -- the exit of 54 and
2 mile marker screaming for help. And me and that officer,
3 which was Officer Peay, we then ran emergency blue lights
4 and siren all the way to the 54.

5 Q And when you arrived at that scene what did you see?

6 A When we first pulled up I observed Trooper Lindler on
7 scene, along with Corporal Hunter, which is also another
8 trooper, and they had just placed what appeared to be the
9 Defendant, Mr. Harbuck, into handcuffs. And had just
10 arrested him and stood him up.

11 Q And is that man here today?

12 A Yes, he is.

13 Q Is he over there?

14 A He is. Gray shirt.

15 THE COURT: Let the record reflect he's identified the
16 Defendant.

17 Q When you got there, you said he was in cuffs. Was that
18 the extent of the -- of your dealings with him?

19 A No, sir. Which point in time myself and Officer Peay
20 arrived on the scene -- Highway Patrol doesn't typically use
21 caged vehicles for transport. However, our agency does.
22 And due to the nature of everything that had transpired on
23 scene prior to us arriving -

24 MR. QUINN: Objection. That's speculation. How can he
25 know what happened before he got there?

CASEY JONES-DIRECT EXAMINATION

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1 THE COURT: Well, you may want to ask it this way,
2 Solicitor. Based upon whatever information he received,
3 what did you do as a result of that. Ask it that way. So
4 I'll sustain the objection, but with that allowance of you
5 asking him that way.

6 Q Based on when you arrived on the scene, how did you
7 handle the situation?

8 A Upon speaking with Trooper Lindler and Corporal Hunter,
9 we determined the best course of action was to place Mr.
10 Harbuck in the back of one of our cage city vehicles. At
11 which point in time myself, Officer Peay, attempted to place
12 Mr. Harbuck into the back of one of -- I believe it was
13 Officer Peay's vehicle. While doing so, and escorting him
14 to the patrol car, we attempted to search him incident to
15 arrest. However, Mr. Harbuck would not cooperate, and as a
16 result we had to place him onto the ground to attempt to
17 search him incident to arrest.

18 Q What do you mean by not cooperating?

19 A He was trying to kick at us and pulling away from us.
20 Didn't want to cooperate whatsoever.

21 Q Was he on the ground?

22 A No. We were walking at that time, or attempting to, as
23 we were escorting him to the patrol car, which resulted in
24 us taking him to the ground to be able to search incident to
25 arrest.

CASEY JONES-DIRECT EXAMINATION

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1 Q And then what happened?

2 A He was placed into Officer Peay's patrol vehicle.

3 Shortly thereafter Office Peay notified me that Mr. Harbuck
4 was making a very deliberate effort to get towards the back
5 -- or was reaching into the back of his pants.

6 MR. QUINN: I would object at this point. It's
7 hearsay. Now, if the Solicitor assures me he's going to put
8 Officer Peay up I'll withdraw the objection. However it's
9 hearsay.

10 THE COURT: I think the State has already indicated
11 they're going to put Officer Peay up. You may proceed.

12 A However, that was specifically told to me by Officer
13 Peay. At which point in time we then -- I then went to the
14 back of Officer Peay's car. Opened the door. Mr. Harbuck
15 was laying across the seat at that point, and he complained
16 to me about his handcuffs were too tight. I then attempted
17 to adjust his handcuffs, at which time he proceeded to push
18 back away from me and began kicking me about my knees and my
19 legs.

20 Q So he did kick you?

21 A Yes, sir. Several times.

22 Q And let's go back. You mentioned the cage. Would you
23 explain to this jury what a cage is? I'm not sure if
24 they're familiar with --

25 A I'll be glad to. In law enforcement vehicles some

CASEY JONES-DIRECT EXAMINATION

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1 vehicles are equipped with a partition between the front
2 driver's area and the rear seat. Oftentimes that's used
3 when you're transporting a prisoner that's giving officers
4 problems, or whatever it may be.

5 Q So after you got him in the car then what happened?
6 Where did he go from there.

7 A After he -- Mr. Harbuck began kicking me about my
8 knees. Officer Peay was on the opposite side of the vehicle
9 attempting to pull him back towards the other side of the
10 vehicle away from me, and ultimately resulted in Officer
11 Peay deploying his taser and drive stunning Mr. Harbuck.

12 Q What effect did that have on him?

13 A That -- full taser cycle is a five second cycle. Mr.
14 Harbuck calmed down for a few minutes. We were able to try
15 and adjust his handcuffs as best we could and complete the
16 search incident to arrest to make sure he didn't have any
17 other contraband or weapons he could hurt himself or any of
18 us. At which point in time Mr. Harbuck then became irrate
19 again and we simply closed the doors on the patrol car.

20 Q Was that the last time you saw Mr. Harbuck that day?

21 A No, sir. It was not.

22 Q When did you see him again?

23 A Shortly thereafter, Office Peay had began to transport
24 Mr. Harbuck to the Laurens County Detention Center. At
25 which time he had to go eastbound towards Columbia, get off

CASEY JONES-DIRECT EXAMINATION

123

1 on 60 and turn around and come back up the interstate, or
2 either go down Shady Grove Church Road to get back towards
3 the jail. I was notified via radio Officer Peay was
4 requesting assistance at the 60 because Mr. Harbuck was
5 attempting to get out of his handcuffs. I then ran blue
6 lights and siren to the 60 to assist Officer Peay there.

7 Q What did you find when you got to the second scene?

8 A When I arrived there Officer Peay informed me of what
9 was transpiring and I then opened the back door of the
10 patrol car. Explained to Mr. Harbuck, look, this the issue.
11 Do not kick me. Do not assault me. We're going to adjust
12 your handcuffs. I got an affirmative okay, or what seemed
13 to be an affirmative okay, and he then began attempting to
14 kick me again. At which point in time Investigator Shelton
15 with the Sheriff's Office had arrived on scene and deployed
16 his taser. Subsequently, Mr. Harbuck was removed from the
17 back of the vehicle. Was placed in -- his handcuffs were
18 adjusted and placed in a pair of leg shackles in an attempt
19 to keep him from kicking any other officers. He was then
20 put back in the vehicle and transported without further
21 incident.

22 Q So he was tased again at the second incident?

23 A A total of three times.

24 Q And what was his demeanor at that point after the third
25 time?

CASEY JONES-CROSS EXAMINATION

124

- 1 A After the third time we got him back in the car, like I
2 said, he was transported without further incident.
- 3 Q Where were his handcuffs when you arrived on scene?
- 4 A They were behind his back.
- 5 Q Were they on properly or --
- 6 A I could note, from what I recall, he was really
7 wrenching on those cuffs trying to get them past his hands.
8 So if I remember right, I think we actually -- or I actually
9 placed a second pair of cuffs on him, adjusted them properly
10 to make sure they were fitted properly and he couldn't get
11 out of them, and then I think I removed the original pair,
12 if I remember right.
- 13 Q Were there any other restraints put on him at that
14 time?
- 15 A He was put in leg restraints as well at that time.
- 16 MR. TODD: Beg the Court's indulgence.
- 17 Q Going back to that second incident where you arrived
18 back on scene after calls for help, where was that? Where
19 did that take place?
- 20 A That was right there on the -- the second incident?
- 21 Q Yes.
- 22 A That was right on the ramp of the 60. The exit ramp.
- 23 Q What exit is 60?
- 24 A That's Highway 66 right there. The exit for Joanna.
- 25 Q Laurens County?

CASEY JONES-CROSS EXAMINATION

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1 A Yes.

2 MR. TODD: Beg the Court's indulgence. Answer any
3 questions the Defense has.

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION

6 BY MR. QUINN:

7 Q Lieutenant Jones, you're not the investigating officer
8 in this case, are you?

9 A No, sir.

10 Q That would be Lieutenant Shelton; isn't that right, of
11 Laurens County?

12 A I can't say. I didn't have anything to do with the
13 Sheriff's Office's investigation. We were merely an
14 assisting agency to the Highway Patrol.

15 Q Did you do an incident report in this case?

16 A I did not personally. I believe Officer Peay did.

17 Q Did you do a use of force report in this case?

18 A I believe Officer Peay did.

19 Q I thought you said you tased him?

20 A No, sir. I never tased Mr. Harbuck.

21 Q Officer Peay is the one who tased him?

22 A That's correct.

23 Q And Lieutenant Shelton tased him?

24 A That's correct.

25 Q And who's the third use of taser?

CASEY JONES-CROSS EXAMINATION

126

1 A Officer Peay used his twice.

2 Q And the second time he used it was at the same location
3 where Lieutenant Shelton tased him?

4 A No, sir. That was not. That was there on the initial
5 scene when we were trying to search him incident to arrest
6 when I was assaulted, and adjusted his handcuffs.

7 Q Initial scene stuff. The initial scene. Are you
8 talking about where the vehicles were stopped?

9 A Yes, sir.

10 Q You tased him at that location?

11 A I did not tase him. No, sir.

12 Q He was tased at that location?

13 A Yes, sir. Twice.

14 Q Before you all got him in the car?

15 A No, sir. He was back in the patrol car.

16 Q So you took him out of a caged vehicle --

17 A No, sir. He was in the back of this caged patrol car.
18 Once he was placed in that car --

19 Q Is a patrol car not a vehicle?

20 A -- he never came out.

21 THE COURT: Wait a minute. Don't talk over each other.

22 Q Is a patrol car not a vehicle?

23 A Yes, sir. It is.

24 Q So caged vehicle was not an accepted description. I'll
25 use caged patrol car. So your testimony is that Mr. Harbuck

CASEY JONES-CROSS EXAMINATION

127

1 was in the back of a caged patrol car handcuffed?

2 A Yes, sir.

3 Q You took him -- you took him out of that vehicle?

4 A At the 60. Yes, sir.

5 Q So at that point -- I'm sorry. Let's go back and start
6 all over.

7 A Okay.

8 Q At 54, which I believe is the exit where the original
9 arrest occurs.

10 A Yes, sir. That's right.

11 Q You come to that location?

12 A I did.

13 Q And at that location are you aware of Mr. Harbuck was
14 tased or not?

15 A At the point in time when we arrived on the scene, no
16 sir. I was not aware that he'd ever been tased prior to.

17 Q While you were at that location, however long it took,
18 Officer, are you aware if Mr. Harbuck was tased or not?

19 A Yes, he was. Twice at the 54.

20 Q Once by Officer Peay and once by --

21 A Twice by Officer Peay at the 54.

22 Q Twice by Officer Peay at 54?

23 A Yes, sir. That's correct.

24 Q And prior to him being tased by Officer Peay was he in
25 the back of a caged patrol car?

CASEY JONES-CROSS EXAMINATION

128

1 A He was.

2 Q Handcuffed?

3 A He was, in the process of kicking me.

4 Q Well, not until you opened the door; is that right?

5 A That's right.

6 Q And so, prior to you opening the door had he attempted
7 to kick out the glass in the door?

8 A I can't recall.

9 Q Well, would you recall if there had been damage to the
10 vehicle that would have had to have been repaired?

11 A I would say so. Yes, sir. I'm not aware of any.

12 Q Any damage to the cage?

13 A Not that I'm aware of.

14 Q There were no -- I believe that I'm asking were there
15 any officers or other people in the backseat caged with him?

16 A Other officers in the backseat with him?

17 Q I'm asking.

18 A No, sir.

19 Q So was there anybody in danger while he was in the back
20 of a caged patrol car handcuffed?

21 A Only to himself at that point.

22 Q And yet he ends up getting tased twice at that scene?

23 A Yes, sir. After he kicked me in my knee. Yes, sir.

24 And continued to --

25 Q And tell me again why you --

CASEY JONES-CROSS EXAMINATION

129

1 A -- assault me again.

2 THE COURT: Again, please --

3 MR. QUINN: Judge, my mistake.

4 THE COURT: Officer, wait for the question to be
5 completely asked and then you can answer. Mr. Quinn, wait
6 for the answer to be complete before you ask another
7 question.

8 THE WITNESS: Yes, sir.

9 THE COURT: Very good. Thank you.

10 Q Tell me again why you went in there.

11 A I was told by Officer Peay that it appeared that Mr.
12 Harbuck was attempting to reach well into the back of his
13 pants. Didn't know what -- if he was trying to retrieve an
14 item. Something we didn't locate on that initial search
15 incident to arrest. So that was the reason we went back
16 into the car. After which Mr. Harbuck complained about the
17 fitment of his handcuffs which I was attempting to adjust
18 for him when he began assaulting me.

19 Q And at that point he gets tased?

20 A That's right.

21 Q And thrown back in the back of the caged patrol car?

22 A He was still inside the backseat of the patrol car the
23 entire time until we came to 60.

24 Q So did you just close the door then after he was tased
25 the first time?

CASEY JONES-CROSS EXAMINATION

130

1 A No, sir. We didn't. Because we were attempting to
2 complete our search incident to arrest.

3 Q And after he was tased you weren't able to do that?

4 A No, sir. We were not.

5 Q And then your other Officer Peay leaves the scene,
6 drives up the road and has to stop and he, Mr. Harbuck, is
7 tased yet again; is that right?

8 A By Lieutenant Shelton with the Sheriff's Office.
9 That's right.

10 Q And you were there when that occurred?

11 A Yes, sir. I was.

12 Q And had Mr. Harbuck gotten his handcuffs off at that
13 point?

14 A Not at that point. No completely. No, sir.

15 Q So he was still -- well, you say not completely. Had
16 he gotten one cuff off?

17 A No, sir.

18 Q So the handcuffs were on both of his wrist?

19 A That's right.

20 Q And he was in the back of, I assume, still a caged
21 patrol car?

22 A That's right. He attempted to kick me once again there
23 at 60, and as a result Lieutenant Shelton tased him once
24 again.

25 Q And officer Peay was transporting him?

CASEY JONES-REDIRECT EXAMINATION

131

1 A Yes, sir.

2 Q And do you know did you or did Officer Peay transport
3 Mr. Harbuck to the hospital?

4 A That would have been -- from my best recollection, I
5 believe that was Officer Peay.

6 Q But you didn't do a report in this matter?

7 A No, sir. It was documented by Officer Peay.

8 Q Have you reviewed Officer Peay's report?

9 A I looked over it briefly within the last week.

10 Q And does your department not require you to do use of
11 force reports when someone is tased?

12 A Yes, sir. There was one completed.

13 Q And I believe you said that one of the people you spoke
14 to at exhibit 54 was Corporal Hunter; is that right?

15 A That's right.

16 Q And who's he employed by?

17 A The Highway Patrol.

18 Q And apparently Lieutenant Shelton from Laurens County
19 came to the scene at exit 54?

20 A Yes, sir.

21 Q And did Sergeant Moye, M-o-y-e, did he also appear?

22 A Yes, sir. I remember seeing him at the -- I believe
23 it's the 60.

24 Q And did forensics arrive while you were there? Do you
25 know which forensic officer came?

CASEY JONES-REDIRECT EXAMINATION

132

1 A No, sir. I have no idea. Once I left from the 60, if
2 I remember right, I'm pretty sure I went back to the city.

3 Q So did you, after this second stop where Mr. Harbuck is
4 tased by Lieutenant Shelton, did you then follow Officer
5 Peay to be sure there would be no more difficulties?

6 A I don't recall. We had several officers on the scene.
7 I don't remember if I escorted him or if another officer
8 did.

9 MR. QUINN: I don't have any other questions.

10 THE COURT: Redirect, Solicitor?

11 MR. TODD: Just briefly.

12 REDIRECT EXAMINATION

13 BY MR. TODD:

14 Q Officer Jones, what was the reason you went back into
15 that caged vehicle on exit 54?

16 A On exit 54?

17 Q Yeah.

18 A I had received information from Officer Peay that it
19 appeared that Mr. Harbuck was digging into the back of his
20 pants in which he might be attempting to retrieve contraband
21 or a weapon, something we may have missed on the initial
22 search incident to arrest. When we attempted to initially
23 search him incident to arrest prior to placing him in the
24 back of that caged vehicle he was still resisting us which
25 resulted in us having to take him to the ground to attempt

CASEY JONES-RECROSS EXAMINATION

133

1 to try and search him.

2 Q What was the testimony about the handcuffed fitting?

3 A Pertaining to --

4 Q Exit 54.

5 A At 54? When I opened the rear door of the vehicle in
6 order to further search him incident to arrest Mr. Harbuck
7 complained about the fit of his handcuffs, which I attempted
8 to check and was going to adjust, if necessary, and that was
9 when he became irate with me and began assaulting me.

10 Q But you had continued to try to adjust the handcuffs?

11 A Yes, sir. And also complete that search incident to
12 arrest, which also led to the second tasing incident of Mr.
13 Harbuck there at the 54, because we were still trying to
14 complete that and he was still completely uncooperative with
15 us.

16 Q And the two tasings, two by --

17 A Officer Peay.

18 Q At the original 54 scene?

19 A Yes, sir. That is correct.

20 Q And at exit 60 how many?

21 A That would have been one from Lieutenant Shelton. He
22 actually deployed his taser. The two there on 54 Officer
23 Peay just used a drive stun method.

24 Q So it was a two-man job to adjust the handcuffs?

25 A Yes, sir, if not more so.

SCOTTY PEAY-DIRECT EXAMINATION

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1 MR. TODD: No further questions.

2 THE COURT: Anything on recross?

3 RECROSS-EXAMINATION

4 BY MR. QUINN:

5 Q What did you find in his pants?

6 A Nothing.

7 THE COURT: Thank you, sir, for your testimony. You
8 can step down, sir.

9 (Whereupon, the witness stepped down from the witness
10 stand.)

11 THE COURT: Solicitor, call your next witness.

12 MR. SCOTT: The State calls Scotty Peay.

13 OFFICER SCOTTY PEAY, having first
14 been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q Could you state your name for the record.

18 A Scotty Peay.

19 Q P-e-a-y?

20 A That's correct.

21 Q Clinton Public Safety? And you were with Clinton
22 September 6th of 2015?

23 A That's correct.

24 Q You've been sitting in here. How did you come to be at
25 that exit 54 ramp on September 6th, 2015?

SCOTTY PEAY-DIRECT EXAMINATION

135

1 A I was working a collision with Lieutenant Jones and
2 another officer and I heard frantic calls on the radio for
3 assistance at the 54. I then left. Was in route. While I
4 was in route the witness called 911 and I got that 911
5 called, and dispatch advised that the trooper was on the
6 radio and needs assistance on the interstate. So I was
7 already in route on the way and I pulled up shortly after.

8 Q So what's the first thing you see when you pull up
9 there on the ramp?

10 A When I pulled up I seen they had him on the ground. He
11 was in handcuffs. And like I said, they had him on the
12 ground in handcuffs and they was trying to get him up, and
13 that's when I kind of walked up and assisted with
14 everything.

15 Q What was he doing in the handcuffs, if anything?

16 A They were trying to walk him towards the car when we
17 come up to him, and then that's why they started fighting.
18 Going real crazy. You could hear on the video Corporal
19 Lindler saying we got to take him to the ground, and that's
20 what we did. And kind of take him down and subdue him.

21 Q What was the reason you took him to the ground? I
22 missed that part.

23 A He's fighting and kicking around and just, you know,
24 going to be dead weight coming up. Just going crazy kicking
25 and stuff.

SCOTTY PEAY-DIRECT EXAMINATION

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1 Q Was he saying anything, do you remember, at that time?

2 A Not at that time that I can recall. He was talking,
3 but I can't recall what he was saying.

4 Q So after you all took him to the ground were you all
5 able to subdue him at that point?

6 A For a minute. You know, you took him down and he'd
7 stop. Try to get him back up to get him to the car in which
8 he starts -- I can't tell you exactly when he starts to flip
9 out again, but it was multiple times throughout the night
10 that we was dealing with him.

11 Q But at some point you were able to get him in the back
12 of -- is it your car?

13 A It was my car. Yes, sir.

14 Q And the cage that was just explained, that's just the
15 metal partition between the front seat and the backseat?

16 A It's metal around the bottom of it, and in my car
17 there's actually plexiglass around the top of it.

18 Q And did you assist in getting him into the --

19 A I did.

20 Q Does that end everything once you get him in the back?

21 A No. I opened the door, the side we was going to put
22 him on, because Lieutenant Jones was trying to subdue him
23 enough so I could get the door open. And usually in a
24 situation like that he's not just going to sit down in the
25 backseat. And so, what I did is I went around to the

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1 driver's side, opened the back door. At which point we laid
2 his -- laid him into the seat. And I had to reach up and
3 grab him by his arms. And when I go to pull him in is when
4 he starts to kick at Lieutenant Jones.

5 Q Now, protocol is to put the handcuffs behind he back?

6 A Behind the back. That's correct.

7 Q So you had to help from one side so you could pull him
8 in and --

9 A That's correct.

10 Q -- Jones is ducking his head and pushing him in?

11 A That's correct.

12 Q And did you see him kick Casey Jones?

13 A I did. He was actually kicking several times. There
14 was another -- I believe it was a SLED agent, I'm not sure,
15 that was passing by and pulled over to assist as well. So
16 he was kind of just standing back and watching. But I seen
17 him. As I was pulling him he was steady kicking, and we
18 just kind of shut the door to let everything calm down for a
19 minute.

20 Q Did he calm down?

21 A He was moving around in the back of the car which is
22 what scared me, because I knew I was going to be
23 transporting him and I didn't want him to have some type of
24 weapon in his pants. Because we tried to search him
25 incident to arrest, but when somebody's acting like that

1 it's hard -- it's easy to miss something. And so, my
2 thinking was if we had him in the back of the car, if we
3 could get him to calm down some type of way, or maybe we can
4 get enough people in there so we can actually search his
5 pants or something and figure out what was going on, because
6 he was reaching for something.

7 Q What's a typical arrest? Like if you get me and I've
8 got my hands behind my back, do you kind of just tap me
9 down, looking in my pockets and everything? Is that how it
10 works?

11 A A typical arrest would be -- if you're standing like
12 this and I'm just going to pay you down, if it's a search
13 incident to arrest, I'm going to try to get everything out
14 of your pockets. The first thing I'm going to do is pat you
15 down for weapons just to make sure. Well, go around your
16 waist and make sure there's no weapons around your waist, in
17 your pockets, down your legs. But a search incident to
18 arrest is he's going to go to jail, so we're going search
19 everything. We're going to pull pockets out. I'm going to
20 untuck his shirt, hat, anything. I'm going to run my hands
21 through his hair if I have to, shoes, just to kind of make
22 sure he has nothing that's going to go into the jail that's
23 going to be illegal, or anything illegal on his person.

24 Q Tell us why that wasn't practical during this arrest.

25 A Couldn't get control of the situation. I tried and

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1 tried but -- you know, that's why -- that's why it led to
2 the drive stun. It was just because I -- I didn't want to
3 -- I did not want to transport him without being able to
4 search him properly.

5 Q Well, that's what I want to get to. I'm trying to get
6 to your way of thinking at the time. So you got him in the
7 backseat and you know that he hadn't been fully searched.
8 Is that what you're saying?

9 A That's correct. Yes, sir.

10 Q And then what did you see him doing that caused
11 concern?

12 A Well, he's got his hands behind his back cuffed and
13 he's steady pulling on his cuffs. He's steady digging in
14 his pants. He's all over the place. And, like I said, my
15 biggest concern is I'm fixing to drive him from Clinton to
16 Joanna, and then from Joanna to the hospital, and then from
17 the hospital to the jail, and he's going to be behind --
18 he's going to be sitting behind me by myself for possibly
19 the next 20 minutes, and I just want to make sure there's
20 nothing on him that's going to hurt me in any kind of way.
21 But he made that difficult. I couldn't do that.

22 Q So what did -- what was the next step after you see him
23 digging in his pants? What did you all do?

24 A Well, it was -- it came up to the point where he has to
25 be searched before we transport him. There's no way that

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1 we're going to transport him without searching him. But at
2 the same time we're not going to leave him out there, so
3 he's got to be transported. And so, as I'm sitting there
4 talking to him trying to calm him down, the Lieutenant's on
5 the other side and starts -- we're trying to feel around his
6 pants. Trying to pull him, you know, in toward the car,
7 because, I mean, he's just all over the backseat. And
8 that's when he starts to kick the lieutenant, and that's why
9 I just -- I hit the drive stun then.

10 Q Just for the jury, is a drive stun the one you just
11 mash --

12 A Drive stun is when you deploy the taser but it doesn't
13 have the prongs that shoot out of the taser. It's just kind
14 of a drive stun gun that you would buy at the store, except
15 it's a police issue type. So I took the cartridges off of
16 it so it wouldn't shoot. I stuck it in his back and
17 deployed a five second round, or drive stun.

18 Q And then what affect did that have on him?

19 A For the five seconds -- you know, he took five seconds
20 and he didn't move. And maybe 15 seconds after that it all
21 started again.

22 Q Kicking and all that?

23 A Kicking, screaming. He was talking about his handcuffs
24 being too tight and -- and he just talking, you know, all
25 over the place.

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1 Q Did you all attempt -- make some attempt to adjust his
2 handcuffs?

3 A We tried to.

4 Q What did you all get in return for that?

5 A Not far. You know, like I said, we didn't get far with
6 it. Lieutenant wanted to make sure everything was -- he was
7 taken care of, but I just -- I mean, I knew we weren't going
8 to take his handcuffs off of him. I was scared that he was
9 wanting us to take them off just so he could start fighting
10 again and have his hands free.

11 Q When you say Lieutenant, you're talking about Casey
12 Jones?

13 A That's correct.

14 Q Let me ask you though. When you all tried to adjust
15 the handcuffs what happened in return?

16 A When we tried to adjust them, I don't know if he felt
17 them loosen up. I don't know if the Lieutenant even had
18 them -- got them to loosen up. I just know he was messing
19 with them, trying to check them for fit, and like I said it
20 -- he was -- it was just steady. Like one minute, down the
21 next.

22 Q Well, I'm trying to get -- when was the next time you
23 stunned him? Didn't you do it two times?

24 A It was twice. It was -- it wasn't back to back. But
25 it was -- we checked the handcuffs. He starts kicking. And

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1 I was trying -- we was trying to check the handcuffs, trying
2 to search him, too, at the same time. Trying to do all this
3 at the same time. Trying to search him. We drive stun him
4 the first time. We sat there for five seconds. Kind of
5 took it. Fifteen, 20 seconds later I said all right, search
6 him. As we start searching again, he's kicking again. And
7 kicking and kicking, and that's when I drive stunned him the
8 second time. It was not simultaneous, but it was close.

9 Q And then you finally get him in the car. You all are
10 riding towards exit 60?

11 A That's correct.

12 Q And then what was the next thing that happened? Tell
13 me how that happened.

14 A I was driving on the interstate. Of course, I was
15 keeping an eye on him in the rear view mirror because I
16 didn't know exactly what was going on with him. And he's
17 moving around the backseat. He's all over the place. He's
18 sitting up one minute, kind of laying down the next. And I
19 see him kind of take the position -- I'll try to show you.
20 He's got his hands behind his back and he's leaned over and
21 he's got like his foot against the door like this and he's
22 leaning down. So his handcuffs are not behind him anymore.
23 He's got of got them -- his back is kind of up, so his
24 handcuffs are out, and I see him fidget around. And I've
25 seen it before, as people trying to -- in my opinion he was

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1 trying to work his handcuffs off. And which is what made me
2 decide to stop. I didn't want to -- I didn't want to pull
3 on the side of the interstate just in case it happened again
4 because, you know, the interstate -- I don't recall what day
5 it was. But I just didn't want, you know, busy traffic on
6 the interstate and here we are stopped on the side of the
7 interstate if something bad happened. I was -- I waited
8 until I got to the 60 to get pulled over.

9 Q Show us about where he got the cuffs on his hand.

10 A When we got to the 60 I got out and I took my
11 flashlight -- because it was dark by this time. I walked
12 around to the back of the car and he still -- still leaned
13 over, just like he knows I'm there but he don't care. I
14 mean, he's still -- he's still pulling and pulling. And he
15 had -- the handcuff on his left arm was still on. The right
16 on his right arm, he had his hand around it like so, and he
17 had it pulled up like this and his hand was bent over. And
18 it was just right here around the knuckles is what it was
19 and it was coming -- it was coming around. Just like it was
20 kind of sitting a little sideways. And it was coming
21 around. It was just right there by his knuckles.

22 Q When you saw that what did you do?

23 A I tried to tell him to stop, sit up, you know. But --

24 Q Did you call for backup?

25 A I called for backup immediately because I wasn't going

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1 to try to take them off by myself. And I was the only
2 officer out there at that time.

3 Q I'll try to get through this. But once -- who showed
4 up, Casey Jones?

5 A When I called for backup they advised me they were all
6 coming. And, you know, like I said, they sent a bunch of
7 backup, because they've all been dealing with him for the
8 past however long. The Lieutenant showed up. I know a
9 Sheriff's Office car showed up, and I do remember Lieutenant
10 Shelton being out there from the -- I'm sorry, from the
11 County as well. Sheriff's Office.

12 Q So what happened when you all opened the door this
13 time?

14 A We tried to talk to him. Tell him that -- you know,
15 he's already been tased twice at this point. Like don't
16 kick. Just calm down. We're going to take you to the
17 hospital and figure out what's going on. Just don't kick.
18 We're going to put another set of handcuffs on you. And I
19 remember he -- at first, because his head was toward the
20 driver's side, we was talking to him from the driver's side,
21 because he can't kick us at that time. And he said okay.
22 He acknowledged that he wasn't going to kick or anything
23 like that. And then as soon as the door came open
24 Lieutenant Jones stepped in and he just started kicking
25 again. Taking his knees out.

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1 Q Taking his knees out?

2 A Well, when you stand up to the back of a car, the part
3 that's showing -- if I can stand up. I mean, you're
4 standing up and it's just your knees right here that comes
5 up to the side of the backseat of the car.

6 Q You said he was kicking and --

7 A He was kicking the whole time. Yes, sir.

8 Q What was he saying?

9 A He was -- he was talking to me. You know, your mom's a
10 whore. Just saying all kind of just crazy stuff about me,
11 and just everything. I can't recall everything. I remember
12 him saying that, and I remember -- I remember telling him
13 that I -- that I sensed the odor of marijuana and I remember
14 him telling me that he thought that -- he said that it might
15 be coming from my blood. It was just --

16 Q How is -- were there any words that --

17 MR. QUINN: Your Honor, we need to approach.

18 THE COURT: Okay.

19 (Whereupon, a sidebar was held.)

20 Q Officer Peay, what -- you mentioned some things he
21 said. There was never any marijuana found?

22 A No, sir. There was nothing found or anything.

23 Q No drugs? You all didn't find any drugs?

24 A No, sir.

25 Q And you have no knowledge of anything that he was using

1 beforehand?

2 A No, sir. I don't have a clue.

3 Q Well, let me ask you this. Have you ever seen somebody
4 who had smoked marijuana?

5 A Yes, sir.

6 Q Was he acting like somebody that smoked marijuana?

7 A No, sir.

8 Q Well, how would you describe his behavior? Do you have
9 a word for it?

10 A In my opinion he was definitely impaired. It was
11 definitely something other than marijuana, and it was some
12 type of drug that's not, you know, seen much or something to
13 act like that.

14 MR. QUINN: Object.

15 THE COURT: I'm going to sustain just I'm not certain
16 that the witness is qualified to make such a statement. I
17 instruct the jury to disregard that last answer. That will
18 be stricken from the record.

19 Q Did you -- so after the -- what we keep calling the
20 second incident, exit 60, where did you take him after that?

21 A Took him to the hospital.

22 Q How was his behavior there?

23 A While I was on the way I advised the dispatch to have
24 the hospital workers, the police officers there to come
25 outside. They sent two officers from the County Detention

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1 Center over, and then me and -- it was me. And we pulled
2 up. Opened the door and talked to him. Advised him, you
3 know, he needed to be still. The hospital had already got a
4 call about the way he was acting, what was going on, so they
5 pulled a stretcher outside to the patrol car. As we pulled
6 -- we pulled him out of the patrol car, and he had about
7 seven, eight officers around them, and we set him on the
8 stretcher. And because he was in handcuffs he was laying
9 face down on the stretcher, and we rolled him into a
10 hospital room they already had set up for him to come in.

11 Q And did you -- were you escorting him that whole time?

12 A I was. Yes, sir.

13 Q And were they able to do any kind of exam on him?

14 A No, sir. They -- they tried to, but he wouldn't -- he
15 wouldn't consent to anything.

16 Q So to your knowledge, no exam was done on him at that
17 time?

18 A No. And I sat beside him the whole time.

19 Q What was he doing to prevent the --

20 A Every time the doctors tried to get close to him he
21 just told them, you know, you're not touching me and just --
22 you know, they tried to -- they tried to talk to him
23 reasonably. You know, we're not cops. We just want to make
24 sure that you're okay. You've been involved in some type of
25 collision. We want to make sure everything's good with you.

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1 And he just kept denying everything. He didn't want no one
2 to get close to him. No doctors to touch him or anything.

3 Q So to your knowledge, there was never any -- they were
4 not able to get any kind of blood drawn or anything like
5 that?

6 A No, sir.

7 Q Then -- well, I guess from there back to the jail?

8 A From there we took him back to my vehicle and
9 transported him to the jail. And we had another probably
10 eight or nine officers sitting out there waiting on him,
11 just from the circumstance, everything that's happened.
12 Pulled in the jail. Opened the doors and just walked him on
13 in.

14 Q At any time did he become subdued during this -- to the
15 ride to the jail?

16 A No, sir.

17 Q He was still --

18 A Well, he wasn't -- he was still -- I say up and down.
19 He wasn't kicking like he was at first. He had done calmed
20 down a lot since we had gone to the hospital. While he was
21 sitting in the hospital he had calmed down a lot. Once we
22 got to the jail, you know, he wasn't -- when we opened the
23 door he let us get him out, you know, and stuff like that.
24 You know, he never -- he quit kicking and all by that time.

25 MR. SCOTT: Thank you. Answer any questions --

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1 THE COURT: Cross-examination? One second.

2 MR. QUINN: May we approach?

3 THE COURT: Sure.

4 (Whereupon, a sidebar was held.)

5 CROSS-EXAMINATION

6 BY MR. QUINN:

7 Q Officer Peay, did you do a report in this case?

8 A Yes, sir. I did.

9 Q And was it provided to the Solicitor's Office?

10 A I'm not sure. I don't -- I don't make those --

11 Q Did you do a use of force report in this case?

12 A I did.

13 Q And did you do one or two?

14 A I think it was one for both incidents.

15 Q Do you have a camera in your vehicle?

16 A I do now. At the time, I can't recall. They were
17 going through a new camera system at the city and my -- the
18 camera in my car wasn't working at the time.

19 Q Do you know if Lieutenant Jones had a camera in his
20 vehicle?

21 A I'm not sure. Like I said, it was in that same -- it
22 was in that timeframe. I'm not 100 percent sure.

23 Q Does your department wear body cameras?

24 A We do now.

25 Q Did you at the time of September 6th?

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1 A I can't recall. It wasn't law then. I know it's law
2 now. But I'm not 100 percent sure.

3 Q So you think it's possible that you may have had a body
4 camera and you may have had a camera working in your
5 vehicle?

6 A It's possible I may have had a body camera, but I'm not
7 100 percent sure.

8 Q And when you transported Mr. Harbuck to the hospital
9 did any other officers go with you?

10 A From the time that I left the 54 to the 60 I was by
11 myself. From the time from the 60, which is where I turn in
12 Joanna to go back to Laurens to the hospital, I had three
13 officers behind me.

14 Q And did they accompany you to the hospital?

15 A Yes, sir. They did.

16 Q Did they stay with you at the hospital?

17 A They stayed in the area. They stayed around the room
18 and stuff, you know. I don't know exactly where they were.

19 Q And were you in the room the entire time with Mr.
20 Harbuck?

21 A I left one time for a split second to go check on
22 Corporal Lindler, in which I returned back to the room. And
23 I had to go call -- I think I stepped out two or three times
24 to call the Lieutenant for the Highway Patrol.

25 Q When you appeared at the scene at exit 54 --

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1 A Yes, sir.

2 Q -- who was present from law enforcement?

3 A I can't tell you everybody. I mean, it was -- it was a
4 blurred thing, you know. I do know that Corporal Lindler
5 was there, and I know Lieutenant-Jones was following me, and
6 Corporal Hunter was there with the Highway Patrol. And I
7 couldn't tell you who else.

8 Q But you are convinced that they had not fully searched
9 Mr. Harbuck?

10 A That doesn't matter to me. I'm going to search him
11 before he gets in my car.

12 Q So you searched him simply because he was getting in
13 your car?

14 A Affirmative. Yes, sir.

15 Q Not because you saw him reaching in the back of his
16 pants or something?

17 A No. I seen him reaching when he was in the back of the
18 car. I don't know what he was doing. He could have been
19 messing with the handcuffs to go reaching for a weapon for
20 all I know. That's why he was getting searched.

21 Q And was anything found?

22 A No, sir. Nothing was found.

23 Q So you put him in the car prior to searching him?

24 A Yes, sir.

25 Q You put him in the car, in a caged patrol car --

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- 1 A Uh-huh.
- 2 Q -- handcuffed --
- 3 A Uh-huh.
- 4 Q -- then took him out to search him?
- 5 A No, sir. He never came out.
- 6 Q So you were going to search him while he was laid down
- 7 --
- 8 A Yes, sir.
- 9 Q -- on his stomach?
- 10 A Yes, sir. Just because of the way he was acting.
- 11 Q And couldn't somebody have stood at his head and
- 12 reached down to his back, or even into the seat of his pants
- 13 to search?
- 14 A I was trying, but he was -- you know, as I'm reaching
- 15 through his pants he's turning this way and he's turning
- 16 back this way, and he's kind of rolling in his seat. I
- 17 can't explain it 100 percent what I'm trying to tell you.
- 18 But he wasn't being still. He wasn't just sitting there
- 19 letting us search him. He was pulling his knees back this
- 20 way and he was kicking this way and he was turning this way.
- 21 I mean, he was all over the place.
- 22 Q And so, immediately after you tased him you searched
- 23 him, right?
- 24 A Not immediately afterwards. After the second time.
- 25 Q Why didn't you search him after the first time? You

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1 knew he'd been stunned.

2 A He'd been stunned. But he took the five second ride,
3 and as soon as the five second ride was over, I mean, it
4 took -- it might have been 15 seconds later is when he
5 started again.

6 Q And so, how long was the ride the second time?

7 A From the 60?

8 Q No, no. You said -- you called it a five second ride.
9 I assume that means --

10 A Okay. I'm sorry.

11 Q -- stunned with the taser.

12 A Yeah, let me clarify that. When I say five second ride
13 I mean when you tase somebody with a taser it's a five
14 second cycle. So when you pull the trigger regardless it's
15 going to run for five seconds. So he -- I pulled the
16 trigger the first time, he had a five second cycle. At
17 which point 15, 20, 30 seconds later he started again.
18 Tried to get him stop, in which I gave -- I stunned him
19 again with another five second cycle.

20 Q During -- after the first cycle, during whatever, 15,
21 20, 30 seconds --

22 A Yes, sir. Yes, sir.

23 Q -- did you search him?

24 A Not between the first cycle. No, sir.

25 Q Any good reason? Any reason?

1 A I mean, he -- he's -- from where he's been flopping
2 around and stuff he's done started to come out of the car.
3 He might be like down in the floorboard. We're trying to
4 pick him, get him on the seat, pull him back, and as soon as
5 we go to search him again is when it all -- is when it all
6 happens again.

7 Q And the second time when you stopped -- I think it's
8 exit 60; is that correct?

9 A Yes, sir. Exit 60, Joanna.

10 Q I know you described the handcuff was low on his hand.
11 But it wasn't off his hand, was it?

12 A It was not off his hand. It was still -- still on his
13 hand. It was just -- it was pulled down to the point where
14 I wasn't comfortable transporting him anymore.

15 Q And I think you described it as he flipped out several
16 times that night?

17 A Yes, sir.

18 Q Do you remember who the SLED agent was that was
19 standing there?

20 A No, sir. And I couldn't really tell you if he worked
21 for SLED. I know he had a badge and he had a vest on.

22 MR. QUINN: I don't have any other questions. Thank
23 you.

24 THE COURT: Any redirect, Solicitor?

25 MR. SCOTT: No, Your Honor.

1 THE COURT: You can step down, sir.

2 (Whereupon, the witness stepped down from the witness
3 stand.)

4 THE COURT: Any further witnesses from the State?

5 MR. SCOTT: Your Honor, I don't know if we're going to
6 take a break right now or --

7 THE COURT: Right. Let's take a 10 minute afternoon
8 break. Mr. Foreman and ladies and gentlemen of the jury,
9 we'll take about 10 minutes. Again, I remind you not to
10 begin any discussions about this case among yourselves.
11 We'll get you back out shortly.

12 (Whereupon, the jury exited the courtroom at 3:41 p.m.)

13 THE COURT: We'll be in recess about 10 minutes.

14 (Whereupon, a recess was held from 3:41 p.m. 3:55 p.m.)

15 THE COURT: We're back on the record in the Harbuck
16 case. Solicitor Scott, are you going to call any other
17 witnesses?

18 MR. SCOTT: No, sir. We'll rest.

19 THE COURT: You rest. All right. We'll let you make
20 that indication in the presence of the jury. But while the
21 jury's out let's go and -- Mr. Quinn, do you have any -- I
22 know we need to put on the record concerning, I think, two
23 matters. Let's go ahead and do that, and you can make any
24 motions. We had a sidebar conference when Officer Peay
25 stated something to the effect about what the Defendant

1 allegedly said about marijuana usage. I can't remember the
2 exact wording. There was a sidebar conference and an
3 objection by Defense. And then Officer Peay's testimony
4 about what the Defendant allegedly said at the hospital in
5 connection with refusing any sort of testing or medical
6 treatment. We had a sidebar conference on that, and there
7 was a Defense objection. So you put on the record, Mr.
8 Quinn, anything you want to on those two points, and then
9 we'll get to your motions in a minute. Okay?

10 MR. QUINN: And I appreciate, Your Honor, who has
11 encapsulated the arguments succinctly. I did object to any
12 testimony about marijuana or about the hospital room
13 statement. I believe the State has to put us on notice of
14 any written or recorded statements that they intend to use
15 made by the Defendant once the request is made.

16 Additionally, I would like to point out to the Court
17 that it came out in cross-examination that Officer Peay
18 apparently did do an incident report and did do a use of
19 force report. Neither of those reports have been provided
20 to us in discovery. If they had been, I might have been on
21 notice of these statements, and been able to address them
22 before they were made in front of a jury. I also might have
23 been able to use those in cross-examination. But neither
24 the report -- incident report, nor the use of force report
25 were provided as part of discovery.

1 THE COURT: And let me just stop you right there.
2 Solicitor, why was not a basic incident report provided?
3 And I have to assume that it was not provided to you,
4 otherwise I would have to further assume that you would have
5 provided it in discovery. That's about as basic as basic
6 can be.

7 MR. SCOTT: No, he's got an incident report. But the
8 confusion is there's four -- three agencies. There's
9 Clinton PD, then the Sheriff's Department comes, and Highway
10 Patrol. And so, I don't have anything that Peay did. And I
11 don't know a use of force potentially, but typically I had
12 to use, you know, a taser because he was kicking another
13 officer or something to that effect. He does have the
14 incident report, and I think that's what he's been working
15 off of. Nicholas Moye, which is the Sheriff's Department,
16 which to use his words, encapsulates pretty much everything
17 he's going to testify --

18 THE COURT: There's a separate incident report that
19 Officer -- I think what Mr. Quinn is complaining about. If
20 I'm understanding correctly, there's an incident report
21 prepared by Officer Peay that's in existence but that was
22 not provided in discovery?

23 MR. QUINN: I believe it's in existence because the
24 officer just testified to it. And, yes, sir, it was not
25 provided in discovery.

1 THE COURT: Were you unaware of --

2 MR. SCOTT: I don't have it. I don't have anything
3 from Peay. All I've got is the Sheriff's Department file,
4 which covers pretty everything that's been testified to. I
5 presume Peay would maybe talk about exit 54 and then 60.
6 And if there was one I don't have one. I've never seen
7 that.

8 THE COURT: Right. I mean, that's why I said if you
9 had it you would have provided it. Why was that not
10 provided to your office though?

11 MR. SCOTT: I don't know.

12 THE COURT: Clinton has some involvement in this case.
13 And I guess what we're going to have to do is let's get it
14 and let's see what's in it. Because, you know, you're going
15 to have to show some prejudice, and without knowing exactly
16 what's in it, you know, it's hard for me to make a ruling.

17 But let me go ahead and touch on it as far as not
18 discoverable. Under Rule 5 any oral statements -- and
19 that's what you were complaining about. Oral statement
20 about marijuana, oral statement at the hospital. So that
21 would be discoverable under Rule 5. And that's as the
22 result of the interrogation, and these statements were not
23 as a result of interrogation. So I don't think we have any
24 discovery issue with respect to these oral statements. But
25 I want to go back to Officer Peay's incident report not

1 being provided to you.

2 MR. SCOTT: Your Honor, I don't want to interrupt, but
3 they're going across the hall to look at their system and
4 see if they can find anything. It may well be that it
5 doesn't exist. I don't have it.

6 THE COURT: Right.

7 MR. SCOTT: But we're tracking it down to see anyone
8 does.

9 THE COURT: So let's just put -- of course, anything
10 else you want to put on the record in connection with that,
11 and let's just kind of put that on hold until we can see if
12 there is actually one in existence. So anything else on
13 that before we get to any mid-trial motions?

14 MR. QUINN: No, sir.

15 THE COURT: Any motions you would like to make since
16 the Defense as rested?

17 MR. QUINN: Yes, Your Honor. I would make a motion for
18 directed verdict, specifically on the assault -- sorry, the
19 attempted murder charges. That there is not evidence in the
20 record that will justify letting the case go forward to the
21 jury that would exhibit an attempt to kill another person
22 with malice aforethought either expressed or implied. So I
23 would -- although I move for a directed verdict on all the
24 charges, based on the general insufficiency of the State's
25 evidence I would move specifically on the attempted murder

1 charges based on their failure to establish that element of
2 the offense.

3 THE COURT: Thank you, Mr. Quinn. Viewing the evidence
4 in the light most favorable to the State the Court does find
5 that there is the existence -- I'm not concerned with the
6 weight at this point, but the existence of evidence for
7 charges to go to the jury.

8 Now, while we're waiting on Officer Peay's incident
9 report, let me go ahead and advise the Defendant concerning
10 his right to testify or not testify. Give me just a second
11 to pull it up.

12 Madam Clerk, would you go ahead and swear Mr. Harbuck,
13 please.

14 ROBERT CLINTON HARBUCK, having been
15 first duly sworn, testified as follows:

16 THE COURT: Mr. Harbuck, at this time I'm going to
17 explain to you certain of your rights. If you do not
18 understand anything I say, please let me know. If you want
19 me to explain anything in detail, please let me know that as
20 well. Do you understand, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: We have now reached the stage in the trial
23 where you may present your defense. You have the right to
24 claim the protections given to you by the Fifth Amendment
25 through the Constitution of the United States. And this

1 Amendment states in part, "No person shall be compelled in
2 any criminal case to be a witness against himself." This
3 means that you cannot be required to testify in this case.
4 You have the right to testify on your own behalf, however no
5 one can make you testify. This is a personal right. No one
6 can waive this right except you, sir. If you decide to
7 testify you will be subject to the same rules that govern
8 other witnesses and you may be examined and cross-examined
9 on any relevant issue in this case. In addition, if you
10 have any convictions involving dishonesty or false
11 statements or for crimes punishable by imprisonment for more
12 than one year and this Court determines that the probative
13 value of admitting this evidence outweighs its prejudicial
14 affect to you, the Solicitor will be able to introduce your
15 record to attack your credibility. If you decide to
16 testify, this decision on your part must be freely,
17 voluntarily and intelligently made with knowledge of the
18 projections given to you by the Fifth Amendment and the
19 consequences of your decision to testify. If you decide not
20 to testify, I will instruct the jurors that they cannot give
21 the fact that you did not testify any consideration
22 whatsoever and that there is to be absolutely no prejudice
23 to you because you did not testify. It is left entirely up
24 to you whether or not you testify. You certainly have the
25 right to talk to Mr. Quinn, any family members, friends that

1 you have available, anyone else, but the final decision will
2 be left entirely up to you.

3 Have you understood what I've explained to you, sir?

4 THE DEFENDANT: Yes, sir.

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

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you had enough time to talk to Mr.
9 Quinn and others about whether or not you'll testify?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you made a decision of whether or not
12 you'll testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you made a decision of whether or not
15 you will testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And what is that decision?

18 THE DEFENDANT: I'll testify.

19 THE COURT: You will testify?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Very good. You can have a seat. Thank
22 you, sir.

23 THE DEFENDANT: Thank you.

24 THE COURT: Mr. Quinn, just to kind of get an idea.

25 Other than Mr. Harbuck's testimony do you intend to put up

1 any other witnesses?

2 MR. QUINN: Three other witnesses, two of which will be
3 character witnesses. Very brief.

4 THE COURT: All right. Certainly I don't want to
5 control the order of your witnesses. Since I had informed
6 both sides that we needed to cut the thing short, a little
7 bit earlier, about quarter to 5:00. Would you anticipate if
8 you put your client up first that direct and cross -- and I
9 know you can't predict what they will do, but do you think
10 we'll go past quarter till 5:00?

11 MR. QUINN: Likely.

12 THE COURT: That's kind of my feel. Would it be
13 possible for your other witnesses to go before him, or you
14 don't want to do it that way? Which is fine.

15 MR. QUINN: I could not put the character witnesses up
16 before. I'm sorry. He's got to be my first witness.

17 THE COURT: That's fine. That's fine. I just didn't
18 know if this other witness could be filled in. But if
19 that's not how you want to do it, then that's fine.

20 Well, let's just everybody be at ease and let's try to
21 get this incident report resolved. Do you got it?

22 MR. SCOTT: Yes, sir. It's a two page report. I've
23 just reviewed it. They tell me the reason they -- they
24 didn't file any charges on them. So this was, I guess, an
25 internal thing for them. Everything I get says the

1 Sheriff's Department -- or Sheriff's Department documents, I
2 guess. This is just for their internal --

3 THE COURT: Let's take a little short recess to give
4 Mr. Quinn an opportunity, and I'd like to take a look at it,
5 too. So we'll be off the record for a few minutes.

6 (Whereupon, a brief recess was held.)

7 THE COURT: We're back on the record. We took a break
8 on the issue of the incident report and use of force form
9 from Clinton PD. The State was able to obtain that from the
10 PD. Got copies. Provided a copy to Defense counsel. A
11 copy I -- the Court has looked at that. Has compared it
12 with the Sheriff's Department incident report that was
13 provided in discovery.

14 So, Mr. Quinn, I'll be glad to hear from you.

15 MR. QUINN: Your Honor, I renew the motion to declare a
16 mistrial for failure to provide this to me earlier in
17 discovery or I would have adequately prepared. The report,
18 if nothing else, and it does other things I would argue to
19 the Court, identifies a witness, SLED 3, that I have not
20 previously been aware of that could have been interviewed or
21 could have been used a witness to -- who supposedly observed
22 all these things.

23 THE COURT: Now, did Clinton PD incident report refers
24 to SLED? I missed that.

25 MR. QUINN: It is -- the designation is SLED 3.

1 THE COURT: Okay. Yeah.

2 MR. QUINN: Because the officer testified today he
3 wasn't even sure it was a SLED agent. Did not.

4 THE COURT: I think he just assumed. He said the
5 person had a badge and a vest on. He assumed it was SLED,
6 but he was. But, of course, under *Brady* itself, to
7 constitute a *Brady* violation doesn't it have to be a showing
8 that the non-disclosed information would be favorable -- not
9 speculative favorability, but favorable to the Defense?
10 Isn't that one of the elements of a *Brady* violation?

11 MR. QUINN: Well, I'd have to go back and look. When
12 you're informed of it halfway through trial --

13 THE COURT: I know.

14 MR. QUINN: -- it's difficult to show prejudice when
15 I've not had the opportunity to have the witness identify
16 it.

17 THE COURT: Right. I mean, let me just say, it
18 concerns me -- and I'm not placing fault on anybody, but it
19 concerns me that an agency that was involved in this case to
20 a large degree has an incident report and another form, an
21 excessive use form, that's not provided. I mean, that
22 concerns me. But again, I've got to see if *Brady* has been
23 violated, and I have to make a finding if there's any
24 prejudice resulting to the Defense.

25 MR. QUINN: And I don't think Your Honor has to go that

1 far. I think Your Honor can find it's a violation of Rule 5
2 and that that is sufficient to declare a mistrial.
3 Obviously we can retry this case if they wanted to, if they
4 had to, if we could get the witnesses and get everything
5 together. And I'm not pointing fingers. When I do
6 everything right I'll start pointing fingers at somebody
7 else. We have no reason to think he's hiding a thing.

8 THE COURT: Oh, I'm not -- if my statements were
9 suggesting that. I've known these lawyers over at the
10 Solicitor's Office. I'm in no way suggesting that they had
11 this and they kept it in their back pocket.

12 MR. QUINN: Right.

13 THE COURT: I'm not suggesting that at all.

14 MR. QUINN: And I hope there's no suggestion of that by
15 me. But it's four pages of documents we've never had
16 before. Quite honestly the Officer did not testify in the
17 same manner in which this report is written, and it
18 identifies a witness we've never had knowledge of before.

19 THE COURT: Well again, now, the testimony from Officer
20 Peay as it relates to statements made by the Defendant to
21 the doctor at the hospital, these statements made about
22 marijuana, I've already ruled -- I'm not concerned about
23 that. That's not a -- that's not a violation of Rule 5 or
24 *Brady*, so -- but the document -- the four page instrument
25 report -- well, three page incident report and the use of

1 force report not being provided, again, that's what I've got
2 to look at and make some determination whether or not any
3 relief would be -- would be justified. And right now I'm
4 probably not prepared to make a ruling.

