

ORIGINAL

Volume II of II

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2016-001363

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S.C. SUPREME COURT

Hubert Brown,.....Respondent,

v.

State of South Carolina,.....Petitioner.

APPENDIX

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**APPENDIX**

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## INDEX

|                                                                  |     |
|------------------------------------------------------------------|-----|
| TRANSCRIPT OF THE TRIAL (July 9-11, 2013).....                   | 1   |
| DIRECT APPEAL - NOTICE OF APPEAL.....                            | 388 |
| DIRECT APPEAL - APPELLANT'S FINAL BRIEF .....                    | 391 |
| DIRECT APPEAL - RESPONDENT'S FINAL BRIEF .....                   | 408 |
| DIRECT APPEAL OPINION (2014-UP-425) .....                        | 426 |
| REMITTITUR.....                                                  | 428 |
| APPLICATION FOR POST-CONVICTION RELIEF (2014-CP-46-4219) .....   | 429 |
| AMENDMENT TO APPLICATION FOR POST-CONVICTION RELIEF.....         | 437 |
| RETURN TO THE APPLICATION .....                                  | 442 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT (April 19, 2016) ..... | 448 |
| ORDER GRANTING POST-CONVICTION RELIEF.....                       | 539 |
| YORK COUNTY CLERK OF COURT RECORDS .....                         | 550 |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS RECORDS .....           | 556 |

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF YORK

4 2014-CP-46-4219

5 Hubert Brown

6 vs.

7 State of South Carolina

8

9 York, South Carolina

10 April 19, 2016

11 Before the Honorable Frank R. Addy, Jr.

12

13 APPEARANCES

14 For the State: Justin Hunter

15 For the Applicant: Tommy Thomas

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

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|    |                |    |
|----|----------------|----|
| 1  | Jerry Parrish: | 4  |
| 2  | David Cook:    | 7  |
| 3  | Hubert Brown:  | 47 |
| 4  | Certificate:   | 91 |
| 5  |                |    |
| 6  |                |    |
| 7  |                |    |
| 8  |                |    |
| 9  |                |    |
| 10 |                |    |
| 11 |                |    |
| 12 |                |    |
| 13 |                |    |
| 14 |                |    |
| 15 |                |    |
| 16 |                |    |
| 17 |                |    |
| 18 |                |    |
| 19 |                |    |
| 20 |                |    |
| 21 |                |    |
| 22 |                |    |
| 23 |                |    |
| 24 |                |    |
| 25 |                |    |

## JERRY PARRISH - DIRECT

1           MR. HUNTER: This is Hubert Floyd Brown versus State  
2 of South Carolina, that's 2014-CP-46-4219. Your Honor, he  
3 was indicted in the September 2012 term of the York County  
4 Grand Jury for attempted murder and burglary in the first  
5 degree. He was represented at trial by Mr. David Cook on  
6 July 9th through 11th of 2013, he proceeded to a jury trial  
7 before Judge Hayes and was found guilty as indicted. He  
8 was sentenced to life without parole on both charges. On  
9 direct appeal the Court of appeals affirmed his conviction  
10 by unpublished opinion filed on November 26th of 2014. He  
11 filed this current application July 17th of 2014. He is  
12 present today in the courtroom represented by his attorney,  
13 Tommy Thomas.

14           THE COURT: All right. Are you ready to proceed?

15           MR. THOMAS: I am, Your Honor. Please the Court?  
16 Your Honor, we're going to call out of order Mr. Parrish,  
17 Jerry Parrish, he is here, he's agreed to be here and I  
18 know he has to be back at work.

19           The witness, JERRY PARRISH, was first duly sworn and  
20 testified as follows:

21           MR. THOMAS: Please the Court, Your Honor?

22           THE COURT: Yes, sir.

23           MR. THOMAS: Your Honor, just in a little bit of  
24 background, Mr. Parrish is here because there are some  
25 allegations in the trial that this was a fight, and to

JERRY PARRISH - DIRECT

1     simplify it, there were some allegations at trial that the  
2     motive for this fight was the fact that my client had lost  
3     his job as a result of either, one, the victim or the  
4     individual that he was staying with, and Mr. Parrish is  
5     here to address that issue as to whether or not he was  
6     fired or what his condition was.

7             THE COURT: Very good. Proceed.

8             MR. THOMAS: Your Honor, if it please the Court?

9                     DIRECT EXAMINATION

10     BY MR. THOMAS:

11     Q     Mr. Parrish, are you related to Hubert Brown?

12     A     No.

13     Q     And what is your relationship to him?

14     A     I was the operations manager at Rock Hill Industrial,  
15     he was an employee of that company --

16     Q     Yes, sir.

17     A     -- for more than several years.

18     Q     And how long did he work with you?

19     A     Approximately four and a half years.

20     Q     You were a supervisor?

21     A     I was operations manager, there was a supervisor in  
22     between.

23     Q     Did he -- what kind of employee was he?

24     A     He was an exemplary dedicated worker, extremely  
25     efficient at the task that he was assigned and given. He

JERRY PARRISH - DIRECT

1 was a motivator and that carried with it kind of  
2 two-faced, a lot of people got in line with his  
3 motivation, a lot of them resented it.

4 Q All right, sir. Now, going back, was there a Michael  
5 Mahoney or Christopher or Chris Calvert that worked at your  
6 company?

7 A There was.

8 Q All right, sir. And are they still employed there, do  
9 you know?

10 A I'm not sure. I've left that employ for 15 months.

11 Q That's right, you have moved. But at the time both of  
12 those individuals were employed there also with Mr. Brown?