5 Solicitor, you want to -- Solicitor Scott, Solicitor
6 Todd, you want to chime in on this?

7 MR. SCOTT: Just that my review of it, Your Honor, it
8 tracks almost fairly identically to the Sheriff's Department
9 report. And I think the one lone difference is they refer
10 to this unidentified good Samaritan law enforcement
11 passerby. One says it looked like a Newberry County deputy,
12 unidentified. That one says it looks like a SLED unit,
13 unidentified. No offense, a little disingenuous to say if
14 he had known the identity of this mysterious character it
15 could have changed his approach to the case. To my
16 knowledge, I could be wrong, but he's never pre-interviewed
17 any of the named law enforcement officers in this case. So
18 for him to say that would have changed his approach to the
19 trial, that he would have gone out and sought this one
20 particular witness --

21 THE COURT: Right.

22 MR. SCOTT: -- is a little disingenuous to me. So I
23 don't see how -

24 THE COURT: Well, if nobody knows the identify of SLED
25 3, then it would be, you know, pretty hard to have access to

1 the person to interview or whatever. I mean, would that not
2 be a fair assumption? If nobody -- I mean, if the
3 Solicitor's Office doesn't know who SLED 3 is and -- I mean,
4 and Officer Peay and the other -- Jones are shaking their
5 heads now saying they don't know who it is. Then the fact
6 that that in and of itself, because it appears in the
7 report, you know, nobody knows who he is, then how would you
8 be prejudiced because you'd be unable to have any contact
9 with this person not knowing who he is?

10 MR. QUINN: And I don't know who he is standing here.
11 But I suspect we can identify whoever was identifying
12 himself as SLED at a crime scene on September 16th, 2015
13 with a phone call to SLED.

14 MR. SCOTT: But my other point is this. Of all the
15 named law enforcement agencies, who has he spoken to before
16 this trial in regards to preparing for the trial? None of
17 them, to my knowledge. Even if we had this identity of SLED
18 3 or Newberry deputy, he's shown that he hasn't
19 pre-interviewed any of these people, so I can't wrap my
20 brain around how he's prejudiced by this one lone
21 unidentified passerby that -- a mistrial is kind of an
22 atomic button, you know, in any case. I just cannot fathom
23 how this approaches that remedy.

24 MR. QUINN: And so, the Solicitor wants to say yes,
25 I've violated the rule. I haven't --

1 MR. SCOTT: No, I do not say that. I do not say that.

2 MR. QUINN: It was not provided in violation of Rule 5.
3 But there is no relief, Judge. Just trust me that it
4 wouldn't have changed anything. And so, we're just going to
5 go forward. Well, I don't know if SLED 3 did a report. We
6 may yet identify yet another report. That's the whole point
7 of not trying cases by ambush. By getting the information
8 beforehand.

9 THE COURT: Right. And that is true. But, you know,
10 for me to go to the extent of granting a mistrial, which
11 everyone would recognize that as pretty -- pretty strong
12 relief, I'm just not going to go on you being prejudiced on
13 a speculation, well, if this had happened then possibly this
14 would have happened. If we could have identified SLED 3,
15 then possibly he did a report. You know, it's got to be
16 more than speculation. It's got to be some firm prejudice
17 resulting to you. And I have to disagree, Mr. Quinn. I
18 have to make that finding that there is prejudice resulting
19 to you, especially if I go to the extent of granting a
20 mistrial.

21 What I want to do is -- since we're going to be
22 finishing up anyways. I want to take a look at this this
23 afternoon and this evening, in the morning. Let's -- let's
24 start back about 9:00 in the morning and we'll -- we'll try
25 to figure something out.

1 MR. QUINN: Your Honor, could we start back at 9:30?
2 Only because that will give me time to contact SLED in the
3 morning to see if we can identify who this person is, since
4 that apparently --

5 THE COURT: Well, let's go one step further. Since we
6 have the Solicitor, maybe they may have a little bit --
7 little bit better access to SLED than you do. Maybe if you
8 hang around a few minutes, Solicitor Scott, Solicitor Todd,
9 would you be of some assistance, along with the law
10 enforcement and just see if this SLED 3 can be identified
11 and --

12 MR. SCOTT: We've got the Sheriff's Department here,
13 Highway Patrol, Clinton PD. One of them ought to have some
14 kind of contact.

15 THE COURT: And so, Mr. Quinn, would you be willing to
16 solicitor some of their assistance this afternoon and see if
17 we can find out about the SLED 3 and see if that's going to
18 really be something important or not?

19 MR. QUINN: Certainly. If any of them will try to
20 identify them, I'll step out to my car and get my cell phone
21 and see if I can get somebody at SLED to identify him.

22 THE COURT: You still want to start back at 9:30 and
23 not 9:00?

24 MR. QUINN: No. If we can identify him this afternoon,
25 or at least attempt to, 9:00 is fine.

1 THE COURT: The let's do this then. Once you all find
2 out something on this issue can one of you all email me and
3 just kind of bring me up to speed where we are on this?

4 MR. SCOTT: Yes, sir.

5 THE COURT: So I would ask that law enforcement who's
6 here, just kind of hang around and see if there's any help
7 you can provide the Solicitor or Mr. Quinn on this issue.
8 Okay?

9 Thank you very much for your all's hard work and we'll
10 be in recess until 9:00 tomorrow morning.

11 THE BAILIFF: The jury.

12 THE COURT: Wait a minute. I've got 13 people that we
13 got to tend to. Yeah, bring the jury out. Thank you for
14 reminding me.

15 (Whereupon, the jury entered the courtroom at 4:30
16 p.m.)

17 THE BAILIFF: All jurors are present, Your Honor.

18 THE COURT: Thank you, Mr. Bolt. So noted for the
19 record. Ladies and gentlemen, thank you for your patience.
20 We had some legal issues that we had to deal with. We're
21 not going to resume this case until in the morning at 9:00.
22 Be back promptly at 9:00 and we will get -- we'll get
23 started. Same instructions as yesterday. Of course, I've
24 already told you -- and this is a continuing instruction as
25 far as not discussing this case among yourselves. And I'll

1 continue to repeat that. When you get home this evening, or
2 wherever you go after you leave the courthouse, you can't
3 have any discussions with anybody that you come into contact
4 with, whether it's family, friends, whoever.

5 Secondly, and I'll repeat this again in the morning,
6 don't go on the Internet and try to conduct some research on
7 your own about this case or the nature of the charges or
8 that sort of thing.

9 Get you a good night's rest tonight and we'll see you
10 in the morning, 9:00.

11 TRIAL DAY 3-08/26/16

12 THE COURT: We're on the record this morning. We left
13 matters yesterday dealing with and discussing the Clinton
14 City Police Department incident report that had not been
15 provided to the Solicitor's Office, therefore was not
16 provided in discovery. There was an issue about that
17 incident report referring to this SLED agent who happened
18 upon the scene. I have reviewed that incident report and
19 kind of compared it with the incident report from the
20 Sheriff's Office that was provided in discovery and I do not
21 find a Brady violation. I don't believe the failure to
22 produce that report would necessarily make any difference in
23 this case. I find nothing in there that would necessarily
24 be favorable to the Defendant. So I'm going to find that
25 there was not a Brady violation and therefore not grant any

1 relief by way of a motion made by the Defense such as -- I
2 think you made a motion for a mistrial and I'm going to deny
3 that motion.

4 Anything else we need to put on the record on that
5 particular issue? I know we've got some other issues to
6 talk about. But anything else on the record on that?

7 MR. QUINN: No, Your Honor. Thank you.

8 THE COURT: Thank you. Let me just note for the record
9 that we had a conference back in chambers before we came on
10 the record today. Just for your information, I am going to
11 charge the subsection A on resisting as a lesser included.
12 That's just for your information. And I know we're going to
13 have more discussion about the charge after a while.

14 The other issue that was brought to my attention was
15 that it was the Defense's intention on having the Defendant
16 testify that he has been diagnosed with PTSD, and I told the
17 lawyers that before I make a ruling I wanted to give the
18 State an opportunity to review whatever medical records that
19 Defense as provided. Solicitor Scott, have you had an
20 opportunity to review those?

21 MR. SCOTT: I have.

22 THE COURT: And basically what -- I know there are VA
23 records related to that.

24 MR. QUINN: Your Honor, if I might, if I could just
25 provide the Court a copy also. It's just one page. And the

1 Court has the original.

2 THE COURT: For the record, Mr. Quinn, basically your
3 plan is to have your client testify to exactly what? And
4 then I'll hear whatever objections that the State has.

5 MR. QUINN: That -- well, of course, the incidents of
6 the day of September 6th. And then that since then he has
7 been evaluated pursuant to Court order as a condition of his
8 bond. It was required that he go to the VA and be evaluated
9 for PTSD, which he has lived up to that Court order, and
10 that he has been diagnosed with PTSD, and nothing further.
11 Not with treatment -- I'm sorry. And is he receiving
12 treatment for it. Is he receiving counseling. But that's
13 it. I'm not going to go into anything past that.

14 THE COURT: And, Solicitor, your position on that?

15 MR. SCOTT: Well, there's a couple. I think the
16 inference would be that it was the PTSD that caused his
17 behavior, obviously. That was September of last year. I've
18 got -- this memo is dated four days ago, and it says that he
19 was diagnosed in December of 2015, which would have been
20 three some months after the incident in question.

21 This, I believe, I would say is akin to an insanity
22 type defense, if that is what his defense is going to be. I
23 have not been noticed of this. I think the requirement
24 would be 10 days prior to trial I would have to be noticed
25 that that would be his defense. I find this memo is an out

1 of court statement. It's hearsay. I would further make an
2 objection that this attorney made great hay over my victim
3 talking about a herniated disc that he got as a result of
4 this incident, and ultimately that was deemed inadmissible
5 and stricken from the record and the jury was asked not to
6 consider that.

7 So all in all, I'm asking the Court to do what he's
8 asked the Court to do previously and not allow this medical
9 diagnosis in. It looks like it was Stephen H. Johnson who
10 is a social worker. And had I been on notice of this I
11 would have probably an expert, and I've got one on call. I
12 called one in Newberry during that Eli Hooker trial.
13 Someone who's specialized in the diagnosis of PTSD to say,
14 well, even if he had PTSD it would not lead to this type of
15 behavior that he's doing in this video. So I would ask that
16 the Court deem this inadmissible.

17 THE COURT: You know, it is -- PTSD is a recognized
18 medical condition, such as, you know, as far as in the
19 mental health realm. There's schizophrenia, bipolar, you
20 know. And in the physical realm, you know, cancer, you
21 know, diabetes, whatever. And, you know, without a doctor
22 coming in and making that diagnosis, I just don't see how
23 that -- even though you're going to stop it at, yeah, I've
24 been diagnosed with PTSD and stop it there, I know the
25 inference that you're wanting to be made is that, well, the

1 PTSD had some cause, or whatever actions that took place out
2 at the scene. And I just feel like I'm just going way
3 beyond what I should, and I'm going to deny any testimony
4 that he had been diagnosed with PTSD. And I think it's
5 significant to some extent that a social worker has signed
6 this letter. I don't know if a social worker is necessarily
7 qualified to make a medical diagnosis.

8 Now, I guess the Defendant would be entitled to testify
9 as to symptoms that he has been experiencing. I'm just
10 maybe thinking ahead just a little bit, that -- you know, he
11 has experienced, or was experiencing at the time when all
12 this took place. But I just don't think he would be
13 entitled to say I have been diagnosed with PTSD. That would
14 be a hearsay statement made for -- offered for the truth of
15 the matter. So I believe I will deny that.

16 All right. Anything else before we bring the jury out?
17 State?

18 MR. SCOTT: No, Your Honor.

19 THE COURT: Defense?

20 MR. QUINN: No, sir. Thank you.

21 THE COURT: Thank you very much. Mr. Bolt, if you will
22 bring the jury out, please.

23 I'm going to go ahead and have this marked as a Court's
24 exhibit just to the record -- it will be retained in the
25 record.

1 (Whereupon, Court's Exhibit No. 1 was marked for
2 identification.)

3 THE COURT: Solicitor, did you rest on the record in
4 the presence of the jury? I can't remember.

5 MR. SCOTT: I didn't, Your Honor.

6 THE COURT: Okay. We need to do that.

7 MR. SCOTT: I think we handled all the motions and
8 everything, but I don't think we ever got to --

9 (Whereupon, the jury entered the courtroom at 9:42
10 a.m.)

11 THE BAILIFF: All jurors present, Your Honor.

12 THE COURT: Thank you, Mr. Bolt. Let the record so
13 note that.

14 Ladies and gentlemen, good morning. I hope everyone
15 had a good restful evening and ready to get back to work.

16 Solicitor, are you ready to proceed?

17 MR. SCOTT: Your Honor, the State rests.

18 THE COURT: The State rests. Very good. Mr. Quinn,
19 are you ready, sir?

20 MR. QUINN: I am, Your Honor. Thank you.

21 THE COURT: Okay. Call your first witness.

22 MR. QUINN: Your Honor, we would call Robert Clinton
23 Harbuck to the stand.

24 THE COURT: Okay. Come around, please, sir.

25 ROBERT CLINTON HARBUCK, having

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- 1 first been duly sworn, testified as follows:
- 2 DIRECT EXAMINATION
- 3 BY MR. QUINN:
- 4 Q Could I have your full name for the record.
- 5 A Robert Clinton Harbuck.
- 6 Q Do you go by Robert or Clinton, or how do you go?
- 7 A I go by Clint.
- 8 Q And do you mind if I call you Clint?
- 9 A I don't.
- 10 Q Clint, how old are you?
- 11 A I'm 28.
- 12 Q And where do you live?
- 13 A Anniston, Alabama currently.
- 14 Q I'm sorry. Tell me again where you live?
- 15 A I currently live in Anniston, Alabama.
- 16 Q And is that where you were born and raised?
- 17 A It is.
- 18 Q And who do you live with currently?
- 19 A My mother.
- 20 Q And on September 26th, 2015 where were you living?
- 21 A September 26th, I just moved to Lynchburg, Virginia. I
- 22 started college at Liberty University.
- 23 Q And when did you finish high school?
- 24 A 2006.
- 25 Q 2006?

ROBERT HARBUCK-DIRECT EXAMINATION

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1 A Correct.

2 Q So 10 years ago?

3 A Correct.

4 Q And what did you do in the intervening 10 years before
5 going to college?

6 A I spent six and a half years in the US military.

7 Q And what branch of the military were you in?

8 A It was the Army.

9 Q Were you an enlistment or were you drafted?

10 A No, I was an enlistment.

11 Q And during that six and a half years what was your job?
12 What did you do in the military?

13 A I got stationed at Fort Bragg with the 82nd Airborne
14 and I was a communicator essentially. I was -- I was in
15 charge of computer systems, computer networking, voice over
16 IP telephone systems. That kind of thing.

17 Q What was the last thing?

18 A Voice over IP telephone systems.

19 Q What is that?

20 A Essentially it's like a land line but it goes over the
21 Internet. It's like any other phone. It just uses the
22 Internet instead of land lines.

23 Q And did you have that knowledge going into the military
24 or did they teach you?

25 A I mean, growing up in my generation most people have a

1 pretty good idea about technology. They did train me in
2 that aspect. But, I mean, I was a techie kid growing up.

3 Q Tell the jury, you started at Fort Bragg. And what
4 state is Fort Bragg in?

5 A That's in North Carolina.

6 Q And then were you subsequently stationed at other
7 places?

8 A Yes. I got stationed in Afghanistan twice. I did two
9 tours in Afghanistan. But I was stationed at Fort Gordon,
10 Georgia, during AIT, and Fort -- it's right here in South
11 Carolina. Jackson, for basic.

12 Q I'm sorry. Keep in mind this isn't a military court.
13 What's AIT?

14 A Advanced Individual Training. That's where you go --
15 it's essentially school for the military.

16 Q And so, how long were you in Afghanistan?

17 A Collectively over 20 months.

18 Q And you say two tours. How long were you there for the
19 first tour?

20 A First tour was 13 months, and then the second tour was
21 seven.

22 Q And in between those tours where were you stationed and
23 what happened?

24 A So we would come back and we would have about two weeks
25 off and then we'd go right back into a training cycle,

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1 because we were on a rapid deployment cycle. You get less
2 than a year between your two deployments and then you go
3 right back into training and go back overseas. So we were
4 stationed back at Fort Bragg, and then I went to Fort Irwin,
5 California and did a training exercise out there before my
6 second tour.

7 Q And when you say you did two tours in Afghanistan, did
8 you do them in the same place both times?

9 A I was in Herat Province the first tour and then
10 Kandahar Province the second tour.

11 Q And the Court has to take everything down. Tell me the
12 name of the first province again?

13 A Herat.

14 Q Can you spell that?

15 A H-e-r-a-t.

16 Q And tell me about Herat Province.

17 A It's in the western part of Afghanistan. It was hot.
18 It was -- it definitely a culture shock getting there, you
19 know. Never experienced any of that in my life. Never been
20 to a third world country. But it was -- it was definitely a
21 culture shock and it really shows you how to appreciate
22 where you come from, honestly. And really, I mean, I
23 enjoyed the time. It was just hot. It was different. It
24 smelled very different. And just the entire environment is
25 so much different than what it is here in America.

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1 Q And was it an active military zone? Was there fighting
2 going on?

3 A Yes, there was. Usually how they do it, they're
4 watching all these bases and they see rotations come in and
5 out. We fell in behind the tenth mountain, and it wasn't
6 two weeks after our first push got in -- we call it the
7 torch party. Our first push got in that we got hit by
8 indirect fire.

9 Q And tell me what that means.

10 A Essentially you got some guys out in the mountains, or
11 in the back of pickup trucks shooting mortar rounds into the
12 base. It could be small arms, could be just mortar, it
13 could be a combination of either.

14 Q And did you ever go off the base in person?

15 A I did.

16 Q Off the base for military --

17 A Yes, sir. We did resupplies for different COPs and
18 FOBs. And COP is a combat outpost. A FOB is a forward
19 operating base. And really the names are different
20 depending on the size of the facility you're at. I mean,
21 you've got airbases which are usually -- you got the Air
22 Force stationed there, and they're huge facilities. I mean,
23 they're literally cities. And then you got like COPs that
24 are combat outposts. They're real small. I mean, it's
25 basically between you and the enemy is a sandbag. And then

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1 you've got FOBs which are in between an airbase and a COP.

2 Q And how would you do that? Who would you get from
3 place to place?

4 A It was convoyed in heavily armored vehicles, in wraps.
5 That kind of -- that's with Humvees.

6 Q And did you ever come under -- in your first tour did
7 you ever come under fire?

8 A Not direct fire.

9 Q And tell me what that means.

10 A Essentially the enemy sees you, you see the enemy and
11 you're engaged in combat right where you're at.

12 Q And why is that not called direct fire?

13 A I said I did not come under direct fire. I did -- we
14 did -- I got -- it was indirect fire both tours.

15 Q Tell me what that means. Tell me the difference
16 between -- tell the jury. What's the difference between
17 indirect --

18 A So the difference between direct fire and indirect fire
19 is you're engaging the enemy. You're shooting back. You
20 know where the enemy is at. And indirect fire is you're not
21 sure where the enemy is at, but they know where you're at
22 and they're shooting at you and you're trying to figure out
23 where they're at.

24 Q So you came under indirect fire?

25 A Correct.

1 Q In other words, they were shooting at you and you all
2 didn't know where they were to shoot back?

3 A Correct.

4 Q And how often did that happen during this first tour?

5 A The first tour we took two rounds, two volleys, if you
6 will, of indirect fire between two months apart at the first
7 three or four months that we got to Afghanistan. It was
8 really -- they're trying to catch you when you're off foot.
9 Before the 82nd got in there we really got taken over
10 different routes, route clearance, that kind of thing.
11 Before we really knew what we were doing, if you will. They
12 wanted to make sure they hit you then, because it's very
13 chaotic. And you've got guys coming out, you've got guys
14 going in, you've got guys being briefed on, you know, what's
15 the situation around the area. So it's very new, and they
16 try to catch you flipping, if you will.

17 Q And were you personally injured in any way during the
18 first tour?

19 A First tour I was.

20 Q And how were you injured?

21 A We were doing a resupply and -- driving through the
22 mountains of Afghanistan is -- it's hairy. I mean, you're
23 driving on goat paths. I mean, you've got these great big
24 trucks. You're talking 18-wheelers essentially driving fuel
25 and supplies, different cargo, and you're driving on goat

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1 paths in the mountains of Afghanistan. And I was TC --
2 basically assistant driver, making sure the driver of the
3 truck is doing his job, for a fuel truck. We had made it to
4 the base that we were going to, resupplied those guys,
5 dumped the fuel truck. And so, the fuel truck was empty.
6 Thank God. And on the way back my driver -- and mind you, I
7 mean, between the truck tire and a -- I think it was about a
8 50 foot drop off is about as wide as that -- as that divider
9 right here. And it literally took a split second of him not
10 paying enough attention for that truck to dip down on the
11 side of the mountain. And when he tried to open it, or spin
12 it up back uphill, it just rolled down the hill. It flipped
13 once. Everything in the truck landed on top of him. I
14 couldn't see him. It was laying on the driver's side. I
15 couldn't see him down there. But this truck had a hatch
16 where you would drop a turret in the top of it. But we
17 didn't have a turret. It was just a hatch. I popped the
18 hatch, dumped everything out of the truck, got to him,
19 pulled him out. Since -- I mean, I just banged my head up a
20 little bit. It wasn't anything like no memory loss, no
21 concussion, nothing like that. But, you know, we had to get
22 out there and dig this truck out of a ditch essentially
23 surrounded by mountains on all sides. You got guys that you
24 don't know if it's friendly, if it's Afghan National Army or
25 Afghan National Police that are patrolling these mountains.

1 You don't know who these guys are, but they're just looking
2 at you. Probably calling in their buddy. Hey, man, we got
3 a dump over truck over here if you guys want to lob some
4 mortars or come, you know, to and attack them. But anyways.
5 So yes, I did sustain injuries on my first tour.

6 Q And what about the driver? Was he all right?

7 A He was pretty banged up, but the same. No concussion,
8 no nothing like that.

9 Q And did you get additional training before you went to
10 your second tour?

11 A We did.

12 Q And did you get parachutist training at that point?

13 A No. That came into play -- that was part of my initial
14 contract joining the Army. They offered airborne school,
15 and you take that. You go either 101 or you go to the 82nd.
16 And so, I opted for that. It was an extra 150 bucks a month
17 to follow the aircraft. And at the time they sell it to
18 you. They give you this motivational video of these guys
19 just jumping out of airplanes with guns and big systems and
20 trucks just falling out of this aircraft and I'm like, man,
21 I really want to do that. And then you get there and it's
22 nothing like that at all. At all. And so, I opted for
23 that. And that was right after AIT I went to airborne
24 school, and then immediately following airborne school I was
25 stationed at Fort Bragg with the 82nd Airborne.

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1 Q And did you use that training at all in Afghanistan?

2 A No.

3 Q Now, in your second tour in Afghanistan, tell me again
4 the province it was in.

5 A That was Kandahar.

6 Q And can you describe that to the jury? What that
7 province is like.

8 A It's very similar. Afghanistan is pretty much desert
9 and mountain. There's rivers through Afghanistan and that's
10 where all the foliage is. You've got trees and grass around
11 the rivers. But most everything else is desert or mountain.
12 So the general view of the place is very similar to Herat.
13 It's just mountain and desert. And -- but the -- in
14 Kandahar is the biggest airfield there. The US military had
15 there. So this place was just a giant city, but they also
16 had a giant sewage waste facility there that made this place
17 smell the worst you would probably ever smell in your life.
18 And so, that was interesting being there. But I wasn't
19 stationed on CAP then. I was stationed on a FOB outside of
20 the Kandahar airfield. And it was generally the same setup.
21 We had T walls, which are these giant concrete barriers that
22 go between, you know, outside the wire and inside the wire.
23 HESCO walls, which are essentially giant sandbags. They can
24 filled with sand. They can be filled with concrete. Either
25 way, or both. And rocky ground. Just good old fashioned

1 military base really.

2 Q And was it an active military area or --

3 A It was. We took indirect fire again from there.

4 Mortar fire. And where we were working you've got --

5 essentially the command center is in the center of the base,

6 furthest away from any walls. So they've got to get all the

7 way into the base before they can hit the command. And

8 around the command center you've got all your shops, you

9 know, logistics, communications, you know, combat arm guys.

10 Whatever they're doing for command. Command and control.

11 And a mortar round came in, and fortunately it was a dud.

12 But the rocket -- whatever, the tail end where it's

13 exploding out and flying, singed through a few different

14 tents that we had around the command center and landed

15 probably, I don't know, maybe three or four meters from that

16 commander's -- commander of housing development.

17 Q And did you come under any direct fire or indirect fire

18 during the second tour?

19 A Yes. I worked right there at that facility. I was in

20 charge -- essentially the second tour we were working with a

21 battalion sized element. And I was in charge of all the

22 communication systems, whether it be a radio, computer

23 system, telephone system, whatever it is. And I'm working

24 generally with majors and colonels, sergeant majors, first

25 sergeants, that sort of thing.

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- 1 Q And did you -- after Afghanistan where were you
2 stationed?
- 3 A I went back to Fort Bragg.
- 4 Q And did you separate from the military?
- 5 A I did.
- 6 Q And when was that?
- 7 A It was March of 2013.
- 8 Q And did you receive a discharge?
- 9 A I did.
- 10 Q And what was the nature of the of discharge?
- 11 A It was honorable.
- 12 Q Now, you say September of 2015 you were accepted to
13 Liberty University?
- 14 A That's correct.
- 15 Q And where is that?
- 16 A That's in Lynchburg, Virginia.
- 17 Q Is that Jerry Falwell's school?
- 18 A That's correct.
- 19 Q And are you particular religious?
- 20 A I'm a Christian.
- 21 Q And what were you -- what was your degree going to be
22 in from Liberty University?
- 23 A Computer engineering.
- 24 Q So where did you wake up on September 6th, 2016? Where
25 were you physically living?

1 A So I was in between Atlanta and Virginia at that point.
2 Prior to me getting accepted into college I was working as a
3 network engineer for a company called One Ring Networks in
4 Atlanta, Georgia.

5 Q And what were you doing for them? I'm sorry.

6 A I was a network engineer.

7 Q And how long had you been doing that?

8 A About eight months.

9 Q And so, were you accepted into Liberty University at
10 that point?

11 A That's correct.

12 Q And when were classes supposed to start?

13 A I had actually started classes. I'd been going to
14 school for two weeks.

15 Q So when you say you were back and forth, were you still
16 moving, or what were you doing?

17 A Correct. So I applied for college pretty much spur of
18 the moment. I wanted to go back to school because I felt
19 like I sold myself short when I was in the military. I
20 didn't take advantage of the free schooling then. And I was
21 like, dude, you got the GI Bill. They're going to pay you
22 to go to school. You really need to do it. So I'm like,
23 you know what, I'm going to apply to a few schools and if I
24 get accepted, you know, I'll take them up on that. So I
25 applied. And it was late in the application process where,

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1 you know, if I had maybe two weeks to get everything
2 together to get to the school before they review it and make
3 a decision. And by the time they made the decision and
4 accepted me I had about five days to get up to Lynchburg,
5 Virginia to be enrolled in the classes. So essentially what
6 happened is I told my employer, hey, man, I'm going to be at
7 -- I'm sorry. This is that GPS. It's a phone call that --
8 all right. I told my employer, hey, I got accepted into
9 school. It was short notice. It was -- I gave him about
10 two days notice. Wasn't happy with that, but he was okay
11 with it. And I grabbed essentials, clothes, mattress,
12 hygiene stuff, and shagged up to Lynchburg, Virginia so I
13 could get an apartment, get everything closed on, get
14 utilities set up. Everything's ready to where I could have
15 a place to stay and get to school. So I did that. And I
16 left a lot of stuff in my apartment in Atlanta because they
17 require a two month notice before you can leave and I gave
18 them two weeks and they're like, no, you're still going to
19 pay for two months rent. So I came back to Atlanta to get
20 some more of my stuff and head back to Lynchburg.

21 Q So what was your plan on September 6th, 2015? What
22 were you going to do that day?

23 A The plan was to come down -- well, the plan was come
24 down to Atlanta, grab my stuff, and shag back up to
25 Lynchburg.

1 Q So you woke up in Lynchburg or in Atlanta?

2 A I woke up in Atlanta on that Sunday.

3 Q And where did you go that day?

4 A Hit the interstate. Packed up the truck and hit the
5 interstate.

6 Q And what happened that day?

7 A That was a very interesting day. Essentially what
8 happened is everything that you all have heard in the
9 testimony. It was quite the event. I'm not -- do you -- do
10 you just want me to kind of start describing the entire
11 scenario situation that happened?

12 Q Well, did you have any difficulties that you're aware
13 of in Georgia?

14 A No. No, I didn't. I don't want to say no, I didn't.
15 I'm not sure exactly. But somewhere between North Georgia
16 and South Carolina state line I started getting an
17 overwhelming feeling of paranoia. That I felt somebody was
18 following me is essentially what happened.

19 Q Tell the jury about that. What was your state of mind?

20 A At that point I thought I was being followed by a few
21 different cars. So I pulled off the interstate. Hit a gas
22 station. And these vehicles followed in behind me at this
23 gas station.

24 Q And where were you at this point?

25 A Again, I really don't remember if I was in North

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1 Georgia or South Carolina at this point. So I get back on
2 the interstate and all these vehicles get back on the
3 interstate with me. So at this point I'm getting a little
4 freaked out. But I'm like, okay, if these guys -- they're
5 not doing anything. They're following me, whatever.
6 Driving down. Kept on heading up -- I don't even know the
7 name of the interstate. Heading up to Virginia. And again
8 I'm very paranoid. I see the vehicles still following me.
9 There's a shopping center somewhere relatively close to
10 here. It's -- I told you about it, Tom. I don't remember
11 the name of the shopping center. But there's a little
12 shopping complex somewhere around here. I'm going to get
13 off this exit and I'm going to park the furthest back of
14 this parking lot that I can park and see if these vehicles
15 are still following me. So I do that. Pull off in this
16 little shopping center and I park. I sit there a few
17 minutes and I see them. One was a black SUV. One was a
18 BMW. Another one was a white pickup. I believe it was a
19 Toyota. And then some -- excuse the terminology, but like a
20 little Ricer. Like a Honda with a super big muffler type
21 deal. And they all came into this parking lot. And, you
22 know, it's a shopping center. The parking lot is massive.
23 And I'm pretty much as far back as you can get. There's
24 probably maybe 10 rows of parking lots between me and their
25 little divider of grass and the road that runs back there.

1 So I park. And all these vehicles pull up into the spaces
2 in front of me, two -- you know, spaced out. Say I'm here.
3 I had two spaced out up here. One over here and one over
4 here. So I'm sitting there. I'm just looking at these
5 guys. One guys on the phone. The other guy gets out of his
6 car. He's walking around, smoking a cigarette. I'm just
7 like -- I didn't approach him. You know, I'm nervous. I'm
8 like I'm not going to get out. There's four guys here. I'm
9 not just going to get out of my vehicle and, hey, you know,
10 why are you following me. So I sat there a few minutes and
11 I was going to wait. I'm like, I'll sit here and wait for
12 any one of you all to leave, you know, just to see if you
13 really were following me. If you came here to meet
14 somebody. What was going on. So nothing happens.
15 Everybody just sits in the parking lot. I'm like, you know
16 what, I've got -- it's a Sunday. I've got school Monday. I
17 need to get back to school, up to Lynchburg. So I'm out of
18 here. Pull out. Get to the red light. And when I get to
19 the red light the guy -- one of them pulls in -- I see him
20 coming out of the shopping center. And I'm making a
21 left-hand turn out of a red light going across traffic back
22 on the interstate heading north. He gets in behind me and
23 I'm like -- I felt very uncomfortable. So I was like, you
24 know what, I'm just going to head back home. I'm going to
25 go talk to my mom. My dad's a contractor in Iraq. He's

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1 military. Big dude. Got a lot of friends, like the FBI. A
2 lot of local PD guys. He used to be -- he's been a -- he
3 flew blimps for a living. He worked a lot with the police
4 force to secure air space and that sort of thing. But so,
5 when I see that guy coming out of the parking lot coming in
6 behind me, I checked -- got out of that lane, took a right
7 and headed back south back towards Atlanta, Alabama area.
8 At that point I jump on the phone with mother. I'm like,
9 mom, I don't know what's going on here, but I've got about
10 four or five cars following me. I need -- this is what I
11 want you to do. I want you to call dad, or email dad. Ask
12 him to get in touch with some of his friends and see if
13 there's something going on, because I'm not -- I don't know
14 why these guys are following me. And at this point I'm not
15 hysterical but I'm concerned. I'm like seriously why do I
16 have guys following me around Atlanta, South Carolina, you
17 know, wherever. So I started driving and all four -- four
18 of those vehicles I see in my rearview mirror again. And I
19 started telling my mother. I'm like, look. I don't know
20 what's going on, but this is what I'm going to do. I'm
21 going to tell you the mile marker and the exit number that
22 I'm at for the next -- however long I'm on the phone. That
23 way if anything happens to me you'll know at least where to
24 begin looking. So she's asking me, you know, what do the
25 vehicle look like. What is this. I'm like, mom, I'm right

1 here. Mile mark this, exit this. And one of the vehicles
2 pass me and I give her the license plate number. I don't
3 remember what it was. But I said, it was this make, model
4 vehicle, license plate number. And about three or four
5 vehicles pass me that I believe was following me and I gave
6 her the license plate number, make, model of the vehicle.
7 And going down the road. At this -- at this point I'm
8 nervous. I've got a lot of adrenaline running. I'm amped
9 up. But I'm not hysterical. So these vehicles all pass me.
10 I get the license plate. The make, model of the vehicle.
11 And I'm on the phone giving her the mile marker and all that
12 stuff and the phone cuts out. I don't know if it was the
13 service connection or what. The phone cuts out. At this
14 point, again, I'm not hysterical. I gave her the
15 information she needed. I'm heading up to Virginia. If
16 anything else suspicious happens I'm going to call her back.
17 So driving down the road and a gold SUV that I had a
18 suspicion was following me also drives past me and I -- I
19 fully believe I saw somebody come out of the back glass of
20 the SUV. Not out of the back glass, but saw them through
21 the back glass of the SUV stand up and it looked like they
22 were holding a gun. And at that point I became hysterical.
23 And from then on was the erratic driving with the 911 phone
24 calls, we got a guy driving on the interstate acting
25 erratic, this kind of thing, because I was fearful that

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1 these guys were already following me. Now I see in a gold
2 SUV pop up with a gun. And from then -- I know the question
3 is, well, why didn't you call the police, why didn't you do
4 this, why didn't you do that. I would have to say because I
5 was not in my right mind. Why would I make a rational
6 decision to call the police. If I'm seeing a guy pop out of
7 a truck, I'm believing guys are following me, why is my next
8 move a rational decision to call a police officer. So I
9 would say that is why I did not. I can't tell you the
10 reason why I did not. I'm not sure why I didn't call the
11 police. But yeah, so the erratic driving stems from that.
12 And apparently there were 911 calls, hey, I got a guy here
13 driving on the interstate acting erratic. Again, I don't --
14 I don't remember seeing the officer pull in behind me prior
15 to the blue lights. But he -- apparently was behind me long
16 enough to videotape me and that kind of thing. He hits the
17 blue lights. I remember at that point getting off the
18 interstate, and I remember the impact of the first vehicle.
19 I remember the impact of the police cruiser. I remember --
20 and again, what I remember I'm not going to tell you was 100
21 percent correct. I remember struggling with the police
22 officers. But I also remember hearing chatter on a radio,
23 but not from the police radios. This was even while I was
24 in the truck prior to the police even getting there, or -- I
25 mean, he might have been behind me. I don't know. Hearing

1 police -- police chatter. Radio chatter that I honestly
2 thought was coming through my car stereo. So I'm sitting
3 here -- I mean, with the squawks, the static and everything,
4 and I'm talking to -- and, you know, you hear yourself
5 speak. You know, you're conscious, whatever it is, of your
6 voice. This was not my voice. It wasn't like some
7 celebrity voice. It wasn't Donald Trump's voice. It was
8 just some random voice. I couldn't tell you who it was.
9 But I'm hearing chatter coming across the radio. And it's
10 very low and I'm struggling to even hear what the guy is
11 saying. And I keep telling the voice I can't hear you. I
12 can't hear you. I remember saying that. And I remember his
13 response was yes, you can. Yes, you can. So obviously very
14 weird. But -- so I remember when the audible -- I don't
15 know what you want to call it. I don't know when I started
16 hearing that. I can't tell you if it was when the cop was
17 behind me, when he hit the blues. It wasn't -- I really
18 don't remember if I was hearing it when I was driving
19 erratically. But regardless, I'm hearing this chatter come
20 across what I believe to be my car stereo, which my car
21 stereo didn't work anyways. So it wasn't the radio. So I
22 pull off the interstate. I remember the impact of the first
23 vehicle. I remember the impact of the police cruiser. The
24 entire time that -- from the impact of the first vehicle and
25 the police officer, or state trooper, my gut feeling at that

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1 time was I'm in a training environment. It wasn't, hey, let
2 me maliciously hurt this officer, or maliciously hurt these
3 people. In the Army we did a lot of different scenarios for
4 training, whether it be with vehicles, outside of vehicles,
5 live fire, non-live fire, whatever. So -- and if you're
6 familiar with operations recently like Jade Helm. You know
7 you've got US military working with -- doing exercises like
8 this through cities all day. So -- not -- not exercises
9 like this. They're going exercises through cities all day.
10 That was last year. Middle of the year, I think. But at
11 that point, like I said, my gut feeling was I'm in some kind
12 of training exercise. So I remember hitting the vehicle.
13 The SUV in the front. I remember the impact of the State
14 Trooper. I remember getting picked up off the ground. And
15 I assume because I was acting erratic, I was forcefully put
16 up against one of the vehicles. I don't remember if it was
17 my truck, if it was one of the cars or what. I remember
18 getting put into a police car. Again, I'm not sure which
19 one. I remember my wrist hurting. I'm not sure if asked
20 for help with handcuffs or not. I do remember my wrist
21 hurt. But past that, honestly anything from the side of the
22 road -- I remember the impacts. I remember the feeling -- a
23 gut feeling of a training environment. I remember some of
24 the tussle with police officers. But again, it wasn't like
25 I remember, you know, I'm sitting here trying to kick box

1 this guy or whatever. I just remember a physical
2 altercation. It's not like I have a vivid memory of what
3 was taking place. I remember a physical altercation. And
4 then I remember getting to the jailhouse and being put in a
5 restraint chair. I remember two state troopers coming in
6 and questioning me while I was in, I guess, the intake cell
7 of Laurens County.

8 Q Clint, let me interrupt you at this point.

9 A Okay.

10 Q Only because at some point -- we're not permitted to go
11 past the incident.

12 A Oh, okay.

13 Q Who did you think these people were following you?

14 A Honestly I wasn't sure. My gut instinct first was it
15 was federal. I think that's just because of -- I've been --
16 my dad was in the military. I've been in the military. My
17 dad's worked with federal officers in the past. I've met a
18 few. So I think just because of the association with those
19 type of people I believe is why it was I believe the federal
20 government is following me.

21 Q And were you running from any anybody, other than them?
22 Were you running from the authorities because there was an
23 arrest warrant out for you?

24 A No. No, sir.

25 Q Did you have any drugs in the car?

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1 A No, sir.

2 Q Any guns in the car?

3 A No, sir.

4 Q Anything illegal in the vehicle?

5 A No, sir.

6 Q Had you previous to this been treated for mental health
7 issues or paranoia? Were you any medication?

8 A No, sir.

9 Q And I may have asked one too many questions. Were you
10 on any medication?

11 A No, sir.

12 Q Had you been treated for mental health issues?

13 A Yes, sir.

14 Q In the military or subsequent to the military?

15 A In the military.

16 Q And has you been treated for paranoia?

17 A No, sir.

18 Q Had this ever happened to you before?

19 A No, sir.

20 Q Was this drug induced? Had you been using illegal
21 drugs that day?

22 A No, sir.

23 Q The night before?

24 A No, sir.

25 Q The day before had you used illegal drugs?

1 A No, sir.

2 Q Do you remember being tased?

3 A I remember getting tased once. But again, not any --
4 just the fact that you're on the ground being tased. I
5 don't remember who it was, how it happened, where I was, but
6 just -- I mean, if you've ever been tased your entire body
7 locks up. All I remember is that fact that my entire was
8 locked up. And it felt like I'd grabbed -- put a fork in an
9 outlet.

10 Q And when did you get back in your right head?

11 A I was fully aware of the entirety of this situation
12 when I was taken -- because even when I was in the -- I
13 guess it's through processing -- I guess it's processing
14 cell that's in Laurens County there. You're in the front
15 before you get fingerprinted. When I was taken from there
16 and actually put into the main area, the back, is when I was
17 like, dude, this isn't a game anymore. You've really done
18 something and you're not going home anytime soon.

19 Q And you agree that you've done what they see on the
20 videotape and what these witnesses have described, you
21 driving erratically, crashing into the vehicles?

22 A That's correct.

23 Q Physically you agree you've done those things?

24 A That's correct.

25 Q Was it ever your intention to kill anybody in any of

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1 these cars?

2 A No, sir.

3 Q Your intention to kill anybody?

4 A No, sir.

5 Q Your intention to harm them in any way?

6 A No, sir.

7 Q Do you even know why you were running into these cars?

8 A No, sir.

9 Q Was it your intention to resist arrest?

10 A No, sir.

11 Q To do anything illegal that day?

12 A No, sir.

13 Q Since this incident have you undergone counseling
14 through the military?

15 A It's through the VA, but -- so no, not the military.

16 But through the VA.

17 Q Through Veteran's Affairs?

18 A Correct.

19 Q I'm sorry. I thought they were part of the military.

20 So you've undergone counseling through Veteran's Affairs?

21 A Correct, yes.

22 Q And are you still undergoing counseling?

23 A Yes, sir.

24 Q Have there been any other incidents like this since
25 then?

1 A No, sir.

2 Q Did you intend to break the law at all on September
3 6th, 2015?

4 A No, sir.

5 MR. QUINN: I don't have any other questions. You can
6 answer any questions --

7 THE COURT: Let's take a very short break before we
8 start cross-examination.

9 Ladies and gentlemen, if you'll go back to the jury
10 room just for a break. Again, I remind you not to have any
11 discussions among yourselves about this case, and we'll get
12 you back out shortly.

13 (Whereupon, the jury exited the courtroom at 10:19
14 a.m.)

15 THE COURT: All right. Just a very short recess. You
16 can step down. You just can't talk to anyone about your
17 testimony. Okay?

18 THE DEFENDANT: Okay.

19 THE COURT: You're free to step down.

20 (Whereupon, the Defendant stepped down from the witness
21 stand.)

22 (Whereupon, a recess was held from 10:19 a.m. to 10:34
23 a.m.)

24 (Whereupon, the jury entered the courtroom at 10:34
25 a.m.)

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1 (Whereupon, the Defendant returned to the witness
2 stand.)

3 THE BAILIFF: All present, Your Honor.

4 THE COURT: Okay. So noted for the record. Solicitor,
5 are you ready?

6 MR. SCOTT: Yes, Your Honor. Thank you.

7 CROSS-EXAMINATION

8 BY MR. SCOTT:

9 Q Mr. Harbuck, first of all, I do want to thank you for
10 your service.

11 A Thank you.

12 Q If at any time -- I know we're on two different sides,
13 but I do want to start off by saying that because we've
14 covered a lot of your background in the military. So thank
15 you for that.

16 A Very good.

17 Q September 6th, that morning you woke up in Atlanta.
18 That was your testimony, correct?

19 A Correct.

20 Q And did you ingest anything there that morning that
21 would affect your state of mind?

22 A I smoked cigarettes and drank Red Bull, but -- in the
23 context of your question I believe you're asking did I drink
24 alcohol or consume any drugs. No, I did not.

25 Q What time did you leave Atlanta?

1 A It was mid afternoon.

2 Q So where was it that you first saw the white BMW and
3 the black SUV and the man smoking the cigarette?

4 A That instance, I don't remember the name of the outlet
5 mall, but it's somewhere close to around here. It was in
6 the parking lot of that outlet mall.

7 Q You first started becoming paranoid in Atlanta though,
8 right?

9 A Again, I don't remember if it was in Atlanta or if it
10 was -- it was somewhere between North Georgia and South
11 Carolina.

12 Q I'm thinking on direct you said around Atlanta
13 somewhere you become paranoid, but --

14 A I don't believe that was -- that was the case.

15 Q So you left Atlanta feeling fine?

16 A Correct.

17 Q Somewhere around North Georgia?

18 A South Carolina.

19 Q So it was 85? Is that the route you take?

20 A This was really my first time going up there, so I
21 guess maybe. If that -- if that takes you to Virginia, then
22 that's probably the route.

23 Q Yeah, I'm trying to figure out what route you were
24 taking as well.

25 A That looks about right.

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1 Q Does that look right? Is 85 --

2 A Yes, sir.

3 Q And so, here's North Georgia. You would have probably
4 cut up through Clemson, and then Lynchburg is up here?

5 A Correct.

6 Q So is that what you think you did, 85?

7 A That looks about right. Yes, sir.

8 Q So mid-afternoon you say you leave Atlanta sometime and
9 you're up here around Anderson, South Carolina you start
10 feeling a little paranoid is what you said?

11 A Correct.

12 Q And at any time there besides Red Bull did you take any
13 other stimulants or anything?

14 A No, sir.

15 Q So tell me, there's some outlets there, you said?

16 A Yes, sir.

17 Q And explain again, what was it that started making you
18 paranoid?

19 A I really couldn't tell you what the situation was that
20 made me paranoid, or if there was some kind of outside
21 stimulus. Say, a sound or, you know, a person, a look, or
22 what it was that would give me that feeling. But what I do
23 remember is becoming paranoid that I was being followed and
24 then starting to observe exactly who was around me and who
25 was on the road and that sort of thing.

1 Q What was the first car that you felt was following you?

2 A I really don't remember, but -- I mean, I really don't
3 remember what the first vehicle was that I thought was
4 following me.

5 Q Have you driven on the interstate -- it's a silly
6 question. You have driven on the interstate many times
7 before, haven't you?

8 A Correct.

9 Q And there's always cars kind of in front of you and
10 behind you, aren't they?

11 A That's right. I like to consider myself an offense
12 driver. I tend to do five over. Generally speaking, I'm --

13 Q What's an offensive driver?

14 A Just instead of reacting to the situation you try to
15 keep yourself from those situations essentially. You take
16 the offensive and not being, you know, tailgating or
17 whatever it is that's going to cause an accident.

18 Q But you weren't -- you weren't doing that that day,
19 were you?

20 A In the sense that not causing an accident, then no.

21 Q I'm trying -- you got to explain better. What was it
22 about these cars -- there's hundreds and thousands of them
23 on the interstate at any given time.

24 A Right.

25 Q Which car was it that you felt was following you?

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1 A So again, there was about -- once I became paranoid and
2 I started looking in my mirrors. And again, I'm usually the
3 guy that's passing people, you know. Most traffic, you
4 know, it's whatever. It's lunch. They're going to work.
5 They're generally just cruising along. I'm generally a five
6 mile an hour, 10 mile an hour over kind of driver. I like
7 to get where I'm going. So usually there's not many people
8 following me. So again, driving down the interstate. I
9 start getting the sense of paranoia. And -- so I start
10 observing the cars around me. And again, I'm usually
11 passing vehicles. Nobody's usually around. And I see --
12 again, I don't remember who -- which vehicle it was. But
13 the sense of paranoia I had, I generally felt there were
14 people following me. And once I got off the -- at that
15 first stop at the gas station there was cars pulled in. The
16 black SUV, the BMW, the truck. And at that point, I don't
17 remember if that -- because when somebody has a modified car
18 that stands out to you, the exhaust, the sound of that car,
19 I really don't remember that vehicle being at that first
20 stop, but it was at the second stop and the shopping center.

21 Q I thought the first stop was the shopping center?

22 A No. The first stop was the gas station and then the
23 shopping center.

24 Q A gas station, a black SUV, BMW and a truck?

25 A Correct.

1 Q And did any of them get out?

2 A No, sir.

3 Q And where was the ricer? What was that?

4 A Again, I don't know if it was -- you know, if was a
5 car with exhaust. I'm not --

6 Q Was that the first stop?

7 A Again, I don't remember if that vehicle was at the
8 first stop or not.

9 Q So black SUV, BMW and truck at the first stop.

10 A Correct.

11 Q And you perceive that they got off when you got off the
12 interstate?

13 A Correct.

14 Q And then what did you do next?

15 A Got back on the interstate. At a gas station again
16 waiting to see -- we're at a gas station. Are you going to
17 get out. Are you going to go in. Are you going to get gas.
18 You know, what are you going to do. I parked, waited and
19 nobody did anything. All these people are still just
20 sitting in the gas station parking lot. So, okay. I left
21 and --

22 Q Did you talk to anybody there?

23 A No, sir. I didn't -- I didn't get out of my vehicle
24 either.

25 Q So when you -- did the black SUV, BMW and truck leave

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1 with you?

2 A Yes, sir.

3 Q And then where did you go next?

4 A Got back on the interstate heading north and -- yeah,
5 heading to Lynchburg.

6 Q Where was the next stop?

7 A The next stop was that shopping center.

8 Q And that's in South Carolina?

9 A I believe so.

10 Q Still on 85?

11 A I believe so. I really don't know.

12 Q Tell me about the second stop. Who all was there?

13 A It was the same vehicles again. We got off at that
14 shopping center. And again, like I said, I went -- it was a
15 strip mall pretty much in a line. So the front of the
16 shopping mall was over by the interstate. So I went the
17 farthest away from the interstate that I could get and
18 parked. And those vehicles again pulled up into that
19 parking lot. They parked within -- you know, you've got
20 your parking strip and you've got two parking spots and
21 you've got rows on either side or -- you know, essentially
22 rows on either sides and you've got the next lane. They
23 were across the little road in parking spots, and then also
24 in the same line of parking spots that I was in.

25 Q Was it the black SUV, the BMW and the truck?

1 A Correct. And at that time a -- that ricer, if you
2 will, came down one of the access roads, sped by and parked
3 in the same line again as -- that I was in, just a little
4 farther up.

5 Q So you remember that very clearly. You were -- where
6 they all parked and everything. Describe where they all
7 parked. A strip of something?

8 A Yeah. So, you know, I mean, you're parking lots.
9 You've got the long strip of parking lots and the access
10 road, a long strip of parking lots, the access road. So two
11 vehicles, the BMW, and I don't remember if it was the SUV or
12 truck, was parked. Say I'm parked here. There were two in
13 front of me here, and then I had two vehicles on either side
14 of me, and then that ricer came around.

15 Q And somebody got out of one of these cars at that
16 point?

17 A Right. The guy on my left got out of the vehicle and
18 was walking around his car smoking a cigarette.

19 Q Did you talk to him?

20 A I did not.

21 Q Why not?

22 A In the context of the situation I was -- I felt I was
23 being followed. So if that was the case, if they were
24 following me, why would they not come to talk to me. And if
25 they weren't, why would I -- you know, I mean, in the sense

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1 that I don't want to go put myself in any kind of situation
2 where I could get robbed, mugged, whatever. Kidnaped, you
3 know, whatever.

4 Q But you were in an open parking lot though, right?

5 A Correct.

6 Q You didn't think to say, hey, are you guys following
7 me, or what's going on here?

8 A No.

9 Q What was the guy wearing?

10 A I really don't remember.

11 Q What color was the BMW?

12 A I don't know. It was black, I believe.

13 Q What about the truck?

14 A I believe it was a white Toyota.

15 Q What about the Honda?

16 A I don't remember.

17 Q Black SUV, black BMW, white Toyota and a Honda with
18 exhaust pipes around it?

19 A Correct.

20 Q So I guess you didn't talk to the mysterious guy with
21 the cigarette.

22 A Correct.

23 Q Anybody else get out of their cars?

24 A No, sir.

25 Q Who left first?

1 A I did.

2 Q And where did you go then?

3 A I started making my way back out a little access road
4 that goes down to the road that gets you on the interstate.
5 And it was a left-hand turn to get back to northbound. I
6 guess it's on 85.

7 Q And you're still heading towards Lynchburg?

8 A Correct.

9 Q What happens next?

10 A So again, I don't remember if it was the SUV, the
11 truck, or who it was. But one of the vehicles I saw coming
12 out of the parking lot and getting into the same turn lane
13 that I was in. And at that point I made the decision that I
14 was going to go back south. And I got out of the left-hand
15 turn lane, merged into traffic and took the interstate back
16 south.

17 Q Back towards Atlanta?

18 A Correct.

19 Q And you're just going home at this point?

20 A Correct.

21 Q Now, explain again, because I did have that question.
22 You went ahead and started to explain it. But why didn't
23 you just drive to the police department or call 911?

24 A I really can't tell you a rational reason why I did not
25 make that decision. In the context of the entire situation

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1 that just wouldn't -- that doesn't line up with you're being
2 irrational, you're being irrational, you're being
3 irrational. Oh, now you want to make a rational decision
4 and call the police, so...

5 Q But you did call your mom?

6 A Correct.

7 Q And now you're heading back to Atlanta. And what
8 happens next?

9 A The vehicles still following me. And at that point --
10 I believe before I called my mother all the vehicles passed
11 me on the interstate. And after that I want to say it was a
12 gold SUV. I saw a guy in the back glass of that -- I guess
13 in the -- either the backseat or the back trunk area stand
14 up and point what looked like to me to be a rifle.

15 Q So do you believe you were hallucinating, or did that
16 really happen?

17 A Do I -- what do I personally belief? I personally
18 believe that I saw everything that I'm telling you that I
19 saw today.

20 Q So there was a man with a rifle in the back of the gold
21 SUV?

22 A I would say yes, sir.

23 Q What kind of SUV was it?

24 A I'm not sure.

25 Q So he pointed the gun at you?

1 A Correct.

2 Q And this is southbound 85, back towards Atlanta,
3 correct?

4 A Correct.

5 Q And what did you do as a result of seeing this guy?

6 A Called my mother. And at that point I got hysterical.
7 Not hysterical. I was -- it elevated the situation to a
8 point that I was not -- I mean, at the time, again, I was --
9 there was no erratic driving or nothing like that. And at
10 that point the erratic driving started.

11 Q And you remember that's what keyed the erratic driving?

12 A I believe so. Yes, sir.

13 Q What do you mean by erratic driving? What were you
14 doing?

15 A Driving at a high speed, weaving in and out of traffic.

16 Q Do you remember passing people on the shoulder?

17 A Yes, sir.

18 Q Going over 100 miles an hour?

19 A I don't specifically remember looking at the
20 speedometer saying how fast you're going. But I would
21 assume -- it's a -- it was a Chevy V8. I would assume it
22 could go over 100 miles an hour.

23 Q Do you remember passing people in between people going
24 down the interstate?

25 A I don't remember that. It's a full sized truck. I

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1 don't believe you can squeeze a full sized truck -- I mean,
2 unless you got two Hondas side by side you might be able to
3 squeeze it in there.

4 Q But you don't deny that you did that?

5 A I deny that I squeezed that truck in between two
6 vehicles on a two lane highway.

7 Q So you remember that?

8 A I'm saying I don't believe it's possible.

9 Q Did your mom tell you to call 911 or anything?

10 A No. She was more, from what I remember, just trying
11 to, I would say, understand what was going on.

12 Q What about, hey, Clint. Pull over, man. Just stop the
13 truck.

14 A Nope, she didn't say that. I mean, essentially it
15 sounded like to her I'm in fear for my life. I've got
16 people following me. Hey, stop the truck and let these
17 guys, you know, just --

18 Q You don't have any answer why not to call law
19 enforcement, or star HP like the other people did?

20 A Right.

21 Q You don't have any explanation for that?

22 A Well, my explanation is, in a irrational state of mind,
23 making a rational action like that just doesn't follow.

24 Q Well, what was the state -- were you driving legally?

25 I mean, everything with your license and truck and

1 everything legal?

2 A No, sir. I was under suspension.

3 Q So you weren't supposed to be driving or anything like
4 that?

5 A Correct.

6 Q Did that have any reason for you not to call 911 or
7 anything like that?

8 A I wouldn't say so.

9 Q So the erratic driving starts after the gold SUV. And
10 you're driving back towards Lynchburg. So where did you go
11 next?

12 A Again, I phoned my mother. The phone call cuts out. I
13 was giving her license plates, make, models of the vehicle,
14 and mile marker and exhibit to write down. And the phone
15 call ends. Still heading north, and --

16 Q North?

17 A Towards Lynchburg.

18 Q I thought you had turned around at this point to go
19 back to Atlanta?

20 A I turned around at one point and went back towards
21 Atlanta. But at this point I don't believe so. I was still
22 headed north. And yeah, so I was heading towards Lynchburg.

23 Q You lost me. Because I thought with the gold SUV, when
24 you saw that guy you said that's it. I'm going back to
25 Atlanta.

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1 A At that point -- it might have been that vehicle. I
2 know I made the decision to turn around at one point. Where
3 exactly in the line of events that was prior to the police
4 officer I don't remember specifically.

5 Q Well, I guess, when you turned around and started going
6 back to Atlanta what do you remember after that?

7 A Still being followed and really -- I mean, that's it.
8 I remember talking to my mother. I remember a phone call
9 cutting out. And then the police officer getting behind me
10 and then the blues. After the driving was reported.

11 Q Now, we know, I guess, you came in up 85, and we talked
12 about North Georgia and some of the outlets and stuff that
13 you remember encountering heading out towards Lynchburg.

14 A Are you familiar with Newberry?

15 A I'm not. Just because I was here for two months I
16 heard guys talk about Newberry. But no, I'm not familiar
17 with Newberry.

18 Q And your name is Clinton, and ironically you know you
19 were -- all this happened at the Clinton exit. You know
20 that's about right -- let me get a better pen. That's about
21 right down here on I-26.

22 A Correct.

23 Q So tell me how you became -- or you came to be on your
24 way to Columbia when you were heading towards Atlanta on 85?
25 How did you end up -- where does 26 start? You went down

1 here somehow.

2 A Correct. I was asked that more than a few times in my
3 stay here in Laurens County, and I'll tell you like I tell
4 them. I really have no idea.

5 Q Do you remember going down to the Chapin exit and then
6 flipping back up and heading up 26 into towards Spartanburg?

7 A No, sir.

8 Q You don't remember that?

9 A No, sir.

10 Q You don't remember that?

11 A No, sir.

12 Q What was it that -- I'm trying to get this. You know
13 about the black SUV, the black BMW, the white Toyota truck,
14 the Honda with the exhaust pipe. You know where everybody
15 parked in that one parking lot.

16 A Right.

17 Q How come you don't remember anything about -- that I'm
18 asking you with these events?

19 A Again, all of that was a different -- prior to the gun
20 being -- to what I believe a gun being pointed at me, it was
21 a different level of excitement. And then from that point
22 when the gold SUV -- I believe the man in the gold SUV
23 pointed a weapon at me, the level and intensity of the
24 situation elevated.

25 Q Well, just timing-wise, you understand that this would

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1 have had to been a number of hours you were operating under
2 this state of mind. Do you understand that?

3 A Correct.

4 Q So you remained paranoid about this guy for a number of
5 hours driving up and down the interstates?

6 A Correct. And also under the believe that what I was
7 doing was a training environment up until the point where I
8 was put into the back of Laurens County.

9 Q Did you say you had done a lot of training exercises
10 that were similar to what you were doing that day? Is that
11 what you said on direct?

12 A In the sense of detainment, unarming people,
13 essentially profiling people, that sort of training. Yes,
14 sir.

15 Q What about the cars? Do you have any training with
16 cars?

17 A Yes, sir.

18 Q You did computer? Was it computer systems and voice
19 over IP, but I guess - car training?

20 A Well, you have to get certified to drive any military
21 vehicle.

22 Q I mean, did any of them kind of mimic ramming other
23 cars and --

24 A Well, when you get in Afghanistan it's a different
25 style of training. You train on -- I mean, it's similar to

1 what the police work with disarming vehicles. You know,
2 because you got guys fly into your convoy. You really don't
3 want that. You need to figure out either push them out of
4 the way or disable a vehicle. And you -- and in the sense
5 that if you're in the vehicle and you're the last guy, you
6 need to know how to operate that vehicle efficiently.

7 Q So you don't deny that you went down 26 to exit 91,
8 which is Chapin. You're almost in -- well, you're in
9 Lexington County then. And then you flip back up and you
10 went up -- I guess that's westbound I-26, but it's really
11 kind of traveling in a northwest direction. But you went
12 back and all of this happened at exit 54 in Clinton. You
13 don't deny that, right?

14 A I don't deny that. But again, I couldn't have told you
15 that's exactly what happened.

16 Q Well, tell me what do you remember at exit 54?

17 A Again, I remember the impact of the first vehicle that
18 I hit and the police officer. I remember scuffling with the
19 police officers, and I remember being tased. Not what --
20 nothing that led up to be being tased or anything like that.
21 Just the sensation of the taser. And getting put in the car
22 and that's it.

23 Q Don't you agree with me that's a little convenient that
24 you remember all this stuff very clearly, but the part we're
25 here on today you just can't remember any of that?

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1 A I'll agree with you that -- well, I wouldn't say that
2 it's convenient.

3 Q What do you remember about the first bump when you hit
4 that car in front of you? What do you remember specifically
5 about that?

6 A Just the impact.

7 Q Well then, what do you remember about chasing that
8 trooper up the ramp in reverse?

9 A Again, I remember the impact of that cruiser.

10 Q You don't remember targeting him and looking at him in
11 your rearview?

12 A But again, I'm saying it's a cruiser because that's
13 what the evidence says. I mean, the video clearly shows the
14 -- I remember impacting a vehicle, or something hard.

15 Q You saw the video though, right?

16 A Correct.

17 Q And, I mean, you actually kind of tracked him up that
18 ramp in reverse which is pretty impression driving. I mean,
19 wouldn't you agree?

20 A That's what it looks like. I guess so.

21 Q You're in a state of mind where you can do that? You
22 remember the blue lights or anything like that?

23 A I remember the blue lights coming on and having to get
24 off the interstate.

25 Q Have you ever been involved with any kind of road rage

1 incidents before?

2 A No, sir.

3 Q So you remember one tase.

4 A Correct.

5 Q You don't remember the other two?

6 A No, sir.

7 Q And you don't remember kicking Casey Jones? That's
8 just something you can't remember?

9 A Specifically Casey Jones, or -- no, sir. I remember
10 altercations with the police officers.

11 Q Kicking? Do you remember kicking or anything like
12 that?

13 A Really what I remember is me being forcefully handled.
14 But again, if the evidence is that I was dealing harshly
15 with the police officers, then it follows that they would
16 deal harshly with me.

17 Q Well, you did say you remember the cuffs and you say
18 they were tight?

19 A Cuffs -- right. I mean, they were hurting. I don't
20 know if they were too tight or what.

21 Q You remember that. Do you remember going to the
22 hospital?

23 A I don't.

24 Q You don't remember some of the things you were saying
25 to some of those cops that were not so nice?

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1 A I don't.

2 Q And you never asked them why were you guys following me
3 or anything like that. I mean, so -- did you tell anybody
4 after this that, hey, you guys were following me. That's
5 why I'm doing this, or --

6 A There was some dialog when I was in the back. Once I
7 was processed in. There was some dialog between and some of
8 the officers. But really, again, I was still believing that
9 I was about to get let out of this intake cell at any
10 moment. Hey, man, good run. Good exercise. We'll see you
11 some other time.

12 Q So I guess you're not going to be able to testify to
13 what your intent was though at the scene? You testified
14 that I did not intend to maliciously -- which was an
15 interesting word. I didn't intend to maliciously hurt
16 anybody. I didn't intend to kill anybody. Because you know
17 what you're charged with, so you denied all that. So how
18 could you say what your intent was if you can't remember
19 anything there?

20 A Given the fact that I remember a very strong feeling of
21 a training exercise, there's no -- not that I'm aware of, a
22 training exercise where your intent is to harm anybody.

23 Q You're saying now, you're testifying, that you do
24 remember what your intent was at the --

25 A Well, I testified at the time that I remember there

1 being a strong feeling of this is a training environment.

2 So I would hold true to that testimony.

3 Q Do you remember refusing medical treatment at the
4 hospital?

5 A I don't.

6 Q And do you remember them asking for consent to draw
7 your blood?

8 A No, sir.

9 Q So you don't remember this tussling -- well, you do
10 remember some of the scuffling and everything.

11 A Just like physical contact.

12 Q Well, if it was a training exercise, why would you have
13 done that when -- I'm sorry. You recognize a police
14 uniform, don't you?

15 A Yes, sir.

16 Q And you got two different flavors over there. A
17 Sheriff's Department guy is there. And you've seen blue
18 lights before?

19 A Correct.

20 Q What training exercise, even in the military -- I know
21 it's different. But involves uniformed authorities putting
22 you under arrest and you ramming their cars and doing all
23 this kind of stuff? What exercise --

24 A Right. I mean, out -- obviously outside of anything to
25 do with the military, I've personally never heard of one.

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1 Like I said, Operation Jade Helm, you know, US military was
2 working with some PDs nationwide. I don't know the details
3 of those exercises. But again, I would say I've never heard
4 of one, no.

5 Q No crack that day?

6 A No, sir.

7 Q No methamphetamine?

8 A No, sir.

9 Q PCP?

10 A No, sir.

11 Q Bath salts?

12 A No, sir.

13 Q Do you remember hoping around in the truck? The
14 driver's seat to the passenger? Back and forth? You said
15 you were amped.

16 A I don't. There -- in that truck there's a center
17 console that's above the seats. So for that to happen it
18 would be -- to drive the way it said I was driving, and to
19 be doing that is quite the feat, in my opinion.

20 Q You heard multiple witnesses say that's what you were
21 doing?

22 A Right.

23 Q All right. I think that's about all. The black SUV,
24 black BMW, white Toyota truck, a Honda with -- what were the
25 exhaust? What was the exhaust on the Honda?

GINA HARBUCK-DIRECT EXAMINATION

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1 A Just loud. I mean, those kind of cars, they're just --
2 they're loud and they're pretty noticeable.

3 Q A man smoking a cigarette, and then the gold SUV?

4 A Correct.

5 Q And you were driving the gold Silverado?

6 A No, it's silver.

7 Q Silver Silverado, under suspension.

8 MR. SCOTT: All right. I think that's all, Mr.

9 Harbuck.

10 THE COURT: Any redirect, Mr. Quinn?

11 MR. QUINN: No, Your Honor.

12 THE COURT: Okay. You can step down, sir.

13 (Whereupon, the Defendant stepped down from the witness
14 stand.)

15 THE COURT: Call your next witness.

16 MR. QUINN: I call Gina Harbuck.

17 GINA HARBUCK, having first been
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. QUINN:

21 Q Can I have your full name for the record, please.

22 A Regina K. Harbuck.

23 Q And, Ms. Harbuck, how are you related, if you are, to
24 Clinton?

25 A He's my son.

GINA HARBUCK-DIRECT EXAMINATION

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- 1 Q And is he your only child?
- 2 A No, sir.
- 3 Q How many other children do you have?
- 4 A I have a daughter.
- 5 Q And how old is your daughter?
- 6 A Twenty-nine.
- 7 Q And does your daughter currently live with you?
- 8 A No. She lives in Michigan.
- 9 Q Does Clinton currently live with you?
- 10 A Currently yes, under Court order.
- 11 Q And are you married?
- 12 A I am.
- 13 Q And who are you married to?
- 14 A Carl Harbuck.
- 15 Q And what does your husband do for a living?
- 16 A He works for the -- for a contractor with the State
- 17 Department in Iraq.
- 18 Q And what does he do in Iraq?
- 19 A He's a helicopter pilot.
- 20 Q And how long has he done that?
- 21 A He's been flying helicopters for seven or eight years
- 22 with -- with the State Department. He was in the military
- 23 as a helicopter pilot.
- 24 Q So how long was he in the military?
- 25 A Ten years.

1 Q And do you remember what branch of the military he was
2 in?

3 A He was in the Army.

4 Q And since he's left he's been with -- what's the
5 company name he works for?

6 A When he left the Army he went to work for the Lightship
7 Group which flew blimps. And then the whole time he was
8 trying to get back into helicopters. And then he got the
9 job with DynCorp, which is a contractor for the State
10 Department.

11 Q And on September 6th, 2015 where were you?

12 A I was in Michigan.

13 Q And you say your daughter lives in Michigan. Do those
14 two things have anything to do with each other?

15 A Yes. I had gone up to my daughter's house for the
16 weekend.

17 Q And do you remember where in Michigan she lives?

18 A St. Joseph.

19 Q And did you speak with Clint that day?

20 A I did.

21 Q And about what time was that?

22 A We were getting ready to go to dinner. So I'm going to
23 say about 6:00.

24 Q And were you worried about exact times or --

25 A No. I mean, I'm off work. I'm taking some time and --

GINA HARBUCK-DIRECT EXAMINATION

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1 Q And what do you do for a living?

2 A I am case administrator, a divisional trainer, and a
3 backup courtroom clerk for the United States Bankruptcy
4 Court for the District of Alabama, Eastern Division.

5 Q And how long have you worked in the federal court
6 system?

7 A Nineteen and a half years.

8 Q Now, how did you come to speak with Clint that day?

9 A We were getting ready to go to dinner.

10 Q And you say we were getting ready to go to dinner.
11 Who's we?

12 A Myself and my daughter and her fiancée.

13 Q And when you answered your phone, who was it?

14 A It was Clint.

15 Q And can you describe to the jury what his attitude was?

16 A He was very agitated. He sounded almost panicked. And
17 he said, mom, I need you to get in touch with dad now. I
18 have people following me and I don't know why. I need his
19 FBI buddies to figure out who's following me.

20 Q And did he tell you who he believed was following him?

21 A He started giving me -- he told me. He said write this
22 down. And he started giving me tag numbers and descriptions
23 of vehicles. Almost every vehicle he described was either
24 white or black. An SUV or -- most of them were SUVs. But
25 almost every vehicle was either white or black, and he gave

1 me tag numbers.

2 Q And did you write them down?

3 A I wrote down a list of them, yes. Why, don't ask me.

4 I just --

5 Q And did you ask him why he thought these people -- just
6 tell us what you can about the conversation.

7 A When he called, and he starts this, and he's telling
8 me, and I'm like, Clint, there's no one following you. And
9 he's like, yes, mother, they are. You need to know. And he
10 gave me mile markers. He's like, if something happens to me
11 you need to know where to find me. And I'm like, son, there
12 is no one following you. Mother, yes, there is. I never
13 been through this with him before. I mean, this was totally
14 out of left field for me. And -- but I'm writing it down,
15 because at that point I'm thinking, okay, if there really is
16 something going on I need to know where he is, because I'm
17 several hundred miles away. And I -- as he talked -- and he
18 told me at one point they're shooting at me. I don't know
19 if they're rubber bullets or real bullets. And again, I'm
20 like, son, there's no one shooting at you. And -- because I
21 couldn't hear any -- I couldn't hear them firing. It sounds
22 like I'm on the speaker phone, because you can hear when
23 you're on a speaker phone. I don't know if -- it sounded
24 that way. I didn't hear any gunfire. As he continues to
25 give me descriptions -- and this went on for quite some

GINA HARBUCK-DIRECT EXAMINATION

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1 time. And I didn't time it. I don't know. It was -- it
2 was not two or three minutes. We had a long conversation of
3 lots of tag numbers and car descriptions. As he's giving me
4 this, my reaction is oh, my God, he has lost his mind. He
5 has gone over the edge. He's crazy.

6 Q Did you try to talk him down?

7 A I tried to -- I said, son, there's no one following
8 you. Yes, mother, there is. You need to get dad this
9 information. And he was adamant that his dad got this
10 information.

11 Q And were you able to calm him down at all?

12 A No. No.

13 Q And I know you said this took several minutes. Can you
14 give the jury an idea about how long you might have been on
15 the phone with him.

16 A Thirty minutes or more.

17 Q And did you suggest he call the authorities or call
18 911?

19 A I did not. And I did not because he was so agitated.
20 Not -- yeah, I guess agitated, that he wasn't listening to
21 anything I had to say. He was more adamant that I take
22 down the information that he's giving me, because it's
23 important that I take this information down. And I'm
24 telling him to calm down. Did I even think call 911? No.
25 I'm trying to figure out what has just happened and what's

1 going on.

2 Q And how did that phone call end?

3 A Well, his phone died -- or cut off.

4 Q And was there any subsequent phone calls?

5 A I tried to call him back and it went straight to voice
6 mail.

7 Q And after you got off the phone did you consider
8 calling the authorities or 911?

9 A I did not. And honestly, looking back, I probably
10 should have. I wasn't sure exactly where he was. I knew he
11 had left Atlanta and was headed to Virginia. At one point
12 he did say he was in South Carolina. But I had no idea he
13 was on I-26 south. I was assuming up north. So no, I did
14 not. And in hindsight I probably should have.

15 Q Was your son in his right head when he was speaking
16 with you?

17 A I don't think he was, but I'm not --

18 Q Did he express to you at any point during this phone
19 conversation what he was going to do?

20 A No.

21 Q And you say he's currently living with you; is that
22 correct?

23 A That is correct.

24 Q And is he receiving treatment at this time, do you
25 know?

GINA HARBUCK-CROSS EXAMINATION

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1 A I take him to the VA. I drop him off, he goes in the
2 door.

3 MR. QUINN: I don't have any other questions. Thank
4 you, Gina.

5 THE WITNESS: Thank you.

6 THE COURT: Cross-examination, Solicitor?

7 CROSS-EXAMINATION

8 BY MR. SCOTT:

9 Q So you first heard from him at 6:00?

10 A I would say roughly 6:00. We were getting ready to go
11 to dinner.

12 Q And he's giving you tag numbers and mile markers and
13 everything else?

14 A Yes.

15 Q Why didn't you call the police if he's giving you mile
16 markers of his exact location?

17 A That's a good question, and thank you. And in
18 hindsight, yes. Had I realized what the situation actually
19 was, I probably would have. But you're right. I should
20 have called. Absolutely I should have.

21 Q I didn't say that. I'm just -- and I'm not judging
22 you.

23 A Yeah. I mean, no. I understand that. But yeah, in
24 hindsight. But when you're -- when you're caught up in a
25 moment and your child's on the phone and he's panicked,

1 you're on the one telephone you have. No, I did not think
2 to do that.

3 Q You're describing a situation to this jury where he's
4 lost his mind. He's driving down the interstate. And you
5 know his exact location because he's giving it to you.

6 A And I don't know anything about erratic driving or
7 anything of that. I know he thinks people are following
8 him, and he thinks somebody is shooting at him. I don't
9 know any of this other stuff that I've heard today. Heard
10 this week.

11 Q But you said -- you testified now, when his attorney
12 asked you, that he seemed not to be in right mind. I knew
13 he was on the interstate.

14 A Correct.

15 Q I knew exactly where he was because he gave me the mile
16 markers.

17 A He gave me a mile marker. He didn't say I'm on I-26,
18 I-85. He gave me a mile marker.

19 Q And you never asked?

20 A I don't recall that I asked, no. Until you're in a
21 situation like that it's -- it's really -- it's hard to
22 know. Looking back you think I should have done X, Y, Z.
23 But in the moment of -- out of the blue, out of the
24 ordinary, something is going on, you don't always --

25 Q What was your concern in the moment?

GINA HARBUCK-CROSS EXAMINATION

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1 A My concern in the moment, that he -- he was crazy.

2 Q Not to get him off the road?

3 A No.

4 Q You knew him to do drugs before?

5 A No.

6 Q No?

7 A He smoked weed when he was in high school, but --

8 Q Weed with anything in it?

9 A No. I don't even know for a fact that he smoked weed.

10 I mean, it's a possibility. And, you know, he didn't live
11 with me for quite a few years. I mean, he was in the Army.
12 He wasn't at home.

13 Q You know, and that's not something you want your mom to
14 know anyway, but --

15 A Right. And I don't think he would, you know, hey mom.

16 Q Yeah.

17 A But no, I do not know him to --

18 Q You were on the phone with him for 30 minutes. Well,
19 what did you do after the phone had cut off? Did you --

20 A I tried to call him back. He didn't answer. I
21 contacted my husband. And then I started praying. I'm a
22 very Christian, religious woman. I prayed all the way
23 through Afghanistan. And I just started praying. I didn't
24 know exactly where he was or what was going on, but I just
25 started praying.

1 Q And at this time in his life, I guess, there's a lot of
2 different things going on. He's living by himself over in
3 Atlanta?

4 A Yes, sir. Yeah. I mean, he'd been out of our house
5 for several years.

6 Q Did he have a woman in his life or anything that you
7 know of?

8 A At that time, no.

9 Q He described this kind of very spontaneous idea to go
10 to college, and he was running up there at the last minute
11 to check in.

12 A I had come to Atlanta to pick his dad up. He flies in
13 and out of Atlanta when he comes in from Iraq. And he met
14 us -- he met him at the airport. And he said, I think I'm
15 going to go to college. He said that's something I wish I
16 had -- you know, I wish I had done and I'm -- go for it,
17 son, I mean. So yeah, last minute, but --

18 Q I mean, was his life kind of in flux at that period?

19 A Well, he had gotten out of the military. He had gotten
20 a job. He was working. And went -- you know, I want to go
21 back to school. That's important to me.

22 Q How was his -- what was his demeanor that last time you
23 saw him when he was describing that?

24 A At the airport, very upbeat. Very, hey, I want to go
25 to college. But that wasn't the last time I had seen him.

GINA HARBUCK-CROSS EXAMINATION

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1 I mean, that was probably -- I mean, he was in Atlanta, and
2 Anniston is not that far -- apart. He had been home.
3 Because after his dad came in, was there, he came in for the
4 weekend and he was fine.

5 Q So you saw him -- when was the last time before this
6 incident that you saw him?

7 A I actually went to Lynchburg and helped him find an
8 apartment.

9 Q I don't know what that means. How close in time was --

10 A That was -- he was moving to Lynchburg.

11 Q A couple of weeks before, or a week before?

12 A Probably a few days before.

13 Q And what was his demeanor then?

14 A Excited about school. He was -- we found an apartment.

15 Q Do you remember the routes you all -- you would have
16 come from Anniston. But I guess you would have driven I-20
17 to Atlanta and then up to 85 to Lynchburg. Do you remember
18 the route?

19 A I flew in. So yeah, I went to Atlanta, flew to
20 Charlotte and then from Charlotte into Lynchburg.

21 MR. SCOTT: Okay. Thank you. Mrs. Harbuck?

22 THE WITNESS: Yes, sir.

23 MR. SCOTT: Thank you, Mrs. Harbuck.

24 THE WITNESS: Your welcome.

25 THE COURT: Any redirect?

KAREN DEAN-DIRECT EXAMINATION

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1 MR. QUINN: No, Your Honor.

2 THE COURT: Thank you, ma'am. You can step down.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 THE COURT: Call your next witness.

6 MR. QUINN: We call Ms. Karen Dean to the stand.

7 KAREN DEAN, having first been sworn
8 to tell the truth, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. QUINN:

11 Q Could I have your full name for the record, please,
12 ma'am.

13 A Karen Nelson Dean.

14 Q And, Ms. Dean, where do you live?

15 A I live in Anniston, Alabama.

16 Q And do you happen to know Clint Harbuck?

17 A I do.

18 Q And is he the fellow that's been sitting with me in the
19 blue shirt?

20 A Yes, he is.

21 Q And how do you know Clint? How did you come to know
22 him?

23 A Our children went to school together. My -- our
24 youngest daughter and Gina's daughter, they graduated
25 together. So they went all through school and they were in

KAREN DEAN-DIRECT EXAMINATION

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1 and out of the houses. And they were over at her house and
2 then over at my house. And in the band together. So I've
3 known them -- that's how I know him.

4 Q So how long have you known the Harbuck family?

5 A The Harbuck family I have known about -- let's see.
6 She lived out of state for a while. So I guess close to 20
7 years. Eighteen or 20 years.

8 Q And did you all live in the same neighborhood?

9 A Within the same community.

10 Q And so, were the kids able to go back and forth without
11 problems?

12 A Right, yes.

13 Q And have you dealt with Clint specifically?

14 A Yes.

15 Q And tell me what dealings you've had with Clint.

16 A We've talked to each other a lot about deep things, and
17 we joke and we play, and I've watched him skateboard, and
18 just general every day contact.

19 Q And do you attend the same church that they do?

20 A No.

21 Q And so, have you known Clint about 20 years?

22 A About 18.

23 Q And in that time have you had the opportunity to make a
24 determination as to his ability -- as to his credibility?

25 That is, what we call believability.

1 A Yes.

2 Q And can you tell the jury what your opinion of that is?

3 A He is a very respectful young man. He does not lie.

4 Even if it gets him in trouble he won't lie. He is a --

5 he's grown into such a wonderful young man. He's funny. He

6 has a great sense of humor.

7 THE COURT: Ma'am, you're going to need to speak up,
8 please.

9 Q You say you live in the same community.

10 A Uh-huh.

11 Q Do you know what the community's belief would be as to
12 his reputation for credibility or believability?

13 A I believe that the community would believe that he
14 would not lie either, because he's -- we've been in that
15 community since he came to school there, which -- well, 18
16 years. And they have dealt with him a great deal, and I
17 think that he would -- they would also be ones to say that
18 even at the cost of getting his own self in trouble, he
19 would still be truthful and honest.

20 Q And are you friends with his mom, Gina?

21 A Yes. Gina and I went to school together and we've
22 known each other 40 something years. Been in and out of
23 each other's house.

24 Q And is it fair to say you wouldn't want to see Clint
25 get in trouble?

KAREN DEAN-CROSS EXAMINATION

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1 A I would not.

2 Q And is it fair to say you wouldn't want to see anything
3 bad happen to Clint?

4 A I would not. It would break my heart.

5 Q Would you come to Court and put your hand on the Bible
6 and lie for him?

7 A No.

8 MR. QUINN: I don't have any other questions. Thank
9 you.

10 THE COURT: Any cross-examination, Solicitor?

11 CROSS-EXAMINATION

12 BY MR. SCOTT:

13 Q On September 6th, 2015, I know you weren't with Clint,
14 but did you speak with him --

15 A No.

16 Q -- on that day?

17 A No.

18 MR. SCOTT: Thank you. Nothing further.

19 THE COURT: Thank you, ma'am. You can step down.

20 (Whereupon, the witness stepped down from the witness
21 stand.)

22 THE COURT: Any other witnesses, Mr. Quinn?

23 MR. QUINN: One more. We call Mr. Dean to the stand.

24 TIMOTHY PAUL DEAN, having been

25 first duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. QUINN:

3 Q Mr. Dean, could I have your full name for the record,
4 please.

5 A Timothy Paul Dean.

6 Q And, Mr. Dean, it seems obvious, but let me ask. Are
7 you married to Karen Dean?

8 A Thirty-six years. Yes, sir.

9 Q And do you two have children?

10 A Yes, sir. We have two girls.

11 Q And did one of your girls -- was one of your girls
12 friends with Clint's sister?

13 A Yes.

14 Q And which of your girls is that?

15 A My daughter's Christina. Was in the band, involved in
16 several other activities at the school. We had one of those
17 magnets called a pool, so we had children over all the time.

18 Q And the pool was at your house or was it a community
19 pool?

20 A It was ours.

21 Q And was Clint one of the people that was over
22 sometimes?

23 A Yes, sir.

24 Q And have you gotten to know Clint?

25 A I have.

TIMOTHY PAUL DEAN-CROSS EXAMINATION

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1 Q And how long have you known him?

2 A Seventeen years.

3 Q And do you all live in the same community as the
4 Harbucks?

5 A We do.

6 Q And during the time that you've known him have you had
7 occasion to deal with Clint?

8 A Yes.

9 Q And have you spoken with him?

10 A Yes.

11 Q About anything in particular? His religion, or school,
12 or anything in particular?

13 A We talk about all of those things.

14 Q And have you been able to develop an opinion as to his
15 credibility? That is, his believability?

16 A I have.

17 Q And what is your opinion, sir?

18 A I trust him. I'd trust him with anything I had. He's
19 proven this week if you need him you can call him, he'll be
20 there.

21 Q And I believe you say you've lived in the same
22 community. Do you know what the community's opinion of his
23 credibility might be?

24 A I do not.

25 Q Now, Mr. Dean, you wouldn't want to see Clint get in

1 trouble or hurt in any way, would you?

2 A No, sir.

3 Q Would you come to court and lie for him?

4 A No, sir.

5 Q And did you speak with Clint on September 6th, 2015?

6 A I did not.

7 Q Did you see him on that day?

8 A I did not.

9 Q So do you know anything about the facts of what
10 happened that day?

11 A I've learned here in the Court.

12 Q But personally do you know anything about it? You
13 weren't there that day?

14 A No, sir.

15 MR. QUINN: I don't have any other questions. Thank
16 you, Mr. Dean.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. SCOTT:

20 Q Mr. Quinn pretty much asked it, but -- what I was going
21 to ask you. You didn't speak -- you don't know what he was
22 up to that day in Atlanta and on 85 and what he may have
23 been doing?

24 A No, sir.

25 MR. SCOTT: Thank you, sir. You can step down.

1 (Whereupon, the witness stepped down from the witness
2 stand.)

3 MR. QUINN: The Defense rests.

4 THE COURT: Thank you, Mr. Quinn. Solicitor, does the
5 State have any rebuttal case?

6 MR. SCOTT: No, sir, Your Honor.

7 THE COURT: All right. The evidentiary record in this
8 case is now closed.

9 Ladies and gentlemen, what we have left to do in this
10 case is the lawyers will make their closing arguments to
11 you, and then I will charge you on the law in the case, and
12 after that is done then I will instruct you to begin your
13 deliberations, then you will reach a verdict in this case.
14 It's about 11:30 and we're getting close to a lunch break.
15 Plus, I need to work with the lawyers concerning the Court's
16 final charge. So I'm going to give you a little longer
17 lunch break and have you come back at 1:30. That's in two
18 hours. It's 11:30 now. Be back here at 1:30 and hopefully
19 we'll be in a position at that time to -- for the lawyers to
20 give their closing arguments and the Court to charge you.
21 So you're free until 1:30. Again, I remind you as I have
22 before, don't begin any discussions among yourselves about
23 this case, anybody that you come into contact with. And if
24 you're out in public at a restaurant and the like, keep your
25 juror button on. Okay?

1 Have a good break and we'll see you back at 1:30.

2 (Whereupon, the jury exited the courtroom at 11:26
3 a.m.)

4 THE COURT: Anything we need to put on the record
5 before we adjourn for lunch?

6 MR. SCOTT: No, Your Honor.

7 MR QUINN: Yes, sir. Your Honor, at this time I would
8 renew my earlier motion for a directed verdict.

9 THE COURT: Very good. So noted, and thank you. Let's
10 -- it's 11:30 now. We need to finalize the charges and
11 verdict forms. Let's get together a little bit before 1:00.
12 Okay? Suite everybody?

13 MR. SCOTT: Yes, sir.

14 THE COURT: All right. We'll see you then. Have a
15 good break.

16 (Whereupon, a lunch recess was held from 11:26 a.m. to
17 1:53 p.m.)

18 THE COURT: Okay. We're back on the record. Provided
19 everybody with a final draft of the charge. Certainly after
20 I do charge I give everybody the right to make whatever
21 objections or exceptions. But I think the final draft, I
22 think, covered a few things that we discussed in chambers.

23 MR. QUINN: Yes, sir.

24 THE COURT: All right. Solicitor Scott, are you going
25 to open on the law?

1 MR. SCOTT: No, sir. I hadn't intended on it. I
2 thought I'd just close in full.

3 THE COURT: All right. Mr. Quinn, are you ready for
4 your closing?

5 MR. QUINN: I'm ready.

6 THE COURT: Very good. Mr. Bolt, if you'll bring the
7 jury out, please.

8 (Whereupon, the jury entered the courtroom at 1:55
9 p.m.)

10 THE BAILIFF: All jurors are present, Your Honor.

11 THE COURT: Thank you, Mr. Bolt Ladies and gentlemen,
12 as I told you before we broke for lunch what we have left in
13 this case is the closing arguments by both the lawyers and
14 that then the Court will charge you on the law applicable to
15 this case, and then I will instruct you after that to begin
16 your deliberations. So, Mr. Quinn, if you're ready. I
17 would ask you just continue to give these lawyers your
18 undivided attention. Okay? Thank you very much.

19 MR. QUINN: Thank you, Your Honor. If it please the
20 Court.

21 THE COURT: Yes, sir.

22 CLOSING ARGUMENT

23 BY MR. QUINN: Mr. Foreman and ladies and gentlemen of
24 the jury, Clint Harbuck took this stand and tried to answer
25 the Solicitor's questions and tried to make sense for you

1 all of what happened on September 6th. But the problem is,
2 you can't make sense of something that's crazy. And he
3 still believes it. Did you see that he didn't want to back
4 off that this really happened. He still believes that he
5 was followed by these four cars, that some guy pointed a gun
6 at him out of the back of an SUV, that he was maybe in some
7 training film or training exercise with the FBI or CIA, or
8 whatever was in his delusion. Because as his mom says, when
9 I talked to him I was afraid he had fallen off the edge.
10 Mom knows better than anybody. She gets up and has to say
11 in public Court to 13 jurors, my son's crazy. He was crazy
12 that day. He was not in his right head. When I talked to
13 him I kept trying to say nobody is following you. Nobody is
14 chasing you. She tried to calm him down but was unable to.

15 Now, the Solicitor -- and let me back up. One of the
16 things I will have to do is I only get one opportunity to
17 speak with you, just as the Solicitor only gets one
18 opportunity. Because if we got to talk again and again we'd
19 be here forever. So I have to anticipate some of what the
20 Solicitor is going to say. I can't anticipate them all. I
21 may say, oh, the Solicitor is going suggest this. He may
22 not at all. He may have something completely different in
23 his mind as to what he's going to discuss with you. But I
24 have to try to guess a bit and I will do a bit of that. One
25 of the things he may suggest is that Clint has cooked this

1 story up. That this -- he didn't tell the police this at
2 the time because he thought it was an exercise, but he's
3 made it all up, ladies and gentlemen. None of this really
4 happened that day. Two things. One, we'll go back through
5 the evidence together in a second and we'll see that that
6 doesn't make any sense at all. But secondly, if he was
7 going to make it up, why wouldn't he make up a better story?
8 Is there any advantage -- because the Solicitor wanted to
9 suggest that Mr. Harbuck didn't want to happen that day
10 because it was somehow to his advantage. I hope you all
11 heard clearly, as I believe Clint testified, I did what's on
12 that video. Yeah, I was driving that car. I crashed into
13 those people. I was driving crazy. I don't believe that I
14 could have squeezed my big truck between two other vehicles.
15 But yeah, I was driving crazy. That's the only thing he
16 expressed any doubt about was that he could drive his car
17 between two other cars on a two lane highway. That was the
18 only time he expressed any concern about with what all the
19 other witnesses have said. Otherwise he said yeah. I
20 remember tussling with the cops. I only remember being
21 tased once. Hell, if he was going to make up a story why
22 wouldn't he say how the cops abused me and tased me
23 unnecessarily over and over and over. And we'll talk about
24 that. If he's making this up, why doesn't he make up a
25 better story. And why didn't he deny any of the things that

1 these witnesses are saying that are on video. I mean, maybe
2 you've got to admit the video. What choice do you have.
3 But things that other people were saying, why wouldn't he
4 just deny it. It's because he is telling what he believes
5 is the truth, even though we know it's not. There's no
6 evidence, none, not suggested by the State, not suggested by
7 any of their witnesses, not suggested by the Defense or any
8 of our witnesses that this actually happened. Nobody has
9 identified of these vehicles. Nobody has identified anybody
10 with a gun in the back of a car. It didn't happen. It's in
11 Clint's head. The Defense also puts up his mom. You heard
12 her testify. And these two people in the neighborhood who
13 come and say we've known him forever. We weren't -- we
14 didn't see him that day. We didn't see him the day before.
15 We know he's a truth teller, even if it were to
16 disadvantage. We all know that, too. That even if it works
17 to his disadvantage to say as far as I know these State
18 witnesses are telling the truth about the way I was driving
19 and telling the truth about what happened, if I may have
20 been kicking when they were pulling me into the car. Even
21 if it works to this disadvantage he tells the truth.

22 The State's witnesses -- and there is unfortunately
23 lots of papers I may have to shuffle and I will ask for your
24 consideration. The State's witness, Ms. Hamby, describes
25 him as driving crazy, and says we couldn't figure out when

1 he rammed our car what was wrong with him or what intent he
2 had. Mr. Raines describes it as driving crazy. EMS came to
3 the scene -- I'm sorry. I'll come back to that at a
4 different point. And that they didn't understand what he
5 was doing. And that they didn't understand what he was
6 doing. Mr. Stephenson, the driver who says you don't know
7 what state of mind these people are in. That at first he
8 thought it was a police officer because the guy was driving
9 so out of control, so quickly, and that's why he said does
10 everybody got their seatbelts on because he didn't want to
11 get a ticket. And then he realizes it's not a cop who's
12 driving nuts up and down the road, and they then try to get
13 help to get them stopped. Corporal Lindler says I believe
14 there must have been some kind of impairment. He was
15 fidgety in the car. I had a gut feeling that something was
16 wrong. And if I misstate the exact words, I'm sorry. But I
17 believe he said I could feel the hairs on the back of my
18 neck raise up. That he saw him ram the car, the rear-end of
19 the SUV, and didn't know what he was going to do next. That
20 he didn't know what he was doing. That he was fidgety. All
21 of them described him as crazy. Officer Jones describes him
22 as difficult to deal with. Officer Peay describes him as
23 flipped out multiple times that night. I believe those were
24 his exact words. Everybody agrees that Clint Harbuck was
25 wrong that night. And when I say wrong, I mean in his head.

1 That he was not acting right. That he wasn't even close to
2 acting right. Nobody could figure out why, because the
3 question is why. We talked about that at the beginning of
4 the case and I told you there's questions and which one I
5 was going to concentrate on. There is no evidence in the
6 record that Clint Harbuck was running toward anything.
7 Wasn't trying to get to his girlfriend. Wasn't late trying
8 to get back to Virginia. You know, 100 miles an hour to get
9 to Virginia or something like that. There's no evidence he
10 was running from anything. He agrees he'd driving under
11 suspension. Okay. We don't have a charge for that, so I
12 don't know what happened with that. But apparently he may
13 have had a suspended license. But short of that, did they
14 find any drugs in his car? No. Paraphernalia that would
15 indicate the use of drugs? No. Guns? None. Did they find
16 anything in the vehicle that would justify him fleeing up
17 and down the road with nobody chasing him. He's doing all
18 this crazy driving without a police officer behind him.
19 Keep in mind, driving isn't in relation to the officer
20 following behind him. He's just driving like this because
21 he thinks he's being chased.

22 So what is the reason for any of this? Well, maybe
23 when the officer becomes involved it's because he's got a
24 warrant. They're going to arrest him for something. Any
25 evidences as to that? None. So why is he doing this?

1 Well, the Solicitor is going to suggest, I believe based on
2 his questioning, drugs. Ladies and gentlemen, drugs.
3 There's no evidence of that. None. One officer said
4 something about he smelled marijuana. Smelled the scent of
5 marijuana. Whatever the exact words might have been. But
6 then even the Solicitor -- he was the Solicitor's witness.
7 The Solicitor got up and said, well, don't you agree he
8 wasn't acting the way anybody smoking marijuana would act,
9 meaning marijuana is supposed to slow you down and make you
10 hungry or whatever. Like I don't know. But not act like
11 this. And they didn't find any drugs. They didn't find any
12 evidence of drugs. They're going to say, well, the officer
13 says I've been around a lot of people a lot of years and I
14 thought he might have been on something. There's medical
15 personnel involved in this case, none of which have come and
16 testified. There's a doctor at the hospital who saw him.
17 As far as I know, based on the testimony from the officer,
18 who saw him face to face in an examining room. Saw him at a
19 fairly close distance. Not as if I'm seeing somebody
20 sitting at the back of the courtroom. But somebody that I
21 would be right up on. Somebody that is a trained medical
22 person who might be able to say his pupils were dilating or
23 expanding, and that's evidence of use of drugs, or that his
24 pulse rate was fast or slow, or that he was sweaty or
25 clammy, or described any physical things over and above

1 blood tests, which apparently were not done. None of that
2 is presented here. Maybe it's hard to get a doctor to come
3 to court.. Maybe the doctor didn't spend enough time with
4 him. What about the EMTs? The officer said, yeah, the EMTs
5 were at the scene. They were there. What's their notice
6 about it? The physical condition of Mr. Harbuck. And if you
7 listen to the description of the people involved, they talk
8 about -- I think Officer Lindler used the phrase he had a
9 moment of clarity. That at one point he said stop, just
10 quit, you know, we're done, and he does. I believe that was
11 the right word, moment of clarity. Is that what drug
12 addicts do? If you're wired on drugs do you go up and down?
13 Do you change? Does the drug kick in and then stop, and
14 then start again and then stop? There's no evidence of
15 drugs in this case. There's all kinds of hints about it in
16 the Solicitor's argument, because if he convinces you, even
17 with no evidence, that drugs were involved, then perhaps you
18 can convict Mr. Harbuck. Because if you don't find that the
19 proof of that exists beyond a reasonable doubt, Mr. Harbuck,
20 under the law, is not guilty. Intent is required in every
21 offense before you even except one -- and I'll come back to
22 failure to stop for a blue light. It is required of each of
23 these crimes. If you don't intend to break the law, you
24 cannot be punished for that crime. It doesn't mean you
25 can't be sued. It doesn't mean there's not all kinds of

1 other repercussions. But you can't be guilty of attempted
2 murder if you were not trying to kill somebody. If you
3 could not form that intent in your mind. The Judge is going
4 to tell you, in case you think I'm making this up, that
5 that's the law in South Carolina. As far as I know, it's
6 the law in every state in the Union. That criminal intent
7 is an essential element of each of these offenses, save one.
8 And that if you find that Mr. Harbuck was not able to form
9 the intention to commit these crimes because he was under a
10 delusion that made him believe some other scenario was
11 ongoing, and that he was thinking he was in an exercise, or
12 whatever was in his sad little head, that he is not guilty
13 of these crimes. We don't lock people up for having mental
14 difficulties. He has a medical discharge from the military.
15 He's undergoing therapy and counseling, according to his
16 testimony. You don't put people in jail, the law does not
17 put people in jail, if they are not able to form their
18 thoughts and form an intent. If somebody hurts somebody
19 else accidentally, they're not convicted. They're not found
20 guilty. And, in fact, if you find that intent has not been
21 proven by the State beyond a reasonable doubt, you must,
22 under your oaths as jurors, find Mr. Harbuck not guilty,
23 because that would be the right verdict.

24 And under the failure to stop for a blue light, the
25 Judge is going to tell you what the law is and will not --

1 not intentionally misstate it. I believe it says in the
2 absence of mitigating circumstances if you fail to stop for
3 a police officer. Well, this case reeks of mitigating
4 circumstances. I mean, mitigating circumstances are he
5 thought it was an exercise. He didn't realize this was a
6 sincere effort by an officer to stop him. He doesn't
7 thankfully go very far. Another screwy part in this case is
8 he stops. He goes through ramming these vehicles -- and
9 that's the word that the State keeps using, and I'm going to
10 talk to you about that in a second. He strikes both of
11 these vehicles. But then, instead of driving away, he pulls
12 over and stops. And Officer Lindler says -- This is the
13 second time Officer Lindler has gotten out of his car
14 because he doesn't drive away down the exit ramp of 54. He
15 pulls over. Officer Lindler says he stopped and followed my
16 instructions. At that point he did. Got out of the car,
17 did what I wanted and complied, until he started to put the
18 handcuffs on him and he goes crazy again on him. But at
19 least until then he followed my instructions. What drug
20 kicks in and out like that. What drug would suddenly have
21 you stop and say, okay, Officer, I'm comply. What would
22 ever make you do that unless you were just -- and I, of
23 course, want to make sense of what doesn't make sense. We
24 all do. We all want to say, well, what happened out there
25 goes this way, that way and this way. But it doesn't,

1 because in his head it was a whole different scenario.

2 You're going to be presented a laundry list of charges
3 in this case. The law allows what are called included or
4 lesser included offenses. That is, that if you're charged
5 with a crime, there may be other crimes you could be found
6 guilty of. For instance, in this case, Mr. Harbuck is
7 charged with four counts of attempted murder. The only
8 witness here is still Officer -- he's accused of attempting
9 to kill Officer Lindler, and attempting to kill Mr.
10 Stephenson and Raines, and Ms. Hamby in the other vehicle.
11 Let's do facts and law is the only way I know how to do
12 that. Factually, do you really believe that's true? Is the
13 evidence such that he was trying to kill them? You have the
14 tape in evidence. If I knew how to use this magical thing,
15 I might. But you will have the tape in evidence. The
16 vehicle driven by the three civilians -- driven by Mr.
17 Stephenson, he was the driver, is bumped by Mr. Harbuck. No
18 question about it. I'm not trying to mislead it in any way.
19 But to say he rams it may be an overstep. They drive that
20 vehicle away. They drive that vehicle later that night to
21 Columbia. It is not disabled in any means. All three of
22 them were asked, either by myself or by the Solicitor, were
23 you hurt. What injuries did you have. None of the three
24 reported any injuries. Not a bump, not a bruise, not a cut,
25 not a scratch, not anything that required medical treatment,

1 yet he's charged with attempted murder. Now, he if he had
2 T-boned intentionally trying to hit a passenger or the
3 driver, we'd have a different fact situation. But I
4 encourage you to look at the tape, if you don't believe you
5 remember it clearly, or believe it might be of assistance to
6 you, to see what damage there is to that vehicle. None of
7 that has been presented to you. There's no estimate of how
8 much damage. How much it cost to fix that vehicle. Why
9 there's no malicious damage to property is beyond me. I
10 don't -- it seems to me that that's the logical charge if I
11 tear up your property to charge with malicious damage of
12 property. But there is no charge before us for that. But
13 is this attempted murder? Is that what he attempted to do?
14 And the Judge is going to tell you that attempted murder has
15 a different sort of intent in South Carolina and it has to
16 be a specific intent to kill. And that has to be specific.
17 No general intent. No I did something wrong. Ill will,
18 hatred, malice. Is there any evidence he knew these people
19 before? Any evidence he was out to get them or injure them
20 in any way? No. The same is true with Officer Lindler.
21 Now, is he nuts, driving back up that way, ripping his tires
22 up to try to hit Officer Lindler's car? It's crazy. He
23 hits Officer Lindler's car, and then pulls away and starts
24 to leave. Doesn't strike it a second time. Doesn't attempt
25 to run Officer Lindler over. Doesn't attempt to injure him

1 in anyway. Of course, he doesn't have a weapon. But he
2 doesn't try to do anything to murder Officer Lindler, which
3 is what he's charged with. He's charged with attempted
4 murder on Officer Lindler. Again, should there be a
5 malicious damage? I don't know. That vehicle is back out
6 in service. So what the damage to that vehicle was from
7 this strike -- because he's got a brush guard on the front.
8 It didn't disable the car. Officer Lindler is able to get
9 back in and drive the vehicle up, repark, get out and arrest
10 him. So that vehicle is not even broken or stopped or --
11 I'm sorry. I'm missing the right word. It's not injured in
12 such a way that it's disabled. There you go. Yet
13 supposedly you're supposed to find him guilty of attempted
14 murder. Well, that's where all these lesser includeds come
15 in. If you find that there was -- and if you'll give me one
16 second, please.

17 You're also going to be given the opportunity to
18 consider assault and battery in the first degree, and that
19 is an assault and battery on a person accomplished by means
20 likely to produce death or great bodily injury. Great
21 bodily injury is permanent -- I'm sorry. Serious permanent
22 disfigurement or protracted loss or impairment of the
23 function of a bodily member or organ. It's a long way of
24 saying you got tore up pretty bad. Okay. That you have a
25 substantial risk of death or serious permanent

1 disfigurement. Or you can consider assault and battery in
2 the second degree. That's moderate bodily injury. And we
3 wonder why people hate lawyers. That causes temporary or
4 moderate disfigurement or temporary loss of the function of
5 a bodily member or organ, or injury that requires medical
6 treatment which requires the use of regional or general
7 anesthesia or an injury that results in a fracture or
8 dislocation. Or you can find him guilty of assault and
9 battery in the third degree, which is assault and battery in
10 the third degree is if he unlawfully injures another person
11 or offers or attempts to injury another person with the
12 ability to do so.

13 So you've got all these choices. Your first choice the
14 Judge is going to tell you you have to find all the elements
15 of any defense before you can find anybody guilty of
16 anything. So if you find there is no intent, that poor
17 Clint Harbuck was crazy, he's not guilty and you stop. You
18 find him not guilty. There are no lesser includeds. You
19 don't look at any other charges. You're finished. If you
20 disagree and somehow you find that he was in his right head
21 and he intended to do certain things against the law, then
22 you're going to have to figure out which crime is
23 applicable. Did he intend to murder him? I don't believe
24 there's any evidence of that. But ladies and gentlemen, you
25 get to make that decision. But look at the facts. Is there

1 anything in the facts that speaks to his intention to murder
2 any of these people. Is it assault and battery of a high
3 and aggravated nature or assault and battery in the first
4 degree. Great bodily injury. The death or serious
5 disfigurement. None. There's no evidence of any in this
6 case. Moderate bodily injury. General anesthesia, a scar,
7 temporary loss of a body organ. Is there any evidence of
8 that in this case? None. If you find him guilty of
9 anything, and I don't believe you should because of the
10 first element of intent is not met. It would be perhaps
11 assault and battery in the third degree because he
12 unlawfully injured another person. In this case, and in
13 Officer Lindler's case, Officer Lindler did testify that his
14 back was hurting. So, I mean, there is an injury to at
15 least one person. Not to the three in the other car. None
16 of those three had any injury. But there was at least an
17 injury to Officer Lindler. I will certainly concede that.
18 Officer Lindler's clearly testified to that.

19 So you're going to have to make those decisions about
20 the assault and battery. I would encourage you to consider
21 the charge in the way it's written which means you start
22 with intent. If you get past that, then you figure out what
23 injuries, if any, were suffered, and then you apply it to
24 the facts to the law and that's your verdict. Two other
25 charges. Failure to stop for a blue light. Let me just to

1 that one, because resisting is going to take a moment. If
2 there are mitigating circumstances then you're not guilty of
3 failure to stop for a blue light in this case. Mitigating
4 circumstances are his ability and his capacity at that
5 point. Where he was in his brain, or the problem in his
6 brain.

7 Let's talk about resisting arrest. If Clint Harbuck
8 was making this up, this is where he should have made up a
9 better story, because while the three people in the vehicle
10 that were trying to get Mr. Harbuck stopped before someone
11 did get hurt seriously didn't do anything wrong. And
12 Officer Lindler, who was doing everything he could to stop
13 him, saying calm down, calm down, we're finished, he didn't
14 do anything wrong. I am not willing to concede that about
15 the other two officers. You get to make these decisions.
16 But I want you to consider. If I am handcuffed, my arms are
17 limited to that sort of distance. This officer shows up,
18 Officer Peay shows up, there are other officers all over the
19 scene. He couldn't even name all of them there were so many
20 other officers there. They had already searched him. They
21 had him under control. The only reason they needed somebody
22 from Clinton is because he's got a caged car. So they put
23 him in a caged backseat. You all know what that is from
24 television. Television can be abused sometimes. It's a
25 metal mesh partition between the front and the back. You

1 can't get out of the back of a police car. The doors don't
2 work. The police have got to get you out. So he's
3 handcuffed. Handcuffed on his belly. And I'm not willing
4 to lay down on the ground. I'm sorry. On his belly with
5 his hands behind his back, having already been placed under
6 arrest by other officers. And one of the things I don't
7 understand in this case, and ladies and gentlemen, you need
8 to consider this, the resisting arrest is not against
9 Officer Lindler. The resisting arrest is against this
10 Officer Peay from -- no, I'm sorry. It's against Lieutenant
11 Clark from Clinton who supposedly gets kicked. Laid on his
12 belly, handcuffed in a caged vehicle, and they say we had to
13 get him out to search him. What? We had to get him out to
14 search him. I must have gone through that over and over
15 with the Lieutenant what are we talking about. Which
16 location are we at. And no, we had to get him out because
17 he was not -- he was struggling to get out of his handcuffs.
18 So what? Why did you have to go in the cage to get him? I
19 thought that was the whole point. Officer Lindler could
20 have taken him if we were going to stop every time he tried
21 to get out of his handcuffs. We knew he was going to
22 resist. We knew he was going to be a problem, right? Think
23 they sort of had a hint when he's zipping up and down the
24 road driving crazy that he might be a problem? They have to
25 pull him out of the car. And guess what, we have to give

1 him a five second ride. Love that word. A ride. And guess
2 what. That wasn't good enough. We had to give him a second
3 one. And, in fact, we had to give him a third one in
4 another location, and we're not even going to bring that
5 officer to tell you about it. Lieutenant Shelton gave him
6 the third tase. We haven't seen Lieutenant Shelton, because
7 don't know what in the world Lieutenant Shelton might say.
8 He might call it something even better than a ride. He may
9 not have any justification for doing this. Officer -- or
10 Lieutenant, I'm sorry, Clark's story is that when he is laid
11 down -- I'll do it over here. His head is down there.
12 Lieutenant Clark supposedly goes to his legs, because
13 they're going to search him. Of course they don't find
14 anything, but that doesn't count. Lieutenant Clark
15 supposedly gets up against the car to hold his legs so he
16 can get kicked. What? He got to be a Lieutenant and that's
17 how he approaches a subject he believes is going to fight?
18 Would any of you have enough sense if you were fighting with
19 your child to stand back where he couldn't kick you and grab
20 his feet? No. Lieutenant Clark gets up so quick that he
21 was getting kicked in the legs, so we had to pull him out
22 and tase him. And it doesn't make no sense. You know, this
23 outrageous. This is just outrageous. There is no evidence,
24 none, not a seconds worth of evidence that Lieutenant Clark
25 was injured in any way. There wasn't a picture of a bruise.

1 There wasn't a picture of an ouch, a bandage or anything on
2 Lieutenant Clark. And for him to be so foolish as to do it
3 once, he does it a second time. This guy has made
4 Lieutenant and he doesn't have enough sense to stand back
5 far enough and reach in when the guy is laid down and hold
6 his legs. Hold his feet. Really? That's the testimony.
7 That's the resisting arrest. The resisting arrest was the
8 injury on Lieutenant Clark. Non-existent injury on
9 Lieutenant Clark. Did you hear any medical testimony about
10 poor Lieutenant Clark? Not a word. There is no resisting
11 arrest in this case. The truth is, if there was, it was
12 against poor Officer Lindler. Not against Lieutenant Clark.
13 But Officer Lindler didn't tase him. Your verdict on the
14 resisting arrest should be not guilty. Just factually. If
15 poor Clint hadn't been crazy that day, your verdict in that
16 case should be not guilty. If he was the most sane son of a
17 gun in the world, your verdict should be not guilty on those
18 things. Those facts are outrageous.

19 The Judge will tell you the law, because he will
20 address you immediately after the Solicitor completes his
21 argument, or very shortly thereafter, there's no reason for
22 me to go through it at great length. He is going to tell
23 you, as I have mentioned in opening statement, the
24 presumption of innocence still applies. That Clint Harbuck,
25 as he sits there is innocent. He will remain innocent

1 throughout your deliberations unless you decide the State
2 has proven by facts. Not we think he was on drugs, we think
3 this. Facts that came from this witness stand that prove to
4 you beyond a reasonable doubt he's guilty. Until that point
5 he gets the benefit of every single doubt. If you're unsure
6 sitting here or in the jury room, well, I can see it this
7 way and I can see it this way, if the one is more benefit to
8 Mr. Harbuck, he gets the benefit of that doubt. The Judge
9 is going to tell you that, just in case you think I'm making
10 these things up. The Judge is going to tell you you got to
11 follow the law. He's going to tell you that's the law.
12 He's going to tell you the State has the burden of proof.
13 They've got to prove this case. Not hint. Not suggest.
14 Not maybe should a, would a, could a. But ladies and
15 gentlemen, let me show you the proof we have. Let me show
16 you the photographs we have. Let me show you the tape we've
17 got. I mean, that's proof. That's evidence. It's
18 something that the 12 of you can consider. You cannot
19 consider, well, gee, we thought maybe he was on this. We
20 thought maybe he was impaired. Officer Lindler thought he
21 had a drunk driver, but there's no evidence of alcohol or
22 drugs or any of that. There's no reason for him to be doing
23 any of this other than the delusion. If there is any proof
24 of any motive to kill these people, it's not come from this
25 witness stand. If there is proof of any reason to kill

1 Officer Lindler, it's not been presented to you in this
2 courtroom in the last several days. What's clear is when
3 his mom comes into court and says he has fallen over the
4 edge. That's what happened. In South Carolina, if you
5 cannot establish intent, your verdict must be not guilty.

6 Now, ladies and gentlemen, I'm sorry. This case has
7 taken a couple of days. I am taking a moment to glance
8 through my notes. I'm sure I'll sit down and think I've
9 forgotten something. So will Mr. Scott. It's the nature of
10 the business.

11 It's easy to do the wrong thing. It is easy for all of
12 you or any of you to go in the back and say they've got
13 video. You did it. He was the one behind the wheel, and so
14 that's good enough. We'll find him guilty. It is easy to
15 get yourself in trouble by just falling in with the group.
16 It's hard to do the right thing sometimes. It is hard to
17 say I'm going to follow what the Judge has told me the law
18 is. I'm going to follow what I heard with my own ears and
19 saw with my own eyes. I am going to trust the person who
20 knows him better than anybody in the world and believe that
21 there is no reason for him to cook up a story about this.
22 And if he did, it would be better. Your verdict in this
23 case should be not guilty on each of the charges. If you do
24 not agree with that, you should consider the individuals
25 injuries and determine what level of assault and battery is

1 appropriate. There is no level of resisting arrest that is
2 appropriate. You'll have a choice. There are two. Neither
3 of them are appropriate in this case. And finally, you'll
4 have the opportunity to make a decision about failure to
5 stop for a blue light. Based on what was going on in his
6 head, the verdict in each of these cases should be not
7 guilty. He still believes this is true. He still wants to
8 convince everybody that this happened. He's wrong. Don't
9 you all make a mistake like he did. Don't do the wrong
10 thing in this case. The right verdict is not guilty.

11 THE COURT: Thank you, Mr. Quinn. Solicitor Scott, are
12 you ready, sir?

13 MR. SCOTT: Yes, sir.

14 THE COURT: You may proceed.

15 CLOSING ARGUMENT

16 BY MR. SCOTT: You guys have spent the last two days
17 listening to recklessness, listening to a complete and utter
18 disregard and value of human life, and you hear a story
19 about a man who would drive up and down the roads of your
20 country hopped up on who knows what to the extent that he's
21 passing people in the emergency lane, going between vehicles
22 on I-26, hopping around in his car back and forth while
23 driving in speeds in excess of 100 miles an hour. Putting
24 everybody's life in danger who he shared that road with. I
25 don't think that's -- I don't think that's been contradicted

1 by the Defense. I mean, everybody who came in contact with
2 him were at risk of losing their life.

3 A trial sometimes is a situation for the State to -- I
4 can put up evidence and show you exactly what happened. I
5 mean, this case, like Solicitor Todd said in opening, we
6 don't always have video in a case. I mean, a great majority
7 of the time it's witness statements. Here's what happened
8 that day. Sometimes it's, you know, one victim's word
9 against one suspect's word and that's all you've got. But
10 this is a unique situation where I'm putting you guys in the
11 seat of Trooper Lindler, because we're getting his viewpoint
12 as he's approaching that scene, and we get to hear from
13 three unbiased independent witnesses who they can see did
14 nothing wrong that day, and we get to hear their testimony
15 and what they see going down I-26 and Mr. Harbuck's actions.
16 And I can show you all of that. And that's well and good.
17 But then you get like a slick Defense attorney who comes in
18 here and tries to sell a story that we're all hearing for
19 the first time. I, like you all, am hearing this story for
20 the first time about this sudden paranoia that just grips
21 this guy and makes him do this. Have you ever heard such a
22 thing? Have you ever heard such a thing? This man has no
23 prior history of anything like this, nothing since. But the
24 one day he gets into a bunch of trouble, oh, that was
25 because I went crazy that day. And that's what they're

1 trying to sell you on. I mean, what do I do about that, you
2 know. They've brought no doctors here who have diagnosed
3 him. They showed up no history of mental health problems or
4 anything at all like that. So he's asking us to take his
5 word for it. The Defense attorneys. And he's spoken with
6 his client and they figured out exactly how to present this
7 case in Court to you guys. So a little bit of an insult on
8 your intelligence but, you know, I see all kinds of
9 defenses. Typically they're I wasn't there. I didn't do
10 it. It was somebody else. But in this one it's I was crazy
11 that day. I've never been crazy before. I've never been
12 crazy since. But on this day I was crazy. I don't have any
13 explanation for it. That's the defense.. That's what it is.
14 Don't pay attention to what your eyes see on the video.
15 Just listen to me when I tell you I was crazy that day. And
16 it's frustrating because, you know, that happens in trial.
17 If I was to go sit down with a friend and show him this
18 video, you know, or anybody off the street, not in a court
19 setting, they would say good grief. What was that dude on.
20 He's guilty as can be. We know all bets are off in Court
21 because, you know, you never know what the Defense is going
22 to come up with on the day of Court. And that's -- I've
23 been trying to play you know on my toes the last couple of
24 days because, again, this is the first time this story has
25 been told. It was not told on the night of September 6th,

1 2015. It has not been told to any law enforcement since.

2 Your eyes are wrong. That's what he's telling me.

3 I think one way of looking at a driver's license though
4 is kind of a general agreement between everybody else on the
5 street. Almost kind of a social contract where, you know,
6 in order for me to drive I agree with my fellow drivers that
7 I'll respect you. I'll drive in a manner that's safe, and I
8 won't put your life or your health or your safety in
9 jeopardy. And that's kind of the trade off. That's -- all
10 of us agree to do that when we take the road. But, you
11 know, you can drive as safe as you want. But when you come
12 up against somebody like Mr. Harbuck on the street all bets
13 are off. My dad used to always kind of worry about us
14 driving. And we talk about what a good driver he was, but
15 he would always remind us, well, you're always at the mercy
16 of the next guy on the road. And I'm just glad it didn't
17 turn out where somebody died, you know, because any of those
18 people that he's blowing by, who he's splitting lanes with,
19 driving on the shoulder, it could have come out a lot worse.
20 I mean, I think we all understand that. I commute to
21 Laurens every day over an hour to work here, and I drive
22 that stretch of 26 every day. I see the distracted drivers.
23 I see the guy eating his breakfast biscuit while he's
24 driving into work, or, you know, of course the speeders and
25 people texting while they're driving. I've even seen a guy

1 with a book propped up on the steering wheel while he's
2 driving down the road. Fair to say they probably are not
3 being completely, you know, respectful of their fellow
4 drivers probably, but nothing to the extent that we're
5 dealing with here. And I'm trying to impress that on you
6 all. And I know I'm repeating a lot of what witnesses have
7 already said. But his actions on September 16th were
8 something altogether different, and there's only one
9 explanation. I mean, he was impaired on something. There
10 was something he took, you know. We don't get to know what
11 it was because he wouldn't consent to the medical treatment
12 he was so hopped up. They want to talk about -- that's
13 preposterous that he was on drugs. That's exactly the way
14 they describe him. That's exactly what the professionals
15 described it as. They said it appeared to me he was on
16 something. He was impaired on something. I don't know
17 what. We didn't find anything. He was digging in his
18 pants. We ultimately didn't find anything. Does that sound
19 like somebody who was paranoid to you guys, or -- does it
20 sound like anything else to you all? I mean, it sounds like
21 drugs to me. On the road traveling great distances. Should
22 never have gotten behind the wheel. Violent and resisting
23 at the scene. All the way to the hospital and on the way to
24 the jail. Had to be restrained there. Had to be tased
25 three times. These are not the actions of somebody who's

1 paranoid.

2 You know, there's an affirmative defense in South
3 Carolina. You know, if you're crazy, that's an affirmative
4 defense. You can't be prosecuted if you're determined to be
5 mentally ill. And that's what he was talking about when he
6 said if you can't conform to the law --

7 MR. QUINN: Objection. And I am loath to object during
8 closing arguments. That's not a true statement of law, and
9 it's not relevant in this case.

10 MR. SCOTT: The argument was he couldn't conform
11 because he didn't have requisite intent because he was
12 insane.

13 THE COURT: I'm going to overrule the objection. I
14 don't think the Solicitor is going to spend a lot of time on
15 it. You may proceed.

16 MR. SCOTT: That was it, wasn't it? Wasn't that the
17 whole argument? He didn't have intent. He couldn't. He
18 was crazy. There's a legal theory in South Carolina, you
19 bring forward the professionals who are going to talk about
20 you being crazy. You didn't hear any of that. You've got
21 this guy here who for the first time when he's facing 12
22 jurors that he comes up with a story that's right out of a
23 movie. I mean, he's being followed by all these people.
24 And I just -- I thought it was interesting. He remembers
25 all these great details about the -- you know, it was a

1 white BMW and the Honda with the exhaust and, I mean, the
2 black SUV and the gold SUV. And he's very specific about,
3 you know, the parking lot. Where they all parked and
4 everything. But then when we get to where the rubber meets
5 the road, you know, exit 54, suddenly he cannot, you know,
6 remember anything about that. I remember the impact. The
7 first one and then the second one. But that's really all.
8 And that's calculated, you know, because the argument here
9 at the trial, I had no intent to do anything. I don't
10 remember anything, so I can't have intent to do anything.
11 That's the argument. So how is it that he remembers
12 everything up to that point and suddenly he doesn't. And
13 he's been driving -- if his mom talks to him at 6:00 and he
14 left Atlanta mid-afternoon, all this happens at 7:30, I
15 mean, do the math. Is he just -- how long is he insane?
16 These cases are hard to kind of, you know, argue at some
17 point because you're dealing with an excuse that makes no
18 sense. And there's no -- there's absolutely no evidence of
19 it, so I can't really cross-examine him on it. If he'd
20 brought a doctor in here, we'd have a talk with him.
21 There's just nothing. Even the mother, you know. He seemed
22 kind of -- something was wrong with him. But I didn't
23 really know what to do about it, so I didn't do anything.
24 Not to disparage her, but she didn't call 911. She said she
25 kind of wished she had. You know, despite knowing where he

1 was. She said he'd given her the mile markers. I'm at mile
2 marker so and so, mile marker this. Pull off the road,
3 Clint. If all this is going on, somebody's following you,
4 go to the Sheriff's Department. It never happened. It
5 didn't happen that way. Why didn't he call law enforcement
6 if he truly believed somebody was following him? It's just
7 -- I want to point out Mr. Harbuck this week -- because
8 you've all been able to observe him. He seems to be the
9 picture of serenity. I mean, he comes to you well groomed.
10 He presents himself well. He's very articulate. And this
11 is a highly stressful situation. If he is apt to have bouts
12 of paranoia and just stress related craziness, in his
13 defense, wouldn't this have been a good time to do it when
14 he's at trial in General Sessions Court? I submit to you
15 no, because he has no history of it. His mother said he has
16 no history. I've never seen him this way before. He's not
17 like that since. I'll mention I respect his service. Okay?
18 I do, because he apparently went overseas. There's no way
19 -- I'm not contradicting that. I have no reason not to
20 believe he did. But he served this country and that's to be
21 commended. It is. And that's not what we're here for
22 though. You know, he and his defense attorney spent 20, 30
23 minutes of his direct examination talking about the military
24 service and this and that and, you know, I appreciate it,
25 but that's not this case is about. I submit to you the sole

1 purpose of that is sympathy. We want the jury to sympathize
2 with him and remind you over and over he's a veteran. You
3 know, sometimes we have to prosecute pillars of society.
4 Everybody -- you know, I don't care if it's the mayor of a
5 town, pastor of a church. In the eyes of the law, you know,
6 if it's working right and we have 12 unbiased jurors every
7 man is supposed to be seen equally. It doesn't matter how
8 rich you are, how powerful you are, how decorated you are,
9 what occupation you come from, you are to be treated the
10 same as any other person. That's all I'm asking you to do.
11 We're not here to talk about him working on computers in
12 Kandahar. We're not talking about multiple deployments to
13 Afghanistan. That's to be commended, but that's not why
14 we're here. We're here for September 6th, 2015. Did this
15 guy do it or did he not. Did he intentionally strike that
16 Expedition in a way that could seriously hurt those people.
17 Not did he work, you know, in Atlanta, you know.

18 I want to go over just really quickly, I guess, the
19 slide that I have here and it is titled what makes sense.
20 We've gone over his version. There's two parts to it, I
21 guess, from what I've detected this week in court. Part A
22 is a number of cars that begun following him. At least one
23 of them pointing a gun at him. And that's what led him to
24 drive erratically for hours on end. And then another part
25 that is sort of, I guess, a subpart of his defense is that

1 he was also in the belief that he was in a training
2 exercise. And in reality, he was under the influence of
3 something. I mean, you're talking about the erratic
4 driving. If you think, you know, in your mind you're
5 working under the reality that these people are following
6 you and you're in a lot of trouble, you know, pull over.
7 Get help. You ask the guy, the guys with the cigarette, are
8 you guys following me. Is there something I should know
9 about. His actions don't make sense. And the reality is
10 that, you know, it is a safe submission to you that he was
11 under the influence of something. Attempted murder.
12 There's a -- the defense attorney tried to come off as being
13 very offended with this charge. What I would ask of you is
14 what would the charge be if Lindler had been killed. You
15 know, he intentionally struck him in his car and he would
16 have been killed. He would have been murdered. That's
17 because when you use a deadly weapon, four ton truck that's
18 capable of traveling at great rates of speed and you
19 intentionally ram somebody's car with it, the inference
20 there is malice. The inferences that you mean great harm.

21 MR. QUINN: Objection. That is a complete
22 misstatement.

23 THE COURT: Restate what you just said.

24 MR. SCOTT: The inference when using a deadly weapon is
25 malice.

1 MR. QUINN: Supreme Court cases.

2 THE COURT: Come up here, lawyers.

3 (Whereupon, a sidebar was held.)

4 MR. SCOTT: Let me repeat. He doesn't want to hear
5 that. But when you use a deadly weapon malice is inferred.
6 If I shoot a gun at somebody and I miss, the malice is
7 inferred. You can infer I intended to kill them if I use a
8 deadly weapon. A car is a deadly weapon. That's why it's
9 attempted murder. That's what they charged him with. And
10 the Judge is going to give you the law. He attempted to
11 kill another person with malice aforethought. That's the
12 law. And it can be either expressed or implied. What is
13 malice? It's hatred, ill-will or hostility toward another
14 person. It's intention doing of a wrongful act, ramming
15 another car intentionally, without just cause or excuse and
16 with an intent to inflict an injury. I don't know what
17 other intent you would have in hitting a car purposely from
18 the rear knowing that it was occupied by multiple people. I
19 don't know what intent you would have in, I'm saying,
20 targeting the trooper. I mean, because if you watch the
21 video -- you all are going to have that video back there.
22 Watch it as many times as you want. I'm not playing it
23 during closing because you all will be free to watch it back
24 in the jury room. But you're going to watch him tracking
25 the trooper up that ramp. You're going to watch him as the

1 trooper is trying to get away. They go out on the lanes of
2 travel on the interstate, and then the trooper works his way
3 up the ramp and he's tracking him the whole time. Targeting
4 him. Making an intentional action to strike the trooper's
5 car, and ultimately he does. It can be inferred from
6 conduct showing a total disregard for human life, and again
7 it can be inferred from the use of a deadly weapon. Fists
8 can be a deadly weapon. A car is certainly a deadly weapon.

9 The way the law works, and in cases like -- there's
10 tiers. You've got the charge that he's on trial for that.
11 the police charged him with that night. And then if you
12 don't think, well, you know, maybe it's not that, then you
13 work your way down and they're called lesser included
14 charges. The next step down -- he wasn't charged with this,
15 but you're going to get to consider this, is assault and
16 battery high and aggravated nature. And I know this sounds
17 confusing. I think it'll make more sense when you get back
18 to the room. But this is something where you if you think,
19 well, I don't know that it was attempted murder. I don't
20 know that he intended to kill. And I'm telling you malice
21 can be shown by his actions. And I'm harping back to that.
22 If Lindler had died, one of those people -- those innocent
23 people in that Expedition had died, it would be murder. So
24 when you strike somebody and they don't die you don't get
25 rewarded. That's attempted murder. But the law says you

1 get to consider the lesser included. The next step down, at
2 least for Lindler, is a assault and battery high and
3 aggravated nature. To commit that crime, if they unlawfully
4 injure another person and the acts comes by means likely to
5 produce death or great bodily injury. Lindler was hurt.
6 His back was hurt. We talked about the extreme elevations
7 in blood pressure, and he was actually physically sick that
8 night after the adrenaline dump. But he was injured. And I
9 submit to you driving a car and intentionally striking
10 another car all bets are off. Great bodily injury, or the
11 worst case scenario, death. You don't get this charge for
12 the three in the Expedition because thankfully none of them
13 were hurt. Now, I just wrote Corporal Lindler was injured
14 when Harbuck rammed his patrol car. An act of hitting
15 somebody with a car is likely to produce death, and
16 certainly produce great bodily injury. Now, assault and
17 battery first degree. You get to consider this for all of
18 them. This is another -- this is the third step down. So
19 you've got attempted murder up here. You've got assault and
20 battery high and aggravated nature. Assault and battery
21 first degree. They commit that crime if they unlawfully
22 alter or attempt to injure another person with the present
23 ability to do so and the act as accomplished by means likely
24 to produce death or great bodily injury. You know, again,
25 that's if I take the hammer and I try to strike you with it

1 and miss, that could be a assault and battery first. I'm
2 offering or attempting to injure you means likely to produce
3 death or great bodily injury. You can consider that on all
4 four of the victims on the ramp that day, Lindler,
5 Stephenson, Raines and Hamby. And he certainly offered or
6 attempted to injure, there's three in the Expedition when he
7 intentionally struck their vehicle from behind. Certainly
8 offered and attempted to injury Trooper Lindler. A&B second
9 and third. You're going to get these charges. I'm not
10 going to spend a lot of time with them because I ask you not
11 to even consider those. Those are the two on the lowest
12 rung of the assault charges. And when you watch that video,
13 he's not guilty of the two lowest rungs of assault and
14 battery. You don't use a deadly weapon on someone if you
15 intend moderate injury. And that's all that those two
16 account for, moderate injury. Did he intend to produce
17 moderate injury. You know, I don't know when people use a
18 deadly weapon like a car, and they do an intention act like
19 ramming another car, that you ever intend moderate injury.
20 I ask you not to consider those. Failure to stop for a blue
21 light. The law is simple. It's just what it sounds like.
22 We all know, and it's the worst feeling -- sadly we all know
23 it too well, when you're heart kind of skips a beat and the
24 blue lights are on behind you. But it's the easiest thing
25 in the world. You just pull over. Fail to stop after being

1 signaled by law enforcement by means of siren or flashing
2 lights. That's failure to stop for a blue light. The thing
3 that, you know, to have avoided that -- really to avoid this
4 whole mess, when he was signaled to stop on the ramp, he
5 would have just pulled off on the ramp leading up to the
6 road in Clinton. There's a Citgo right there he could have
7 pulled in. But no, he had other things on his mind. We see
8 him get back on towards Columbia, following after the
9 Expedition. You know, and again, the blue lights. Here's
10 the good guys. I mean, if you're really operating under
11 this idea that all these bad guys are following you, there's
12 a guy with a gun, you know, well, here's the trooper right
13 here. Here's the good guy. Tell him. So how does that
14 make any sense? I hate to keep getting into. But I'm
15 literally blown away with the Defense this week. So if I
16 sound like it, I am. Assault on the officer. That was a
17 little despicable, the display the Defense attorney put on
18 questioning that assault on an officer. And I submit to you,
19 he didn't listen at all during the direct testimony from
20 that officer. He explained very clearly how he's in the
21 back. They couldn't search him at the scene. Now, he's out
22 there, you know, in his suit saying, well, why didn't
23 Lindler search him. Lindler's throwing up on the side of
24 the road. Lindler thought he was about to die. Harbuck's
25 thrashing around like a Tasmanian Devil. How you going to

1 conduct a search on a man like that. Thorough search. The
2 first thing they got to do is subdue this guy who's hopped
3 up on I don't know what. Again, we don't get to know
4 because he won't let medical staff touch him. Hopped up on
5 whatever he is on. They put him in the back of the patrol
6 car and he's still not calming down. As a matter of fact,
7 he's reaching in the back of his pants. Those pants they
8 didn't get to search which causes officers, and rightfully
9 so, to feel the need they need to check him again. Did you
10 hear what Peay said? I'm not going to drive him in my
11 patrol car until he's searched. He didn't, but he doesn't
12 know that he doesn't have a gun in his waistband. Shoot him
13 in the back of the head while he's driving to Clinton. You
14 got to search him before you drive, and that's why they
15 opened the door. Now, he's acting like that was the
16 silliest thing in the world. He's never been a law
17 enforcement agent. He's a defense attorney. He didn't
18 listen to a thing the officer said. You know why I know
19 that? Because he referred to him 15 times as Officer Clark.
20 There's no Officer Clark. I assume he's talking about Casey
21 Jones. He wasn't listening. If he had been he would have
22 heard that when Peay took him up to the next exit he's
23 coming out of his handcuffs. That's why they had to open
24 the door again. It's frustrating because, I mean, a lot of
25 times I've got to sit down there and just listen to it and I

1 can't do a thing about it. But I hope you all were
2 listening because that's where the assault comes in. It's
3 for his safety that the officers have to open the thing, so
4 he's not hurting himself or any of the officers. What does
5 he do? He acts out again and he kicks the officer in the
6 knee. And he even disparaged the officer for calling that
7 an injury. Well, you know, I ask him to let Harbuck kick
8 him in the knee. It was an injury, and it was an assault on
9 an officer, very clearly. If you wilfully assault an
10 officer while they are resisting an arrest -- now, somebody
11 you reasonably know to be law enforcement, and when you're
12 wearing the full uniform or when you're driving a car with a
13 siren on and not think that kind of goes without saying
14 you're law enforcement. You committed an assault on an
15 officer while resisting.

16 I don't know really what else to say, guys. I just ask
17 you -- sometimes trying these cases and submitting to a jury
18 standing on the edge of a cliff as a lawyer is just kind of
19 a feeling of helplessness. You know, I don't get to go back
20 there with you all and if you all got questions say, oh,
21 yeah, don't you all remember this part. Let me show you all
22 this part of the video. Or, hey, don't you all remember
23 what he said when he testified on the stand? I can't do
24 that. I just -- I've got to kind of, you know, hope and
25 pray. I picked 12 really just common sense type people.

1 And that you will go back there and say, what makes sense,
2 or what do we all think about this story about just one day
3 of insanity for no reason. Do we all buy that, you know. I
4 can't go back there and argue and say why that's really
5 irrational and illogical. I've got to sit here on the edge
6 of the cliff and while you're all back there I've got to
7 pace around nervously saying what are they talking about
8 back there. Did they listen to everything. What did they,
9 you know, zero in on. Did I really pick rational people or
10 did I pick people who will let outside influences get to
11 them. People who will consider things that had nothing to
12 do with this trial. It's just -- it's really a feeling of
13 helplessness. I don't envy you guys either. I've never had
14 to serve on a jury. But I really -- just my last plea is I
15 want you all to go back there and -- you all must follow the
16 law. And that's what the Judge is going to tell you. The
17 law that he gives you should be substantially what I showed
18 you. I think Judge Hocker sends you a copy of the charges
19 back with you so you get to look at them. You must follow
20 the law. You can't say, well, this -- you know, I'm not
21 going to do this because I saw this on the news, or I am
22 going to do this because it just seems right. You have to
23 follow the law and you have to use your common sense. God
24 given common sense. Logic thinking. You know, don't --
25 what evidence was there that the man was crazy that day?

1 You've got video of his actions, okay. You've got officers
2 saying he seemed highly impaired to me. Beyond a reasonable
3 doubt. The Judge is going to say it twice that you must be
4 firmly convinced in order to find him guilty beyond a
5 reasonable doubt. That's the standard. If you're firmly
6 convinced that he's guilty of these crimes you must convict.
7 I'm asking, you know, for the attempted murder. Certainly
8 in Trooper Lindler. I'll concede, and I don't often do
9 this, but if you came back with three A&B first on the
10 Expedition, I could see why you would do that. After you
11 look at the law, look at, you know -- I keep using the --
12 there's plenty other examples. You know, if I take the gun
13 and fire at you and miss you. That's attempted murder.
14 You're not hurt. Your unscathed, but I used a deadly
15 weapon, and I shouldn't be rewarded for missing when my
16 intent was to hit you. And that's kind of what happened
17 here. You rammed somebody with your car that day. You
18 track them up the ramp and you hit him. He's not complying
19 after that. No. I think that was the argument. Yeah, he
20 stopped his car right after that, and that's not the truth.
21 Lindler had to get back in his car just as Harbuck got in
22 front of the Expedition, and it appeared that he was about
23 to back into it again. He had to be ordered out of the
24 truck at gunpoint. And thank you, Lindler, for the
25 constraint you showed. He would have been legally justified

1 in shooting him at that point. I am very happy we're not in
2 that situation, thank God. But he did not stop his car, as
3 the defense attorney said. You heard the testimony that he
4 was in front of the Expedition intending to hit the car
5 again when the trooper positioned his car in between and
6 ordered him out at gunpoint. That's how the thing ended. I
7 want you all to watch the video and consider how dynamic
8 that situation was, on the side of the interstate. I ask
9 you to find him guilty. I do. I think it was attempted
10 murder on Lindler. You know, I think the failure to stop
11 and resisting arrest are no brainers. I think the struggle
12 is going to be with what level do we go with. I submit to
13 you it is attempted murder on Lindler. I ask you nothing
14 lower than the assault and battery first on the other three.
15 Please, just, you know, be courteous to one another. Talk
16 about this thing, respect one another's thoughts in the
17 case, but the only thing I ask at the end of this thing,
18 common sense. What makes sense. What accounts for this
19 man's behavior that day.

20 Thank you, ladies and gentlemen.

21 THE COURT: Thank you, Solicitor. Mr. Foreman, ladies
22 and gentlemen of the jury, we're going to take a little
23 breather before we go into the charge in this case. So
24 again, don't start your deliberations until I tell you to.
25 Okay? So go on back, and a short little break, catch your

1 breath, and we'll get you back out and I'll charge you on
2 the law.

3 (Whereupon, the jury exited the courtroom at 3:05 p.m.)

4 THE COURT: We'll be at recess about 10 minutes.

5 (Whereupon, a recess was held from 3:05 p.m. to 3:16
6 p.m.)

7 THE COURT: We're back on the record. Mr. Quinn, did
8 you want to put on the record the objection that was
9 actually discussed at sidebar concerning the inference
10 argument that Solicitor Scott made?

11 MR. QUINN: I do, Your Honor. And I'll cite you *State*
12 *vs. Belcher* which the Court has already indicated at the
13 sidebar it's familiar with.

14 THE COURT: Right.

15 MR. QUINN: The holding in *Belcher* says, "Where
16 evidence is presented that would reduce mitigating excuse or
17 justify homicide or assault and battery with intent to kill
18 caused by use of a deadly weapon, juries shall not be
19 charged that malice may be inferred from the use of a deadly
20 weapon." In this case I believe evidence has been presented
21 that would reduce, mitigate or excuse, or justify an assault
22 and battery with an intent to kill. So I do not think the
23 inference is appropriate in this case.

24 THE COURT: All right. You're saying the mitigation
25 would be your client's testimony as to his mental state at

1 the time when this took place; is that correct?

2 MR. QUINN: Lack of intent, which would be lack of
3 element of the offense which would excuse the homicide or
4 assault and battery with intent to kill.

5 THE COURT: What's the State's position where Mr. Quinn
6 is arguing, Solicitor, that the mitigation in *State v*
7 *Belcher*?

8 MR. SCOTT: Well, first of all, it's fine when --
9 *Belcher* is all about jury instructions. So I can always
10 argue as the Solicitor at closing. That's completely
11 appropriate. But I don't that he's noticed that that is in
12 our jury instructions. That we're going to give the jury
13 malice being inferred from the use of a deadly weapon. And
14 he had a chance to review it --

15 THE COURT: Well, I'm not going to -- because as I
16 stated, and as I always do even after the jury charge, if I
17 allow both sides to offer any objections or exceptions to
18 things not already put on the record. So, I mean, I'm not
19 going to hold Mr. Quinn's feet to the fire just because he
20 previously approved the jury charge. I would certainly give
21 him the right --

22 MR. SCOTT: It just surprised me a little bit when he
23 objected to it after we agreed on the jury charges and he
24 agreed that was appropriate. At any rate, I think it is
25 appropriate in this case. The mitigation in *Belcher* is

1 typically you can't infer malice from the guy using a deadly
2 weapon. If he's saying I had to use a deadly weapon for
3 self-defense. In this case he's saying his mitigation, I
4 think, is his guy didn't have requisite intent. And I kind
5 of got into that briefly. I think that was another
6 objection maybe. But the affirmative defense of insane, or
7 not guilty by mental insanity is an affirmative defense, and
8 what you have to do is show that they can't conform to the
9 law. Therefore, intent is not existent. He hasn't done
10 that. I mean. All he's done is say, you know, that his guy
11 was paranoid. Never said that he -- his guy testified and
12 never said -- you know, didn't talk about what his intent
13 was. I think he said he didn't have the intent to kill the
14 guy at some point. But just to say he was so insane that he
15 couldn't conform to the law. That was never really
16 testified to. But I don't think the mitigation they talk
17 about in Belcher was met in this case.

18 THE COURT: Well, I mean, I think your most common
19 mitigation would be a self-defense situation. The Belcher
20 case does not clarify what the Court meant when it said
21 evidence is presented that would reduce, mitigate, excuse or
22 justify the homicide. Now, quite frankly, you know, I don't
23 know what it means when you say reduce the homicide, or
24 mitigate the homicide or excuse them. You know, justify the
25 homicide. I could see a self-defense would justify killing

1 if the self-defense was found by the jury. But in this case
2 the Defense says that because I did not have the requisite
3 intent I therefore did not commit the attempted murder. And
4 I'm not so certain that's the same thing that *Belcher* is
5 addressing. *Belcher* is saying, all right, you admit to do
6 it, but you were justified doing it in this situation of
7 self-defense, which your defense has been based upon is that
8 I didn't do it because I didn't have the requisite intent
9 because of my mental state at the time of the offense. I
10 mean, that's basically how I've understood your defense, Mr.
11 Quinn.

12 MR. QUINN: I don't know that I would phrase it exactly
13 that way. He did it physically. He did not have the
14 requisite intent.

15 THE COURT: Right.

16 MR. QUINN: That's the same -- exact same logic that
17 would reduce murder to manslaughter or to involuntary
18 manslaughter.

19 MR. SCOTT: So legally in this case, if his theories
20 are to be believed, that doesn't excuse or justify what he
21 did. That would be through a M'Naghten type analysis that
22 he didn't have the capacity to conform. We haven't -- we
23 haven't done that. We haven't gone over his analysis of his
24 intent, or ability to form intent.

25 THE COURT: If I were to go along with -- if I were to

1 go along with the Defense, it looks like page 12 would be --
2 would be the portion that would need to be addressed. Is
3 that correct?

4 MR. QUINN: That's correct, Your Honor. My position is
5 two paragraphs would have to be -

6 THE COURT: It looks like on page 12, malice. That
7 paragraph. Ordinary objects paragraph. Well, we actually
8 -- really almost have to gut the charge, because if you go
9 back on page 11, malice aforethought may be expressed or
10 inferred. No, I guess we could leave that in. So really it
11 looks like if I were to take it out, it would be those two
12 paragraphs on page 12.

13 MR. QUINN: Yes, sir.

14 THE COURT: Okay. I'm going to find that under *Belcher*
15 the mitigation offered would be sufficient enough to not
16 charge inference of malice by use of a deadly weapon. I'm
17 going to take out those two paragraphs. And, Solicitor,
18 your position is so noted on the record, unless there's
19 anything else you want to put on. On the record on that
20 point.

21 MR. SCOTT: No, sir. I think I made our point, just
22 that --

23 THE COURT: It -- I mean, I'll be honest with you.
24 It's not something I have thought about before. And it's an
25 extremely close issue, whether or not what has been

1 presented by the Defense in this case is close whether or
2 not it's covered by *Belcher* or not. It's very close.

3 MR. SCOTT: Yeah, I guess my argument is if even
4 believed, it wouldn't justify ramming a police car or the
5 other car.

6 THE COURT: I understand what you're saying. I
7 understand. And I appreciate your argument.

8 We're going to make -- I'm going to go ahead and bring
9 the jury out and charge them. The copy that we give the
10 jury, Callie is taking care of taking those two paragraphs
11 out.

12 MR. QUINN: Thank you. I would ask one additional
13 thing. I would ask for an instruction to the jury that the
14 attorneys may have in their closing arguments alluded to
15 this idea that there's an inference in the use of a deadly
16 weapon and that you have determined that that is not
17 applicable in this case.

18 MR. SCOTT: No, I can argue that. That's not what
19 *Belcher* says. It's a jury charge instruction.

20 THE COURT: Right.

21 MR. SCOTT: It has no bearing on what I can argue.

22 THE COURT: What I will do, as just a general rule, you
23 know, if the lawyers in discussing the law, if it
24 contradicts what I charge you, then you follow what I
25 charge, and not to suggest that the attorneys in any way

1 intentionally misstated any of the law. But you follow what
2 I say. I'm just going to do that in kind of a general. And
3 also, I'm going to tell them, too, that if they want to view
4 the video that they'll have to come back out here. I was
5 wondering whether or not we just recently got new equipment
6 back in the jury room and we -- we have not.

7 MR. SCOTT: Oh, they'll have to --

8 THE COURT: Yeah, they'll have to come back out here.

9 MR. SCOTT: I came up from Newberry and --

10 THE COURT: I know. I know. And I thought, well,
11 maybe when we got these monitors that the Clerk sprang for a
12 little extra and put it in the jury room, but she did not.
13 All right. Bring the jury out, please, Mr. Bolt.

14 (Whereupon, the jury entered the courtroom at 3:35
15 p.m.)

16 THE BAILIFF: All jurors present, Your Honor.

17 JURY CHARGE

18 THE COURT: Thank you, Mr. Bolt. Mr. Foreman, and
19 ladies and gentlemen of the jury, I now will charge you the
20 law application to this case and you must consider the
21 charge as a whole and not focus on some portions to the
22 exclusion of other portions.

23 Now, the indictments charge the Defendant with four
24 counts of attempted murder, one count of failure to stop for
25 a blue light, one count of assault on an officer while

1 resisting arrest. And I'll remind you that the fact that
2 the Defendant has been arrested, charged and indicted in
3 this case is not evidence in this case and cannot be
4 considered by you as evidence of guilt in this case, nor
5 does it create any presumption or inference of guilt. These
6 documents are simply the formal written instruments which
7 contain the charges made against the Defendant. They are
8 the formal documents by which this case is brought into this
9 Court.

10 The indictments in this case allege several different
11 offenses against the Defendant. The charges are -- and I'm
12 just going to use the last number of the indictment. 1618,
13 attempted murder, 1619, attempted murder, 1620, attempted
14 murder, 1621, attempted murder, 1622, assault on an officer
15 while resisting arrest, 1710, failure to stop for a blue
16 light. Each indictment charges a separate and distinct
17 offense. You must decide each indictment separately on the
18 evidence of the law applicable to it, uninfluenced by your
19 decision as to any other indictment. The Defendant may be
20 convicted or acquitted on any or all of the offenses
21 charged. You'll be asked to write a separate verdict of
22 guilty or not guilty for each indictment. And I've got a
23 form that I will go over with you at the conclusion of this
24 charge.

25 The Defendant has exercised his Constitutional right

1 and has pled not guilty to these six indictments, and that
2 plea puts the burden on the State to prove the Defendant
3 guilty. A person charged with committing a criminal offense
4 in South Carolina is never required to prove himself
5 innocent. I charge you that it is an important rule of law
6 that the Defendant in a criminal trial, no matter what the
7 seriousness of the charge or charges may be, will always be
8 presumed to be innocent of the crime or crimes for which the
9 indictments were issued unless guilt has been proven by
10 evidence satisfying you of that guilt beyond a reasonable
11 doubt. This presumption of innocence does not end when you
12 begin your deliberations but it accompanies the Defendant
13 throughout the trial unless you reach a verdict of guilt
14 based on the evidence satisfying you of that guilt beyond a
15 reasonable doubt. This presumption of innocence is like a
16 robe of righteousness placed about the shoulders of the
17 Defendant which remains with the Defendant unless it has
18 been stripped from the Defendant by evidence satisfying you
19 of the Defendant's guilt beyond a reasonable doubt. Now,
20 this presumption of innocence is not a mere legal theory.
21 It's not just a legal phrase that lawyers and judges use.
22 It is a substantial right to which every defendant is
23 entitled unless you, the jury, are satisfied from the
24 evidence of the Defendant's guilt beyond a reasonable doubt.

25 Now, what is this reasonable doubt. Some of you may

1 have served as jurors in civil cases where you were told
2 that it is only necessary to prove that a fact is more
3 likely true than not true, such as by the greater weight or
4 the preponderance of the evidence. In criminal cases
5 however the State's prove must be more powerful than that.
6 It must be beyond a reasonable doubt. Proof beyond a
7 reasonable doubt is proof that leaves you firmly convinced
8 of the Defendant's guilt. Now, there are few -- very few
9 things in this world that we know with absolutely certainty,
10 and in criminal case the law does not require proof that
11 overcomes every possible doubt. If, based on your
12 consideration of the evidence you are firmly convinced that
13 the Defendant is guilty of the crimes charged, you must find
14 the Defendant guilty. If on the other hand you think
15 there's a reason possibility that the Defendant is not
16 guilty, you must give the Defendant the benefit of the doubt
17 and find him not guilty.

18 Now, I will remind you also, as I told you -- as I told
19 you the other day, I think yesterday, that during this trial
20 you and I have certain duties to perform. As the trial
21 judge it's been my responsibility to preside over the trial
22 of this case, and I've also had the duty to rule on the
23 admissibility of evidence offered during this trial. You
24 are to consider only the competent evidence before you. If
25 there's any testimony ordered stricken from the record in

1 this case during this trial you must disregard that
2 testimony. You are to consider only the testimony which has
3 been presented from the witness stand, any exhibits which
4 have been made a part of the record in this case, and any
5 stipulations of counsel. I also have the additional duty to
6 charge you the law applicable to this case, as I'm doing
7 now. As the presiding judge I am the sole judge of the law
8 of this case. And it's your duty as jurors to accept and
9 apply the law as I now state it to you. If you already have
10 any idea as to what the law is or what the law ought to be
11 and it does not agree with what I now tell you the law is,
12 you must abandon your idea because you are sworn to accept
13 the law and apply the law exactly as I state it to you. In
14 every case tried in this Court before a jury, the jury
15 becomes the sole and exclusive judge of the facts in the
16 case. And I've told you that also back -- I think it was
17 yesterday. A trial judge cannot intimate, state, comment on
18 or make any statement to a trial jury about the facts in the
19 case. Since you the jury are the sole judge of the facts of
20 this case, you are not to infer from I have said during the
21 progress of this trial in ruling upon the admissibility of
22 evidence or otherwise, or anything that I saw now during the
23 course of this instruction to you that I have any opinion
24 about the facts in this case. I do not have an opinion
25 about the facts in this case. The law does not allow me to

1 have an opinion about the facts in this case. This is a
2 matter solely for you, the jury, to determine. As jurors it
3 is your duty to determine the effect, value, weight and
4 truth of the evidence presented during this trial.

5 Now, Mr. Foreman, ladies and gentlemen of the jury,
6 there are two types of evidence which are generally
7 presented during a trial. That being direct evidence and
8 circumstantial evidence. Direct evidence directly proves
9 the existence of a fact and does not require deduction.
10 Circumstantial evidence is prove of a chain of facts and
11 circumstances indicating the existence of a fact. Crimes
12 may be proven by circumstantial evidence. The law makes no
13 distinction between the weight or value to be given to
14 either direct or circumstantial evidence. However, to the
15 extent the State relies on circumstantial evidence, all of
16 these circumstances must be consistent with each other and
17 when taken together point conclusively to the guilt of the
18 accused beyond a reasonable doubt. If these circumstances
19 merely portray the Defendant's behavior as suspicious, the
20 proof has failed. Once again, the State has the burden of
21 proving the Defendant guilty beyond a reasonable doubt as to
22 each charge. This burden rests with the State regardless of
23 whether the State relies on direct evidence, circumstantial
24 evidence, or a combination of the two.

25 Necessarily, ladies and gentlemen, you must determine

1 the credibility of witnesses who have testified in this
2 case. Credibility simply means believability. It becomes
3 your duty as jurors to analyze and to evaluate the evidence
4 and determine which evidence convinces you of its truth. In
5 determining the believability of witnesses who have
6 testified in this case you may believe one witness over
7 several witnesses, or several witnesses over one witness.
8 You may believe a part of the testimony of a witness and
9 reject the remaining part of the testimony of that same
10 witness. You may believe the testimony of a witness in its
11 entirety or reject the testimony of a witness in its
12 entirety. You may consider whether any witness has
13 exhibited to you any interest, bias, prejudice or other
14 motive in this case. You may also consider the appearance
15 and manner of a witness while on the witness stand.

16 Now, let me talk to you about intent. In order to
17 establish criminal liability, criminal intent is required.
18 For example, the mental state required to be proven by the
19 State for a particular crime might be purpose, intent,
20 knowledge, recklessness or criminal negligence. Criminal
21 intent must be proven by the State beyond a reasonable
22 doubt. Criminal intent is always a matter that must be
23 determined by the jury from the circumstances surrounding
24 the situation. Now, there's no way to prove intent to a
25 mathematical certainty. There's no way medical science can

1 dissect a person's brain and determine what the person had
2 in mind, so the law says that criminal intent may be
3 inferred from the circumstances shown to have existed. This
4 is how you make a determination of whether or not the
5 element requiring intent was present. It's not necessary to
6 establish intent by direct or positive evidence, but intent
7 may be established by inference in the same way as any other
8 fact by taking into consideration the acts of the parties in
9 all of the facts and circumstances of the case. Criminal
10 intent is a mental state. A conscious wrongdoing. It is up
11 to you to determine what the Defendant intended to do based
12 on the circumstances shown to have existed. The offense of
13 attempted murder is a specific intent crime.

14 Now, let me talk to you about attempted murder. As you
15 realize, there are four attempted murder charges as to each
16 individual. The three people in the SUV and Corporal
17 Lindler. The Defendant is charged with attempted murder.
18 In order to prove this crime the State must prove the
19 Defendant attempted to kill another person with malice
20 aforethought either expressed or implied. Malice is hatred,
21 ill-will or hostility towards another person. It is the
22 intentional doing of a wrongful act without just cause or
23 excuse, and with an intent to inflict an injury or under
24 circumstances that the law will infer an evil intent.
25 Malice aforethought does not require that malice exists for

1 any particular time before the act is committed, but malice
2 must exist in the mind of the Defendant just before and at
3 the time of the act is committed. Therefore, there must be
4 a combination of the previous evil intent and the act.
5 Malice aforethought may be expressed or inferred. These
6 terms expressed and inferred do not mean different kinds of
7 malice but merely the manner in which malice may be shown to
8 exist. That is either by direct evidence or by inference
9 from the facts and circumstances which are proved. Express
10 malice is shown when a person speaks words which express
11 hatred, ill-will for another, or when the person prepared
12 beforehand to do the act which was later accomplished. For
13 example, and this is just an example, lying in wait for a
14 person, or any other acts or preparation going to show that
15 the deed was within the Defendant's mind would be expressed
16 malice. If facts are proved beyond a reasonable doubt
17 sufficient to raise an inference of malice to your
18 satisfaction, this inference would simply be an evidentiary
19 fact to be considered by you, the jury, along with the other
20 evidence in the case and may give it the weight you decide
21 it should receive. A specific intent and element of
22 attempted murder. Attempt means intending the result which
23 actually occurs. Not accidentally or involuntarily. Intent
24 may be shown by acts and conduct of the Defendant and other
25 circumstances from which you may naturally and reasonably

1 infer intent. Evidence of the character of the act. The
2 character of the instrument used. The manner in which it
3 was used. The purpose to be accomplished and the resulting
4 wounds or injuries may be considered in determining the
5 intent with which the act was committed. Intent is
6 demonstrated that the Defendant voluntarily and willfully
7 commits an act. The natural tendency of which is destroy
8 another's life.

9 Now, it's already been discussed by the lawyers in
10 closing argument that as to the four charges of attempted
11 murder there are what we call lesser included offenses that
12 you can consider. And the first one would be assault and
13 battery of a high and aggravated nature. If you find that
14 the State has failed to prove beyond a reasonable doubt that
15 the Defendant is guilty of attempted murder, and this
16 assault and battery of high and aggravated nature would only
17 apply to Corporal Steven Lindler, then you just then decide
18 whether the State has proven beyond a reasonable doubt that
19 the Defendant is guilty of assault and battery of a high and
20 aggravated nature. A person commits the offense of assault
21 and battery of high and aggravated nature if the person
22 unlawfully injures another person and great bodily injury
23 to another person results or the act is accomplished by
24 means likely to produce death or great bodily injury. Now,
25 great bodily injury is defined as, and meaning, bodily

1 injury which causes a substantial risk of death or which
2 causes serious permanent disfigurement or protracted loss or
3 impairment of the function of a bodily member or organ.

4 Now, the next lesser included offense, and this would
5 apply to all four of the individuals. The three in the SUV
6 and Corporal Lindler. Assault and battery first degree. If
7 you find that the State has failed to prove beyond a
8 reasonable doubt that the Defendant is guilty of attempted
9 murder as to each of the four attempted murder indictments
10 and assault and battery of high and aggravated nature as to
11 Steven Lindler, you must then decide whether the State has
12 proved beyond a reasonable doubt that the Defendant is
13 guilty of assault and battery in the first degree. Assault
14 and battery in the first degree, if the person unlawful
15 offers or attempts to injury another person with the present
16 ability to do so and the act is accomplished by means to
17 produce death or great bodily injury. And again, I'll
18 define for you great bodily injury. Meaning bodily injury
19 which causes a substantial risk of death or which causes
20 serious permanent disfigurement or protracted loss or
21 impairment of the function of a bodily member or organ.

22 Now, we come down to assault and battery in the second
23 degree. If you find that the State has failed to prove
24 beyond a reasonable doubt that the Defendant is guilty of
25 attempted murder, assault and battery of high and aggravated

1 nature as to Steven Lindler, and assault and battery first
2 degree as to all four, you may then decide whether the State
3 has proven beyond a reasonable doubt that the Defendant is
4 guilty of assault and batter in the second degree. A person
5 commits the offense of assault and battery if the person
6 unlawfully injures another person or offers or attempts to
7 injury another person with the present ability to do so, and
8 either moderate bodily injury to another results, or
9 moderate bodily injury to another person could have
10 resulted. And I will define for you what a bodily --
11 moderate bodily injury means. It means physical injury that
12 involves prolonged loss of consciousness, or that causes
13 temporary or moderate disfigurement or temporary loss of
14 function of a bodily member or organ, or injury that
15 requires medical treatment when the treatment requires the
16 use of regional or general anesthesia or injury that results
17 in a fracture or dislocation. Moderate bodily injury does
18 not include one time treatment and subsequent observation of
19 scratches, cuts, abrasions, bruises, burns, splinters or any
20 other minor injuries that do not ordinarily require
21 extensive medical care.

22 Now, we come down to assault and battery in the third
23 degree. If you find that the State has failed to prove
24 beyond a reasonable doubt that the Defendant is guilty of
25 attempted murder, assault of a high and aggravated nature as

1 to Steven Lindler, assault and battery of the first degree
2 and assault and batter of the second degree as to all four,
3 you must then decide whether the State has proven beyond a
4 reasonable doubt the Defendant is guilty of assault and
5 battery in the third degree. A person commits the offense
6 of assault and battery in the third degree if the person
7 unlawfully injures another person or offers or attempts to
8 injure another person with the present ability to do so.

9 Now, let me discuss with you failure to stop for a blue
10 light, which is the next charge against the Defendant. In
11 order to prove this crime, failure to stop for a blue light,
12 the State must prove in the absence of mitigating
13 circumstances beyond a reasonable doubt that the Defendant
14 was driving a motor vehicle, the Defendant was driving a
15 motor vehicle on a road, street or highway of this state,
16 that the Defendant was signaled to stop by a law enforcement
17 vehicle by means of a siren or flashing light, and the
18 Defendant did not stop. In determining whether or not there
19 are mitigating circumstances which would justify the
20 Defendant's failure to stop for the blue light, you may
21 consider actual road conditions, actual roadside conditions,
22 conditions such as lighting and weather, officer, driver
23 and/or passenger safety, and any other circumstances you
24 believe to reasonably mitigate the alleged violation. An
25 official signal requiring a motorist to stop may be a siren

1 or flashing lights, but both are not required. An attempt
2 to increase the speed of a vehicle or in some other manner
3 avoid the pursuing law enforcement vehicle when signaled by
4 a siren or flashing light may be considered as evidence of
5 failure to stop for a blue light. However, it is merely an
6 evidentiary fact to be taken into consideration by you along
7 with all other evidence in the case and to be given the
8 weight that you decide it should receive.

9 Now, the last charge to consider is assaulting an
10 officer while resisting arrest. And this also has a lesser
11 included offense which I'll explain. The Defendant is
12 charged with assaulting a law enforcement officer while
13 resisting a lawful arrest. The State must prove beyond a
14 reasonable doubt that the Defendant knowingly and willfully
15 assaulted, beat, or wounded a law enforcement officer who
16 was serving, executing, or attempting to serve or execute a
17 legal writ or process, or that the Defendant assaulted,
18 beat, or wounded an officer when the Defendant was resisting
19 an arrest being made by a person the Defendant knew or
20 reasonably should have known was a law enforcement officer.
21 Knowingly means with knowledge consciously done. Willfully
22 means done intentionally and not done by accident. An
23 assault occurs when a person violently or forcefully
24 attempts to hurt or injure another person and has the
25 present ability to complete the attempted injury. And

1 assault is the intentional creation of fear of immediate
2 bodily harm. It's not necessary that the attempted injury
3 or harm actually take place. For example, if I walk up to
4 you and when we are within arms reach I draw back to hit
5 you, that is an assault.

6 Now, a battery is the unlawful touching of a person by
7 a person who has committed the assault. And the lawful
8 touching can be caused by a part of the accused or by any
9 object the accused puts in motion. A battery is the
10 completion of the assault by using or applying force to
11 another person, however slight, in a rude, angry, or
12 resentful manner without legal justification for doing so.
13 Using my earlier example, if I carry through the assault by
14 hitting you, that would be a battery.

15 A law enforcement officer means any duly appointed or
16 commissioned law enforcement officer of the state, county,
17 or municipality.

18 Now, there is a lesser included offense called simply
19 resisting arrest. If you find that the State has failed to
20 prove beyond a reasonable doubt that the Defendant assaulted
21 an officer while resisting arrest, you may consider whether
22 the State has proven beyond a reasonable doubt the Defendant
23 simply resisted arrest. Resisting arrest does not include
24 any assault on an officer. The State must prove beyond a
25 reasonable doubt that the Defendant resisted a lawful arrest

1 being made by a person the Defendant knew or reasonably
2 should have known was a law enforcement officer. And again,
3 knowingly means with knowledge consciously done, and
4 willfully means done intentionally and not done by accident.
5 Resist means to oppose, strive against, or obstruct.
6 Obstruct means to impede, hinder or interfere with. Even
7 peaceful, nonviolent, indirect obstruction of an arrest or
8 the service or execution of process is considered resisting
9 arrest. If the means used are sufficient to prevent the
10 officer from making an arrest, the Defendant is guilty of
11 resisting arrest.

12 Now, that was a lot, wasn't it? I am going to give
13 you, for your use if you so choose, a copy of what I have
14 just read to you for you to refer to.

15 Now, every verdict that you reach, and there are going
16 to be multiple verdicts because we have multiple charges and
17 we have all these lesser included charges, every verdict
18 that you reach must be unanimous among the 12 of you. Okay?
19 And when you have reached a verdict as to each indictment
20 then, Mr. Foreman, you'll knock on the door, notify the
21 bailiff, and we'll receive your verdict.

22 Now, let me mention a couple other things and then I'm
23 going to come down and show you the verdict form. If at any
24 time any of the two lawyers misstated any statement of the
25 law, and if they did that, it certainly was not intentional.

1 Just make sure that the law you follow is what I have
2 instructed you on.

3 Also, and as you're fully aware, there's a video. If
4 you so choose you want to view the video again, you would
5 have to let the Bailiff know and come out here. We don't
6 have any technology back in the jury room for you to be able
7 to view it back there. Okay?

8 Now, let me come down and go through this verdict form
9 with you. And I think with my explanation and with the
10 chance to take it back to the jury room it will make sense
11 to you. Maybe initially it may not. But you all are smart
12 people. You can figure it out.

13 It's divided up into six parts because we have six
14 indictments. Okay? We have four indictments of attempted
15 murder as to the four individuals. And then we have the
16 indictment on the failure to stop for a blue light, and we
17 have the indictment on the assault of the police officer.
18 So what you will see is -- we'll just kind of go through it
19 generally and then go back through each part. We have Roman
20 numeral one, and that applies to Denise Hamby of attempted
21 murder. Then you have Roman numeral two, Darrell Raines.
22 Roman numeral three, Jason Stephenson. Roman numeral four,
23 Steven Lindler. Those are the four attempted murder
24 indictments. Roman numeral five, assault on the officer
25 indictment. Roman numeral six, the failure to stop. So

1 what you do is go through and make a determination whether
2 or not you unanimously believe that the Defendant is guilty
3 of attempted murder. You will put -- every time you write
4 on this line, Mr. Foreman, you put your initials.

5 Now, if you unanimously agree that he is guilty of
6 that, then you would skip over to Roman numeral two. If you
7 decide he's not guilty, then you would start looking at the
8 various lesser included offenses. You would first go as to
9 her, assault and battery one, and make a determination of
10 whether or not the State proved to you that particular
11 charge. If you decide yes, it did, you find him guilty,
12 then you would go to Roman numeral two as to the next
13 indictment. If you do not believe that they have met their
14 burden of proof, then you will go to the next lesser
15 included charge, which would be assault and batter of the
16 second degree and go through that same process. The only
17 difference between the four individuals, we've added one
18 more lesser included offense and that being in connection
19 with Corporal Lindler, and you have -- after the attempted
20 murder you have the assault and battery of a high and
21 aggravated nature. You go -- you exercise the same process
22 for all four of the attempted murder indictments. And then
23 the assault on a police officer while resisting arrest has
24 one. If you believe that the State has not met their burden
25 of proof in proofing to you that offense, assault on a

1 police officer while resisting arrest, then you will go down
2 and make the consideration of whether or not they met their
3 burden of proof as to the charge of just resisting arrest.
4 And last, failure to stop does not have a lesser included
5 offense. Okay?

6 Now, like I said, it may not make a whole lot of sense
7 to you, but as you start going through the process, and this
8 going to become, I'm confident, easy for you to figure out.

9 Now, I'm going to send you back to your jury room. Do
10 not begin your deliberations yet, because I need to talk
11 with the lawyers and make sure that the jury charge is
12 correct and that we do not need any further instructions, or
13 that I do not need to correct anything that I told you.
14 Okay? If that is the case, and there needs to be no further
15 charge, then when Mr. Bolt brings to you the verdict form,
16 the copy of my charge that I just read to you, and all the
17 exhibits in this case, that will be your cue for two things
18 to happen. Mr. Beil, you are the alternate. You would need
19 to exit the jury room and come back in here for further
20 instructions. And then you will begin your deliberations at
21 that time.

22 If for some reason I need to bring you out for an
23 additional charge or a correction or an addition, then Mr.
24 Bolt will come get you and all 13 will come out and I will
25 do that.

1 So go back to your jury room, all 13 of you. Don't
2 start any discussions about this case yet.

3 (Whereupon, the jury exited the courtroom at 4:04 p.m.)

4 THE COURT: All right. Other than what's already been
5 placed on the record, does the State have any objections or
6 exceptions to the Court's final charge?

7 MR. SCOTT: No, sir.

8 THE COURT: Okay. Defense?

9 MR. QUINN: No, sir.

10 THE COURT: Okay. Thank you very much. We're off the
11 record. If the lawyers will get together and make sure
12 we've got all the exhibits together.

13 MR. QUINN: Judge, I do have one other matter. I'm
14 sorry. And off the record is fine.

15 (Whereupon, jury began deliberations at 4:04 p.m.)

16 (Whereupon, Court's Exhibit No. 2 was marked for
17 identification.)

18 THE COURT: The jury has submitted a note that they want
19 to view the video. Does any side have an objection for me
20 to ask them do they want to see the entire 17 minutes or
21 stop it when it just goes to audio, after the camera comes
22 off the --

23 MR. SCOTT: I don't -- maybe inquire of the Foreman any
24 specific portion they care to see. It might just be kind of
25 as an exit or something. I have no objection.

1 MR. QUINN: And I have no objection to try to get them
2 to fine tune it for you. Because truthfully, Judge, the
3 video goes on longer than 17 minutes. It goes on and on and
4 on. It must go an hour.

5 MR. SCOTT: Yeah, 40 minutes.

6 THE QUINN: There's portions of it that have not been
7 shown.

8 THE COURT: I got you. Okay. Well, let's bring them
9 out and let's see what they want.

10 MR. QUINN: And, Your Honor, I'd like to ask you to
11 admonish anybody in the courtroom not to gesture, make
12 faces, do anything while the video is going that might
13 influence the jury.

14 THE COURT: Was that a problem when it was shown
15 yesterday?

16 MR. QUINN: Well, I don't know if it was a problem when
17 it was shown yesterday. But I feel like at this point we're
18 sitting in the jury room. So I'm concerned that -- in a
19 public courtroom they could have made faces if they wanted.
20 There's nothing -- but I'm very concerned.

21 THE COURT: All right. Nobody make any gestures or
22 faces or anything of that nature. Bring them out.

23 THE BAILIFF: Do you want the lights out?

24 THE COURT: Yeah, when you bring them in and start the
25 video then do the lights. Yeah.

1 (Whereupon, the jury entered the courtroom at 4:18
2 p.m.)

3 THE COURT: Mr. Foreman, I understand that the jury
4 wants to view the video that was in evidence.

5 THE FOREMAN: Yes, sir.

6 THE COURT: Okay. Now, the video that's in evidence is
7 about 17 minutes in length. Is it the jury's desire to view
8 the entire 17 minutes?

9 THE FOREMAN: Yes, sir.

10 THE COURT: Okay. Very good. Mr. Bentley, if you'll
11 take care of that. And Mr. Bolt, if you'll take care of the
12 lights.

13 (Whereupon, the requested video was published for the
14 jury.)

15 Okay. We'll take about a five minute break, and we'll
16 do what we can, but we're going to stop about 5:00. So you
17 all kind of figure out what you want to do. Okay?

18 (Whereupon, the jury exited the courtroom to resume
19 deliberations at 4:36 p.m.)

20 THE COURT: Okay. Gentlemen, I understand that the
21 jury has reached a verdict. Anything on the record before
22 we bring the jury out?

23 MR. SCOTT: Nothing from the State, Your Honor.

24 MR. QUINN: Nothing from the Defense.

25 THE COURT: Very good. Mr. Bolt, if you'll bring the

1 jury out, please.

2 (Whereupon, the jury entered the courtroom at 5:55
3 p.m.)

4 THE BAILIFF: All jurors present, Your Honor.

5 THE COURT: Thank you. Mr. Foreman, Mr. Bolt informs
6 me that you have reached a verdict.

7 THE FOREMAN: Yes, sir. We have.

8 THE COURT: Okay. And without telling me what the
9 verdict is, as to each indictment is the verdict unanimous
10 among the 12 of you?

11 THE FOREMAN: Yes, sir. It is.

12 THE COURT: Okay. If you'll hand the verdict form --
13 just the verdict form to Mr. Bolt.

14 Mr. Foreman, I have one question. There is no
15 indication on the failure to stop charge. If a verdict was
16 unanimously reached on that can I hand you this verdict form
17 back and you complete it appropriately?

18 MR. FOREMAN: Yes, sir.

19 THE COURT: Madam Clerk, would you publish the verdict
20 as to each of the six indictments.

21 MADAM CLERK: Yes, sir. Your Honor, in the case of the
22 State of Carolina versus Robert Clinton Harbuck, case number
23 2015-GS-30-1618 through 1622 and 2015-GS-30-1710. As to
24 Denise Hamby, as to the included offense of assault and
25 battery of the third degree of Denise Hamby, we the jury

1 find the Defendant guilty. As to Darrell Raines, as to the
2 included offense of assault and battery of the third degree
3 of Darrell Raines, we the jury find the Defendant guilty.
4 As to Jason Stephenson, as to the included offense of
5 assault and battery of the third degree of Jason Stephenson,
6 we the jury find the Defendant guilty. As to Steven
7 Lindler, as to the included offense of assault and battery
8 of a high and aggravated nature of Steven Lindler, we the
9 jury find the Defendant guilty. As to the assault on
10 Officer while resisting arrest, Lieutenant Casey Jones, as
11 to the included offense of resisting arrest, we the jury
12 find the Defendant guilty. As to failure to stop, as to
13 indictment 2015-GS-30-1710, which charges the Defendant with
14 failure to stop for a blue light, we the jury find the
15 Defendant guilty. Signed by the Foreperson Billy R. Smith,
16 dated August 26th, 2016.

17 Ladies and gentlemen, if that be your verdict, please
18 indicate by raising your right hand.

19 (Whereupon, jury raises their right hand.)

20 MADAM CLERK: Thank you.

21 THE COURT: Okay. Thank you very much, Madam Clerk.
22 Does either side want to have individual polling of the jury
23 or does either side want to inspect the verdict form.
24 State?

25 MR. SCOTT: No, Your Honor.

1 MR. QUINN: No, Your Honor.

2 THE COURT: Okay. Thank you very much. Ladies and
3 gentlemen of the jury, let me thank you once again for your
4 jury service. The verdict that you reached is of no
5 significance to me. What I want -- what is significant to
6 me is that a jury performs their duty conscientiously,
7 diligently, that you are fair minded, that you pay
8 attention, and you have done all of those things. Serving
9 on a jury is a tough, tough thing to do, and I'm sure that
10 you have found it to be a difficult task. But I hope you
11 realize that the task of serving on a jury is also vitally
12 important to not only our justice system but just how we
13 operate in society. And I hope at least for some of you
14 that serving on this jury has been an educational
15 experience, and maybe you learned some things that you
16 didn't already know, and that you would like to sit on a
17 jury again, whether it's in the criminal arena or whether it
18 is in the civil arena. But again, thank you so much for
19 your contribution that you have made to our justice system
20 which I've already told you is the greatest in the world by
21 far without question.

22 What I want to do, I'd like to shake the hands of
23 members of the jury that I preside over, and I'm just going
24 to come down and do that. Mr. Foreman, there are additional
25 documents that you will need to sign. So if you'll just

1 kind of hang tight. If any of you are interested in the
2 sentencing process, then you will leave out this room, but
3 you're welcome to come in the courtroom and sit in the back,
4 if you're interested. You certainly don't have to, because
5 you're going to be free to leave here in just a second. But
6 if anybody is interested in the sentencing, we're going to
7 engage in that in just a few minutes.

8 So with that said, you are free to leave. If you'll
9 just follow Mr. Bolt and Mr. Reams out that way.

10 (Whereupon, the jury was released.)

11 THE COURT: Everybody be at ease for just a few minutes.

12 (Whereupon, a brief recess was held.)

13 THE COURT: We are in the sentencing phase of the *State*
14 *of South Carolina vs Robert Clinton Harbuck*. Let me make a
15 finding on the record as it concerns the assault and battery
16 of a high and aggravated nature conviction. That being a
17 violent offense pursuant to 16-23-500. That would prohibit
18 any future ownership or possession of firearms.

19 I'll hear from the State first concerning sentencing,
20 Solicitor.

21 MR. SCOTT: Judge, first of all I want to thank the
22 jury, and I see a number of them still out here, and that
23 says a lot that they stay on a Friday night to see this. I
24 concur with their assessment of the case. I think -- I
25 think that's appropriate. He has no record, and we all know

1 that. I do still stand, I thank him for his service, but a
2 lot of this that they talk about, this moment of insanity,
3 it just doesn't fit the situation. That's never really kind
4 of -- I'm convinced he was on something. Whether it be bath
5 salts, whether it be synthetic marijuana. Something of that
6 degree. I don't see how you just click on one day after
7 never having anything like that before and then never
8 anything after that. So that was kind of, you know, our
9 thinking and our theory of the case.

10 I don't know if Your Honor got to see the video. I
11 don't know if it was every positioned in a way that you
12 could see it.

13 THE COURT: Yeah, because I've got the --

14 MR. SCOTT: Okay, great.

15 THE COURT: I've got the screen right here so I can see
16 it. Plus I can see it from where it was angled. So, yeah,
17 I saw it.

18 MR. SCOTT: Just very compelling video. Kind of, you
19 know, every troopers' worst nightmare just to have to be in
20 a situation like that. What's also noteworthy is if you
21 listen to the thing, Lindler -- he maintains his composure
22 to such a degree with Harbuck that, you know, I really
23 applaud him for that, when he could have lost his cool, and
24 with the adrenalin pumping things could have gotten bad. I
25 mean, the guy was pulled out at gunpoint and then he

1 continues to resist. If you listened, at some point he has
2 the adrenaline pumping. His blood pressure is skyrocketing.
3 His back is killing him. And the thing he's asking the
4 other officers, would you please go check on that burgundy
5 SUV and see if they're okay. These guys get -- anything you
6 ever hear about them is the bad stuff. I'd like to commend
7 him, and it was a pleasure to fight for him this week. I
8 think he does want to address the Court at some point. But
9 just, Your Honor, I think the range of zero to 20 is a lot
10 of -- your Honor is going to have a lot of decisions to make
11 but we do ask for a sentence that kind of addresses what he
12 had to go through that day, when all he was trying to do was
13 his job.

14 And the other guys, I mean, I know it was, you know, a
15 30 day misdemeanor on them. I think they should be
16 applauded. I mean, they were trying to get home -- or go to
17 work rather. They spent a good hour and a half, two hours,
18 following this dude around so he couldn't kill somebody.
19 And, you know, it was good for them to do that. They're on
20 the phone constantly trying to shout out where his location
21 is. That should be commended, too. I know a lot of light
22 was made about Casey Jones, but, you know, I think his
23 involvement should be addressed. And all he wanted to do
24 was get Harbuck safely in the back of the car so he could
25 safely be transported. He got a kick in the knee, you know,

1 multiple times because of that. I know they only indicted
2 him on the resisting portion, but I'd like that to be
3 addressed as well.

4 But, Your Honor, I think Trooper Lindler does want to
5 address the Court.

6 THE COURT: Okay. Corporal Lindler, I'll be glad to
7 hear from you, sir.

8 CORPORAL LINDLER: First of all, I'd just like to
9 mirror what the Assistant Solicitor said and just thank
10 everybody for your time. I know this is an important part
11 of the judicial system, and sometimes the jurors don't get
12 recognized enough. But it -- you know, just like you said,
13 it is very important. And I'd just like to thank the ones
14 that are here for sticking by and what you done.

15 I just -- I'd like to basically just address Mr.
16 Harbuck and advise him of what I've been through, you know,
17 since -- since that incident. I did suffer a back injury.
18 I've got two herniated discs because of what you done, and
19 I've got many sleepless nights because of what you done. I
20 think about you ever night. I see the expression on your
21 face when you was looking at me in that mirror. And only
22 thing I can describe it is evil. I mean, because I wouldn't
23 have hurt you. You saw how I treated you. You heard the
24 videotape. I would have helped you any way I could have.
25 And, you know, another thing that bothers me is you showed

1 no remorse at all. You never said I'm sorry for what you've
2 done to me. You've never addressed the other people in the
3 vehicle that you rammed, you know. And that's -- you're the
4 reason why I do this job. I'm here because of people like
5 you, and I take pride in people like you off the street,
6 because you don't need to be on the street. Right now, I
7 mean, you need to be locked away until you can get your
8 affairs in order, because you have many issues and I don't
9 know -- I know you was on some kind of drug that day because
10 I've seen it before. Because I grew up around it. I know
11 how to identify people that's impaired and people that's
12 just out there that shouldn't be driving. And you didn't
13 need to be driving that day. You were bound and determined
14 to kill somebody. And you tried to kill me. You tried to
15 end me. And, you know, I'm getting off the subject. But,
16 you know, I'm 43-years-old. I know you probably don't know
17 that. But I've been married for 27 years and I've got three
18 small children that I got to support. And if you killed me
19 that day, what are they going to do. She would have to go
20 tell them that their father was dead because of your
21 actions. And it disgusts me, you know. And I said it
22 before but, I mean, you showed no remorse. You haven't --
23 you don't care, and I don't know why, you know. I feel
24 sorry for you in a way, because if I done that to somebody I
25 would be begging for mercy. I mean, I would tell them, I'm

1 sorry, man, you know. I had a bad day. I made a mistake.
2 You know, part of growing up is admitting when you make
3 mistakes and that's something that you haven't done and you
4 need to. You need to just own up to what you've done. It's
5 on videotape. We all know it. We all seen it, you know.
6 You purposely rammed these people, and I feel so bad because
7 I couldn't stop you from doing it. Because that's what
8 these people in here pay me to do. They pay me to take
9 people like you off the street, and I feel like I failed
10 them because I couldn't stop you from doing what you did. I
11 would have done anything to keep you from hitting those
12 people. Anything. But I don't know. I just -- I'll pray
13 for you. That's all I can do. And one day I hope, you know
14 -- you know, maybe me and you can sit down and you can tell
15 me what happened, you know. What you did. Why you did it,
16 you know. I got a good idea why you did it. But, you know,
17 I'm not asking your for an apology. I don't. But, I mean,
18 when you don't show any remorse for what you done, that
19 bothers me to a certain extent. And I mentioned, you know,
20 that I think about you all the time. I've had to go to a
21 class because of you. A post critical incident class. I
22 had to go talk to a classroom of people and tell them what
23 you've done to me, trying to get it off -- out of my system.
24 But sometimes it's like when they come and say this trial's
25 coming back, I can't sleep at night because of you. Because

1 all I can see is your face and you trying to end me, because
2 that's what you were doing. You watched me in your rearview
3 mirror and I could see you. Me and you made eye contact,
4 and you know this. You know you -- me and you looked each
5 other in the eyes and I could see you just evil when you was
6 trying to hit me, or when you did hit me. And it's just --
7 it's a sad situation. But like I said, I'll pray for you.
8 That's all I can do. I hope the best for you, sir. I'm
9 sorry, Your Honor.

10 THE COURT: Thank you, Corporal Lindler. Anything
11 further from the State?

12 MR. SCOTT: No, Your Honor.

13 THE COURT: Mr. Quinn, I'll be glad to hear from you
14 and anybody who would like to speak on Mr. Harbuck's behave.

15 MR. QUINN: And, Your Honor, I want to submit a couple
16 of documents to the Court. But before I do, I want to echo
17 the Solicitor's comments about Trooper Lindler who certainly
18 did nothing wrong in this situation. I think I made that
19 clear in front of the jury that he was as reasonable as he
20 could be to Mr. Harbuck out there trying to say just calm
21 down. It's over. There was no accusations against -- no
22 allegations against Trooper Lindler doing anything wrong in
23 this case. I'm sorry that -- and I understand the State's
24 presentation in sentencing is that they do not believe in
25 that Mr. Harbuck has post traumatic stress disorder. I

1 previously submitted to the Court, marked as a Court's
2 exhibit, was a statement from Steven Johnson from the
3 Department of Veterans Affairs. I'll submit a copy to the
4 Court at this time. Also, I'll submit to the Court a copy
5 from Major Clinton Schofield, S-c-h-o-f-i-e-l-d, which was
6 written actually before this incident to try to assist Mr.
7 Harbuck in getting employment.

8 Mr. Harbuck is -- you've heard the facts in the case.
9 I'm not going to go back through them.

10 THE COURT: Sure.

11 MR. QUINN: Mr. Harbuck, as you've heard is 28. He has
12 no prior criminal record. There was no good reason that
13 this incident to have occurred under any circumstances. But
14 nothing was found in the car that would evidence that he was
15 running from who knows who, the police or anybody for a
16 specific reason. He is -- has been diagnosed by the
17 Department of Veterans Affairs as undergoing at this time
18 treatment and counseling for it, and I believe the statement
19 before the Court even lists when his next appointments are.
20 As you heard, he was accepted at Liberty University and was
21 preparing to attend. His plan was -- after this incident,
22 he had to withdraw from Liberty because he wasn't able to go
23 to classes. So his plan at that point was to reenlist in
24 the military. Obviously he's not going to be able to do
25 that with this conviction. So he is hopeful that Liberty

1 will accept him back. As you've heard, he has extensive
2 compute skills. Some that he had before he went in the
3 service and then others that were developed in the service.
4 He was working in the computer field. And so, he would be
5 able to find employment in the computer field again because
6 he has fairly extensive skills. He spent 68 days in jail
7 before he was released on bond. He was released in
8 mid-November of 2015. So eight, nine months, I guess.
9 Sorry, my math isn't the best in the world. But nine or 10
10 months. He was released on electronic monitoring which went
11 off while he was testifying. There's not been any
12 violations of his electronic monitoring.

13 While he was in the Army -- and he did describe his
14 service at some length. He received several service medals
15 and ribbons including the Army Accommodation Medal, Army
16 Achievement Medal, Army Good Conduct Medal, National Defense
17 Service Medal. Your Honor, has before him a letter written
18 by Major Schofield who was one of his supervisors. When
19 Sergeant Harbuck left the service, Major Schofield was good
20 enough to write him that letter to assist him in getting
21 employment.

22 Sentencing obviously is up to the Court. I will ask
23 the Court to consider, with no prior record, that the Court
24 consider a home incarceration sentence or probation to be
25 appropriate in this case. If the Court does not believe

1 those are appropriate, I obviously would ask you to be as
2 reasonable as you could on any incarceration sentencing if
3 you believe it was necessary. I do believe that Mr. Harbuck
4 will be a threat in the future if he continues with his
5 treatment and counseling through the Veterans Affairs.
6 PTSD, however it arises, is something that can be treated
7 through counseling. Whether Officer Lindler's one class was
8 sufficient, I don't know. That was -- it has not been
9 sufficient for Mr. Harbuck. As Mr. Johnson's letter
10 delineates, he is going to be in an extensive program for an
11 extended period of time. I would ask the Court to consider
12 that home incarceration or probation for a gentlemen with no
13 prior record undergoing counseling for a diagnosable
14 treatment -- a diagnosable condition is an appropriate
15 sentence.

16 THE COURT: What was the amount of time you're seeking
17 credit for?

18 MR. QUINN: Sixty-eight days.

19 THE COURT: Sixty-eight days?

20 MR. QUINN: I believe that's right. Yes, sir. And as
21 the Court knows, his mother is here. I don't believe she
22 needs, or wants to address the Court, and the two character
23 witnesses that spoke for him have already testified. You've
24 heard their testimony.

25 THE COURT: Thank you. Does Mr. Harbuck wish to

1 address the Court? He certainly doesn't have to, but I'd be
2 more than welcome to hear from him if he'd like.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Yes, sir. I'd be glad to hear from you.

5 THE DEFENDANT: First I want to offer an apology to
6 Corporal Lindler. I wasn't sure if it was appropriate or
7 not to engage you these past couple of days, so I did
8 postpone that and I apologize. But I would like to extend
9 an apology to you guys, any of the other officers involved,
10 and definitely the family members, and of course your wife
11 also and your daughter. And I apologize for the incident in
12 general, and you guys certainly did nothing wrong and I do
13 appreciate how you guys did handle that situation. So thank
14 you.

15 THE COURT: I have taken into account, Mr. Harbuck,
16 that you do not have a prior record. That is certainly to
17 your benefit. I am taking into account to some extent the
18 fact that you are currently being treated for PTSD.
19 However, I'm not certain enough has been presented to me
20 that that condition would have been the cause of what you
21 did. I'm certainly no doctor or psychiatrist or
22 psychologist, but at least the people that I am aware of
23 that have this condition is -- it's a common almost every
24 day situation, and basically what I heard from the Defense
25 was that everything was good before and after and then all

1 of a sudden this is one day and this PTSD created some
2 issues. I don't know. I have taken that into account to
3 some extent. What I felt like was about as significant as
4 it relates to Corporal Lindler, the impact involved caused
5 the in car video camera to come off the mount. And I've
6 always understood that those things are mounted pretty good
7 just to prevent people that they arrest jerking the thing
8 off. And the impact was such that it knocked that camera
9 off the mount. That's pretty strong. That's pretty strong.

10 With all due respect to Mr. Quinn's request to home
11 incarceration and probation, there is just no way I can do
12 that. Not in light of this. You know, if you had been in
13 and out of the criminal justice system and then convicted of
14 this particular offense, I don't think there's any question
15 I'd give you the max, which is 20 years. I'm not going to
16 do that, because I have given some benefit, some weight to
17 the mitigation that's been presented in this case. But just
18 because of a law enforcement person signs up for a very,
19 very risky job, it still doesn't make it right for someone
20 like Corporal Lindler here to have to go through what he's
21 gone through. And, too, I commend all the officers on how
22 they handled a very difficult situation. You know, for one
23 person to be injured out of this several hours of
24 unbelievable dangerous erratic driving, and for no one to be
25 hurt at all, that's amazing. That just is absolutely

1 amazing to me that that does not happen -- or did not happen
2 rather. I can probably sit here and go on and on. I'm not
3 going to do that.

4 On the assault and battery, of course, it's a 30 day
5 maximum sentence. So that will be time served. On the
6 failure to stop it's going to be a sentence of three years.
7 On the resisting sentence of one year. And on the assault
8 and battery of a high and aggravated nature it will be a
9 sentence of nine years. All that to run concurrent with
10 each other. Credit for 68 days. Good luck to you, sir.

11 (Whereupon, court was adjourned.)

12 END OF REQUESTED TRANSCRIPT OF RECORD

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Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 24th, 25th, and 26th day of August, 2016.

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

Tara T. Scott

Tara T. Scott, CVR
Circuit Court Reporter
December 1, 2016

COUNTY OF LAURENS

ROBERT CLINTON HARBUCK,

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: Dayne C. Phillips, Esq.Address: 4723-A Sunset Blvd., Lexington, SC 29072

IN THE COURT OF COMMON PLEAS

335

COPY

CIVIL ACTION COVERSHEET

2017 -CP- 30 - 648APPLICATION FOR
POST-CONVICTION RELIEFSC Bar #: 77712Telephone #: (803) 808-9600Fax #: (803) 808-2240

Other: _____

E-mail: dayne@thejeffcoatfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

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- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____ -NI- ____ ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature: Dayne PhillipsDate: August 2, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

FORM 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	<i>2017-CP-30-648</i>
ROBERT CLINTON HARBUCK	)	APPLICATION FOR
Inmate Number #369560	)	
	)	
v.	)	POST-CONVICTION RELIEF
	)	
State of South Carolina	)	

1. Place of Detention: Allendale Correctional Institution, 1057 Revolutionary Trail, Fairfax, SC 29827.
2. Name and location of Court which imposed sentence: Laurens County Court of General Sessions, 100 Hillcrest Square, Laurens, SC 29360.
3. Name(s) of co-defendant(s) (if any): N/A.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-30-1618 (Assault and Battery, 3rd Degree).
 - (b) 2015-GS-30-1619 (Assault and Battery, 3rd Degree).
 - (c) 2015-GS-30-1620 (Assault and Battery, 3rd Degree).
 - (d) 2015-GS-30-1621 (Assault and Battery of a High and Aggravated Nature).
 - (e) 2015-GS-30-1622 (Resisting Arrest).
 - (f) 2015-GS-30-1710 (Failure to Stop for a Blue Light).
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) August 26, 2016.
 - (b) 30 days, concurrent, for indictment number 2015-GS-30-1618.
 - (c) 30 days, concurrent, for indictment number 2015-GS-30-1619.

 LAURENS COUNTY
CLERK OF COURT

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LYNN W. LANCASTER

- (d) 30 days, concurrent, for indictment number 2015-GS-30-1620.
 - (e) 9 years, concurrent, for indictment number 2015-GS-30-1621.
 - (f) 1 year, concurrent, for indictment number 2015-GS-30-1622.
 - (g) 3 years, concurrent, for indictment number 2015-GS-30-1710.
6. A finding of guilty was made:
- (a) After a trial by jury before the Honorable Donald B. Hocker.
7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
- (a) No.
8. If you answered "yes" to number (7), list:
- (a) The name of each Court to which you appealed:
 - i. N/A.
 - (b) The result in each Court to which you appealed:
 - i. N/A.
 - (c) The date of each result:
 - i. N/A.
 - (d) If known, citations of any written opinions or ordered entered pursuant to such result:
 - i. N/A.
 - ii. N/A.
9. If you answered "no" to number (7), state your reasons for not appealing:
- (a) Trial Counsel told Applicant to file an application for Post-Conviction Relief.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and

Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984).

11. State concisely and in the same order the facts which support each of the grounds set out in number (10):

(a)

- (i) Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible mitigating evidence in preparation for trial. See *Wiggins v. Smith*, 539 U.S. 510 (2003). Specifically, Trial Counsel failed to obtain and review all of Applicant's psychiatric and mental health counseling records. Trial Counsel also failed to have Applicant evaluated for competency and criminal responsibility by the South Carolina Department of Mental Health or by an independent psychiatric/mental health expert. Trial Counsel further failed to consult with an expert witness for an independent review of Applicant's mental health records despite having a duty to determine whether Applicant was competent to stand trial or could raise the affirmative defense of insanity. See *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).
- (ii) Trial Counsel failed to move for a *Blair* hearing prior to trial to determine Applicant's competency to stand trial. See *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); S.C. Code §§ 44-23-410 and 430.
- (iii) Trial Counsel failed to provide notice of the affirmative defense of insanity to the Solicitor as required prior to trial and to properly raise the defense at trial. See Rule 5(f), SCRCrimP; see also S.C. Code § 17-24-10.
- (iv) Trial Counsel failed to call an expert witness to testify at trial regarding Applicant's diagnosis of Post-Traumatic Stress Disorder (PTSD) and history of mental health treatment when it was reasonable and necessary to present this evidence.
- (v) Trial Counsel failed to subject the prosecution's case to meaningful adversarial testing by not adequately preparing for trial and having an unreasonable trial strategy. See *United States v. Cronin*, 466 U.S. 648 (1984).
- (vi) Trial Counsel failed to object to inadmissible evidence during Applicant's trial.

- (vii) Trial Counsel failed to object to the Trial Court's curative instruction and move for a mistrial after the Solicitor told the jury in the State's closing argument that the jury could infer malice from Applicant's use of his vehicle as a deadly weapon.
 - (viii) Trial Counsel failed to object to the Solicitor's improper comments during closing argument and failed to move for a curative instruction and/or mistrial based on the undue prejudice created by those comments. Specifically, the Solicitor made numerous disparaging comments attacking Trial Counsel's credibility. The Solicitor also argued facts that were not in evidence. The Solicitor repeatedly argued that Applicant was on drugs despite that there was no corroborating evidence presented at trial.
 - (ix) Trial Counsel failed to preserve for appellate review his motion for a mistrial by not obtaining a final ruling after his objection to the Trial Court's curative instruction regarding Corporal Steven Lindler's testimony of medical injuries that were not disclosed by the State.
 - (x) Trial Counsel failed to request jury instructions on the affirmative defense of not guilty by reason of insanity and guilty but mentally ill.
 - (xi) Trial Counsel failed to file a Motion for Reconsideration based on the critical mitigation evidence not presented to the Trial Court during the sentencing phase.
12. Prior to this application, have you filed with respect to this conviction:
- (a) Any petition in a State Court under South Carolina Law? No.
 - (b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No.
 - (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (8)? No.
 - (d) Any other petitions motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of number (12), list with respect to each petition, motion, or application:

(a) The specific nature thereof:

i. N/A.

(b) The name and location of the Court in which each was filed:

i. N/A.

(c) The disposition thereof:

i. N/A.

(d) The date of each such disposition:

i. N/A.

14. Has any ground set forth in number (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.

15. If you answered "yes" to number (14), identify:

(a) The grounds which have been presented:

i. N/A.

(b) The proceedings in which each ground was raised:

i. N/A.

16. If any ground set forth in number (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are not preserved for appellate review or were not appropriate to raise on Direct Appeal.

17. Were you represented by an attorney at any time during the course of:

(a) Your plea hearing? N/A.

(b) Your trial? Yes.

(c) Your sentencing? Yes.

- (d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence?
N/A.
- (e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.
18. If you answered "yes" to one or more parts of number (17), list:
- (a) The name and address of each attorney who represented you:
- (i) Thomas J. Quinn, 109 Laurens Road, Building 4, Suite D, Greenville, SC 29607.
- (ii) Dayne Phillips, 4723-A Sunset Blvd., Lexington, SC 29072.
- (b) The proceedings at which each attorney represented you:
- (i) Thomas J. Quinn represented Applicant at his trial.
- (ii) Dayne Phillips is representing Applicant on this application for Post-Conviction Relief.
19. State clearly the relief you seek in filing this application:
- Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding for a new trial based on ineffective assistance of counsel.
20. Are you now under sentence from any other court that you have not challenged?
- No.

[Applicant's Verification to Follow]

2017- CP- 30-648

STATE OF SOUTH CAROLINA)

County of LAURENS)

VERIFICATION

I, ROBERT CLINTON HARBUCK, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 7th
day of July, 2017.

Debbie L. Phillips (L.S.)
Notary Public

My Commission Expires: July 10, 2024

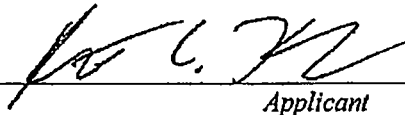
LYNN W. LANCASTER
2017 AUG -7 AM 10:00
LAURENS COUNTY
CLERK OF COURT

2017-CP-30-648

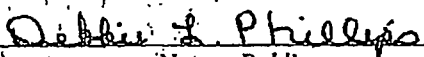
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, ROBERT CLINTON HARBUCK, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
7th day of July, 2017.


Notary Public

My Commission Expires: July 10, 2019

LYNN W. LANCASTER
2017 AUG -7 AM 10:00
LAURENS COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)
) IN THE COURT OF COMMON PLEAS
) OF THE EIGHTH JUDICIAL CIRCUIT

Robert Clinton Harbuck,)
SCDC # 369560)
) 2017-CP-30-648

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

LYNN W. LANCASTER
2017 DEC 13 10:19:18
LAURENS COUNTY
CLERK OF COURT

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 7, 2017, would respectfully show this Court

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Laurens County Clerk of Court. Applicant was indicted at the October 2015 term of the Laurens County Grand Jury for assault on an officer while resisting arrest (2015-GS-30-1622); four counts of attempted murder (2015-GS-30-1618, -1619, -1620, -1621); and failure to stop for a blue light (2015-GS-30-1710). Thomas Quinn, Esquire, represented him. Assistant Solicitors Dale Scott and Jim Todd represented the State. On August 24-26, 2016, Applicant proceeded to a jury trial before the Honorable Donald Hocker after which he was found guilty of resisting arrest as a lesser included offense of assault on an officer while resisting arrest and sentenced to one year imprisonment. He was found guilty of assault and battery (3rd degree) as a lesser included offense of attempted murder for 2015-GS-30-1618, -1619, -1620 and sentenced to thirty days' imprisonment on each charge. He was found guilty of assault and battery of a high and aggravated nature as a lesser included offense of attempted murder for 2015-GS-30-1621 and sentence to nine years' imprisonment. He was found guilty of

failure to stop for a blue light and sentenced to three years' imprisonment. All sentences were to run concurrently. Applicant did not file a notice of appeal.

II.

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel

- a. Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible mitigating evidence in preparation for trial. See *Wiggins v. Smith*, 539 U.S. 510 (2003). Specifically, Trial Counsel failed to obtain and review all of Applicant's psychiatric and mental health counseling records. Trial Counsel also failed to have Applicant evaluated for competency and criminal responsibility by the South Carolina Department of Mental Health or by an independent psychiatric/mental health expert. Trial Counsel further failed to consult with an expert witness for an independent review of Applicant's mental health records despite having a duty to determine whether Applicant was competent to stand trial or could raise the affirmative defense of insanity. See *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).
- b. Trial Counsel failed to move for a *Blair* hearing prior to trial to determine Applicant's competency to stand trial. See *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981) S.C. Code §§ 44-23-410 and 430.
- c. Trial Counsel failed to provide notice of the affirmative defense of insanity to the Solicitor as required prior to trial and to properly raise the defense at trial. See Rule 5(f), SCRCrimP; see also S.C. Code § 17-24-10.
- d. Trial Counsel failed to call an expert witness to testify at trial regarding Applicant's diagnosis of Post-Traumatic Stress Disorder (PTSD) and history of mental health treatment when it was reasonable and necessary to present this evidence.
- e. Trial Counsel failed to subject the prosecution's case to meaningful adversarial testing by not adequately preparing for trial and having an unreasonable trial strategy. See *United States v. Cronin*, 466 U.S. 648 (1984).
- f. Trial Counsel failed to object to inadmissible evidence during Applicant's trial.
- g. Trial Counsel failed to object to the Trial Court's curative instruction and move for a mistrial after the Solicitor told the jury in the State's closing argument that the jury could infer malice from Applicant's use of his vehicle as a deadly weapon.

- h. Trial Counsel failed to object to the Solicitor's improper comments during closing argument and failed to move for a curative instruction and/or mistrial based on the undue prejudice created by those comments. Specifically, the Solicitor made numerous disparaging comments attacking Trial Counsel's credibility. The Solicitor also argued facts that were not in evidence. The Solicitor repeatedly argued that Applicant was on drugs despite that there was no corroborating evidence presented at trial.
- i. Trial Counsel failed to preserve for appellate review his motion for a mistrial by not obtaining a final ruling after his objection to the Trial Court's curative instruction regarding Corporal Steven Lindler's testimony of medical injuries that were not disclosed by the State.
- j. Trial Counsel failed to request jury instructions on the affirmative defense of not guilty by reason of insanity and guilty but mentally ill.
- k. Trial Counsel failed to file a Motion for Reconsideration based on the critical mitigation evidence not presented to the Trial Court during the sentencing phase.

Attached herewith and incorporated herein by reference are the Laurens County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The

applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

[SIGNATURE ON FOLLOWING PAGE]

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

12/13, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

2017-CP-30-0648

ROBERT CLINTON HARBUCK, #369560)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

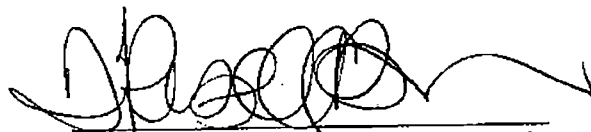
LAURENS COUNTY
 CLERK OF COURT

2017 DEC 18 PM 10:18

LYNN W. LANCASTER

Mr. Dayne C. Phillips
Dayne Phillips Criminal Lawyer LLC
 1614 Taylor Street
 Suite D
 Columbia, SC 29201

DATED this 13th day of December, 2017.



Tamieka Russell-Brown, Legal Assistant

COUNTY OF LAURENS

ROBERT CLINTON HARBUCK,

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 30- 648AMENDED APPLICATION FOR
POST-CONVICTION RELIEFSubmitted By: Dayne C. Phillips, Esq.Address: 1614 Taylor StreetSuite, D.Columbia, SC 29201SC Bar #: 77712Telephone #: (803) 807-0234Fax #: (803) 380-8035

Other: _____

E-mail: dayne@pricebenowitz.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____-NI-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
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Submitting Party Signature: _____

Date: June 11, 2018

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

ROBERT CLINTON HARBUCK)

Inmate Number #369560)

Applicant,)

v.)

State of South Carolina)

Respondent.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2017-CP-30-648

**AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**

[Note: As required by Rule 71.1(b), SCRCF, this application follows Form 5 of the SCRCF Appendix of Forms.]

1. Place of Detention: Allendale Correctional Institution, 1057 Revolutionary Trail, Fairfax, SC 29827.
2. Name and location of Court which imposed sentence: Laurens County Court of General Sessions, 100 Hillcrest Square, Laurens, SC 29360.
3. Name(s) of co-defendant(s) (if any): N/A.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-30-1618 (Assault and Battery, 3rd Degree).
 - (b) 2015-GS-30-1619 (Assault and Battery, 3rd Degree).
 - (c) 2015-GS-30-1620 (Assault and Battery, 3rd Degree).
 - (d) 2015-GS-30-1621 (Assault and Battery of a High and Aggravated Nature).
 - (e) 2015-GS-30-1622 (Resisting Arrest).
 - (f) 2015-GS-30-1710 (Failure to Stop for a Blue Light).
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) August 26, 2016.

- (b) 30 days, concurrent, for indictment number 2015-GS-30-1618.
- (c) 30 days, concurrent, for indictment number 2015-GS-30-1619.
- (d) 30 days, concurrent, for indictment number 2015-GS-30-1620.
- (e) 9 years, concurrent, for indictment number 2015-GS-30-1621.
- (f) 1 year, concurrent, for indictment number 2015-GS-30-1622.
- (g) 3 years, concurrent, for indictment number 2015-GS-30-1710.

6. A finding of guilty was made:

- (a) After a trial by jury before the Honorable Donald B. Hocker.

7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?

- (a) No.

8. If you answered "yes" to number (7), list:

- (a) The name of each Court to which you appealed:

- i. N/A.

- (b) The result in each Court to which you appealed:

- i. N/A.

- (c) The date of each result:

- i. N/A.

- (d) If known, citations of any written opinions or ordered entered pursuant to such result:

- i. N/A.

- ii. N/A.

9. If you answered "no" to number (7), state your reasons for not appealing:

- (a) Trial Counsel told Applicant to file an application for Post-Conviction Relief.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984).
11. State concisely and in the same order the facts which support each of the grounds set out in number (10):
- (a)
- (i) Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible mitigating evidence in preparation for trial. See *Wiggins v. Smith*, 539 U.S. 510 (2003). Specifically, Trial Counsel failed to obtain and review all of Applicant's psychiatric and mental health counseling records. Trial Counsel also failed to have Applicant evaluated for competency and criminal responsibility by the South Carolina Department of Mental Health or by an independent psychiatric/mental health expert. Trial Counsel further failed to consult with an expert witness for an independent review of Applicant's mental health records despite having a duty to determine whether Applicant was competent to stand trial or could raise the affirmative defense of insanity. See *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).
- (ii) Trial Counsel failed to move for a *Blair* hearing prior to trial to determine Applicant's competency to stand trial. See *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); S.C. Code §§ 44-23-410 and 430.
- (iii) Trial Counsel failed to provide notice of the affirmative defense of insanity to the Solicitor as required prior to trial and to properly raise the defense at trial. See Rule 5(f), SCRCrimP; see also S.C. Code § 17-24-10.
- (iv) Trial Counsel failed to call an expert witness to testify at trial regarding Applicant's diagnosis of Post-Traumatic Stress Disorder (PTSD) and history of mental health treatment when it was reasonable and necessary to present this evidence.

- (v) Trial Counsel failed to subject the prosecution's case to meaningful adversarial testing by not adequately preparing for trial and having an unreasonable trial strategy. See *United States v. Cronin*, 466 U.S. 648 (1984).
- (vi) Trial Counsel failed to object to inadmissible evidence during Applicant's trial.
- (vii) Trial Counsel failed to object to the Trial Court's curative instruction and move for a mistrial after the Solicitor told the jury in the State's closing argument that the jury could infer malice from Applicant's use of his vehicle as a deadly weapon.
- (viii) Trial Counsel failed to object to the Solicitor's improper comments during closing argument and failed to move for a curative instruction and/or mistrial based on the undue prejudice created by those comments. Specifically, the Solicitor made numerous disparaging comments attacking Trial Counsel's credibility. The Solicitor also argued facts that were not in evidence. The Solicitor repeatedly argued that Applicant was on drugs despite that there was no corroborating evidence presented at trial.
- (ix) Trial Counsel failed to preserve for appellate review his motion for a mistrial by not obtaining a final ruling after his objection to the Trial Court's curative instruction regarding Corporal Steven Lindler's testimony of medical injuries that were not disclosed by the State.
- (x) Trial Counsel failed to request jury instructions on the affirmative defense of not guilty by reason of insanity and guilty but mentally ill.
- (xi) Trial Counsel failed to file a Motion for Reconsideration based on the critical mitigation evidence not presented to the Trial Court during the sentencing phase.
- (xii) Trial Counsel failed to hire an expert witness to conduct an independent review of Corporal Steven Lindler's medical records to determine whether those injuries met the definition of "Great Bodily Injury" or whether the act that caused those injuries was likely to produce "Great Bodily Injury" to satisfy that

element of Assault and Battery of a High and Aggravated Nature when it was reasonable and necessary in requesting a lesser-included offense.

(xiii) Trial Counsel failed to call an expert witness at trial to testify in rebuttal of the State's argument that Applicant was guilty of Assault and Battery of a High and Aggravated Nature because Corporal Steven Lindler's injuries did not meet the definition of "Great Bodily Injury" when it was reasonable and necessary to present this evidence.

(xiv) Trial Counsel failed to call an expert witness during the mitigation phase of the sentencing hearing to testify at trial regarding Applicant's diagnosis of Post-Traumatic Stress Disorder (PTSD) and history of mental health treatment when it was reasonable and necessary to present this evidence.

12. Prior to this application, have you filed with respect to this conviction:

- (a) Any petition in a State Court under South Carolina Law? No.
- (b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No.
- (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (8)? No.
- (d) Any other petitions motions or applications in this or any other Court? Yes, the initial Application requesting Post-Conviction Relief to this Amended Application.

13. If you answered "yes" to any part of number (12), list with respect to each petition, motion, or application:

(a) The specific nature thereof:

i. N/A.

(b) The name and location of the Court in which each was filed:

i. N/A.

(c) The disposition thereof:

i. N/A.

(d) The date of each such disposition:

i. N/A.

14. Has any ground set forth in number (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.

15. If you answered "yes" to number (14), identify:

(a) The grounds which have been presented:

i. N/A.

(b) The proceedings in which each ground was raised:

i. N/A.

16. If any ground set forth in number (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are not preserved for appellate review and were not appropriate to raise on Direct Appeal.

17. Were you represented by an attorney at any time during the course of:

(a) Your plea hearing? N/A.

(b) Your trial? Yes.

(c) Your sentencing? Yes.

(d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? N/A.

(e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of number (17), list:

(a) The name and address of each attorney who represented you:

(i) Thomas J. Quinn, 109 Laurens Road, Building 4, Suite D, Greenville, SC 29607.

(ii) Dayne Phillips, 1614 Taylor Street, Suite D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) Thomas J. Quinn represented Applicant at his trial.

(ii) Dayne Phillips is representing Applicant on this application for Post-Conviction Relief.

19. State clearly the relief you seek in filing this application:

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding for a new trial based on ineffective assistance of counsel.

20. Are you now under sentence from any other court that you have not challenged?

No.

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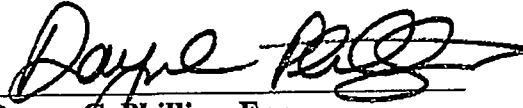
[Signature Page to Follow]

Robert C. Harbuck v. State

AMENDED APPLICATION FOR POST-CONVICTION RELIEF

Case No. 2017-CP-30-648

Sincerely,

A handwritten signature in black ink, appearing to read "Dayne C. Phillips", with a stylized flourish extending to the right.

Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.

Columbia, SC 29201

O: 803-272-4503

C: 803-807-0234

F: 803-380-8035

dayne@pricebenowitz.com

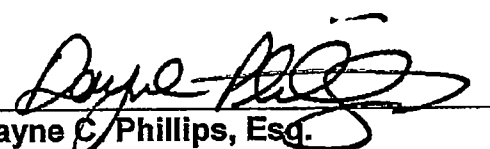
Attorney, Price Benowitz LLP

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Christian A. Saville, Assistant Attorney General
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable Lynn W. Lancaster
Laurens County Clerk of Court
100 Hillcrest Square, Suite B
Laurens, SC 29360

By: **Dayne C. Phillips, Esq.**

1614 Taylor Street, Suite D.
Columbia, SC 29201
O: (803) 272-4503
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dayne@pricebenowitz.com

Attorney, Price Benowitz LLPJune 11, 2018

6/11/18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Robert Clinton Harbuck,	)	2017-CP-30-648
SCDC # 369560	)	
	)	
Applicant,	)	
	)	AMENDED RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

LYNN W. LANCASTER
2018 SEP 25 AM 9:06
LAURENS COUNTY
CLERK OF COURT

The State (Respondent), making its amended return to the application for habeas corpus relief filed on August 7, 2017, and amended on June 11, 2018, would respectfully show this Court:

I. Procedural History

Robert Harbuck (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Laurens County Clerk of Court. During the October 2015 term, the Laurens County Grand Jury indicted Applicant for assault on an officer while resisting arrest (2015-GS-30-1622); four counts of attempted murder (2015-GS-30-1618, -1619, -1620, -1621); and failure to stop for a blue light (2015-GS-30-1710). Thomas Quinn, Esquire, represented him. Assistant Solicitors Dale Scott and Jim Todd of the Eighth Circuit Solicitor's Office prosecuted the case.

On August 24-26, 2016, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker, circuit court judge. The jury convicted Applicant of resisting arrest as a lesser-included offense of assault on an officer while resisting arrest (2015-GS-30-1622), three counts of third-degree assault and battery as a lesser-included offense of attempted murder (2015-GS-30-1618, -1619, -1620), assault and battery of a high and aggravated nature as a lesser-included

offense of attempted murder (2015-GS-30-1621), and failure to stop for blue lights (2015-GS-30-1710). Applicant was sentenced to one year imprisonment for resisting arrest, thirty days imprisonment for each third-degree battery conviction, nine years imprisonment for assault and battery of a high and aggravated nature, and three years imprisonment for failure to stop for blue lights. All sentences were to run concurrently. Applicant did not file a notice of appeal.

II. Factual History

On September 6, 2015, Applicant was driving down I-26 in his gold Chevrolet Silverado “like a NASCAR driver, cutting through traffic, using the emergency lane as a speed lane.” (Trial Tr. 35.) A group of co-workers (witnesses) who were traveling on I-26 the same morning, observed Applicant’s driving and made a frantic call to 911. (Trial Tr. 35.) Trooper Lindler caught up to Applicant and attempted to pull Applicant over. (Trial Tr. 50.) The witnesses got in front of Applicant and exited the interstate. (Trial Tr. 49.) At that point, Applicant was behind them and began to follow them. (Trial Tr. 50.) The witnesses noticed Applicant and pulled over on the interstate ramp to let him pass as they believed he was fleeing from Trooper Lindler. (Trial Tr. 50.) Instead of passing the witnesses, Applicant pulled up behind them and rammed their vehicle. (Trial Tr. 50.) Trooper Lindler pulled in behind Applicant and, after Applicant rammed the witnesses’ car, put his truck in reverse and sped towards Trooper Lindler’s police cruiser. (Trial Tr. 50-51.) Applicant then drove his truck and pulled it in front of the witnesses’ vehicle. (Trial Tr. 51.) Trooper Lindler then positioned his police cruiser between the witnesses’ vehicle and Applicant’s vehicle. (Trial Tr. 51.) Trooper Lindler ordered Applicant out of the vehicle at gunpoint and Applicant complied. (Trial Tr. 87.) Applicant complied with Trooper Lindler’s commands until Applicant was put in handcuffs and he began fighting. (Trial Tr. 88.) Another Trooper showed up at that time, and shortly thereafter, officers from the

Clinton Police Department arrived on the scene. (Trial Tr. 88.) Applicant remained combative and officers had to wait for a caged vehicle to transport Applicant from the scene. (Trial Tr. 88.) Once the caged vehicle arrived, multiple officers had to be used to put Applicant in the vehicle as he continued to fight. (Trial Tr. 90.) Officers "drive stunned" Applicant two times during the arrest in order to get him to comply with their commands. (Trial Tr. 140.) Applicant would stop fighting temporarily, but would eventually become combative again. (Trial Tr. 140-142.)

While being transported, Applicant attempted to shimmy out of his handcuffs back of the caged unit and officers had to pull over and radio for assistance. (Trial Tr. 36, 143.) Officers spoke to Applicant, attempted to calm him down, and Applicant appeared to be cooperative. (Trial Tr. 144.) Once officers opened the car door, Applicant became combative again. (Trial Tr. 144.) Applicant was eventually transported to the hospital for an exam. (Trial Tr. 146-147.) Applicant would not consent to an exam and told the doctors, "You're not touching me." (Trial Tr. 147.) Due to Applicant's non-compliance, no blood was drawn at the hospital. (Trial Tr. 148.) Applicant was then taken to jail without further incident. (Trial Tr. 148)

III. Allegations Raised and Relief Sought

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible mitigating evidence in preparation for trial. See Wiggins v. Smith, 539 U.S. 510 (2003). Specifically, Trial Counsel failed to obtain and review all of Applicant's psychiatric and mental health counseling records. Trial Counsel also failed to have Applicant evaluated for competency and criminal responsibility by the South Carolina Department of Mental Health or by an independent psychiatric/mental health expert. Trial Counsel further failed to consult with an expert witness for an independent review of Applicant's mental health records despite having a duty to determine whether Applicant was

competent to stand trial or could raise the affirmative defense of insanity. See Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

- b. Trial Counsel failed to move for a Blair hearing prior to trial to determine Applicant's competency to stand trial. See State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) S.C. Code §§ 44-23-410 and 430.
- c. Trial Counsel failed to provide notice of the affirmative defense of insanity to the Solicitor as required prior to trial and to properly raise the defense at trial. See Rule 5(f), SCRCrimP; see also S.C. Code § 17-24-10.
- d. Trial Counsel failed to call an expert witness to testify at trial regarding Applicant's diagnosis of Post-Traumatic Stress Disorder (PTSD) and history of mental health treatment when it was reasonable and necessary to present this evidence.
- e. Trial Counsel failed to subject the prosecution's case to meaningful adversarial testing by not adequately preparing for trial and having an unreasonable trial strategy. See United States v. Cronin, 466 U.S. 648 (1984).
- f. Trial Counsel failed to object to inadmissible evidence during Applicant's trial.
- g. Trial Counsel failed to object to the Trial Court's curative instruction and move for a mistrial after the Solicitor told the jury in the State's closing argument that the jury could infer malice from Applicant's use of his vehicle as a deadly weapon.
- h. Trial Counsel failed to object to the Solicitor's improper comments during closing argument and failed to move for a curative instruction and/or mistrial based on the undue prejudice created by those comments. Specifically, the Solicitor made numerous disparaging comments attacking Trial Counsel's credibility. The Solicitor also argued facts that were not in evidence. The Solicitor repeatedly argued that Applicant was on drugs despite that there was no corroborating evidence presented at trial.
- i. Trial Counsel failed to preserve for appellate review his motion for a mistrial by not obtaining a final ruling after his objection to the Trial Court's curative instruction regarding Corporal Steven Lindler's testimony of medical injuries that were not disclosed by the State.
- j. Trial Counsel failed to request jury instructions on the affirmative defense of not guilty by reason of insanity and guilty but mentally ill.
- k. Trial Counsel failed to file a Motion for Reconsideration based on the critical mitigation evidence not presented to the Trial Court during the sentencing phase.

On December 18, 2017, the State filed its return, requesting an evidentiary hearing.

Thereafter, on June 14, 2018, Applicant, through his counsel, Dayne C. Phillips, Esquire, filed an

amend application for post-conviction relief. In this amended application, Applicant sets forth the following additional grounds for post-conviction relief:

- a. Trial Counsel failed to hire an expert witness to conduct an independent review of Corporal Steven Lindler's medical records to determine whether those injuries met the definition of "Great Bodily Injury" or whether the act that caused those injuries was likely to produce "Great Bodily Injury" to satisfy that element of Assault and Battery of a High and Aggravated Nature when it was reasonable and necessary in requesting a lesser-included offense.
- b. Trial Counsel failed to call an expert witness at trial to testify in rebuttal of the State's argument that Applicant was guilty of Assault and Battery of a High and Aggravated Nature because Corporal Steven Lindler's injuries did not meet the definition of "Great Bodily Injury" when it was reasonable and necessary to present this evidence.
- c. Trial Counsel failed to call an expert witness during the mitigation phase of the sentencing hearing to testify at trial regarding Applicant's diagnosis of Post-Traumatic Stress Disorder (PTSD) and history of mental health treatment when it was reasonable and necessary to present this evidence.

As requested relief, Applicant seeks vacation of "his convictions and sentences and remanding for a new trial based on ineffective assistance of counsel."

IV. Response to Ineffective Assistance of Counsel Allegation

Respondent contends that Applicant's trial counsel rendered effective assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) (citing Strickland). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 300 S.C. 115, 386 S.E.2d 624. Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Although an evidentiary hearing will be necessary to address many of the allegations Applicant has set forth, Respondent submits Applicant cannot satisfy either requirement of the Strickland test. Applicant alleges in various ways that trial counsel was ineffective for failing to adequately prepare and investigate Applicant's case. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-146 (2008) (citing Jackson v. State 329 S.C. 345, 353-354, 495 S.E.2d 768, 772 (1998)).

Applicant also alleges in various ways that trial counsel was ineffective for failing to seek an evaluation of Applicant's competency to stand trial. "The test of competency to enter a plea is the same as required to stand trial. The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). The record in this case shows Applicant testified on his own behalf regarding the incident that led to his charges. Applicant recalled specific facts about his military service, communicated effectively, and answered questions appropriately on direct and cross examination during the proceeding. Additionally, Applicant testified at trial he was enrolled and attending college at the time of the incident. (Trial Tr. 190.) The record does not support Applicant's claim that he was not competent to stand trial.

The allegations of ineffective assistance of counsel not directly addressed specifically raise questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Future Amendments

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this

application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. Response to All Other Allegations

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's counsel was ineffective.

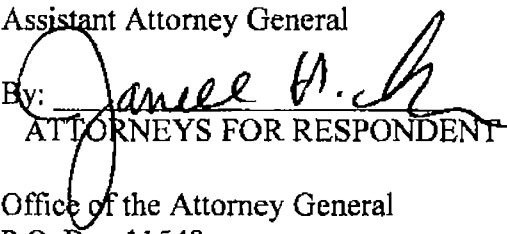
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

9/21, 2018

1 STATE OF SOUTH CAROLINA
2 COUNTY OF LAURENS

)
) IN THE COMMON PLEAS COURT

3 Robert Clinton Harbuck,
4 Applicant,

)
) TRANSCRIPT OF RECORD
) 2017-CP-30-648

5 -vs-

6 The State.

)
) March 1, 2019
) Greenwood, South Carolina

7
8
9
10
11 B E F O R E:

12 HONORABLE BRIAN M. GIBBONS, JUDGE
13
14

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

16 DAYNE C. PHILLIPS, ESQUIRE
17 Attorney for the Applicant

18 JANELL H. GREGORY, ESQUIRE
19 Attorney for the State
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 MS. GREGORY: Your Honor, before you is Mr. Harbuck.
2 This is case No. 2017-CP-30-648.

3 In October of 2015 the Laurens County Grand Jury
4 indicted Mr. Harbuck for assaults on an officer while
5 resisting arrest, four counts of attempted murder and
6 failure to stop for blue lights.

7 On August 24th of 2016 Mr. Harbuck proceeded to a jury
8 trial before Judge Hocker. On August 26th of 2016 the jury
9 found Mr. Harbuck guilty of three counts of assault and
10 battery third degree, for the lesser included offense of
11 attempted murder, one count of assault and battery of a
12 high and aggravated nature as a lesser included offense of
13 attempted murder, resisting arrest, which is a lesser
14 included offense of the assault on an officer while
15 resisting arrest, and failure to stop for blue lights.

16 Judge Hocker sentenced Mr. Harbuck to nine years on
17 the ABHAN, 30 days on each of the assault and battery third
18 degree charges, one year on the resisting arrest and three
19 years on the failure to stop for blue lights. All
20 sentences were to run concurrently.

21 Mr. Harbuck did not appeal his conviction or sentence.
22 He did file a timely application for post conviction relief
23 on August 7, 2017, alleging ineffective assistance of
24 counsel for multiple reasons.

25 Mr. Phillips then amended the application later in

1 June of 2018 alleging three additional grounds.

2 I'm going to let him tell you which grounds he's going
3 to be going forward on today, and my understanding is
4 they're only pursuing P.C.R. on the one count of assault
5 and battery of a high and aggravated nature.

6 THE COURT: All right. Is that correct, Mr. Phillips,
7 as far as the procedural history is concerned?

8 MR. PHILLIPS: Yes, Your Honor.

9 THE COURT: All right. What are you seeking amended
10 findings on?

11 MR. PHILLIPS: Yes, Your Honor.

12 So, specifically, we are challenging the conviction of
13 the Indictment No. 2015-GS-30-1621, originally charged with
14 attempted murder of Officer Stephen Lindler. Ultimately,
15 convicted of assault and battery of a high and aggravated
16 nature on that. So we're only pursuing this post
17 conviction relief application solely on that specific
18 indictment number.

19 So going through on the specific allegations, Your
20 Honor, the first one is that trial counsel failed to
21 conduct a reasonable investigation and didn't develop all
22 reasonable, available, admissible mitigating evidence in
23 preparation for trial.

24 Under state or Wiggins vs. Smith -- and that's 539
25 U.S. 510, 2003, United States Supreme Court case,

1 specifically, trial counsel failed to obtain and review all
2 of the applicant's psychiatric and mental health counseling
3 records. Trial counsel also failed to have applicant
4 evaluated for competency and criminal responsibility.

5 Part of that is for, specifically, the mitigation
6 purposes, not -- we are waiving an allegation that was
7 initially raised about failure to request a Blair hearing
8 based on the results that we had independently done by an
9 expert. But we are still raising the fact that they failed
10 to have that evaluation done for the mitigation evidence.

11 Trial counsel further failed to consult with an expert
12 witness for an independent review of applicant's mental
13 health records despite having a duty to determine whether
14 applicant was competent to stand trial or could raise an
15 affirmative defense of insanity or could present this
16 mitigation evidence during the sentencing phase, citing
17 Reeves vs. State. That's 415 S.C. 366. It's a Court of
18 Appeals case out of 2015.

19 Trial counsel also failed to call an expert witness to
20 testify at trial regarding applicant's diagnosis of
21 posttraumatic stress disorder and history of mental health
22 treatment when it was reasonable and necessary to present
23 this evidence.

24 The trial counsel failed to object to the
25 prosecution's case to a meaningful, adversarial testing by

1 not adequately preparing for trial and having an
2 unreasonable trial strategy. And this is under United
3 States vs. Cronic, United States Supreme Court case, 466
4 U.S. 648 (1984).

5 Trial counsel failed to object to the trial court's
6 curative instruction and move for a mistrial after the
7 solicitor told the jury in the state's closing argument
8 that the jury could infer malice from the applicant's use
9 of a vehicle as a deadly weapon.

10 And trial counsel failed to object to the solicitor's
11 improper comments during closing argument and failed to
12 move for a curative instruction and/or another mistrial
13 based on the undue prejudice created by those comments.

14 Specifically, the solicitor made numerous disparaging
15 comments attacking trial counsel's credibility during
16 closing. The solicitor also argued facts that were not in
17 evidence during closing. The solicitor repeatedly argued
18 that the applicant was on drugs despite there was no
19 corroborating evidence that was presented at the trial.

20 Trial counsel failed to preserve the -- for appellate
21 review his motion for a mistrial by not obtaining a final
22 ruling after his objection to the trial court's curative
23 instruction regarding Corporal Steven Lindler's testimony
24 of medical injuries that were not disclosed by the state.

25 Trial counsel failed to request jury instructions on

1 the affirmative defense -- actually waive this one.

2 Trial counsel failed to file a motion for
3 reconsideration based on the critical mitigation evidence
4 not presented to the trial court during the sentencing
5 phase.

6 Trial counsel failed to hire an expert witness to
7 conduct an independent review of Corporal Steven Lindler's
8 medical records to determine whether those injuries met the
9 definition of great bodily injury or whether the act that
10 caused those injuries was likely to produce great bodily
11 injury as defined by the General Assembly to satisfy that
12 element of assault and battery of a high and aggravated
13 nature or assault and battery first degree when it was
14 reasonable and necessary in requesting the lesser included
15 offense and presenting this evidence to the jury.

16 Trial counsel failed to call an expert witness at
17 trial to testify in rebuttal.

18 The state's argument that applicant was guilty of
19 assault and battery of a high and aggravated nature as
20 Corporal Steven Lindley's injuries did not meet the
21 definition as defined by the General Assembly of great
22 bodily injury when it was reasonable and necessary to
23 present this evidence.

24 Trial counsel failed to call an expert witness during
25 the mitigation phase of the sentencing hearing to testify

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1 at trial regarding applicant's diagnosis of posttraumatic
2 stress disorder and his history of mental health treatment
3 when it was reasonable and necessary to present this
4 evidence to the Court during the sentencing phase.

5 And I will, obviously, reserve argument in citing the
6 basic law for the conclusion of the testimony.

7 THE COURT: All right. Are you ready to proceed with
8 the evidence?

9 MR. PHILLIPS: Yes, Your Honor.

10 THE COURT: You may call your witness.

11 MR. PHILLIPS: Thank you, Your Honor. The first
12 witness, applicant calls Dr. Nicholas Batalis.

13 DR. NICHOLAS IKE BATALIS,
14 having been first duly sworn, testified as follows:

15 THE COURT: All right. Mr. Phillips.

16 MR. PHILLIPS: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MR. PHILLIPS

18 Q Good morning, Dr. Batalis.

19 A Good morning.

20 Q Could you please introduce yourself to the Court?

21 A My name is Dr. Nicholas Ike Batalis.

22 Q Could you give a background of your educational
23 history?

24 A Yes. I completed college at Butler University in
25 Indianapolis, Indiana. Following graduating college I

1 moved on to medical school at the Indiana University School
2 of Medicine.

3 After graduating medical school, I then came to
4 Charleston, South Carolina, at the Medical University of
5 South Carolina where I did a 4-year residency training in
6 general pathology.

7 After finishing that, the 4-year training program, I
8 passed a national board exam to become certified in
9 anatomic and clinical pathology.

10 Following that I then spent another year of training
11 at the Dallas County Medical Examiner's Office doing a year
12 of fellowship for specialized training in forensic
13 pathology, again, after which year I passed an examination
14 to become board certified.

15 At that point I then went back to M.U.S.C. where I
16 took my current position.

17 Q And so your current employment, would you explain what
18 your role is there, and your title, and daily duties as a
19 forensic pathologist?

20 A Sure. I -- before employed as a professor in the
21 department of pathology and laboratory medicine at the
22 Medical University of South Carolina my primary
23 responsibility there is a forensic pathologist. I also
24 have administrative duties and fairly abundant teaching
25 duties for medical students.

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1 Specifically, my job is a forensic pathologist. I'm
2 one of five individuals there. And we -- for the most part
3 we perform autopsy examinations on individuals who have
4 died to determine a cause and manner of death. As part of
5 this we examine and interpret injuries, any sort of
6 patterns on the body and interpreting natural disease to --
7 to come up with a final outcome.

8 Q And so as far as your training outside of education
9 and employment, have you had additional training that's
10 notable that's specific to forensic pathology?

11 A Yes. The notable train would be the forensic
12 pathology fellowship that I performed at the Dallas County
13 Medical Examiner's Office, which is a 1-year training
14 program. I became board certified.

15 Q As far as your experience over that period of time,
16 you had your education and employment. Is there any other
17 highlighted experience that's specific to your area of
18 practice as far as forensic pathology that's notable?

19 A Could you say that again? I'm sorry.

20 Q So as far as -- are you a member of any organization,
21 national organizations, regarding pathology?

22 A Sure. I'm a member of several different
23 organizations, both local pathology societies in South
24 Carolina, general national pathology societies, as well as
25 national forensic pathology societies.

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1 Through that I obtained continuing medical education
2 by attending one of the national forensic meetings,
3 national association of medical examiners. I attend that
4 meeting each year to receive additional training and
5 education.

6 Q As far as publications and editorial boards, are you a
7 part of any of that? Have you published anything?

8 A Yes. I don't have an exact number, but somewhere
9 around 40 or so publications. I'm on at least two
10 different editorial boards and have served as an editor for
11 several other journals.

12 MR. PHILLIPS: Your Honor, may I approach the witness?

13 THE COURT: Yeah.

14 Q Dr. Batalis, will you take a moment to look over what
15 I've handed you?

16 A Okay.

17 Q The document that I handed you, could you describe?
18 what is that?

19 A This is my curriculum vitae or résumé that details my
20 education, professional involvement, publications,
21 committees, all of that sort of stuff.

22 Q Is that an accurate up-to-date curriculum vitae of
23 your history?

24 A I believe so. There may have been another award or
25 two or publication or two within the last couple of months,

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1 but for the most part it's up to date.

2 Q And although I didn't specifically ask you about
3 honors and awards, those are included in that C.V.?

4 A They are.

5 MR. PHILLIPS: Your Honor, at this time I would like
6 to mark Dr. Batalis' C.V. as Applicant's Exhibit No. 1 and
7 move it into evidence.

8 THE COURT: All right. Any objection?

9 MS. GREGORY: No, sir.

10 THE COURT: Without objection, introduced into
11 evidence.

12 (Curriculum vitae of Nicholas Ike Batalis, M.D., marked
13 Applicant's Exhibit No. 1.)

14 Q All right. Dr. Batalis, how many times have you been
15 qualified as an expert in South Carolina general sessions
16 court?

17 A In South Carolina I would estimate somewhere between
18 50 and 75 times.

19 Q And has all of those times been in the area of
20 forensic pathology?

21 A It has.

22 Q And so, specifically, what have you been qualified as
23 an expert in? Is it -- what's the exact title that you've
24 been qualified as an expert in South Carolina as?

25 A I believe it's just been generally as an expert in

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Voir dire by Ms. Gregory

1 forensic pathology, again, encompassing what I described
2 before as far as determining cause and manner of death,
3 interpreting injuries, all of those type of things.

4 MR. PHILLIPS: Your Honor, at this time we would move
5 to qualify Dr. Batalis as an expert in forensic pathology.

6 THE COURT: Any objection?

7 MS. GREGORY: Can I just ask a couple of questions?

8 THE COURT: Yeah. You can do some more voir dire.

9 VOIR DIRE

10 BY MS. GREGORY

11 Q Mr. -- Dr. Batalis -- sorry -- do you have any
12 experience in or training in accident reconstruction?

13 A Not specifically in reconstruction, no.

14 Q Do you have any experience or training estimating the
15 speed of vehicles or evidence -- reviewing evidence of,
16 like, accident scenes like skid marks, things like that?

17 A Reviewing accident scenes in terms of reviewing
18 photographs and scenes in which individuals have died. But
19 as far as getting toward skid marks, that gets more towards
20 reconstruction, so no.

21 Q Or estimating the speed of vehicles or anything like
22 that?

23 A No.

24 Q Okay.

25 MS. GREGORY: No further questions.

Dr. Nicholas Ike Batalis
Direct examination by Mr. Phillips

1 THE COURT: All right. Any objection to his being
2 qualified to testify as a forensic pathologist?

3 MS. GREGORY: No, sir.

4 THE COURT: All right. Without objection, he's
5 qualified to testify as an expert in the field of forensic
6 pathology.

7 MR. PHILLIPS: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION BY MR. PHILLIPS

10 Q As a forensic pathologist and based on your training
11 and experience, the common terminology, what is the -- what
12 is forensic pathology?

13 A So forensic pathology is a field of medicine, a
14 subspeciality of medicine, that really deals with the legal
15 aspects of medicine.

16 As I mentioned, predominantly performing autopsies to
17 determine the cause and manner of death, which includes,
18 again, identifying natural disease injuries and those sorts
19 of things.

20 Q In being a forensic pathologist you review fatalities
21 of traffic accidents?

22 A Yes.

23 Q How many times do you think you've reviewed fatalities
24 of traffic accidents?

25 A It -- roughly -- rough guesstimate would be somewhere

Dr. Nicholas Ike Batalis
Direct examination by Mr. Phillips

1 around 300 performed autopsies or reviewed records on
2 individuals who have died in -- or approximately 300
3 individuals who have died in motor vehicle accidents.

4 Q And specifically as for motor vehicle accidents, in
5 reviewing records do you review MAIT records, records
6 that's compiled by the South Carolina Highway Patrol?

7 A Yeah. Each case will vary. At M.U.S.C. we perform
8 autopsies for a number of different counties around the
9 state. So sometimes our records are a statement from the
10 coroner describing what happened. Other times we receive
11 photographs. Other times we do receive the full accident
12 reports.

13 Q And part of your job as a forensic pathologist is
14 determining the cause and manner of death and seeing and
15 making that determination of essentially what caused
16 someone to -- a fatality.

17 A Yes.

18 Q And the type of injuries that ultimately result in
19 fatalities.

20 A Yes. Through the course of an autopsy we identify all
21 injuries possible and then look to identify the injuries
22 considered most severe that led to the death.

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

24 THE COURT: Yeah.

25 MR. PHILLIPS: Thank you.

Dr. Nicholas Ike Batalis
Direct examination by Mr. Phillips

1 Q Dr. Batalis, have you had a chance to review the
2 document that I handed you?

3 A I have.

4 Q And what document is that?

5 A This is what -- the report I prepared and submitted to
6 you last April after reviewing the evidence in this case
7 upon relaying my opinion.

8 Q And what specifically did you review in this case?

9 A I was provided with the dashboard video of the
10 collision, the transcript of the previous trial and medical
11 records from the officer from the day of the collision or
12 the evening of the collision.

13 (C.D. marked Applicant's Exhibit No. 2)

14 MR. PHILLIPS: Your Honor, I've marked a disc that's
15 containing -- and I have the medical records and paper --
16 but what I've made is essentially a disc that has the video
17 that Dr. Batalis reviewed, as well as the medical records,
18 and for the judicial economy was going to mark that and
19 move that into evidence.

20 I have provided the same disc to the attorney
21 general's office. They have concern because they said they
22 didn't have copies of this. So I, of course, argue that as
23 an extension of the state that the solicitor's office had
24 this and presented it.

25 THE COURT: Was this presented during the trial?

Dr. Nicholas Ike Batalis
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1 MS. GREGORY: Yes, Your Honor.

2 THE COURT: All right. Well, it's coming in.

3 MR. PHILLIPS: Well, the --

4 THE COURT: You can object for the record, Ms.

5 Gregory, if you want to, but, I mean, was this presented at
6 the trial?

7 MR. PHILLIPS: The video, yes.

8 MS. GREGORY: Medical records.

9 MR. PHILLIPS: The medical records were not put in
10 because they were -- it wasn't -- that was a Brady issue
11 that came up.

12 THE COURT: But that's part of the -- they were
13 attempted to be put in.

14 MR. PHILLIPS: Yes, Your Honor.

15 THE COURT: Okay. But you're trying to put them in
16 now in support of your client's P.C.R. application.

17 MR. PHILLIPS: Yes, Your Honor.

18 THE COURT: Okay. Any objection to the records coming
19 in?

20 MS. GREGORY: I would like to review them before I --

21 THE COURT: How much time do you need?

22 MS. GREGORY: I'm not sure. How long is the video?

23 (Pause.)

24 MS. GREGORY: It's just the medical records, Your
25 Honor. So I'm not sure if we could just --

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Direct examination by Mr. Phillips

1 MR. PHILLIPS: I think I have a copy I can just hand
2 over.

3 THE COURT: Okay. I mean, it's medical records of the
4 applicant.

5 MS. GREGORY: No, sir. It is of the -- one of the
6 victims.

7 THE COURT: Medical records of the --

8 MS. GREGORY: The victim, the trooper.

9 THE COURT: -- trooper who was injured.

10 MS. GREGORY: And they were not --

11 MR. PHILLIPS: And, Your Honor, I --

12 THE COURT: But they were in the custody of the state
13 from the solicitor's office?

14 MR. PHILLIPS: Yes, Your Honor. That's how we got
15 them.

16 THE COURT: Okay.

17 MR. PHILLIPS: I'll mark them. I'll mark the medical
18 records as Applicant's Exhibit No. 3 -- paper copy.

19 THE COURT: Right.

20 MR. PHILLIPS: And this is the Laurens County Memorial
21 Hospital records of Officer Steven Lindler. This issue
22 came up through kind of a Brady argument --

23 THE COURT: Okay.

24 MR. PHILLIPS: -- that counsel made.

25 (Medical reports marked Applicant's Exhibit No. 3.)

1 THE COURT: All right. These were records -- I want
2 to make sure. These are records that you're offering in
3 the P.C.R. application which were not offered in the trial
4 of the ABHAN charge as to Lindler.

5 MR. PHILLIPS: So to try to parse that out, there was
6 testimony as to Officer Lindler's injuries.

7 THE COURT: Right.

8 MR. PHILLIPS: Attorney Quinn properly argued. "I
9 haven't been provided with any medical records. This is a
10 discovery violation." And the judge -- they parsed that
11 out. And so these records were then turned over during the
12 trial because the issue of the injuries came up. And
13 Mr. Quinn had not been provided those records pursuant to
14 Rule 5, and he had properly argued --

15 THE COURT: Right.

16 MR. PHILLIPS: -- those parts. So that's why it's --
17 it's the issue that --

18 THE COURT: But Lindler described his injuries to the
19 jury.

20 MR. PHILLIPS: Of course. And then there were
21 arguments about his injuries.

22 MS. GREGORY: Right.

23 MR. PHILLIPS: Because that's the crux of why we have
24 this --

25 THE COURT: Okay.

Dr. Nicholas Ike Batalis
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1 MR. PHILLIPS: -- independent review.

2 THE COURT: All right. Any -- Ms. Gregory, do you
3 want to be heard on your objections?

4 MS. GREGORY: No, sir. I'm just making sure on the
5 C.D. is the same medical records, and they are. My
6 objection was just we hadn't seen what was on the C.D.

7 THE COURT: Okay.

8 MS. GREGORY: So I just wanted to make sure what was
9 on the C.D. was the same records.

10 THE COURT: Okay. So you don't have any objection to
11 the introduction of them?

12 MS. GREGORY: No, sir. Correct.

13 THE COURT: All right. Without objection then items
14 two and three are introduced into the record of this case.

15 And I know -- I'm looking at the -- as you proceed, I
16 am looking at the verdict form. And of course it goes from
17 attempted murder all the way down to A and B third, just
18 like it did on the rest of them.

19 MR. PHILLIPS: Yes, Your Honor.

20 THE COURT: Okay. Go ahead.

21 MR. PHILLIPS: Thank you, Your Honor.

22 BY MR. PHILLIPS

23 Q Dr. Batalis, the medical records that I just handed up
24 to you that's been marked as Applicant's Exhibit No. 3 and
25 then the video that's contained in Applicant's Exhibit

1 No. 2, you've reviewed those in preparation of your report?

2 A I did.

3 Q And through the preparation of your report what did
4 you note about -- what was the sole purpose of reviewing
5 these records?

6 A I believe the -- the purpose what I was asked to
7 review was to determine the presence of great bodily injury
8 and if the motor ve -- motor vehicle collision that was on
9 the video was likely to cause great bodily injury.

10 Q You also reviewed the transcript in this case as to
11 the relevant testimony regarding Officer Lindler's
12 injuries, is that correct?

13 A I did.

14 Q So you compared the testimony and the arguments that
15 were presented at the trial regarding Officer Lindler's
16 injuries in relation to the medical records and the video.

17 A Yes.

18 Q You were also provided copies of South Carolina Code
19 Section 16-3-600, is that right?

20 A Is that the description of the great bodily injury and
21 assault and battery?

22 Q That's correct. And I'll actually hand it up for your
23 review. Take a moment to review that document.

24 A Yes. I believe this language was pasted in one of the
25 e-mails that was sent to me.

Dr. Nicholas Ike Batalis
Direct examination by Mr. Phillips

1 Q And in reviewing that specific statutory code, it
2 provided the definition of great bodily injury.

3 A It did.

4 Q And were you asked to compare the injuries that were
5 discussed in the medical records of Officer Steven Lindler,
6 the video that you watched as far as the conduct of how the
7 injuries occurred, as well as the testimony and arguments
8 presented related to Officer Steven Lindler's injuries from
9 the trial transcript in relation to the definition of great
10 bodily injury from that specific statute number?

11 A I was.

12 MR. PHILLIPS: And, Your Honor, I've asked that that
13 specific statute -- I know it's kind of superfluous -- be
14 marked as a court's exhibit -- or excuse me -- Applicant's
15 Exhibit No. 4. Move that into evidence at this time.

16 THE COURT: That's fine. I'll take judicial notice of
17 it, but for the record it would come in as an exhibit.

18 MR. PHILLIPS: Thank you, Your Honor.

19 THE COURT: All right.

20 (Copy of Code Section 16-3-600 marked Applicant's
21 Exhibit No. 4.)

22 Q And what were your findings?

23 A The findings were that the officer's injuries in the
24 emergency room are noted to be in acute -- acute traumatic
25 lumbar back strain.

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1 They also found two probable compression fractures
2 that were thought to be chronic.

3 Those are the injuries noted at the time.

4 And then in reviewing the statute those did not seem
5 to be -- fall in line with what I would consider great
6 bodily injury.

7 Q In your report you note that a radiograph of the spine
8 was obtained and that it noted that there was degenerative
9 changes which were likely to be chronic changes. Could you
10 explain what that means?

11 A And, again, I'm not a radiologist, but in interpreting
12 their words that there were changes in the back, these
13 possible compression fractures but bychronic. So the
14 radiologist is saying that it's something that's been more
15 longstanding and not anything that happened within those
16 last couple of hours. That would be more considered an
17 acute fracture.

18 Q And could you read the definition of great bodily
19 injury?

20 A Sure, as provided in the statute. "Great bodily
21 injury means bodily injury which causes a substantial risk
22 of death or which causes serious permanent disfigurement or
23 protracted loss or impairment of the function of a bodily
24 member or organ."

25 Q And based on your training, experience and the

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1 accepted values in the scientific community, what is your
2 medical opinion or your opinion as a medical expert in
3 forensic pathology regarding these injuries that you
4 reviewed. All the documents that you reviewed, do they
5 meet the standard or the definition of great bodily injury
6 as defined by the South Carolina General Assembly?

7 A I don't believe so.

8 Q And could you be specific as to your opinion as to why
9 it doesn't meet the definition of great bodily injury?

10 A Sure. I mean, essentially what the physicians that
11 night or the examining officer could say definitively what
12 happened as a result of the accident was a muscle strain of
13 the back.

14 Again, there were the fractures that were thought to
15 be more likely chronic or occurred previously. So,
16 essentially, he had back pain or a strain of the back
17 muscle which would not fit in with the definition of a, you
18 know, permanent disfigurement, impairment of function of
19 the body or an organ.

20 Q And so as an expert in forensic pathology and
21 reviewing the video as well and looking in conjunction with
22 that statute about the likelihood that the actions would
23 have caused death, obviously, there was the questions in
24 voir dire about not being an accident reconstruction
25 expert, but as part of your daily duties as a forensic

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1 pathologist you determine cause and manner of death. Do
2 you feel that you have the expert -- as your expertise in
3 forensic pathology, do you have the ability to make that
4 determination in your opinion from a scientific community
5 standpoint?

6 And to be more specific, if your opinion was peer
7 reviewed in the scientific community or the medical
8 community would they agree that these injuries and the
9 actions that led to this, that led to those injuries, would
10 not likely have produced great bodily injury, that the
11 likelihood standard that's also discussed in the definition?

12 MS. GREGORY: Objection, Your Honor. This question is
13 very compound, and additionally I believe it's going to go
14 past the scope of his expertise.

15 THE COURT: Correct. I sustain it.

16 Just rephrase your question, not as to beyond the
17 expertise. Just rephrase your question.

18 MR. PHILLIPS: It was a mouth full. Yes, Your Honor.

19 THE COURT: All right.

20 Q So, specifically, in reviewing that definition of
21 great bodily injury you have the actual definition of great
22 bodily injury, and then part of that is that -- or excuse
23 me -- under assault and battery of a high and aggravated
24 nature, the subsection of that statute, you reviewed that
25 as well?

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Direct examination by Mr. Phillips

1 A Yes.

2 Q And in reviewing the subsection of the assault and
3 battery of a high and aggravated nature you've looked at
4 the elements of what constitutes assault and battery of a
5 high and aggravated nature.

6 A I have.

7 Q And in that does it -- one of the components, one of
8 the elements, is that the injury itself is great bodily
9 injury, or an element is that the actions that the -- the
10 likelihood that it would have caused great bodily injury --
11 is that a fair representation of what you interpreted?

12 A Right. The wording I'm seeing is that the act is
13 accomplished by means likely to produce death or great
14 bodily injury.

15 Q And so as an expert in forensic pathology is it your
16 opinion that those actions would likely not produce death?

17 MS. GREGORY: Objection, Your Honor. This is beyond
18 his expertise.

19 THE COURT: Sustained. Let me rephrase.

20 Doctor, what is your opinion on whether or not this
21 was a great bodily injury?

22 THE WITNESS: I don't believe the injuries he suffered
23 were great bodily injury.

24 I believe also asking about the -- if the collision
25 would likely to cause great bodily injury --

1 MS. GREGORY: That's the objection, Your Honor.

2 THE COURT: All right. Hang on a second.

3 Is that based upon a reasonable degree of medical
4 certainty?

5 THE WITNESS: Yes.

6 THE COURT: All right. Thank you.

7 Objection noted; objection overruled.

8 BY MR. PHILLIPS

9 Q And due to the reasonable degree of medical certainty
10 if peer reviewed by the medical community would they be in
11 agreement with that opinion in your -- in your mind?

12 A I believe so.

13 Q And, specifically, going to your report, in your
14 opinion based on your review kind of in that last sentence
15 you actually give your opinion as to the probability there.
16 Could you expound upon that?

17 A Yes. As part of the opinion the final statement
18 was --

19 MS. GREGORY: Objection, Your Honor. This is part of
20 the report that we have an issue as it's beyond his
21 expertise.

22 THE COURT: All right. Tell me about that. Let me
23 hear argument on that.

24 MS. GREGORY: Well, Your Honor, he is discussing the
25 low probability of this collision causing death. He

Dr. Nicholas Ike Batalis
Direct examination by Mr. Phillips

1 doesn't know how fast that car was going. He did not
2 review any of the vehicle damage, photos of the vehicle,
3 accident. There's no indication of how fast that vehicle
4 was going.

5 I don't believe his training and expertise would allow
6 him to evaluate how fast that is or how far a car would
7 need to go in order to create great bodily injury.

8 THE COURT: All right. What's your argument,
9 Mr. Phillips?

10 MR. PHILLIPS: The argument is because he's reviewed
11 that many motor vehicle accidents -- earlier we went
12 through his testimony. As a forensic pathologist it was
13 hundreds, and in looking at the specific injuries and
14 looking at MAIT reports, he ultimately -- the state has
15 allowed him to make a determination about cause and manner
16 of death based on injuries. Because of that we believe
17 that allows -- that opens the scope that he can make a
18 determination on what type of injuries would ultimately
19 lead to cause and manner of death.

20 THE COURT: All right. I agree with you,
21 Mr. Phillips.

22 I'm going to overrule the state's objection. You
23 know, the beauty of the nonjury proceeding is that, you
24 know, I'm standing both as fact-finder and as the judge of
25 the law. So I can -- you know, I'm going to let it in.

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1 And of course I'll give it the credibility I believe it
2 deserves. Okay.

3 MS. GREGORY: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MS. GREGORY: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. PHILLIPS: No further questions, Your Honor.

8 THE COURT: All right. Thank you.

9 Cross-examine.

10 CROSS-EXAMINATION

11 BY MS. GREGORY

12 Q Dr. Batalis, did you -- you reviewed the transcript in
13 this case?

14 A I did.

15 Q Do you recall testimony of Corporal Lindler where he
16 testified Mr. Harbuck's tires were spinning and that smoke
17 was coming from them? It's on page 109 of the transcript.

18 A I do remember that.

19 Q Okay. Do you the speed of Mr. Harbuck's vehicle, how
20 fast it would have to be going in order to create spinning
21 tires or smoke coming from them?

22 A No. I mean, I believe that you could get smoke coming
23 from tires from a car not going anywhere at all.

24 Q Okay. And how fast it would be, then be propelled
25 after spinning tires and smoke coming out of them? Do you

1 know how fast a vehicle would be going at that rate?

2 A I don't.

3 Q Did you review -- you didn't review any skid marks on
4 the scene or any accident photos of either of the vehicles
5 and the damage done to either of the vehicles?

6 A I did not review any photos. I think there was some
7 description in the -- in the transcript, but that would be
8 the extent of it.

9 Q Have you evaluated how an in-car-video dash is mounted
10 on a state trooper's dashboard?

11 A No.

12 Q Do you know how much force it would take to knock that
13 off?

14 A No. I do not.

15 Q Did you personally examine Corporal Lindler?

16 A No.

17 Q Do you feel a personal examination would be important
18 in order to develop this kind of opinion to a medical
19 certainty?

20 A I don't believe so. I mean, based on the medical
21 records of -- of those who examined him, I think I can come
22 to the opinion on the great bodily injury.

23 Q Have you ever given an opinion to a reasonable degree
24 of medical certainty where you haven't examined the patient
25 like you are today? This is how you've done this in the

Dr. Nicholas Ike Batalis
Cross-examination by Ms. Gregory

1 past?

2 A It -- I've done it both ways. So I -- I've testified
3 as an expert in cases in which I performed the autopsy but
4 also as a consultant where I've reviewed records of others.

5 Q Are those essentially where you're not examining the
6 patient, are those usually where you're testifying for the
7 defense?

8 A I've testified for prosecution and defense.

9 Q Okay.

10 A And I guess if I could continue that, also in civil
11 ceremonies -- civil proceedings for -- regarding patients
12 who have died or experienced injuries in the hospital.
13 Again, I've testified for both sides.

14 MS. GREGORY: No further questions, Your Honor.

15 THE COURT: All right. Any redirect based on that?

16 MR. PHILLIPS: No, Your Honor.

17 THE COURT: Thank you, sir. You can step down.

18 MR. PHILLIPS: May Dr. Batalis be excused?

19 THE COURT: Yeah. You're free to leave, sir.

20 MR. PHILLIPS: I'm sure he'd rather head back to
21 Charleston.

22 THE COURT: Right. You can head on back. Thank you.
23 (Whereupon, the witness was excused.)

24 THE COURT: Call your next witness.

25 MR. PHILLIPS: Thank you, Your Honor. The applicant

Dr. Donna Schwartz-Maddox
Direct examination by Mr. Phillips

1 would call Dr. Donna Schwartz-Maddox.

2 DR. DONNA SCHWARTZ-MADDOX,

3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. PHILLIPS

5 Q Good morning, Dr. Maddox.

6 A Good morning.

7 Q Could you please introduce yourself to the Court?

8 A Sure. Donna, middle name Schwartz -- S-C-H-W-A-R-T-Z,
9 last name Maddox, M-A-D-D-O-X.

10 Q And, if you could, please describe your educational
11 history.

12 A Sure.

13 THE COURT: Stop.

14 Is there any objection to Dr. Maddox being qualified
15 as an expert?

16 MS. GREGORY: Not at all.

17 THE COURT: She's testified in front of me at least --

18 MS. GREGORY: Yeah. No objection.

19 THE COURT: -- 25 times.

20 what do you want her qualified at?

21 MR. PHILLIPS: So if we could qualify her specifically
22 in psychology, as well as just trying to make sure I don't
23 leave -- leave it too narrow for us.

24 THE COURT: And we can put her C.V. in for your
25 record, you know.

Dr. Donna Schwartz-Maddox
Direct examination by Mr. Phillips

1 MR. PHILLIPS: Yes, Your Honor.

2 THE COURT: But everybody on the Court of Appeals and
3 Supreme Court knows who she is also. Okay.

4 MR. PHILLIPS: Absolutely. I'll go ahead. And no
5 objection to that.

6 THE COURT: All right. So without objection, her C.V.
7 is coming in. And she's going to be qualified in the field
8 of what?

9 MR. PHILLIPS: Forensic psychiatry.

10 THE COURT: Forensic psychiatry.

11 And that's correct? No objection, A.G.?

12 MS. GREGORY: Yes, sir.

13 THE COURT: Okay. No objection.

14 MR. PHILLIPS: And I would mark her C.V. as, I think,
15 Applicant's Exhibit No. 5.

16 THE COURT: Or next in order, whatever it is.

17 (Curriculum vitae of Dr. Donna Schwartz-Maddox marked
18 Applicant's Exhibit No. 5.)

19 MR. PHILLIPS: Thank you, Your Honor.

20 Q In this case what specific records, documents did you
21 review?

22 A Of course this application, some of the letters. I've
23 outlined them in my report. Some of the discovery that was
24 involved, the indictments. He had a history of
25 psychological and psychiatric treatment. I reviewed those

Dr. Donna Schwartz-Maddox
Direct examination by Mr. Phillips

1 records. I reviewed the transcript of the record, the
2 9-1-1 calls, and I evaluated him.

3 MR. PHILLIPS: Thank you, Your Honor. May I approach
4 the witness?

5 THE COURT: Yes.

6 MR. PHILLIPS: Your Honor, for the record, I'm marking
7 the report that was created by a psychiatric evaluation
8 that was conducted in this case by Dr. Maddox.

9 THE COURT: All right. Any objection to that document
10 coming in?

11 MS. GREGORY: No, sir.

12 THE COURT: All right. Without objection, it'll come
13 in then.

14 MR. PHILLIPS: I believe that's Applicant's
15 Exhibit No. 5.

16 THE COURT: All right.

17 MR. PHILLIPS: Or excuse me. Six. Clarification.
18 Applicant's Exhibit No. 6.

19 THE COURT: Thank you, sir.

20 (Psychiatric evaluation marked Applicant's Exhibit No.
21 6.)

22 Q And, specifically, in reviewing those records, you
23 have that noted in your report -- applicant.

24 A I do.

25 Q And have you had a chance to review your report?

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Direct examination by Mr. Phillips

1 A I have.

2 Q And, specifically, based on your training and
3 experience, what were the findings that you've had that
4 were notable in your prior testimony as an expert as far as
5 mitigation?

6 A Well, what I did if I can outline the methodology, I
7 reviewed records, I examined him and I prepared a report.

8 what I did in the report, he had a history, a prior
9 mental health history. So I tried to be specific and
10 outline the factors in his life and in his treatment that I
11 thought were important for these proceedings.

12 THE WITNESS: Your Honor, what I ultimately diagnosed
13 him with was posttraumatic stress disorder. And what I
14 base that on, he had some records, but he served in the
15 United States Army for six and a half years. He was in the
16 82nd Airborne. He did two tours in Afghanistan, one for
17 thirteen months and another for seven months.

18 He had exposure to trauma and life-threatening
19 injuries. Specifically, one of the events he talks about
20 that qualified for the diagnosis of P.T.S.D., he saw a
21 suicide bomber blow himself up at their front gate. The
22 guy's face was taken from his skull, and he has recurrent
23 intrusive thoughts about that.

24 He also had a unit that was blown in half. Their
25 18-wheeler rolled a few times. He jumped out of the truck.

1 He was involved in that. So those -- those two traumas
2 alone would qualify him for the first criteria of
3 posttraumatic stress disorder.

4 He had then tried to get service connected for this
5 after he left the military. And at the time of his
6 discharge he was an E-5 and a sergeant.

7 What's important, he had the preexisting trauma, Your
8 Honor. But also one of the things that I learned in doing
9 his evaluation is he has a -- what's called a gender
10 identity disorder.

11 So he went through the military, which many people
12 with gender identity disorder do, especially males that
13 think that they're females. They try to encompass the most
14 bravado male roles due to their -- that's part of their
15 pathology. They think that they're not man enough, so they
16 often will undertake things similar to decathlon athletes
17 or Navy Seals, those sorts of things. So he was dealing
18 with those issues while he was in the military.

19 He and his wife developed some problems. He was an
20 alcoholic. I mean, he had some alcohol abuse during
21 periods of times, had some D.U.I.s.

22 He and his wife subsequently developed some -- some
23 problems in their marriage.

24 He left the military. He wished he would have stayed,
25 but he left the military to work things out with his wife.

1 They subsequently divorced.

2 This offense occurred about two years after the
3 divorce. As with many people with P.T.S.D., Your Honor, he
4 began abusing substances -- alcohol -- and then later
5 methamphetamine.

6 At the time of the offense, I think it's important
7 what was going on in his life. He was trying to enroll in
8 school. He was going to further his education. He was
9 using methamphetamine 3 grams a day, and he was intoxicated
10 at the time of this offense, which is why it precludes his
11 criminal responsibility or capacity to conform issues,
12 because it was a voluntary intoxication.

13 But what happened, Your Honor, as with many people
14 that abuse methamphetamine, he got psychotic, and he was
15 very psychotic at the time of this offense.

16 He had calls to his mother. He was in the process of
17 taking his belongings and moving them because he was going
18 to start school at the time of this offense.

19 What happened was he believed he had been followed.
20 He had left his apartment complex. He had gone three days
21 without sleep. He thought the people in the apartment
22 complex were trying to kill him. He even called his mother
23 during this period of time telling her that he was in fear
24 for his life.

25 When he was actually stopped by the policeman he --

Dr. Donna Schwartz-Maddox
Direct examination by Mr. Phillips

1 earlier while he was in Georgia he saw a car passing and
2 thought that there was a guy with an AK-47 in the back of
3 it.

4 He drove 100 miles per hour because he thought someone
5 was shooting at him. He did this for two hours before he
6 was apprehended.

7 He stated while he was being pulled he heard voices
8 telling him this is a government training exercise, ram the
9 vehicle in front of you. He reported he hit the police
10 car. When the officers asked him if he was under the
11 influence, he said no.

12 So, unfortunately, even though he was psychotic -- and
13 it's my opinion that the substance abuse he had is
14 comorbidly commonly seen in persons with P.T.S.D., that he
15 was -- he was mentally ill at the time of the offense. And
16 in my opinion this information should have been considered
17 as part of his sentencing.

18 Q Dr. Maddox, how many times have you testified in South
19 Carolina courts, specifically general sessions, in
20 mitigation as far as in the sentencing phase in presenting
21 mitigation evidence to a general sessions judge?

22 A I've done it. There've been many times where there's
23 a separate sentencing hearing after a jury finds someone
24 guilty, especially if there's issues that need to be
25 presented. Probably 15 times or so specifically for that

1 reason.

2 Q And based on your opinion, your expert opinion, is
3 this evidence significant and critical that needed to be
4 presented to the sentencing judge?

5 A In my opinion, it was. It was important, although
6 South Carolina certainly doesn't have diminished capacity.
7 It was a mitigation issue.

8 He was not -- he was psychotic at the time of the
9 offense, and he thought that he was in a military exercise,
10 and he certainly had the training. He had been in the
11 military. He'd done those sort of things. And it was
12 important.

13 Q And, specifically, with the diagnosis of posttraumatic
14 stress disorder, providing that true background of the
15 review of medical records and presenting a full and
16 complete picture of the diagnosis of P.T.S.D. and the
17 medical opinions that go with that, that being specifically
18 presented to the judge in mitigation --

19 A Yes.

20 Q -- and based on your training and experience was there
21 any other findings that should have been presented in
22 mitigation as far as if you were hired in this case to
23 review those expert records prior trial and then presented
24 testimony, either at the trial or during the mitigation
25 phase, was there anything else that wouldn't either need to

1 be presented to the jury or the judge in mitigation? And
2 we can pars those out.

3 MR. PHILLIPS: I apologize, Your Honor. Obviously,
4 that's a compound thing. We can start with the first one.

5 Q As far as part of the argument that was presented --
6 because you've reviewed the trial transcript -- to the jury
7 is that there was a component of essentially like an
8 insanity argument that was presented by trial counsel with
9 that, based on no other evidence being presented to the
10 jury and them making that determination could you have
11 provided some extra contact -- context as to the
12 posttraumatic stress disorder that wasn't presented during
13 his trial?

14 A No. I -- I don't think it was a criminal
15 responsibility or capacity to conform issue. So I don't
16 know. I'm no lawyer, but I don't think that would have
17 been admissible in the guilt phase since it didn't rise to
18 the level of a defense. But in my opinion in terms of
19 presenting that to the judge, post conviction, absolutely.
20 And, specifically, I think the -- the one thing the Court
21 needs to know -- and I -- I outlined that in my report for
22 you -- kind of the evolution of P.T.S.D. and how it's
23 changed over the years.

24 In the old days, Your Honor, we thought it was an
25 anxiety disorder. We now realize it's much more than that.

1 It affects your thinking; it affects your behaviors. And
2 we look at things that predict whether someone's going to
3 do well or not when they have P.T.S.D., and he had a number
4 of factors which would predict poor outcome for him. And I
5 think the mental-health-center records that we had for him
6 show that he was going to have a poor adjustment
7 post-military, and that that would have been important as
8 well.

9 Q And this testimony would have been helpful for a
10 sentencing judge?

11 A I -- I can't speak for the judge, but I would have
12 gladly presented it.

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

14 THE COURT: All right. Ms. Gregory.

15 MS. GREGORY: Yes, sir.

16 CROSS-EXAMINATION

17 BY MS. GREGORY

18 Q I'm sorry about my voice. It has left me this
19 morning.

20 You reviewed the transcript in this case, correct?

21 A I did.

22 Q Okay. Do you think your mitigation would still be
23 helpful since he was claiming he was not intoxicated at the
24 time? The whole trial he said he had Red Bull and
25 cigarettes and that's it, that he was not intoxicated.

1 Do you think your mitigation would have been helpful
2 considering that you were saying that he's voluntarily
3 intoxicated?

4 A Yes and no. Certainly, it wouldn't be good to
5 contract what somebody's strategy is in their trial, but
6 he -- he disclosed those things to me. I don't know
7 whether -- you know, had he had an evaluation he may have
8 very well disclosed that to another psychiatrist at that
9 time. So it's hard to know.

10 Q Right. But he wouldn't have been able to go forward
11 with the trial strategy that he had that he was not
12 intoxicated at the time had you provided that mitigation,
13 is that right?

14 A Correct.

15 Q And the psychosis that you're mentioning, that's part
16 of the voluntary intoxication?

17 A Yes. It's a consequence. Yes. Chronic
18 methamphetamine use -- you can have it with intoxication or
19 withdrawal.

20 Q Okay.

21 A You can get psychotic. But, yes, in my opinion his
22 psychosis was secondary to the methamphetamine use.

23 Q And he was up for three days prior to the incident?

24 A That's correct. And he had had another occasion. We
25 know that in history when you look at his records that when

1 he was intoxicated he would become suicidal or he had -- he
2 had a prior suicide -- cidal ideation in a hospitalization
3 for similar things. So he had had some medical and
4 psychiatric complications from substance abuse in the past.

5 Q Okay. And looking at his military history, you
6 believe that the P.T.S.D. stems from his military history,
7 correct?

8 A Yes.

9 Q And in the transcript he testifies a lot about his
10 military history, correct?

11 A Yes.

12 Q He never mentions a suicide bomber and he never
13 mentions that his Camp Stone got blown almost in half. He
14 mentions a dud that might have caused some tents on fire,
15 and then he mentions indirect fire. He does mention that
16 the truck rolled over, but he says it rolled over one time
17 in the trans -- in your report he says it rolled over three
18 times. Are these kinds of inconsistencies normal for
19 somebody that has P.T.S.D. from those kinds of exposures?

20 A It can be. If you're nervous -- people with post
21 traumatic stress disorder, they can do what's called
22 disassociate when they're under stress or anxiety. They
23 may have difficulty recalling specific details. It can
24 happen.

25 Q Okay. Would it not be important for him to disclose

1 that he saw a suicide bomber? He provided you graphic
2 detail about the suicide bomber.

3 A Yes, yes. And, again, had he had a psychiatric
4 evaluation -- when I examined him, you have to remember I
5 keep his anxiety low.

6 Q Right.

7 A I'm trained to do that.

8 Q Right.

9 A So I know how to get information from persons that
10 have anxiety disorders. When someone like him is on the
11 stand, his anxiety would be very high. And he may require
12 cuing or those sorts of things.

13 Q Okay. And were you able to review any medical records
14 from him on the date of the incident indicating what he was
15 under? He went to the hospital. Did you get any medical
16 records from his treatment at the hospital that day?

17 A I'm not sure that I did. I don't -- I don't recall
18 seeing those, and they're not listed in my report.

19 Q Right. Okay. And that would be because he was quite
20 violent at the hospital. So there's no indication of
21 exactly what he was on on that particular day, just what he
22 told you he had done, is that correct?

23 A That's correct.

24 Q Okay. And a lot of your report is a narrative based
25 on what he has told you.

1 Were you able to obtain his official military records
2 to basically confirm that he did, in fact, do these tours
3 and things like that?

4 A Yes. I did see. I was provided his records. And I
5 had the -- I believe it's -- I'm not sure if it was the
6 DD214, but I did recall reviewing records that showed what
7 his involvement was, what his jobs were in the military,
8 yes.

9 Q Would those records have included any of these
10 incidences of the suicide bomber or the indirect firing or
11 anything like that?

12 A No.

13 Q Such in his words?

14 A No. And I'm not sure that most of those military
15 records will help in specific instances of those things. I
16 may be wrong.

17 Q I'm sorry. How many times did you meet with him?

18 A Just once.

19 Q Do you think that was enough time for you to develop
20 your opinion in this.

21 A Oh, absolutely. I had plenty of time. We were at
22 Allendale Correctional. We were in a secure environment, a
23 private environment, and I had adequate time to perform my
24 evaluation.

25 Q And your report indicates that Mr. Harbuck was

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1 criminally responsible for his actions on that date due to
2 the voluntary intoxication.

3 A That's correct.

4 MS. GREGORY: A moment's indulgence, Your Honor.

5 THE COURT: Yes.

6 (Pause.)

7 MS. GREGORY: No further questions, Your Honor.

8 Q Thank you, Dr. Maddox.

9 A You're welcome.

10 THE COURT: Redirect?

11 MR. PHILLIPS: No further redirect, Your Honor.

12 THE COURT: Okay. Thank you, ma'am. You're free to
13 leave.

14 THE WITNESS: You're welcome, Your Honor.

15 (Whereupon, the witness was excused.)

16 THE COURT: Call your next witness.

17 MR. PHILLIPS: Thank you, Your Honor. We would call
18 Mr. Robert Harbuck.

19 ROBERT CLINTON HARBUCK, having
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. PHILLIPS

22 Q Good morning, Clint.

23 A Good morning.

24 Q Would you introduce yourself to the Court?

25 A My name is Robert Harbuck. I'm the defendant in this

1 case.

2 Q And you go by Clint, correct?

3 A Correct.

4 Q And so, specifically, in this case, in preparation for
5 trial, how many times did you meet with Mr. Quinn?

6 A I met with him, I think, twice, maybe three times, but
7 we had correspondence multiple times through e-mail and
8 telephone calls.

9 Q And so, specifically, how many times did you discuss
10 your military history with Mr. Quinn?

11 A Multiple, on multiple occasions.

12 Q And how many times did you discuss your mental health
13 history with Mr. Quinn?

14 A We had continuing correspondence between me going to
15 the V.A. and getting assessed and diagnosed with P.T.S.D.
16 So that was a reoccurring conversation about the mental
17 health.

18 Q And so, specifically, as to the military part of it,
19 what did you tell him in preparation for trial? What
20 background information did you give him about your military
21 history?

22 A Yes. So I gave him the deployment record, length of
23 service. I gave him my military duty to '14. And then
24 also at my trial the judge asked me if I had been to the
25 V.A. and to be assessed for P.T.S.D. I told him I had not.

1 So a condition of my bond -- I'm sorry. At the bond
2 hearing. A condition of my bond was to go to the V.A. and
3 get assessed, and I did that.

4 Q What, specifically, about your mental health history
5 did you provide to Mr. Quinn?

6 A I disclosed the history of the deployments and also
7 the gender identity thing.

8 Q And, specifically, going into that a little bit
9 deeper, the other -- what other issues did you have from a
10 mental health standpoint that you were discussing with the
11 mental health professionals at the time?

12 A Those were the two primary issues. I disclosed that
13 really to Tom. No specific account of incidents of why I
14 would have P.T.S.D. That was all between me and the V.A.
15 But he -- knowing that, it was requested by the judge at
16 the bond hearing for me to go get assessed. It is the
17 extent of the discussion that me and Tom had.

18 Q So you did discuss that you had a diagnosis of
19 P.T.S.D. with your attorney.

20 A Correct. As soon as I got the diagnosis I e-mailed
21 him the paperwork and...

22 Q Did you also -- and you, specifically, discussed your
23 mental health history, that you were seeking counseling and
24 having issues that you were having addressed by a licensed
25 professional with your attorney?

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1 A Correct.

2 Q Is there anything else you'd like to add here today?

3 A No.

4 Q In preparation for trial was there any discussions
5 about presenting this evidence based on the trial strategy?
6 What trial strategy did your attorney tell you that he was
7 going to present?

8 A Yes. My understanding was that we were going to use
9 the P.T.S.D. as mitigation, and because I've never once
10 claimed that it wasn't me, that I didn't commit a crime.
11 I've always held that I committed a crime that day and
12 I'm -- I'm fully capable and under the impression that I
13 should be held accountable for those actions.

14 My issue came about with the level of correction that
15 was imposed, and so I believe what happened was, is once we
16 got into court me and Officer Lindler both had medical
17 issues. And once these medical issues were brought into
18 evidence or however it is, once they were brought up, there
19 were objections on both sides. And because there was
20 objections on both sides the judge ruled that because there
21 was no expert witness to testify for either one of us that
22 none of our records would be allowed into -- or not only
23 records but --

24 Q So, specifically?

25 A -- testimony would be allowed in -- in evidence.

1 Q So, specifically, did you ever discuss hiring an
2 expert to conduct an independent evaluation on you from a
3 mental health standpoint?

4 A Not to my knowledge.

5 Q So as far as you can remember, there was no discussion
6 about hiring an expert witness --

7 A Correct.

8 Q -- to review your records?

9 A That's correct.

10 Q And that also goes for the expert witness that
11 reviewed the definitions of the great bodily injury and the
12 injuries of Officer Steven Lindler?

13 A That is correct. That to my -- to my knowledge that
14 was not even a strategy to bring up, was whether or not the
15 incident was likely to produce great bodily injury or
16 death.

17 Q In other words, you never had that conversation with
18 your attorney prior to trial.

19 A That's correct.

20 MR. PHILLIPS: One moment, Your Honor.

21 THE COURT: All right.

22 (Pause.)

23 MR. PHILLIPS: No further questions.

24 THE COURT: All right. Ms. Gregory.

25 MS. GREGORY: Thank you.

1 CROSS-EXAMINATION

2 BY MS. GREGORY

3 Q Good morning, Mr. Harbuck.

4 A Good morning.

5 Q Again, sorry about my voice. If you can't understand
6 me, let me know.

7 Do you recall testifying that all you ingested on the
8 date of the incident was Red Bull and cigarettes?

9 A I do.

10 Q Based on your statements to Dr. Maddox, that wasn't
11 true, was it?

12 A That is correct.

13 Q Do you recall testifying that the incident was not
14 drug induced at all?

15 A I do.

16 Q Repeatedly say that. Do you recall testifying about
17 your military deployments?

18 A I do.

19 Q Do you recall testifying about indirect fire?

20 A I do.

21 Q Do you recall never testifying about Camp Stone being
22 blown nearly in half?

23 A I do. I think that's an incorrect representation of
24 what Dr. Maddox was talking about. She was talking about a
25 living unit, specifically, not the entire base.

1 Q Okay. But did you ever testify about anything getting
2 blown up during your testimony at trial?

3 A I don't think so. I don't remember.

4 Q And did you testify about the suicide bomber?

5 A I don't believe so.

6 Q But you provided graphic detail to Dr. Maddox about
7 it.

8 A Correct.

9 Q Why would you leave that out at trial when you're
10 going over your military history?

11 A I think really what happened, all this came after the
12 fact, the judge saying that nothing about the P.T.S.D.,
13 could be admitted into court. So I was honestly hung up on
14 what I was allowed say and what I wasn't allowed to say.
15 So I just didn't bring it up.

16 Q Do you recall testifying about the vehicle flipping
17 over during the trial?

18 A I do.

19 Q And you mentioned that it only flipped over once, but
20 you told Dr. Maddox it flipped over three times. What's
21 with the discrepancy on that?

22 A I would say the discrepancy is not specifically in the
23 account but maybe a misrepresentation on Dr. Maddox's part.
24 Maybe she fleged the numbers.

25 Q Okay.

1 MS. GREGORY: A moment's indulgence, Your Honor.

2 (Pause.)

3 Q Have you reviewed Dr. Maddox's report?

4 A I have.

5 Q What else is she incorrect about in her report?

6 A So the account that my dad was alcoholic, I told her
7 that it was my dad's father who was an alcoholic, not that
8 it was my dad.

9 Q Did she fledge the numbers on anything else?

10 A Not to my knowledge. That was the one thing that
11 stuck out to me.

12 Q How much meth did you have that day before the
13 accident? You were up for three days, is that right?

14 A That day.

15 Q Okay. Well, how much meth were you on when the
16 incident occurred?

17 A It was a lot. I mean, I don't -- I don't -- I
18 couldn't tell you. It was -- it was too much.

19 Q Okay. So your testimony at trial that you only had
20 Red Bull and cigarettes was a lie?

21 A That's correct.

22 MS. GREGORY: No further questions, Your Honor.

23 THE COURT: All right. Any redirect?

24 MR. PHILLIPS: None, Your Honor.

25 THE COURT: All right. Thank you, sir. May step

1 down.

2 Call your next witness.

3 MR. PHILLIPS: No further witnesses.

4 THE COURT: All right. Applicant rests.

5 Let's take about a 10-minute recess. Then we'll
6 reconvene.

7 (Whereupon, a recess was taken.)

8 THE COURT: Right before we took a break we had a
9 bench conference.

10 Mr. Phillips, put on the record what we talked about
11 and what I told you.

12 MR. PHILLIPS: Essentially that Your Honor was going
13 to take the matter under advisement, that I would be
14 submitting a post-hearing brief outlining the specific
15 transcript page numbers, as well as the arguments. That
16 way at the end I can hit the cursory arguments, the case
17 law. Specific testimony and transcript page numbers will
18 be submitted in a post-hearing brief to the Court.

19 THE COURT: That'll be fine. And it doesn't have to
20 be with the formality of a brief. You can just simply
21 e-mail me or however you want to do it just setting forth,
22 you know, where on the transcript you want me to look at as
23 I ponder whatever decision I'm going to make.

24 MR. PHILLIPS: Thank you, Your Honor.

25 THE COURT: However you want to do it.

1 Ms. Gregory.

2 MS. GREGORY: And the A.G.'s office will be able to do
3 the same?

4 THE COURT: Absolutely, of course. I always do that
5 on, you know, trial P.C.R.s where there's a huge transcript
6 to read. I think it's fair to both sides to give me more
7 time than just a couple of hours we're together actually
8 hearing the matter.

9 I will do that, but let's, as we did earlier this
10 week -- I don't like to sit on P.C.R. cases too long. It's
11 not fair for both sides, especially the incarcerated
12 individual who wants a decision just as soon as possible.

13 So I'm going to give you until March 15th to get that
14 done. That's two weeks from today. Just get that to me.
15 We'll roll from there.

16 Okay. All right. Anything further from the applicant
17 at this time?

18 MR. PHILLIPS: No, Your Honor.

19 THE COURT: All right. Applicant rests.
20 State.

21 MS. GREGORY: We would call Thomas Quinn to the stand.
22
23
24
25

Thomas J. Quinn
Direct examination by Ms. Gregory

1 THOMAS J. QUINN, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. GREGORY

4 Q Good morning, Mr. Quinn. How long have you been
5 practicing law?

6 A Forty years.

7 Q How much of that has been in criminal law?

8 A Probably all 40 years.

9 Q Were you appointed or retained in this case?

10 A Retained.

11 Q Do you recall when you were retained from the
12 beginning?

13 A Immediately upon arrest.

14 Q How many times did you meet with Mr. Harbuck?

15 A I think Clint is right. I think three times we met.
16 Most of the times it was we spoke where -- was either by
17 the phone or through e-mail because he was in Alabama.

18 Q And what was he charged with?

19 A He was charged with four counts of attempted murder,
20 failure to stop for a blue light, resisting arrest.

21 Q And did you discuss with him those charges and the
22 elements the state would have to prove?

23 A We discussed the charges. I don't know if we
24 discussed the specific elements of each offense.

25 Q Did you discuss a lesser included offense as well?

1 A We discussed if there were lesser included offenses.

2 Again, I doubt we discussed the elements of them.

3 Q What about possible sentences that he would face?

4 A Well, mostly we talked about sentences potentially for
5 a plea.

6 Q Okay. Were there any plea offers in this case?

7 A There was.

8 Q What was the terms of that plea offer?

9 A Ten years on the attempted murder counts.

10 Q And you communicated that to him?

11 A I did.

12 Q Was it his decision to go forward to trial?

13 A It was.

14 Q And did you file a Rule 5 and Brady motions?

15 A I did.

16 Q And did you review his facts of the case?

17 A He and I went over the case.

18 Q I'm sorry?

19 A He and I went over the case.

20 Q What about his version of the facts based on the
21 state's evidence?

22 A We had discussed that.

23 Q Can you describe the evidence the state against him?

24 A Well, they had statements from three people from one
25 car. And I'm sorry. I don't remember those individuals'

Thomas J. Quinn
Direct examination by Ms. Gregory

1 names. They had a statement from Trooper Lindler. They
2 had video evidence.

3 Q They also had 9-1-1 calls.

4 A I'm sorry. You're right. They had 9-1-1 calls.

5 Q And I'm sorry. Did you mention the dash cam video?

6 A They had video. I mentioned it.

7 Q Okay. I'm sorry. What kind of investigation did you
8 do in this case?

9 A I reviewed the evidence, spoke with my client. I went
10 and rode the scene, although it was essentially a highway.
11 That was pretty much the investigation.

12 Q Did you have enough time to prepare your defense in
13 this case?

14 A I did.

15 Q Were you aware of the mental health issues Mr. Harbuck
16 suffered from?

17 A I had discussed those with him.

18 Q Did you obtain his medical records?

19 A From the hospital or from the jail or his psychiatric
20 records?

21 Q His psychiatric records.

22 A I did not.

23 Q Okay. Did you discuss his mental health history from
24 the military?

25 A Yes.

Thomas J. Quinn
Direct examination by Ms. Gregory

1 Q Did you discuss any possible defenses in this case?

2 A We did.

3 Q Was insanity one of those defenses?

4 A Insanity was never discussed as a defense.

5 Q Why is that?

6 A He wasn't insane. It was clear he was competent.

7 Q Mr. Harbuck has alleged that you failed to provide
8 notice to the state for an affirmative defense. Was it
9 your plan to go forward in an affirmative defense in this
10 case?

11 A I assumed the affirmative defense that you're
12 referring to would have had to have been insanity, and no.
13 I did not consider using insanity as a defense.

14 Q Did he ever indicate to you that he was under the
15 influence at the time of the incident?

16 A He did not.

17 Q What was your trial strategy in this case?

18 A To try to prove, to convince the jury, that he was
19 unable to form the intent necessary to commit the offenses.

20 Q And did you intend Mr. Harbuck to testify regarding
21 his diagnosis of P.T.S.D.?

22 A I did.

23 Q When was he diagnosed with P.T.S.D?

24 A Shortly after his arrest. I believe within 60 days,
25 but certainly within 90 days.

Thomas J. Quinn
Direct examination by Ms. Gregory

1 Q So he was not diagnosed with P.T.S.D. prior to the
2 incident?

3 A I do not believe he was.

4 Q Did the state object to him being able to testify to
5 the P.T.S.D.?

6 A They did.

7 Q What was Mr. Harbuck able to testify to during the
8 trial?

9 A He was able to testify to the -- to his symptoms and
10 how it affected him but not to the diagnosis.

11 Q Was he also able to testify about his military
12 experience?

13 A Oh, yes. I'm sorry. He was.

14 Q Was he also able to testify about symptoms that he had
15 maybe before, like if he had had episodes like this before
16 or episodes like this since the incident?

17 A He was able to testify, again, about how it affected
18 him and what difficulties he had but not the diagnosis.

19 Q Did you call character witnesses on Mr. Harbuck's
20 behalf?

21 A I did. Two.

22 Q Who else testified on Mr. Harbuck's behalf?

23 A His mother.

24 Q Did -- have you been able to review Mr. -- I'm sorry
25 -- Dr. Maddox's report?

1 A I have seen the report.

2 Q Do you believe this report would have been helpful in
3 Mr. Harbuck's -- yes -- Mr. Harbuck's case?

4 A The report would not have been helpful because it
5 contradicted what his testimony was in the courtroom. The
6 diagnosis of P.T.S.D. may have been helpful.

7 Q How would her report indicating he's criminally
8 responsible because he was voluntarily intoxicated have
9 changed your trial strategy?

10 A Well, it would have eliminated the trial strategy that
11 we went forward on, because you could not claim that you
12 were unable to perform an element, the intent element, of a
13 defense if you were voluntary intoxicated -- voluntarily
14 intoxicated since voluntary intoxication is not a defense
15 in South Carolina. So we would have had to have chosen a
16 different trial strategy.

17 Q Was the information that Mr. Harbuck provided to Dr.
18 Maddox consistent with what he told you?

19 A It was not.

20 Q Were you aware that he had been up for three days
21 prior to the incident?

22 A I -- I believe that -- that he had told me three days.
23 If not, he had told me he'd been up for an extended period
24 of time.

25 Q And in the report Mr. Harbuck says he made it to

1 Virginia on the date of the incident. Is that true?

2 A That's not my belief, no. My belief is he never made
3 it to Virginia, that he left Georgia and got to South
4 Carolina but no further.

5 Q Did he ever tell you that he was tripping during the
6 incident as he told Dr. Maddox?

7 A He may have used that word.

8 Q Did he ever tell you about a suicide bomber that he's
9 watched blow himself up while he was overseas?

10 A I don't remember him telling me about that specific
11 incident. As Clint testified to today, he and I talked
12 about his military history and I knew he had had a
13 difficult time and believed he suffered from P.T.S.D. even
14 before the diagnosis.

15 Q Did he ever tell you it was blown in half at Camp
16 Stone?

17 A Again, specifically, I don't remember him telling me
18 that.

19 Q Do you recall Corporal Lindler's testimony?

20 A I do.

21 Q How did he describe Mr. Harbuck's driving?

22 A And I'm sorry. I may not be remembering the exact
23 words, but he thought he was an intoxicated driver.

24 Q Did he testify that Mr. Harbuck experienced or show
25 the normal behavior of an impaired driver? It's on page 76

1 if you have your transcript.

2 A And I'm sorry. He may have used the word impaired and
3 not intoxicated. I'm sorry.

4 Q Did he testify that he was planning on doing a field
5 sobriety test?

6 A Yes.

7 Q Was he able to conduct a field sobriety test?

8 A He was not.

9 Q Why is that?

10 A Because Clint was suffering from mental difficulties
11 at that time.

12 Q Was Mr. Harbuck tased during his arrest?

13 A He was several times.

14 Q And he was taken to the hospital.

15 A I don't remember that. I'm sorry. I've heard that
16 testimony today, and I'm not denying that that's true. But
17 I don't independently remember that he actually was taken
18 to the hospital.

19 Q Mr. Harbuck has alleged you should have called an
20 expert to review Corporal Lindler's medical records. Do
21 you feel that was necessary to have an expert testify as to
22 Corporal Lindler's injuries?

23 A I do not.

24 Q Why is that?

25 A Because the judge submitted all of the lesser

1 includeds, offenses, of attempted murder with all of the
2 definitions of great bodily injury, moderate bodily injury.
3 And I believe the jury had the opportunity to consider all
4 of those.

5 Q Did you object to Corporal Lindler's testimony
6 regarding his injury, two herniated discs?

7 A I did.

8 Q Did the Court give curative instructions regarding
9 that testimony to the jury?

10 A He did.

11 Q Did you move for a mistrial at that point?

12 A I did.

13 Q Did the state have to prove injury in order to convict
14 Mr. Harbuck of attempted murder?

15 A Not under the statute. They do not have to prove the
16 injury.

17 Q Was the jury charge regarding great bodily injury
18 correct that Judge Hocker gave to the jury?

19 A I believe it was.

20 Q Did you move for a directed verdict after the state
21 rested?

22 A I did.

23 Q Do you recall your closing argument?

24 A It's been two years, but I remember parts of it at
25 least.

Thomas J. Quinn
Direct examination by Ms. Gregory

1 Q Okay. Do you have your transcript? It's page 250 to
2 270. Do you recall what you conveyed to the jury?

3 A I'm sorry. I don't have the transcript before me, nor
4 do I remember those specific seven pages. But the defense
5 was that there was no intent, that he had not formed the
6 intent, that he was unable to because of his condition at
7 that time.

8 MS. GREGORY: May I approach, Your Honor?

9 THE COURT: Yeah.

10 Q Here, just in case you want to refresh your memory. I
11 have a couple of more questions.

12 THE COURT: And what pages is it?

13 MS. GREGORY: I'll tell you in just a second.

14 THE WITNESS: 250 to 257 is what she said.

15 MS. GREGORY: It's 250 to 270, Your Honor.

16 THE WITNESS: Twenty pages.

17 THE COURT: Okay.

18 Q In your closing did you discuss Mr. Harbuck's mental
19 health issues?

20 A I did. Well, some of them, not all of them.

21 Q And did you also discuss in your argument the
22 collision with Corporal Lindler's vehicle?

23 A I did.

24 Q Do you recall the state's closing argument?

25 A I did. Again, I remember the manner in which it was

Thomas J. Quinn
Direct examination by Ms. Gregory

1 delivered as much as anything else, more than the words.

2 Q Do you remember objecting during the state's closing
3 argument?

4 A If I did, I didn't object much. I believe I objected
5 once early.

6 Q It's on page 275 if you want to look at it.

7 Did you object when the state talked about affirmative
8 defenses, page 275, Mr. Quinn?

9 A Yes. I did.

10 Q Did you object when the state talked about malice
11 being able to be inferred? That's page 279.

12 A I did. That was an issue in the case.

13 Q And that was a side-bar conversation after that. Is
14 that correct?

15 A It was.

16 Q What was the ruling on that side-bar conversation
17 later?

18 A That the judge told the jury that they could not infer
19 malice from the use of the vehicle.

20 Q And did you ask for a curative instruction?

21 A I believe I did.

22 Q Page 295. And did the judge give that curative
23 instruction to the jury regarding malice?

24 A It does not appear he did, but I may be missing it in
25 the transcript.

1 Q I believe he -- on page 295 -- at least that's the
2 notation I have. It could be an error on my part. The
3 judge gave the -- did the judge instruct the jury that if
4 argument is inconsistent with the charge that they should
5 go with the charge and not the argument?

6 A Yes, he did. I'm sorry. It is at the bottom of page
7 295. Actually I'm not -- that's what he told the lawyers.
8 I'm not certain exactly what he charged back to the jury on
9 that issue.

10 Q Okay. Do you recall other statements made by the
11 solicitor during the closing attacking your credibility?

12 A Yes.

13 Q Did you object?

14 A No.

15 Q Why not?

16 A Because he was getting nowhere with it. The jury
17 clearly had liked me. He was leaning on the bench as if he
18 was disinterested, and the jury was giving him no credence.

19 Q So do you believe objecting during those comments
20 would have changed the outcome of the trial?

21 A Might have made him give a proper closing argument.
22 But short of that, I don't know that it would have changed
23 it.

24 Q Mr. Harbuck has alleged that you failed to request
25 jury instructions on the affirmative defense of guilty by

1 reason of insanity and guilty but mentally ill. why did
2 you not request those?

3 A Well, he wasn't insane, so insanity was never going to
4 be an issue. And guilty but mentally ill is a strawman.
5 It means your client goes to jail. It just gives the jury
6 an opportunity to get out. It's not a charge I would --
7 I'm not sure I'd ever ask for that charge.

8 Q Overall do you recall the jury instructions being
9 current in this case?

10 A Yes.

11 Q What was Mr. Harbuck convicted of?

12 A Well, the only issue that I believe we're facing today
13 is the assault and battery of a high and aggravated nature.
14 He was also convicted of assault and battery in the third
15 degree, three counts, the lesser of the resisting arrest,
16 the one year, and failure to stop for a blue light.

17 Q So he was not convicted on any -- he was -- I'm sorry.
18 He was convicted on all lesser included offenses except for
19 the failure to stop for a blue light?

20 A That's correct.

21 Q Prior to sentencing did you provide mitigation on Mr.
22 Harbuck's behalf to the sentencing judge?

23 A I provided some.

24 Q What did you provide?

25 A I provided argument and I believe the number of jail

1 dates. I'm not certain I provided much more than that
2 because the judge had heard the trial.

3 Q Did you provide a P.T.S.D. report?

4 A I'm sorry. I don't remember. I may have.

5 Q Do you recall providing a letter from the major?

6 A I'm sorry. We did have a letter from the -- one of
7 his commanding officer we submitted.

8 Q And you don't recall submitting medical records from
9 his military?

10 A Again, I don't remember if we did that at closing or
11 if we had done it during the trial. The judge was aware of
12 his military service and the difficulties he had.

13 Q By difficulties, what do you mean?

14 A That -- that there were injuries that resulted in him
15 being diagnosed with P.T.S.D.

16 Q Do you recall the judge making any comments regarding
17 that he took into consideration Mr. Harbuck's P.T.S.D.
18 during the sentencing? It's page 331 if you would like to.

19 A Yes. The judge specifically mentioned he was taking
20 that into consideration.

21 Q His P.T.S.D.?

22 A Yes, ma'am.

23 Q Okay. Do you recall him making any statements
24 regarding the impact of Mr. Harbuck's vehicle on Corporal
25 Lindler's vehicle? That's on page 332.

Thomas J. Quinn
Direct examination by Ms. Gregory

1 A I would not have remembered the comments, but I do see
2 that they are in the transcript on page 332.

3 Q What were his comments?

4 A The judge specifically says, "what I felt like was
5 about as significant as it relates to Corporal Lindler, the
6 impact involved caused the in-car video camera to come off
7 the mount. And I've always understood that those things
8 are mounted pretty good just to prevent people that they
9 arrest jerking the thing off. And the impact was such that
10 it knocked the camera off the mount. That's pretty
11 strong -- that's pretty strong." That's the end of the
12 quote.

13 Q Thank you.

14 How much time was Mr. Harbuck facing?

15 A He was facing 20 years on the assault and battery of a
16 high and aggravated nature, 30 days on each of the assault
17 and battery thirds, a year on the resisting arrest and
18 three years on the failure to stop for a blue light.

19 Q So about 24, a little over 24, years?

20 A I trust your math. I'm sorry.

21 Q How much time did he end up receiving?

22 A Nine years.

23 Q Do you believe Dr. Maddox's report would have changed
24 the outcome of this trial?

25 A Not her report, would not have.

Thomas J. Quinn
Direct examination by Ms. Gregory

1 Q Do you believe Dr. Batalis' opinion or report would
2 have changed the outcome of this trial?

3 A I'm not sure a judge would have let it in. But past
4 that issue, I do not believe it would have.

5 Q Did Mr. Harbuck appeal this case?

6 A He did not.

7 Q Mr. Harbuck has also failed -- has alleged -- I'm
8 sorry -- that you failed to file a motion to reconsider.
9 Do you feel that would have been necessary in this case?

10 A I don't know that it would have been beneficial, but I
11 did fail to file the motion.

12 MS. GREGORY: One moment's indulgence, Your Honor.

13 THE COURT: Sure.

14 (Pause.)

15 Q I'm sorry. When you said that you don't believe Dr.
16 Batalis' report would have come in, why is that?

17 A Because I believe it was speculative and would
18 infringe on the jury's final decision. So I don't know
19 that a judge would let it in.

20 MS. GREGORY: No further questions, Your Honor.

21 THE COURT: All right. Your witness, Ms. Phillips.

22 MR. PHILLIPS: Thank you, Your Honor.

23

24

25

Thomas J. Quinn
Cross-examination by Mr. Phillips

1 CROSS-EXAMINATION

2 BY MR. PHILLIPS

3 Q Good morning, Mr. Quinn.

4 Prior to your testimony today you said you had an
5 opportunity to review the report submitted by Dr. Batalis.

6 A I have seen it.

7 Q You have seen it.

8 MR. PHILLIPS: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 Q In preparation for trial did you ever discuss
11 consulting an expert witness to review Officer Lindler's
12 injuries?

13 A I did not.

14 Q And with this your trial strategy was that there was
15 no intent, no mens rea, to commit a specific intent to
16 kill, is that --

17 A That's correct.

18 Q And so the likelihood of a lesser included offense
19 being argued by the state was a likely result.

20 A But I didn't know if they would argue, but I thought
21 the judge would submit it.

22 Q And knowing that with that issue coming up of the
23 lesser included offenses and that the jury's determination
24 to be based on those injuries of great bodily injury or
25 moderate bodily injury fitting the statute, was there any

1 discussion with Mr. Harbuck to consult with an expert
2 witness to challenge any evidence that could be presented
3 by the state as to the officer's injuries?

4 A There was not.

5 Q And at the moment when there was testimony presented
6 at the trial of the officer's specific injuries and you
7 made the argument regarding Rule 5 and Brady being provided
8 those documents, did you ever make a motion at that time to
9 have -- you know, for a continuance for you to be able to
10 seek an independent evaluation from an expert witness of
11 those injuries?

12 A I don't believe I made a motion for a continuance to
13 be able to obtain an expert, no.

14 Q At any point, either prior to trial or during that,
15 there was no thought process as far as a reasonable trial
16 strategy as to consult to directly challenge the injuries
17 that was received by the officer.

18 A By obtaining an expert, no. There was not.

19 Q And, specifically, to review whether it fit the
20 definition of great bodily injury or moderate bodily injury
21 under the statute.

22 A No. I did not consult an expert about that issue.

23 Q In your opinion now after reviewing the report,
24 reviewing the statute and reviewing the arguments and
25 testimony presented of Officer Lindler's injuries, do you

1 believe that his injuries raised to the level of great
2 bodily injury?

3 A I do not.

4 Q And so is it your opinion that it's not reasonable
5 trial strategy not to have consulted with an expert witness
6 to testify at trial to rebut that testimony and argument
7 that was presented during the trial?

8 A I don't know that it's unreasonable trial strategy.
9 It would have been helpful perhaps to have had an expert
10 testify as to that.

11 Q So at a minimum in your opinion it would have been
12 helpful to the jury in making their determination.

13 A It would have.

14 Q And because an expert witness would have been able to
15 testify and tell the jury that it's his expert opinion that
16 the injury did not rise to the level of great bodily
17 injury.

18 A That's correct.

19 Q And, specifically, to Officer Lindler's injuries -- he
20 was obviously found guilty. Mr. Harbuck was found guilty
21 of assault and battery of high and aggravated nature. So
22 the jury either found that there was great bodily injury or
23 the act that was likely to produce death or great bodily
24 injury. Is that fair?

25 A That is fair.

1 Q And it is your opinion now that had you consulted an
2 expert and they were able to testify as Dr. Batalis did
3 here today that would have been helpful to the jury in
4 their determination of whether Mr. Harbuck would have been
5 guilty of assault and battery of a high and aggravated
6 nature.

7 A Because it would have eliminated one of the two
8 possibilities for a conviction on that count.

9 Q And so it's reasonable that with that testimony being
10 presented that Mr. Harbuck would have been found of a --
11 been found guilty possibly of a more lesser included
12 offense of assault and battery third degree --

13 A Possibly.

14 Q -- or assault and battery second depending on the
15 jury's determination of that testimony?

16 A Right. I don't know what the expert would have
17 testified to as to moderate bodily injury, but it's
18 possible that it might not have been assault and battery of
19 a high and aggravated nature.

20 Q And, specifically, to the testimony we had today
21 regarding Dr. Batalis' findings, say even to the next level
22 of moderate, to a reduction to assault and battery second
23 degree.

24 A That's possible.

25 Q That that would be reasonable and necessary to present

1 to the jury.

2 A It would have been helpful.

3 Q Right. At any point did you ever discuss consulting
4 an expert witness in forensic psychiatry with Mr. Harbuck?

5 A No.

6 Q At any point -- what were the specific records, mental
7 health records and military records, medical records, that
8 you obtained in this case for Mr. Harbuck?

9 A And I'm sorry. I probably can't give you a complete
10 list, and you have my original file, so I wasn't able to
11 review it.

12 I know we had the DD214 because we went through that
13 in court. And I believe I had some of his military
14 records, but I know I did not have all of the records
15 because some were maintained in the V.A. in Alabama, and I
16 didn't have those records.

17 Q And you had the opportunity to review Dr. Maddox's
18 report prior to your testimony today?

19 A I have.

20 Q And in your opinion were there things that you learned
21 in the report regarding his mental health history that you
22 did not know prior to trial?

23 A I may not have known the extent of some of the
24 difficulties mentioned in her report.

25 Q And --

Thomas J. Quinn
Cross-examination by Mr. Phillips

1 A But I knew -- I knew, for instance, that he had had
2 difficulties with alcohol because he had the prior D.U.I.
3 convictions. And he and I had mentioned -- he and I
4 discussed in passing that gender I.D. issues very early in
5 the case but then never discussed them again. So I was
6 aware of some of them.

7 Q Would it be fair to say had you obtained all of those
8 records you would have had a full, complete picture --

9 A A much better picture.

10 Q -- of his mental health?

11 A Yes, sir.

12 Q And that based on that, would that have changed your
13 opinion to consult an expert witness possibly?

14 A Possibly.

15 Q Because once you had the full and complete picture it
16 would be reasonable and necessary in your opinion to
17 investigate further as to whether you could present expert
18 testimony either at trial, depending on the defense that's
19 prepared prior to trial, or during the -- as mitigation
20 during the sentencing phase?

21 A I find it difficult to answer because if I had had the
22 information that is contained in Dr. Maddox's report we
23 would have had to have completely changed our trial
24 strategy.

25 It certainly would have helped for mitigation. It

Thomas J. Quinn
Cross-examination by Mr. Phillips

1 would always help for mitigation, but it would have
2 eliminated the trial strategy we used. So I can't say that
3 her report would have been helpful to me during the trial
4 phase.

5 Q And based on your review of the transcript and the
6 judge's determination not to admit certain testimony from
7 Mr. Harbuck regarding the P.T.S.D. when that's the crux of
8 the defense essentially under the intent element, do you
9 believe that your trial strategy based on that and based on
10 the trial court's ruling to exclude that evidence, that
11 that was reasonable?

12 A I don't. And if I'm not answering your question,
13 please rephrase it. I'm trying.

14 I agree with you completely that I should have had an
15 expert in P.T.S.D. testify. I don't know that the specific
16 report from Dr. Maddox would have been beneficial in trial.
17 But an expert to testify that Clint suffered P.T.S.D., the
18 effects it had on him or any person suffering from it and
19 whether they would be able to, if during one of these
20 difficulties, a phase when the P.T.S.D. was ruling his
21 life, whether he could form criminal intent, that would
22 have been very helpful.

23 Q And with that, ultimately, that could have changed the
24 outcome of the trial because the jury would have had
25 different evidence to consider in weighing guilt.

1 A Absolutely, because I believe the jury found their
2 verdict based on the question of intent.

3 Q And even going even a step further, not only in
4 changing the outcome from the jury's determination
5 regarding guilt but also in the second part of that had
6 they found Mr. Harbuck guilty if that evidence was
7 presented as they did in the actual trial, would that in
8 your opinion -- it would have been reasonable to present an
9 expert witness to present that testimony as, say, to
10 emphasize the mitigation during sentencing to present that
11 to a judge, would it have been helpful to the judge during
12 the sentencing phase?

13 A It may have been. Now, Judge Hocker made it clear
14 that he accepted Clint's statements that weren't admitted
15 to the jury that he suffered from P.T.S.D. So I don't know
16 if he would have specifically changed Judge Hocker's
17 sentence, but it certainly would have made it -- it would
18 have given the judge more information to base his decision
19 on.

20 Q So it's reasonable to say that it's possible that a
21 judge's decision could have been changed. The outcome
22 would have been different possibly as far as the sentence
23 imposed by the judge if they would have heard testimony
24 from an expert as to that mitigation, to provide that
25 further expert's opinions as to the mental health history.

1 A I certainly think it's reasonable to say the more
2 information you give a judge, the more likely it is you're
3 going to get a fair and reasonable sentence.

4 Q On direct the state brought up the fact that there was
5 a curative instruction, at least trying to parse that down
6 regarding the state's argument during closing that the jury
7 could infer malice from the applicant's use of a deadly --
8 or excuse me -- the deadly weapon, the vehicle. Did you
9 challenge that curative instruction?

10 A I'm sorry. I don't remember. I gather I did not
11 since you're asking me.

12 Q And are you aware as far as error preservation
13 purposes that our appellate court has a very strict --
14 unfortunately, I know that we both are in the same camp
15 here -- that you have to follow a very strict kind of
16 procedure in challenging a mistrial to have it preserved
17 for appellate review?

18 A Yes, I do know that there is a procedure you need to
19 follow.

20 Q And part of that would be making sure that you also
21 object to the curative, that you could not cure the
22 prejudice from that but you would still have allow the
23 Court to give the curative?

24 A Right. You can't stop the Court from doing whatever
25 it wants, but certainly I have -- I believe my obligation

1 would have been to object to the curative instruction and
2 move for a mistrial if I thought it was appropriate.

3 Q And during the closing argument there were arguments
4 that were provided by the solicitor that could be arguably
5 improper that were specifically to the credibility of the
6 defense that was presented by the defense and if --
7 obviously, it's a determination, a legal determination,
8 whether those are improper arguments. But in the state's
9 closing those arguments that essentially I would
10 characterize as disparaging comments attacking the
11 credibility of -- of the trial counsel presenting those
12 defenses of the intent -- did you object to any of those?

13 A No.

14 Q And during the closing argument there was also
15 arguments that applicant was on drugs and, obviously, we
16 have through the reports we have now, we understand kind of
17 the full picture, but at the time what evidence that was
18 presented within the trial, there was no other evidence
19 that was presented during, you know, kind of the four
20 corners of that trial that the applicant was on drugs. Is
21 that fair to say?

22 A It is.

23 Q Did you object when the solicitor made those
24 arguments?

25 A Again, I'd have to review it, but I gather I did not.

1 And if I did, I would have only objected once and stopped.

2 Q Now, you did object to the introduction of Officer
3 Lindler's testimony regarding his medical injuries that
4 were not disclosed immediately by the state as far as
5 providing the discovery. You made the proper objections
6 under Rule 5 and Brady.

7 Obviously, there is the issue of error preservation
8 that we just brought up. Did you fail to preserve for
9 appellate review the motion for a mistrial regarding that
10 specific instance? Same scenario of what we just went over.

11 A I'm sorry. I don't remember the specifics. I know
12 that the -- my obligation would have been to object to the
13 curative instruction if I didn't think it was appropriate
14 and move for a mistrial. And I'm sorry. I don't remember
15 if I did or not.

16 Q And if you didn't do that you would agree that you
17 failed to preserve that issue for appellate review?

18 A That's likely true.

19 Q In this case at the end of the sentencing -- and the
20 sentence was imposed by the Court -- you admitted on direct
21 examination that you did not file a motion for
22 reconsideration.

23 In light of your testimony on cross-examination that
24 the expert-witness testimony regarding the officer's
25 injuries and of course the expert opinions from, say, Dr.

Thomas J. Quinn
Redirect examination by Ms. Gregory

1 Batalis or at least consulting with an expert in that area
2 to review that and present that evidence, as well as in
3 forensic psychiatry and to present that evidence, do you
4 feel that you could have done that in a motion for
5 reconsideration to the judge, that you had that second
6 opportunity to present that evidence to a judge by filing a
7 motion for reconsideration?

8 A I could have filed a motion for reconsideration and
9 tried to bolster my argument with experts.

10 MR. PHILLIPS: No further questions, Your Honor.

11 THE COURT: All right. Redirect?

12 MS. GREGORY: Yes, sir.

13 REDIRECT EXAMINATION

14 BY MS. GREGORY

15 Q Mr. Quinn, you testified on direct that you would not
16 have presented an expert like Dr. Batalis because it was
17 speculative and infringed on the province of the jury,
18 right?

19 A That's correct.

20 Q So then why would you have consulted them? Why would
21 you have needed to consult one if that kind of information
22 wouldn't have been helpful for your case?

23 A I believe -- and, again, I'm sorry if I misunderstood
24 the question. I thought the question was whether I would
25 have used -- consulted one for use in mitigation.

Thomas J. Quinn
Redirect examination by Ms. Gregory

1 Q So you would not have used Dr. Batalis during your
2 trial?

3 A I would not have used Dr. Batalis during my trial.

4 Q And why is that again?

5 A Well, first of all, because he was not prepared to
6 testify as to moderate bodily injury, which would still
7 leave me in the position of my client being convicted.

8 Secondly, because the law says -- and I'm sorry. I
9 can't quote the exact words. But under circumstances
10 where, you know, it could cause serious -- I'm sorry --
11 great bodily injury or moderate bodily injury. And I
12 believe that most reasonable jurors would have found that a
13 person backing their car into a trooper's car. Could
14 reasonably have found great bodily injury would occur.

15 Q Okay. And the information that he gave, that
16 Mr. Harbuck gave, to Dr. Maddox is dramatically different
17 than the story he testified to at trial like the meth use
18 and things like that. Would you have used Dr. Maddox for
19 your trial?

20 A No. If this was the report that had been presented to
21 me by Dr. Maddox prior to trial -- well, I have no idea
22 what would have happened.

23 I'd have been in the position of questioning whether
24 we were going to support a perjury. I would not have used
25 Dr. Maddox because she was going to contradict my client.

Thomas J. Quinn
Redirect examination by Ms. Gregory

1 We would have had to change trial strategy or try to reopen
2 plea negotiations.

3 Q Do you think he would have been more likely to be
4 convicted of attempted murder under Dr. Maddox' report?

5 A I'll say yes only because I have no idea what the
6 defense would have been.

7 I don't know. That's so speculative, but it would
8 have taken away from the issue of intent. And I do think
9 that's part of why the jury -- they may have considered the
10 injuries also. But I think intent was what caused the jury
11 to reduce the charges.

12 Q And you knew about the P.T.S.D.

13 A I did.

14 Q And you presented this in mitigation and in your case
15 in chief, isn't that correct?

16 A I presented it in my case in chief and the judge was
17 aware of it in mitigation.

18 Q And regarding the solicitor's closing regarding
19 inferences of drug use, every law enforcement officer that
20 testified there testified that they believed he was on
21 something. There was a lot of testimony from the law
22 enforcement witnesses indicating drug use from Mr. Harbuck,
23 isn't that correct?

24 A That's correct.

25 Q So the inferences the solicitor made about drug use

1 was basically summing up what they believed their evidence
2 showed, is that correct?

3 A To an extent. It was all speculative. It probably
4 was objectionable, but it wasn't hurting me.

5 Q It was -- and it was speculative because he was too
6 violent to get blood from at the hospital that evening,
7 right?

8 A You know, maybe the -- maybe the solicitor could have
9 argued that to the Court and gotten the Court to allow him
10 to continue, but there was no evidence in the record of
11 drug use that I remember.

12 Q And why didn't that kind of testimony -- or why didn't
13 those kind of statements hurt you?

14 A Because they weren't paying a bit of attention to the
15 solicitor in closing argument.

16 Q And going back to Dr. Maddox. In your report if you
17 had used her report you would have had to have confronted
18 the involuntary intoxication and the drug use, isn't that
19 correct?

20 A That's correct.

21 Q And he maintained for all of the trial that he had
22 only Red Bull and cigarettes, is that right?

23 A I believe that was his testimony.

24 Q And that would have been extremely damaging for the
25 jury to hear based on your trial strategy, is that correct?

Thomas J. Quinn
Recross-examination by Mr. Phillips

1 A Right. The voluntary intoxication would have
2 nullified our trial strategy.

3 Q And it would have not helped in mitigation of his
4 offenses either, correct?

5 A I don't believe most jurors -- I'm sorry -- most
6 judges would think being on a methamphetamine binge would
7 be helpful for sentencing.

8 MS. GREGORY: No further questions, Your Honor.

9 THE COURT: All right. Recross based upon that
10 redirect?

11 MR. PHILLIPS: Yes, Your Honor.

12 RECROSS-EXAMINATION

13 BY MR. PHILLIPS

14 Q On redirect you went specifically to great bodily
15 injury and that you didn't believe that the -- Dr. Batalis'
16 testimony would have been relevant because he wouldn't have
17 been able to testify regarding model -- moderate bodily
18 injury.

19 He did testify today that it was his expert opinion
20 with medical -- a degree of medical certainty that it didn't
21 rise to a level of great bodily injury and that it would --
22 that the actions would not have likely produced death or
23 great bodily injury, is that correct. I mean, if --

24 A I was present during his testimony. If he testified,
25 then I don't believe --

1 Q You heard that testimony.

2 A I may have.

3 Q Okay. Had that testimony been presented -- and
4 Mr. Harbuck was convicted of assault and battery of a high
5 and aggravated nature.

6 A I was there. I know.

7 Q And that's the elements of that offense.

8 A It is.

9 Q And if that testimony was presented there's a
10 reasonable possibility that a jury could have convicted him
11 of assault and battery, say, second degree where you have
12 the moderate-bodily-injury standard.

13 A Or first degree. I mean, that's -- it's a
14 possibility.

15 Q And first degree has the great-bodily-injury standard
16 as well. So it would have challenged. That testimony
17 would have challenged the potential conviction of assault
18 and battery first degree as well.

19 A It would have.

20 Q So it would have been relevant and necessary to
21 present that information because it could have been
22 determinative or helpful to the jury in making a decision
23 in the outcome of the case.

24 A Could have.

25 Q And it could have ultimately resulted in the

Thomas J. Quinn
Recross-examination by Mr. Phillips

1 sentencing exposure being reduced significantly, the
2 difference between assault and battery of a high and
3 aggravated nature and assault and battery second degree.
4 would you agree?

5 A I agree.

6 Q And then as far as Dr. Maddox is concerned, I
7 understand that you said you wouldn't present it as it
8 stands today, but you admitted on cross-examination that
9 you had not consulted with an expert prior to trial, is
10 that...

11 A That's correct.

12 Q And had you consulted with the expert prior to trial
13 and you had this report and you had fleshed out all of this
14 information, you say it would have changed the nature of
15 the case?

16 A If I had had a report discussing P.T.S.D. and that
17 Mr. Harbuck was suffering from that, yes, I think it would
18 have affected the jury.

19 Q And the testimony that would have been presented, the
20 trial strategy and defense that would have -- that was
21 presented would have been different because it's
22 inconsistent with that. Is that fair to say?

23 A If I had Dr. Maddox's report, that's right. It would
24 have. I don't know what the trial strategy would have
25 been.

Thomas J. Quinn
Recross-examination by Mr. Phillips

1 Q But it certainly would have changed the nature of how
2 you presented the case.

3 A Yes.

4 Q And it certainly would have been possibly helpful
5 during mitigation if under -- however the case would have
6 been different when that expert would have either helped
7 you prepare for trial or at least during the sentencing
8 phase that the jury -- or excuse me -- the judge could have
9 taken that into consideration by having the expert present
10 that testimony.

11 A No. I don't agree with that, that Dr. Maddox's
12 report, which makes out a voluntary intoxication case,
13 would not have been helpful during trial and would not have
14 been helpful during mitigation.

15 Q But you would agree, because you did on
16 cross-examination as far as the P.T.S.D., if we isolate the
17 P.T.S.D. part of it, and if you had an expert that was
18 solely focused on that, that would have been helpful not
19 only to a jury but a judge during the sentencing phase?

20 A It would have.

21 Q And as to the discussion of the hospital records, you
22 admitted on cross-examination that you did not obtain all
23 of the records, medical records and mental health records,
24 in this case, specifically those records that was right
25 after the hospital -- right after the incident in the

1 hospital visit.

2 A That's correct.

3 Q And that you did not consult or think during your
4 trial strategy or preparation for trial to consult with any
5 expert on any of the issues that were discussed during this
6 hearing?

7 A That's correct.

8 MR. PHILLIPS: No further questions, Your Honor.

9 THE COURT: Thank you, sir. You can step down.

10 The state can call its next witness.

11 MS. GREGORY: Your Honor, we have no further
12 witnesses.

13 THE COURT: The state rests.

14 Anything in reply, Mr. Phillips?

15 MR. PHILLIPS: No reply, Your Honor, and would ask the
16 Court since we are submitting the briefs, do you prefer
17 that we put some argument on the record today.

18 THE COURT: I don't need argument. I know exactly
19 what you want and why.

20 MR. PHILLIPS: Yes, sir.

21 THE COURT: I mean -- you know, I'm going to allow you
22 all to submit additional items to me in the next two weeks.

23 I've been able during the testimony to read the
24 applicable parts of the portions of the transcript that we
25 need to, and of course I've perused your amended

1 application in detail, as well as the state's return. So I
2 understand where both sides are.

3 So, you know, I don't see the necessity of any closing
4 argument, but I do want y'all to submit any additional
5 submissions to me that you feel I need. And, again, I'm
6 not requiring any formal brief format. If you want to do
7 that, that's on you.

8 Okay. Anything else?

9 MR. PHILLIPS: None, Your Honor.

10 THE COURT: All right. Anything else?

11 MS. GREGORY: No, sir.

12 THE COURT: All right. That concludes the hearing in
13 this case.

14 Good luck to you, Mr. Harbuck.

15 What's going to happen is, as you heard, I'm not going
16 to make any decision today because I'm going to give both
17 lawyers an opportunity to get more information to me. And
18 after -- see, I've got to read through all that again and
19 study it. And I took notes about what happened here today.

20 Eventually, I'll make a decision, and, again, like I
21 told you, I don't like to sit on these things too long.

22 Once I make a decision I will communicate through my
23 law clerk with the two lawyers who will then -- your lawyer
24 will be in touch with you and let you know what the outcome
25 is.

1 THE APPLICANT: Okay. Thank you.

2 THE COURT: All right. That concludes the hearing in
3 this case. Thank you very much.

4 (Letter dated April 20, 2018, from Dr. Batalis marked
5 Applicant's Exhibit No. 7.)

6 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Laurens County, South Carolina, on the 1st day of March 2019.

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

June 18, 2019

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

Nicholas Ike Batalis, M.D.

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Charleston, SC 29425

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Fax: 843-792-3537

Citizenship and/or Visa Information: United States Citizen

Education

Indiana University 8/1999-5/2003 M.D./May, 2003 Medicine
School of Medicine
Indianapolis, IN

Butler University 8/1995-5/1999 B.S./May, 1999 Biology
Indianapolis, IN

Residencies or Post Doctoral:

Forensic Pathology 7/2007 – 6/2008
UT-Southwestern Medical Center
Southwest Institute of Forensic Sciences
Dallas, TX

Anatomic and Clinical Pathology 7/2003 – 6/2007
Medical University of South Carolina
Charleston, SC

Applicant's
Exhibit
1

Specialty/Board Certification:

American Board of Pathology

Forensic Pathology September, 2008
Anatomic and Clinical Pathology August, 2007

Licensure:

United States Virgin Islands: 1677 (inactive) November 5, 2010
National Provider Identifier (NPI): 1780774851 October 12, 2006
South Carolina License: 26179 July 1, 2003

Faculty Appointments:

Years	Rank	Institution	Department
1/2018 - present	Professor	MUSC	Pathology and Laboratory Medicine
1/2013 - present	Associate Professor	MUSC	Pathology and Laboratory Medicine
7/2009 - 12/2012	Assistant Professor	MUSC	Pathology and Laboratory Medicine
7/2008 - 6/2009	Instructor	MUSC	Pathology and Laboratory Medicine

Other Employment:

Acting United States Virgin Islands Medical Examiner, September 2010 – February 2011

Administrative Appointments:

Years	Position	Institution	Department
2017 – present	Forensic Pathology Fellowship	MUSC	Pathology and Lab
	Program Director		Medicine
2014 – present	Pathology Residency	MUSC	Pathology and Lab
	Program Director		Medicine
2010 - 2017	Honor Council Faculty Advisor	MUSC	College of Medicine
2009 – 2017	Clerkship Director, Autopsy and	MUSC	Pathology and Lab
	Forensic Pathology Elective/Selective		Medicine
2008 -2014	Assoc. Residency Program Director	MUSC	Pathology and Lab Medicine

Hospital Appointments/Privileges:

Years	Active/Inactive	Institution
2008-present	Active	Medical University Hospital

Membership in professional/scientific societies:**National Societies**

American Academy of Forensic Sciences, 2006 – present
 National Association of Medical Examiners, 2005 – present
 American Society for Clinical Pathology, 2003 – 2017
 College of American Pathologists, 2003 – present
 United States and Canadian Academy of Pathologists, 2003 – 2007, 2010 - 2014

Local Societies

South Carolina Society of Pathologists, 2003 – present
 Nominating Committee, 2011 – 2012
 Executive Committee, Member-at-Large, 2009 – 2012

Editorial Positions:

Associate Editor-In-Chief, Academic Forensic Pathology, Keith Pinckard, Editor-In-Chief, June 2016 - present

Editorial Board Member, Journal of Forensic Sciences, Michael Peat, Ph.D, Lead Editor; March 2016 - present

Guest Editor, Academic Forensic Pathology, Keith Pinckard, Editor-In-Chief; Volume 5, Issue 1, March 2015

Invited Reviewer, Cardiovascular Pathology, L. Maximilian Buja, MD, Editor-in-Chief; April 2012

Table of Contents and Article Reviewer, eMedicine, Sara Park, Senior Editor; March 2011 – 2012

Ad Hoc Reviewer, Journal of Forensic Sciences, Michael Peat, Ph.D, Lead Editor;
2011 – 2016

Inaugural Editorial Board Member, Academic Forensic Pathology; Keith Pinckard MD,
PhD, Editor in Chief; January 2011 – 2016

Invited Reviewer, Health Research Council of New Zealand 2011 Emerging Researcher
Grant Application, Dr. Deming Gong, Project Manager; January 2011

Invited Reviewer, Lab Tests Online (<http://www.labtestsonline.org>), Michael T Kafka,
M.D, Section Editor; February 2010

Ad Hoc Reviewer, American Society of Clinical Pathology, Check Sample Series,
Forensic Pathology section; Gregory G. Davis, MD, Lead Editor; 2009 - present

Invited Reviewer, Clinical Anatomy, Stephen W. Carmichael, Ph.D., D.Sc., Lead Editor;
August 2009

Invited Reviewer, International Journal of Infectious Disease, William Cameron, MD,
Lead Editor; June 2007

Awards, Honors, Membership in Honorary Societies:

Faculty

- Faculty Excellence Award- Nominee, Nominated by the 2nd year medical school class, 2018
- Faculty Excellence Award- Winner, Block 9, Nominated by the 2nd year medical school class, December 2017
- Golden Apple Award- Nominee, Nominated by the 2nd year medical school class, 2017
- Faculty Excellence Award- Nominee, Nominated by the 2nd year medical school class, 2017
- Faculty Excellence Award- Winner, Block 9, Nominated by the 2nd year medical school class, January 2017
- Golden Apple Award- Winner, nominated by the 2nd year medical school class, 2016
- Faculty Excellence Award- Block 2, Nominated by the 3rd and 4th year medical school classes, September 2016
- Faculty Excellence Award- Block 10, Nominated by the 2nd year medical school class, February 2016
- Faculty Excellence Award- Block 9, Nominated by the 2nd year medical school class, January 2016
- Golden Apple Award- Nominee, nominated by the 2nd year medical school class, 2015
- Faculty Excellence Award- Block 3, Nominated by the 2nd year medical school class, December 2014

Golden Apple Award- Nominee, nominated by the 3rd and 4th year medical school classes, 2014

Faculty Excellence Award- Block 1, Nominated by 3rd and 4th year medical school classes, August 2014

Faculty Excellence Award- Runner-up, Nominated by the 2nd year medical school class, 2014

Teacher of the Block- Block 4, 2014- Nominated by the 2nd year medical school class, February 2014

Teacher of the Block- Block 3, 2013- Nominated by the 2nd year medical school class, December 2013

Named one of the "Top 20 Forensic Pathology Professors Online" by ForensicColleges.com: <http://www.forensicscolleges.com/blog/profs/20-top-forensic-pathology-professors>, November 2013

Faculty Excellence Award- Runner-up, Nominated by the 2nd year medical school class, 2013

Teacher of the Block- Block 4, 2013- Nominated by the 2nd year medical school class, February 2013

Teacher of the Block- Block 3, 2012- Nominated by the 2nd year medical school class, December 2012

Golden Apple Award- Nominee, nominated by the 2nd year medical school class, 2012

Faculty Excellence Award- Nominee, Nominated by the 2nd year medical school class, 2012

Teacher of the Month- Nominated by the 2nd year medical school class, January 2012

Teacher of the Month- Nominated by the 2nd year medical school class, December 2011

Faculty Excellence Award- Teacher of the Year, awarded by the 2nd year medical school class, 2011

Teacher of the Month- Nominated by the 2nd year medical school class, January 2011

Golden Apple Award- Winner, nominated by the 2nd year medical school class, 2010

Faculty Excellence Award- Nominee, nominated by the 2nd year medical school class, 2010

Golden Apple Award- Nominee, nominated by the 2nd year medical school class, 2009

Faculty Excellence Award- Teacher of the Year, awarded by the 2nd year medical school class, 2009

Residency

Alpha Omega Alpha, Housestaff membership, Medical University of South Carolina, 2007
 Chief Resident, Anatomic and Clinical Pathology, Medical University of South Carolina, 2006-2007
 Honorable Mention, Best Resident Paper, National Association Of Medical Examiners annual meeting, Los Angeles, CA, October 2005
 Honorable Mention, Pathology/Biology Best Resident Paper American Academy of Forensic Sciences annual meeting, Dallas, TX, February 2004

Medical School

South Bend Center Student Class Representative, 1999-2001

Undergraduate

National Football Foundation Scholar Athlete, 1999
 NCAA Division I Football Academic All-American, First Team, 1999

Academic Committee Activities:**National**

American Board of Pathology, Maintenance of Certification Advisory Committee, 2016 -- present
 Accreditation Council for Graduate Medical Education
 Forensic Pathology Milestones Working Group, 2013 – 2014
 American Society for Clinical Pathology
 Pathologist Recertification Individualized Self-Assessment Examination (PRISE) Committee, 2010 – 2016
 College of American Pathologists
 Membership Engagement Committee, 2015 - present
 Forensic Pathology Resource Committee, 2006 – 2013
 Resident's Forum Delegate, 2006 – 2007
 Resident's Forum Credentials Committee, 2006
 Resident's Forum Nominating Committee, 2006
 National Association of Medical Examiners
 Self-Assessment Modules (SAMS) Committee, 2013 - present
 Scientific Presentation Awards Committee, 2010 – present
 Education/Program Subcommittee, 2006 – 2011, 2016 - present
 United States and Canadian Academy of Pathologists
 USCAP Ambassador, 2010 – 2014; Annual Meeting Volunteer, 2004

University

Medical University of South Carolina

Student Progress Committee, 2018 - present

Faculty Senate, Alternate, 2013 – 2014, 2015 – 2016

Communications & education subcommittee, 2015 - 2016

Clinical affairs subcommittee, 2013 – 2014

College of Medicine, Academy of Medical Educators Task Force, 2012 – present

College of Medicine, Intern 101 Steering Committee, 2012 – 2013

Education Technology Training-Apple Tree Committee, 2011 – present

Innovations in Teaching and Learning Grants selection committee, 2013

College of Medicine, LCME Basic Sciences Review Committee, 2011 – 2012

College of Medicine, Admission Interviewer, 2010 – present

Peer Review Committee, 2010 – 2011

College of Medicine, Year 2 Curriculum Planning and Evaluation Committee, 2009 – present

Pathology Student Interest Group, faculty advisor, 2009 – 2016

Graduate Medical Education Committee, 2008 – present

Department

Medical University of South Carolina

Department of Pathology and Laboratory Medicine

Residency Program Clinical Competency Committee, 2014 - present

Appointment, Promotions, and Tenure Committee, 2011 – present

Webpage OverSite Committee, 2011 – 2014

Diversity Committee, 2010 – 2011, 2014 – present

Quality and Safety Committee, 2010 – present

Peer Review Committee, 2010 – present

Residency Program Evaluation Committee, 2008 – present

Resident Selection Committee, 2008 – present

Major Teaching Responsibilities:**Undergraduate Medical Education**

- Autopsy Service, day to day one-on-one and small group teaching of medical students

-Co-Theme Leader for altered structure and function theme; 2nd year medical school curriculum, 2010 – present

- Block Leader for cardiovascular, pulmonary and renal block; 2nd year medical school curriculum, 2017

-Co-Block Leader for cardiovascular, pulmonary and renal block; 2nd year medical school curriculum, 2010 - 2016

-Provide the lectures on dyslipidemias, cardiovascular, endocrine, and pediatric pathology for the altered structure and function course; 2nd year medical school curriculum

-Provided lectures on cardiovascular pathology and forensic dentistry for the 2nd year dental pathology course (2008-2013)

-Provide lectures on courtroom testimony and death certification to fourth year medical students as part of the "Internship 101" series

-Serve as faculty advisor for medical students (graduation year)

Emily Hutson – 2019

Anthony “Jake” Emmanuel, Daniel “Chad” Butler – 2017

Rachel Jester – 2016; Alisa Tykal – 2015; Elisheva Frankel – 2014;

Yekaterina Eichel – 2013; Jessica Forcucci, Grace Dukes – 2012;

Rebecca Harris- 2011

Graduate Medical Education

-As residency program director, I am responsible for overseeing our four year anatomical and clinical pathology training program and its 21 trainees. Responsibilities include maintaining accreditation, monitoring resident progress, recruiting new trainees, faculty development, and ensuring a productive and safe educational environment

-As fellowship program director, I am responsible for overseeing our one year forensic pathology fellowship. Responsibilities include maintaining accreditation, recruiting trainees, monitoring trainee progress, and ensuring a productive and safe educational environment

-Co-Director for monthly gross pathology conference for residents and rotating medical students.

-Participate in the forensic and medical autopsy didactic series for residents and rotating medical students.

-Autopsy Service, day to day one-on-one and small group teaching of residents and fellows.

-Served as faculty advisor for pathology residents (graduation year)

Yekaterina Eichel – 2017; Austin Turner – 2016; Roger Stone – 2012

Major Clinical Interests and Responsibilities:

Forensic and medical autopsy pathology: Perform autopsies that aid coroners and physicians in death certification; provide important public health information via identification of emerging diseases, drugs and other trends; play a critical role in the criminal justice system; and provide surviving family members with information regarding disease processes identified at autopsy

Invited Lectures

1. “Writing application of knowledge questions: Clinical vignettes”. Medical University of South Carolina, Academy of Medical Educators, Test Question Writing Workshop, June 2017.
2. “Residents as teachers” Guest Speaker, Medical University of South Carolina, Department of Anesthesia and Perioperative Medicine, Grand Rounds, April 2014.
3. “Introduction of the proposed ACGME milestones for Forensic Pathology” Guest Speaker, National Association of Medical Examiners, Forensic Pathology Training Subcommittee Meeting

4. "Introduction to forensic pathology," Guest Speaker, Porter Gaud School, Charleston, SC; November 2012, April 2013, November 2013, October 2017.
5. "Investigating sudden deaths: cause of death scenarios that mimic one another." RTI International, Forensic Science Education Series, November 2011. Online module available at: <http://www.forensiced.org>.
6. "Research opportunities in pathology," Guest Speaker, Medical University of South Carolina Pathology Student Interest Group (Pathos), February 2010
7. "Introduction to forensic pathology," Guest Speaker, Charleston Dental Study Club, Charleston, SC, November 2009
8. "Introduction to forensic pathology," Guest Speaker, Woodland High School, Dorchester, SC, October 2009
9. "A day in the life of a medical examiner," Guest Speaker, Medical University of South Carolina Pathology Student Interest Group (Pathos), September 2009
10. "Introduction to forensic pathology," Guest Speaker, Science Teacher Access to Resources at Southwestern (STARS) program, University of Texas Southwestern, Dallas, TX, 2007-2008
11. "Introduction to forensic pathology," Guest Speaker, The Governor's School of South Carolina, College of Charleston, Charleston, SC, Summer 2006

Platform Presentations

1. Cross AW and Batalis NI. Pathology Internship 101. Presented at the Association of Pathology Chairs 2016 Annual Meeting. Rancho Bernardo, CA, July 2016.
2. Baker TG, Schandl CS, Presnell SE, Madory JE, and Batalis NI. Use of an Automated Nested Multiplex Respiratory Pathogen PCR Panel Post -Mortem in the Pediatric Forensic Setting. Presented at the 68th American Academy of Forensic Sciences Annual Meeting. Las Vegas, NV, February 2016.
3. Madory JE and Batalis NI. PIER - Pathology Informatics Essentials for Residents. Southeastern Association of Pathology Chairs and Administrators Regional Conference. Charleston, SC, October, 2015.
4. Knight LD, Batalis NI, Boggs CL, Hess G, Martin A, Pandey M, Shelly M, and Wiens AL. A forensic pathologist panel on Maintenance of Certification (MOC): Point and counterpoint. Presented at the 49th annual meeting of the National Association of Medical Examiners, Charlotte, NC, October 2015.

5. Knight LD, **Batalis NI**, Hess GL. Maintenance of Certification (MOC) for the Forensic Pathologist. Presented at the 48th annual meeting of the National Association of Medical Examiners, Portland, OR, September, 2014.
6. **Batalis NI**, Presnell SE, Schandl Ca. Revisiting the 5-day turnaround time for medical autopsies. Presented at the Association of Pathology Chairs annual meeting, Monterey, CA, July 2011.
7. Goldin T and **Batalis NI**. Delayed Postpartum death due to sickle cell trait: A Case Report. Presented at the 43rd annual meeting of the National Association of Medical Examiners, San Francisco, CA, September 2009.
8. **Batalis NI**, Caplan MJ, Schandl CA. Acute deaths in non-pregnant adults due to invasive streptococcal infections. Presented at the 39th annual meeting of the National Association of Medical Examiners, Los Angeles, CA, October 2005.
9. **Batalis NI** and Collins KA. Adolescent death: A 15-Year retrospective study. Presented at the 57th annual meeting of the American Academy of Forensic Sciences, New Orleans, LA, February 2005.
10. **Batalis NI**, Harley RA, and Collins KA. Unusual cases of ethanol overdose: Deaths following treatment for Hypertrophic cardiomyopathy. Presented at the 38th annual meeting of the National Association of Medical Examiners, Nashville, TN, September 2004.
11. **Batalis N** and Prahlow JA. Accidental insulin overdose. Presented at the 56th annual meeting of the American Academy of Forensic Sciences, Dallas, TX, February 2004.
12. **Batalis N**, Galup L, Zaki SR, Prahlow JA. West Nile virus encephalitis. Presented at the 37th annual meeting of the National Association of Medical Examiners, San Jose, CA, September 2003.

Poster Presentations

1. Turnbull T, Houston P, and **Batalis NI**. A fatal case of acute necrotizing pancreatitis in sickle cell-beta thalassemia. Presented at the 2018 Southeastern Surgical Congress, Tampa, FL, February 2018.
2. Page TY and **Batalis NI**. The Sensitivity of Pediatric Organ Donation: Ways to Decrease the Decline Rate From Coroners/Medical Examiners. Presented at the 70th American Academy of Forensic Sciences Annual Meeting, Seattle, WA, February 2018.
3. Butler DC and **Batalis NI**. Opioid Associated Deaths in South Carolina: A Retrospective Review. Presented at the 51st annual meeting of the National Association of Medical Examiners, Scottsdale, AZ, October 2017.

4. Butler DC, Emanuel AJ, and **Batalis N**. The interplay between diabetes and pancreatitis: two case reports of sudden, natural deaths and a review of the literature. Presented at the 22nd Annual Diabetes Fall Symposium for Primary Health Care Professionals, North Charleston, SC, September 2016.
5. Caudell AM and **Batalis NI**. Disseminated Adenovirus in Renal Transplant Recipients: Report of a Fatal Case and Review of the Literature. Presented at the 2016 American Society for Clinical Pathology Annual Meeting, Las Vegas, NV, September 2016.
6. Cross AW and **Batalis NI**. Pathology Internship 101. Presented at the Association of Pathology Chairs 2016 Annual Meeting, Rancho Bernardo, CA, July 2016.
7. Cuoco FA, **Batalis NI**, Sturdivant JL, Wharton JM, and Gold MR. Delayed formation of an atrial bronchial fistula following cryoballoon ablation for atrial fibrillation. Presented at the 2016 Heart Rhythm Society Annual Meeting, San Francisco, CA, May 2016.
8. Forcucci JA, Hyer JM, Lewin DN, and **Batalis NI**. Resident In-Service Exam Review Series. Presented at the 2016 Annual Meeting of the United States and Canadian Academy of Pathology, Seattle, WA, March, 2016.
9. Forcucci JA, Soike TM, Madory JE, Lewin DN, and **Batalis NI**. Resident Incentive Program: Engaging Pathology Residents in Quality Improvement Projects Through Financial Incentives. Presented at the 2016 Annual Meeting of the United States and Canadian Academy of Pathology, Seattle, WA, March, 2016.
10. Brown TT, **Batalis NI**, McClain JL, Corey T, Collins KA, Jentzen JM, and Prahlow JA. A Retrospective Study of the Histologic and Clinical Correlation in the Differential of Accidental and Homicidal Asphyxia in Children. Presented at the 68th American Academy of Forensic Sciences Annual Meeting, Las Vegas, NV, February 2016.
11. Eichel Y and **Batalis NI**. Acquired Angioedema: A Case of an Unexpected Death and Review of Literature. Presented at the 48th annual meeting of the National Association of Medical Examiners, Portland, OR, September, 2014.
12. Forcucci JA, Damron A, and **Batalis NI**. Examination of human remains encased in concrete: A case report and review of the literature. Presented at the 47th annual meeting of the National Association of Medical Examiners, Milwaukee, WI, October 2013.
13. Hamilton HH, Caplan MJ, **Batalis NI**, Presnell SE, Schandl CA, and Tormos LM. The importance of microscopic examination of the lungs in decedents with sustained central intravascular catheters. Presented at the 65th American Academy of Forensic Sciences Annual Meeting, Washington, DC, February 2013.
14. Love L, McNulty S, Caton C, Charity P, Parsons C, and **Batalis N**. Intravascular lymphoma presenting as fever of unknown origin. Presented at the Society of General Internal Medicine 2011 Annual Meeting, Phoenix, AZ, May 2011.

15. Bruner ET and **Batalis NI**. Diffuse Bronchogenic Adenocarcinoma: A rare presentation of primary lung cancer. Presented at the College of American Pathologists 2010 Annual meeting. Chicago, IL, September 2010.
16. **Batalis NI**, Marcus BJ, Papadea CN, and Collins KA. The Role of Postmortem Cardiac Enzymes in the Diagnosis of Acute Cardiac Deaths. Presented at the 59th American Academy of Forensic Sciences Annual Meeting, San Antonio, TX, February 2007.
17. **Batalis NI**, Harley RA, Schandl CA. Verapamil toxicity: An unusual case report and a review of the literature. Presented at the 39th annual meeting of the National Association of Medical Examiners, Los Angeles, CA, October 2005.

Extramural Professional Activities:

Publications:

Abstracts:

1. Butler DC and **Batalis NI**. Opioid Associated Deaths in South Carolina: A Retrospective Review. *Academic Forensic Pathology*. 2017;7(7S): S88.
2. Caudell AM, and **Batalis NI**. Disseminated Adenovirus in Renal Transplant Recipients: Report of a Fatal Case and Review of the Literature. *American Journal of Clinical Pathology* 2016;146(Suppl 1): 68.
3. Knight LD, **Batalis NI**, Boggs CL, Hess GL, et. al. A Forensic Pathologist Panel on Maintenance of Certification (MOC): Point and Counterpoint. *Academic Forensic Pathology*. 2015;5(5S):S43.
4. Knight LD, **Batalis NI**, Hess GL. Maintenance of Certification (MOC) for the Forensic Pathologist. *Academic Forensic Pathology*. 2014;4(4S):S34.
5. Eichel Y and **Batalis NI**. Acquired Angioedema: A Case of an Unexpected Death and Review of Literature. *Academic Forensic Pathology*. 2014;4(4S):S63.
6. Forcucci JA, Damron A, and **Batalis NI**. Examination of human remains encased in concrete: A case report and review of the literature. *Academic Forensic Pathology* 2013;3(3S):S85.
7. Stone RW and **Batalis NI**. Hypereosinophilic Syndrome with Loeffler's Endocarditis: Diagnostic Criteria, Characteristic Findings, and Appropriate Laboratory Work Up. American Society for Clinical Pathology Check Sample. *American Journal of Clinical Pathology* 2011;135(2): 317-8.
8. Bruner ET and **Batalis NI**. Diffuse Bronchogenic Adenocarcinoma: A rare presentation of primary lung cancer. *Archives of Pathology and Laboratory Medicine*. 2010;134(9): 1308.

Peer Reviewed Journal Articles: Published or accepted for publication in final form

1. Butler DC and Batalis NI. Opioid associated deaths in South Carolina, 2013-2016: A retrospective review. *Academic Forensic Pathology*. 2017 Nov; 7(4):640-648.
2. Brown TT, Batalis NI, McClain JL, Corey T, et al. A retrospective study of the investigation of homicidal childhood asphyxia deaths. *Journal of Forensic Sciences*. 2017 Oct 16. doi: 10.1111/1556-4029.13666. [Epub ahead of print], PMID: 29044506.
3. LeBel DP, Wolff DJ, Batalis NI, Ellingham T, et al. First report of prenatal ascertainment of a fetus with homozygous loss of the SOX10 gene and phenotypic correlation by autopsy examination. *Pediatric and Developmental Pathology*. 2017 Dec 7. doi: 10.1177/1093526617744714. [Epub ahead of print], PMID: 29216801.
4. Butler DC and Batalis NI. Acute esophageal necrosis. *Academic Forensic Pathology*. 2017 Jun; 7(2):312-316.
5. Baker TG, Schandl CA, Presnell SE, Madory JE, Nolte FS, and Batalis NI. Use of an Automated Nested Multiplex Respiratory Pathogen PCR Panel Post-Mortem in the Pediatric Forensic Setting. *Journal of Forensic Sciences*. 2017 Sep;62(5):1223-1228. doi:10.1111/1556-4029.13415, PMID: 28120330
6. Forcucci JA, Hyer JM, Bruner ET, Lewin DN, and Batalis NI. Success in Implementation of a Resident In-Service Exam Review Series. *American Journal of Clinical Pathology*. Am J Clin Pathol. 2017 Apr 1;147(4):370-373. doi: 10.1093/ajcp/aqx013. PMID: 28340222
7. Butler DC, Emanuel AJ, and Batalis N. The interplay between diabetes and pancreatitis: two case reports of sudden, natural deaths and a review of the literature. *Journal of Forensic Sciences*. 2017 Mar;62(2):519-524 doi: 10.1111/1556-4029.13268. PMID: 27864960.
8. Caudell AM and Batalis NI. Fatal Disseminated Adenoviral Infection in a Renal Transplant Recipient. *ASCP Case Reports, Forensic Pathology*. Exercise 6 (CSFP1606). November 2016.
9. Knight LD, Batalis NI, Boggs C, Martin A, Pandey M, Shelly M. The Changing Landscape of Maintenance of Certification: History, Value and Evidence Base, and Future Impact on Forensic Pathology. *Academic Forensic Pathology*. 2015;5(4):571-89.
10. Schroeder L, Zyblewski S, Forbus G, Buckley J, Batalis N, Kavarana M. Left ventricular myxoma. *The Journal of Pediatrics*. 2016;168:249-e2. Epub October 2015. PMID: 26477872.
11. Tormos LM, Schandl CA, Batalis NI, and Presnell SE. Five-day turnaround time for hospital medical autopsies: A five-year experience. *Academic Forensic Pathology*. 2015;5(2):233-239.

12. **Batalis NI** and Wassum JA. Coronary artery anomalies: Benign entities or pathologic findings? *Academic Forensic Pathology*. 2015;5(1):10-24.
13. Renker M, Baumann S, Rier J, Ebersberger U, Fuller SR, **Batalis NI**, Schoepf UJ, Chiaramida SA. Imaging coronary artery disease and the myocardial ischemic cascade: clinical principles and scope. *Radiol Clin North Am*. 2015 Mar;53(2):261-269. PMID: 25726992.
14. Hamilton H, **Batalis NI**, Presnell SE, Schandl CA, and Tormos LM. The Importance of microscopic examination of the lungs in decedents with sustained central intravascular catheters: A nine-case series. *Journal of Forensic Sciences*. 2015 Mar;60(2):346-50. PMID: 25399659.
15. Eichel Y and **Batalis NI**. Acquired angioedema: A case of an unexpected death and review of literature. *Academic Forensic Pathology*. 2014;4(3):422-427.
16. Klaybor GL and **Batalis NI**. Disseminated cryptococcosis. *College of American Pathologists, FR Series (Forensic pathology surveys)*, FR14-A02. 2014.
17. **Batalis NI** and Harley RA. Pulmonary embolic disorders. *Academic Forensic Pathology* 2013;3(4):420-434.
18. Toussaint MA and **Batalis NI**. Elder and medical neglect. *College of American Pathologists, FR Series (Forensic pathology surveys)*, Accepted for publication July 2013.
19. Wassum JA and **Batalis NI**. Waterhouse-Friderichsen Syndrome. *Academic Forensic Pathology* 2013;3(3):344-345.
20. Forcucci JA, Damron A, and **Batalis NI**. Examination of human remains encased in concrete: A case report and review of the literature. *Academic Forensic Pathology* 2013;3(3):337-343.
21. Hamilton HH and **Batalis NI**. Usual interstitial pneumonia. *College of American Pathologists, FR Series (Forensic pathology surveys)*, FR13-A6. 2013.
22. Lowe, FJ and **Batalis NI**. Aortic valve stenosis. *College of American Pathologists, FR Series (Forensic pathology surveys)*, FR13-A4. 2013.
23. **Batalis NI**. Beer potomania. *College of American Pathologists, FR Series (Forensic pathology surveys)*, FR12-B10. 2012.
24. Orwat DE and **Batalis NI**. Intravascular large B-cell lymphoma. *Archives of Pathology and Laboratory Medicine* 2012; 136(3): 333-8. PMID: 22372911.

25. Ogden EA and **Batalis NI**. Systemic sarcoidosis with cardiac involvement. American Society for Clinical Pathology Check Sample. FP12-1, 1-11.
26. **Batalis NI**. Acute myeloid leukemia. College of American Pathologists, FR Series (Forensic pathology surveys), FR11-B11. 2011.
27. Orwat DE, Welsh CT, and **Batalis NI**. Neurocutaneous melanosis: A case report and review of the literature. Academic Forensic Pathology 2011;1(2): 228-31.
28. Hilty CH, Koonce JA, Stone RW, Ramos-Duran L, Pyle AL, **Batalis NI**, Hardie AD, and Taylor MH. The role of cardiac MRI in the diagnosis and management of Loeffler's endocarditis: A case report with clinical and pathologic correlation. The Open Cardiovascular Imaging Journal 2010; 2: 10-13.
29. **Batalis NI**, Marcus BJ, Papadea CN, and Collins KA. The role of postmortem cardiac markers in the diagnosis of acute myocardial infarction. Journal of Forensic Sciences. 2010;55(4):1088-91. PMID: 20345772.
30. **Batalis NI** and Sheil AT. Scuba diving fatalities. College of American Pathologists, FR Series (Forensic pathology surveys), FR10-B12. 2010.
31. Stone RW and **Batalis NI**. Hypereosinophilic syndrome with Loeffler's endocarditis: Diagnostic criteria, characteristic findings, and appropriate laboratory work up. American Society for Clinical Pathology Check Sample. FP10-06, 66-75.
32. Spruill LS and **Batalis NI**. Parvovirus B19 Infection: Characteristic placental and autopsy findings in a case of intrauterine fetal demise. Pathology Case Reviews. 15(2):50-54, March/April 2010.
33. **Batalis NI** and Presnell SE. Chronic drug abuse. College of American Pathologists, FR Series (Forensic pathology surveys), FR10-A02. 2010.
34. **Batalis NI**. Dog mauling. College of American Pathologists, FR Series (Forensic pathology surveys), FR10-A06. 2010.
35. **Batalis NI** and Pinckard JK. Shotgun slug wound. College of American Pathologists, FR Series (Forensic pathology surveys), FR09-B11. 2009.
36. **Batalis NI** and Caplan MJ. Neonatal Cytomegalovirus infection. College of American Pathologists, FR Series (Forensic pathology surveys), FR08-A08. 2008.
37. Rittershaus AC and **Batalis NI**. Neonatal Herpes Simplex Virus infection. College of American Pathologists, FR Series (Forensic pathology surveys), FR08-A04. 2008.
38. **Batalis NI**. Systemic amyloidosis. College of American Pathologists, FR Series (Forensic pathology surveys), FR08-A03. 2008.

39. **Batalis NI** and Caplan MJ. Lightning injury. College of American Pathologists, FR Series (Forensic pathology surveys), FR07-B11. 2007.
40. **Batalis NI**, Harley RA, Schandl CA. Verapamil toxicity: An unusual case report and a review of the literature. *American Journal of Forensic Medicine and Pathology* 2007; 28(2): 137-140. PMID: 17525564.
41. **Batalis NI**. Hypertrophic Cardiomyopathy: A Clinical, pathologic and genetic Diagnosis. College of American Pathologists, NewsPath, April 2007.
42. **Batalis NI**, Caplan MJ, Schandl CA. Acute deaths in non-pregnant adults due to invasive streptococcal infections. *American Journal of Forensic Medicine and Pathology* 2007; 28(1): 63-68. PMID: 17325468.
43. **Batalis NI**, Caplan MJ, Schandl CA. Invasive group B Streptococcal infections in adults. *American Society for Clinical Pathology Check Sample* 2006; FP06-9: 115-125.
44. **Batalis NI** and Collins KA. Adolescent death: A 15-year retrospective review. *Journal of Forensic Sciences* 2005;50(6):1444-1449. PMID: 16382843.
45. **Batalis NI**, Harley RA, and Collins KA. Iatrogenic deaths following treatment for hypertrophic obstructive cardiomyopathy: Case reports and an approach to the autopsy and death certification. *American Journal of Forensic Medicine and Pathology* 2005; 26(4): 343-348. PMID: 16304468.
46. **Batalis NI**, Galup L, Zaki SR, Prahlow JA. West Nile virus encephalitis. *American Journal of Forensic Medicine and Pathology* 2005; 26(2): 192-196. PMID: 15894859.
47. **Batalis NI** and Prahlow JA. Thrombotic thrombocytopenic purpura. *American Society for Clinical Pathology Check Sample* 2004; FP04-10: 121-135.
48. **Batalis NI** and Prahlow JA. Accidental insulin overdose. *Journal of Forensic Sciences* 2004; 49(5): 1117-1120. PMID: 15461121.
49. **Batalis N**, Galup L, Zaki SR, Prahlow JA. West Nile virus encephalitis. *American Society for Clinical Pathology Check Sample* 2003; FP03-6: 75-91.

Book Reviews:

1. **Batalis NI**. Review of: *Death and Accident Investigation Protocols*, by Mary Dudley. *Journal of Forensic Sciences* 2014; 59(4): 1167.

Book Chapters:

1. **Batalis NI**. Forensic Autopsy of Blunt Force Trauma. *Medscape Drugs & Diseases*. Updated February 26, 2016. Available at: <http://emedicine.medscape.com/article/1680107-overview>.

PATIENT INFORMATION			
CHS - LINDSEY COUNTY HOSPITAL			
2274 Highway 76, Gaston, SC 29025			
MED. REG. # 200090487			
PATIENT NAME: LINDLER, STEVEN O			
VITAL: N/A			
ACCOM # 1000143894		ADMIT DATE: 09/06/15 TIME: 2058	DISCHG DATE:
BIRTHDATE: [REDACTED]		SERV/LOC: ED	SOC SEC: [REDACTED]
AGE: 42	ROOM/BRD:	PAT STATUS:	DEP ER
SEX: M	ACCOM:	ADM CLERK:	AFREEMAN
FIN CLASS: VC	ADMIT SOURCE: 7 EMERGENCY ROOM		
PHYS DIAG:	REASON: EMS BACK PAIN / BLOOD PRESSURE		
PATIENT INFORMATION			
PATIENT: LINDLER STEVEN O		MARITAL ST: M-MARRIED	
Addr: [REDACTED]		RELIGION:	
EM Faphe: [REDACTED]			
UK Phone: [REDACTED]			
PATIENT INFORMATION			
PRIMARY CARE PHYS:		FAMILY PHYS:	
ADMIT PHYSICIAN:		OTHER PHYS:	
ATTENDING/ER PHYS: Jittin Nalji, DO			
CONTACT INFORMATION			
NEXT OF KIN: LINDLER REBECCA		PERSON TO NOTIFY: LINDLER REBECCA	
NOK ADDRESS: [REDACTED]		PERSON NOTIFY ADD: [REDACTED]	
NOK PHONE #: [REDACTED]		PERSON NOTIFY PH: [REDACTED]	
NOK WK PH #: [REDACTED]		PERSON NOK WK PH: [REDACTED]	
EMPLOYMENT INFORMATION			
EMPLOYER: SC Highway Patrol		OCCUPATION:	
ADDRESS: P. O. Box 750		EMP PHONE #: 864-984-7632	
Laurens, SC 29360			
GUARANTEE INFORMATION			
GUARANTOR NAME: LINDLER STEVEN O		GUAR EMPLOYER: SC Highway Patrol	
GUAR ADDRESS: [REDACTED]		GUAR EMP PH: [REDACTED]	
GUAR PHONE NO: [REDACTED]		RELATIONSHIP: IS SELF / SAME AS PATIENT	
		GUARANTOR SS: [REDACTED]	
INSURANCE			
1 S.C. STATE ACCIDENT		30041553877342	
P. O. BOX 102180 COLUMBIA SC 29221-5000		LINDLER STEVEN O	
803-895-5800			
2 BCBS PPC		ZC2051426421250	
P. O. Box 100300 Columbia, SC 29202		LINDLER STEVEN O	
803-788-3860			
ADVANCE DIRECTIVES			
DO YOU HAVE A LIVING WILL?		LOCATION OF THE WILL:	
HAVE YOU GIVEN ANYONE MEDICAL POWER OF ATTORNEY?		IF NO, WAS A PAMPHLET GIVEN:	
IF YES, NAME:			
DO YOU HAVE A CPR DIRECTIVE?			
COMMENT:			

Applicant's
Exhibit

LINDLER, STEVEN O



Ed
M000908687
LH0004149974
Adm 08/06/2015
MOL/MDH/JIT/TNT

General Instructions

Greenville Health System Laurens County Memorial Hospital
Emergency Department
22725 Highway 76 East
Clinton, SC 29325
864-833-8111

Patient: LINDLER, STEVEN O

MRN#: M000908687 Visit ID#: LH0004149974

DOB: [REDACTED] 09/06/2015 20:58

Thank you for visiting the Greenville Health System Laurens County Memorial Hospital Emergency Department.
You have been evaluated today by Tozzi, Jerett, MD for the following condition(s):

Acute traumatic lumbar back pain associated with muscle strain.
Motor vehicle accident involving a vehicle and another vehicle. Car involved. The patient was the driver of the car.
Compression fractures T11, T12--age of injury not known.

178/113
93

INSTRUCTIONS

Apply ice. No strenuous activity. Do not work today, tomorrow.
(Has pain meds that Dr. Stephens has prescribed for back pain.)

Warnings: GENERAL WARNINGS: Return or contact your physician immediately if your condition worsens or changes unexpectedly, if not improving as expected, or if other problems arise.

Follow-up:

Follow up with your doctor Tuesday. Call for the next available appointment.

Understanding of the discharge instructions verbalized by patient.

You have been given the following additional information:

Mvc, General Precautions
Back Pain (Acute Or Chronic)

I have received the following medication _____
a take home pack _____

mg. # _____ in the form of _____

Rebecca J. Smith
Patient/Guardian

LINDLER, STEVEN 09/06/2016 20:58 MP# 12000906887 VISIT# LH0004149074 General Instructions 2 of 2

[Signature]
Hospital Representative

09/06/2016 20:10 Time

LINDLER, STEVEN G
MP# 0906887
LH0004149974
MULJIBHAL, JITIN T
M 42 ED
ADM: 09/06/2016

LINDLER, STEVEN 09/06/2016 20:58 MP# 12000906887 VISIT# LH0004149974 General Instructions 2 of 2

GHS Laurens County Memorial Hospital

22725 Highway 76 East, P.O. Drawer 976
Clinton, SC 29325
Phone: 864-833-9430, Fax: 864-833-9488

DIAGNOSTIC IMAGING RADIOLOGY REPORT 10807-0016 Draft

Patient: LINDELLER, STEVEN O Acct: LH0004149974 Unit: M000908687
DOB: [REDACTED] Loc: ED Room/Bed:
Age/Sex: 42 / M ADM Status: DEP ER ADM Date: 09/08/16
Procedure(s): XR LUMBAR SPINE 2-3 VIEWS Accession Number: 480000000124294
ADM Time: 2058
Ordering Physician: Jerrell Tozzi, MD

****Unsigned Transcriptions represent a preliminary report and
do not represent a medical or legal document.****

LUMBAR SPINE RADIOGRAPHS: 09/06/2015

CLINICAL HISTORY:

COMPARISON FILMS: No comparison exams.

VIEWS: AP and lateral views of the lumbar spine were obtained.

FINDINGS:

Views reveal a transitional vertebral body at the lumbosacral junction. There is mild retrolisthesis of the last segmented body. Some wedging of the lower thoracic vertebral bodies is present. This is probably chronic although difficult to say with certainty without old films. Degenerative changes are noted especially in the lower thoracic spine.

IMPRESSION:

Wedging of lower thoracic vertebral bodies with degenerative change. This is likely chronic although it is difficult to say definitively without prior studies.

Study dictated by:
Penelope Galbraith, M.D.

DOCTOR NAME: Penelope Galbraith, MD
Dictated Date/Time: 09/07/15 0830

RADIODIC
SIGN DATE/TIME

Transcribed Date/Time: 09/07/15 0931
Transcriptionist: JS
CC:

GHS - Laurens County Memorial Hospital

22725 Highway 76 East
Clinton, SC 29325
Phone: 864-833-9111, Fax: 864-833-9493

EMERGENCY DEPARTMENT
Draft: 0906-0073

Patient: LINDLER, STEVEN O
DOB: [REDACTED]
Age/Sex: 42/M

Acc#: LH0004149974
Loc: ED
ADM Status: REG/ER

Physician: Jerett Tozzi, MD
ADM Date: 09/06/15

ED Record

Patient: LINDLER, STEVEN O Clinical Report - Physicians/Mid Levels
MRN: M000908687 Greenville Health System Laurens County Memorial Hospital
Emergency Department
VisitID: LH0004149974 22725 Highway 76 East, Clinton, SC 29325 864-833-9111
42y, M Registration Date/Time: 09/06/2015 20:58

*This is a preliminary document and is subject to change.

Arrived: By private vehicle. Historian: patient. Notes: (crisis).

HISTORY OF PRESENT ILLNESS

Chief Complaint: BACK INJURY. It is described as being in the area of the left lower lumbar spine and lower lumbar spine. Onset was just prior to arrival and it is still present.

Patient notes an injury but denies injury to the head or neck. Mechanism of injury: (HWP, car chase/mva/altercation with assailant). (abrasions to knees).

REVIEW OF SYSTEMS

No fever, headache, difficulty breathing, chest pain or abdominal pain. All systems otherwise negative, except as recorded above.

PAST HISTORY

See nurses notes. The patient has had prior back pain.

Problems:

Muscle Strain, Lower Extremity

Medications:

None.

GLS - Laurens County Memorial Hospital

22725 Highway 76 East

Clinton, SC 29325

Phone: 864-833-9111, Fax: 864-833-8493

EMERGENCY DEPARTMENT

Patient: LINDLER, STEVEN O

Acct: LH0004149974

Allergies:

Sulfa Antibiotics

SOCIAL HISTORY

Unknown if ever smoked.

ADDITIONAL NOTES

The nursing notes have been reviewed.

PHYSICAL EXAM

Vital Signs: 09/06/2015 21:00 BP: 188/117 HR: 124 RR: 26 O2 saturation?

100% Temp: 98.6 F Pain level now: 7/10. Hypertensive. Tachycardic.

Appearance: Alert. Anxious. Patient in moderate distress.

Eyes: Pupils equal, round and reactive to light.

ENT: Pharynx normal.

Neck: Normal inspection. Neck nontender. Painless ROM. No vertebral tenderness.

CVS: Heart sounds normal.

Respiratory: No respiratory distress. Breath sounds normal.

Abdomen: No visible injury. Soft and nontender. Bowel sounds normal.

Back: Normal inspection. Muscle spasm of the back. Vertebral point.

tenderness over the lumbar spine.

Skin: Skin warm. Normal skin color.

Extremities: Extremities exhibit normal ROM. Extremities nontender.

Neuro: Oriented X 3. No motor deficit.

LABS, X-RAYS, AND EKG

LS Spine X-rays: (compression fx T11/T12-age). The X-rays were independently viewed by me but not discussed with the radiologist.

PROGRESS AND PROCEDURES

Course of Care: 21:11 09/06/15. Plan is to treat pain and xray lumbar. Knees abraded but no clinical fx.

21:59 09/06/15. Patient is stable.

Patient counseled.

Disposition: Discharged.

CLINICAL IMPRESSION

Acute traumatic lumbar back pain associated with muscle strain.

Motor vehicle accident involving a vehicle and another vehicle. Car involved.

The patient was the driver of the car.

Compression fractures T11, T12--age of injury not known.

GHS - Laurens County Memorial Hospital

22725 Highway 76 East

Clinton, SC 29325

Phone: 864-833-9111, Fax: 864-833-9493

EMERGENCY DEPARTMENT

Patient: LINDLER, STEVEN O

Acc: LH0004149974

INSTRUCTIONS

Apply Ice. No strenuous activity. Do not work today, tomorrow.
(Has pain meds that Dr. Stephens has prescribed for back pain.)

Warnings: GENERAL WARNINGS: Return or contact your physician immediately if your condition worsens or changes unexpectedly, if not improving as expected, or if other problems arise.

Follow-up:

Follow up with your doctor Tuesday. Call for the next available appointment.

Understanding of the discharge instructions verbalized by patient.

Tozzi, Jerett, MD

Patient: LINDLER, STEVEN O

Clinical Report - Nurses

MRN: M000908687

Greenville Health System Laurens County Memorial Hospital

Emergency Department

VisitID: LH0004149974

22725 Highway 76 East, Clinton, SC 29325

864-833-9111

42y, M

Registration Date/Time: 09/06/2015 20:58

*This is a preliminary document and is subject to change.

TRIAGE

Acuity: LEVEL 3.

Chief Complaint: MOTOR VEHICLE COLLISION.

21:05 09/06/15 --9/6/2015 21:05 Nelson, Heather

21:06 09/06/15 BP: 188/117, HR: 124, RR: 26, O2 saturation: 100%, Temp:

98.6 F. Pain level now: 7/10 --9/6/2015 21:05 Nelson, Heather

GHS - Laurens County Memorial Hospital

22725 Highway 76 East

Gilberton, SC 29325

Phone: 864-833-9111, Fax: 864-833-9493

EMERGENCY DEPARTMENT

Patient: LINDLER, STEVEN O

Acc: LH0004149974

Medications:

None --9/6/2015 21:04 Nelson, Heather

Allergies:

Sulfa Antibiotics --9/6/2015 21:04 Nelson, Heather

History:

Location of injuries: neck, lower back, left hip, left thigh and left leg. This occurred just prior to arrival. Impact was on the front of the vehicle. The collision involved two vehicles and a moderate impact velocity and estimated speed of the collision (other vehicle): 40 mph. (Pt is officer involved in an incident on the road. Stopped a driver and pt was sitting in police car when other car reversed and rammed into officer's car.).

SOCIAL HX: Never smoker. No alcohol use or drug use. No infectious disease exposure.

FALL RISK ASSESSMENT: Fall risk assessment completed. No fall risk identified.

NUTRITIONAL RISK ASSESSMENT: The nutritional risk assessment revealed no deficiencies.

FUNCTIONAL ASSESSMENT: Functional assessment: no impairments noted.

LEARNING NEEDS ASSESSMENT: The learning needs assessment revealed no barriers.

SKIN INTEGRITY ASSESSMENT: Skin integrity risk assessment completed. No skin integrity risk identified. --9/6/2015 21:05 Nelson, Heather.

PROBLEMS:

Muscle Strain, Lower Extremity --9/6/2015 21:05 Nelson, Heather.

PHYSICAL ASSESSMENT

21:10 09/06/15.

GENERAL / NEURO / PSYCH: Alert. Oriented X 4. Appears in pain. He has had numbness of the left leg.

HEENT: No facial asymmetry noted. Head non-tender. Pupils equal, round and reactive to light and light. No swelling of head. Mucous membranes are pink.

RESPIRATORY: Respirations not labored. Chest nontender.

CVS: Pulses within normal limits. Capillary refill less than 2 seconds.

GI / GU: Abdomen soft and nontender.

SKIN: Skin is warm and dry. He has a single superficial abrasion on the right knee. --9/6/2015 21:19 Nelson, Heather.

NURSING PROGRESS NOTES

GHS - Laurens County Memorial Hospital

22725 Highway 76 East

Clinton, SC 29325

Phone: 864-833-9111, Fax: 864-833-9493

EMERGENCY DEPARTMENT

Patient: LINDLER, STEVEN O

Acct: LH0004149974

21:12 09/06/2015 DILAUDID (HYDROMORPHONE HCl PF) IM 2 mg given. Given in the right deltoid. Allergies verified, confirmed 5 rights and sedative warning given to the patient. --9/6/2015 21:17 Nelson, Heather

21:12 09/06/2015 ZOFRAN (Ondansetron HCl) IM 4 mg given. Given in the left deltoid. Allergies verified and confirmed 5 rights. --9/6/2015 21:17 Nelson, Heather

21:25 09/06/15. Patient transported to radiology by stretcher. --9/6/2015 21:33 Nelson, Heather

21:38 09/06/15. Patient returned from radiology by stretcher. --9/6/2015 21:38 Nelson, Heather

This report is not final.

Greenville Health System Laurens County Memorial Hospital
Emergency Department

22725 Highway 76 East, Clinton, SC 29325 864-833-9111

09/06/2015 20:58

PATIENT DOB: [REDACTED]

Patient: LINDLER, STEVEN O

ORDER SHEET

Weight:

Allergies: Sulfon Antibiotics

GENERAL ORDERS:

Lumbar Spine 2-3 Views Stat (21:08 09/06/2015 JTozzi MD) (Ack 21:10 BWheichel) (21:17 HNelson)

MEDICATION ORDERS:

Dilaudid IM 2 mg (HIGH ALERT MEDICATION) (21:08 09/06/2015 JTozzi MD) (21:17 HNelson)

Zofran IM 4 mg (21:08 09/06/2015 JTozzi MD) (21:17 HNelson)

GHS - Laurens County Memorial Hospital

22725 Highway 76 East

Clinton, SC 29325

Phone: 864-833-9111, Fax: 864-833-9493

EMERGENCY DEPARTMENT

Patient: LINDLER, STEVEN O

Acc: LH0004149974

IV FLUIDS:

ORDER SHEET NOTES:

This document has not been locked and should not be saved in the medical record.

DATE: 09/07/15 8:00:00
TIME: 08:00:00

San Antonio Co. Memorial Hosp. DHA-Flva
Medication Discharge Summary

PAGE 1

09/07/15		MEDICATION DISCHARGE SUMMARY	
NAME: JIMENEZ, JIMENA O.	ADULT DATA	AGE: 42	
DOB: 03/28/1973	DISCHARGE DATE:	10/15/15	
ACCOUNT: 0000000000000000	ROOM: 220		
ALLERGIES: No Allergies Documented			
ADMISSION DATE: 09/07/15			
ADMISSION TIME: 08:00:00			

ADMISSION: 09/07/15 08:00:00
1st Med: 09/07/15 08:00:00
2nd Med: 09/07/15 08:00:00

09/07/15 08:00:00
09/07/15 08:00:00
09/07/15 08:00:00

ADMISSION: 09/07/15 08:00:00
1st Med: 09/07/15 08:00:00
2nd Med: 09/07/15 08:00:00

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ADMISSION: 09/07/15 08:00:00
1st Med: 09/07/15 08:00:00
2nd Med: 09/07/15 08:00:00

09/07/15 08:00:00
09/07/15 08:00:00
09/07/15 08:00:00

DATE: 09/07/15 9:10AM
USER: JMS GARNON

Cap Laurens Co Memorial Hosp. MS, MS, MS
Medication Discharge Summary

PAGE: 2

09/07/15

Medication Discharge Summary

NAME: JAMES GARNON

DOB: 04/04/1952

ADMISSION: 09/06/15 0015

ATTENDING: JMS GARNON
Nurse: JMS GARNON
Nurse: JMS GARNON

YASUOKA, JMS

WILSON, JMS

NAME: JAMES GARNON

DOB: 04/04/1952

Medication by

NAME: JAMES GARNON

NAME: JAMES GARNON

Medication

NAME: JAMES GARNON

DOB: 04/04/1952

NAME: JAMES GARNON

NAME: JAMES GARNON

Medication History

NAME: JAMES GARNON

DOB: 04/04/1952

Printed by JMS GARNON 09/07/15 0015
This document is part of the legal medical record.

**S.C. Code Ann. § 16-3-600**

This document is current through all acts received through the 2018 Regular Session.

South Carolina Code of Laws Annotated by LexisNexis® > Title 16. Crimes and Offenses (Chs. 1 — 27) > Chapter 3. Offenses Against the Person (Arts. 1 — 19) > Article 7. Assault and Criminal Sexual Conduct (§§ 16-3-600 — 16-3-755)

§ 16-3-600. Assault and battery; definitions; degrees of offenses.

(A) For purposes of this section:

- (1) "Great bodily injury" means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.
- (2) "Moderate bodily injury" means physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.
- (3) "Private parts" means the genital area or buttocks of a male or female or the breasts of a female.

(B)

(1) A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:

- (a) great bodily injury to another person results; or

(b) the act is accomplished by means likely to produce death or great bodily injury.

(2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than twenty years.

(3) Assault and battery of a high and aggravated nature is a lesser-included offense of attempted murder, as defined in Section 16-3-29.

(C)

(1) A person commits the offense of assault and battery in the first degree if the person unlawfully:

(a) injures another person, and the act:

(i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or

(b) offers or attempts to injure another person with the present ability to do so, and the act:

(i) is accomplished by means likely to produce death or great bodily injury; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

(2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than ten years.

(3) Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

(D)

(1) A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:

(a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or

(b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand five hundred dollars, or imprisoned for not more than three years, or both.

(3) Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

(E)

(1) A person commits the offense of assault and battery in the third degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars, or imprisoned for not more than thirty days, or both.

(3) Assault and battery in the third degree is a lesser-included offense of assault and battery in the second degree, as defined in subsection (D)(1), assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

Curriculum Vitae
DONNA SCHWARTZ MADDOX
 donnamaddoxmd@gmail.com

POSITIONS:

- Owner, Donna S. Maddox, MD LLC
- Contract Forensic Psychiatrist**
Department of Mental Health
- Clinical Professor of Psychiatry**
Medical University of South Carolina
Department of Psychiatry and Behavioral Sciences
- Affiliated Clinical Associate Professor of Psychiatry**
University of South Carolina School of Medicine-Greenville
Department of Psychiatry
- Professor of Psychiatry**
Edward Via College of Osteopathic Medicine
Carolinas Campus



PROFESSIONAL LICENSURE:

South Carolina Medical License # 16574
 Georgia Medical License #74584

EDUCATION:

1981 - 1985	B.A. Psychology Furman University Greenville, South Carolina
1985 - 1989	Doctor of Medicine University of South Carolina School of Medicine Columbia, South Carolina

BOARD CERTIFICATIONS:

Diplomate, Psychiatry, (Board Certification #40726), January 1995,
 recertified 7/05- 12/2015
 Added Qualifications in Forensic Psychiatry, July 1996 #471, recertified
 7/06-12/16

POSTGRADUATE FELLOWSHIPS AND RESIDENCY POSITIONS:

- 1989 - 1993 Resident in General Psychiatry
William S. Hall Psychiatric Institute
Columbia, South Carolina
- 1993 - 1994 Fellowship in Forensic Psychiatry
William S. Hall Psychiatric Institute
Columbia, South Carolina

ACADEMIC POSITIONS/EMPLOYMENT/UNIVERSITY APPOINTMENTS:

- 8/2016-4/2018 Contract Psychiatrist
Harris Psychiatric Hospital
- 8/2013-8/2016 Psychiatric Service Director(certified)
Harris Psychiatric Hospital
- 7/2010-8/2013 Senior Psychiatrist
Bryan Psychiatric Hospital
- 4/24/13 to present Clinical Professor of Forensic Psychiatry
Medical University of South Carolina
Department of Psychiatry and Behavioral Sciences
- 7/2010 to 2015 DMH Professor of Psychiatry
University of South Carolina School of Medicine
Department of Neuropsychiatry
- 7/2006-7/2010 Professor of Clinical Psychiatry
Director, Forensic Psychiatry Services
University of South Carolina School of Medicine
Department of Neuropsychiatry and Behavioral Science
3555 Harden Street Extension, Suite 102
Columbia, South Carolina 29203
(803) 434-4698(803) 434-2367 (fax)
- Consulting and Treating Forensic Psychiatrist
South Carolina Department of Juvenile Justice
- Consulting and Treating Forensic Psychiatrist
South Carolina Department of Corrections

Donna Schwartz Maddox, MD
Curriculum Vitae

- 11/98-6/2009 Consulting and Treating Forensic Psychiatrist
Behavioral Disorders Treatment Program
(Sexually Violent Predator Program: SC 44-48-110)
South Carolina Department of Mental Health
- 6/1997- 7/2006 Associate Professor
Director, Forensic Services
Department of Neuropsychiatry
University of South Carolina School of Medicine
- 1/2004-7/2004 Acting Assistant Director, Psychiatry Residency Program
University of South Carolina School of Medicine
Department of Neuropsychiatry and Behavioral Science
- 9/1995-5/1997 Forensic Residency Training Director
University of South Carolina School of Medicine
- 7 /1996 – 6/1997 Psychiatrist C William S. Hall Psychiatric Institute
Residential Treatment Director of NGRI Unit
- 1/1995 – 6/1996 Teaching Psychiatrist II William S. Hall Psychiatric Institute
Out-patient Forensic Psychiatrist
- 1/1995 – 12/1997 Assistant Professor University of South Carolina School of Medicine
Department of Neuropsychiatry
- 7/1994 –6/1995 Instructor University of South Carolina School of Medicine
Department of Neuropsychiatry
- 7/1994 – 12/1994 Teaching Psychiatrist I William S. Hall Psychiatric Institute
In-patient and Out-patient Forensic Psychiatrist

MEDICAL STAFF APPOINTMENTS

Patrick B. Harris Psychiatric Hospital (current)
Bryan Psychiatric Hospital (current)

UNIVERSITY/ MEDICAL STAFF COMMITTEES:

2015-2016 Vice-President, Medical Staff Harris Psychiatric Hospital
2007-2010 Member, Appointments and Promotions Committee, USC
2002- 2009 Member, Alumni Committee, USC School of Medicine
1996- 2010 Member, Residency Selection Committee

Donna Schwartz Maddox, MD
Curriculum Vitae

1995- 2010	Member, Residency Training Committee
2002- 2003	Member, Search Committee, Chairman of Neuropsychiatry
2000-2001	Member, Committee on Women USC
1997	Member, Traditions Committee USCSM
1997	Member, Search Committee, Director Rehabilitation Counseling
1997	Physician Advisor, Environment of Care
1996	Member, Search Committee Chair of Department of Neuropsychiatry and Director of Hall Institute
1996	Member, Finance Committee, University Specialty Clinics
1994-1996	Member, Infection Control Committee
1993-1994	Member, Research Committee

HONORS AND AWARDS:

2017	Gold Humanism Award Greenville Hospital System
2016	Clinical Mentor Award, University of South Carolina School of Medicine, Greenville, South Carolina
2007	Outstanding Female Physician Mentor Award
2004-2005	Outstanding Forensic Teaching Award Presented by the USC SOM Forensic Fellowship Training Program
1992	Rappeport Scholarship in Forensic Psychiatry Presented by the American Academy of Psychiatry and the Law
1989	Neurology Award, School of Medicine
1985	Cum Laude Graduate, Furman University Phi Beta Kappa, Furman University Alpha Epsilon Delta, Furman University

MEMBERSHIPS AND OFFICES IN PROFESSIONAL ORGANIZATIONS:

2002-2009	American Board of Psychiatry and Neurology Forensic Certification Committee
1999-2009	American Board of Psychiatry and Neurology
1999-2010	Board Examiner
1997-2003	Group for the Advancement of Psychiatry (GAP), General Member
1999	Chair
1992- 2014	American Academy of Psychiatry and the Law (AAPL)
1995-2000	Rappeport Committee (President appointed)
1995-2000	Education Committee (President appointed)
1998-2000	Program Committee (President appointed)
1999	Program Chair
1995-97	Mentor to Rappeport Fellow