13 A They were.

14 Q Now, Mr. Brown at some point in time was no longer  
15 working at the company, and do you know why?

16 A There was an incident -- we call him Floyd -- but Mr.  
17 Brown was actually assigned to a local facility that we  
18 contracted maintenance work with, he was assigned the  
19 night shift, and there was an alleged incident from the  
20 plant management that he had had a situation on the later  
21 evening hours. His wife had arrived at the plant and  
22 agitated him to some degree and the security personnel on  
23 site actually feared that there would be an altercation  
24 and were just before calling the Chester County Sheriff's  
25 Office, and Mr. Brown just decided to leave with her. The

JERRY PARRISH - DIRECT

1 problem with that was that there is a protocol at most  
2 area industries that are under lock and gate, you cannot  
3 leave without proper sign-out and awareness from everyone  
4 on the plant site that you are, in fact, away from the  
5 facility. He negated that and then he did not show or  
6 respond the next day due to the situation that he was  
7 dealing with.

8 Q All right. So he -- as far as work is concerned he  
9 just didn't show back up.

10 A He didn't show back up. Mr. Brown would have been  
11 probably under suspension. I would not have deemed it at  
12 that point a final termination, he would have probably  
13 been under suspension for some time. He was too good of a  
14 worker not to give another chance.

15 Q All right, sir. But in essence he never showed back  
16 up.

17 A He did not.

18 Q Okay. And did his situation to the best of your  
19 knowledge have anything to do with Michael Mahoney or  
20 Christopher Calvert?

21 A Not at all. He was on this assignment as a sole  
22 employee of Rock Hill Industrial.

23 MR. THOMAS: Your Honor, if I can beg the Court's  
24 indulgence.

25 THE COURT: Yes, sir.

JERRY PARRISH - DIRECT

1 (Break in proceedings.)

2 MR. THOMAS: We have no further questions, Your Honor.

3 We would ask that after he answers any questions that the  
4 attorney general may have that he may be excused.

5 THE COURT: Any questions?

6 MR. HUNTER: No questions, Your Honor.

7 THE COURT: Sir, thank you very much for coming, sorry  
8 if we inconvenienced you at all. Call your next witness,  
9 please.

10 MR. THOMAS: Your Honor we would like to call defense  
11 counsel, Mr. Cook, to the stand.

12 The witness, DAVID COOK, was first duly sworn and  
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q Mr. Cook, you had an opportunity to represent Mr.  
17 Brown?

18 A Yes, sir.

19 Q All right. And in what capacity did you represent  
20 him?

21 A I was his defense counsel.

22 Q And he had other attorneys prior to that, do you know?

23 A Yes, sir, he did. I know for a fact that he had Phil  
24 Smith with the public defender's office because I remember  
25 reviewing the case with Mr. Smith. I believe there was

DAVID COOK - DIRECT

1 another attorney maybe before Mr. Smith or after but I  
2 can't recall a name.

3 Q Was that David Sample?

4 A Yes, sir, it was.

5 Q Now, when you got the case you were retained?

6 A Yes, sir.

7 Q And what kind of charges do you remember, if you  
8 remember, what Mr. Brown was charged with?

9 A Well, I mean, he had a burglary first and -- the  
10 attempted charge stuck with my mind. There may have been  
11 some companion charges but those were the crux of it.

12 Q And I know that these -- for the Court's purposes  
13 because the Court doesn't have any prior knowledge of this  
14 case -- can you summarize what the case was in just a  
15 couple of paragraphs?

16 A Yes, sir. Just the alleged fact pattern?

17 Q Yes.

18 A Sure. The State was alleging that Mr. Brown got into  
19 an altercation with two gentlemen that you've already  
20 mentioned, their first names were Mike and Chris, and they  
21 were former employees of Mr. Brown's. There was some  
22 discrepancy as to whether he had lost his job or quit his  
23 job at the same place that they were working. But Mike  
24 had hired Mr. Brown to come build a fence, kind of a side  
25 job as Mike would testify to kind of help him out since he

DAVID COOK - DIRECT

1 lost his job. Floyd -- I call him Hubert -- was upset  
2 that Mike hadn't paid him so he went over one night to  
3 approach him about that, noticed -- Floyd alleged that  
4 Mike was intoxicated. In fact, his testimony was that  
5 he'd been at Hooter's that night and I believe that Mr.  
6 Calvert's testimony was that they had even done some  
7 cocaine in the bathroom. Floyd was real upset that they  
8 owed him money, he was needing money for his family so he  
9 approached them. At that time there was a verbal  
10 altercation, there was some discrepancy as to who swung  
11 first but Mike's testimony was that Floyd swung and hit  
12 him. Calvert testified he saw this and was away from the  
13 scene maybe some 50 yards or so in a vehicle. He gets a  
14 gear shifter, unscrews it and comes and strikes Mr. Brown  
15 in the back of the head severely, caused very traumatic  
16 brain injury which would result in seven staples into his  
17 head. At that time, you know, in discussions with my  
18 client he became very dazed or confused as to what  
19 happened next. There's a lot of testimony from other  
20 people that my client went out into the -- was supposed to  
21 be leaving but went out and got a machete and started  
22 chasing these gentlemen around, went into the house.  
23 While he was in the house Mike's wife makes a 911 call  
24 that's very -- as a piece of evidence it was very  
25 powerful, you could hear people screaming and things going

DAVID COOK - DIRECT

1 on inside the house. He, Mr. Brown, swings at Mr. Calvert  
2 while he's in the house and cuts off some of his fingers,  
3 chases him around at some point as he testified --

4 Q It was his thumb actually.

5 A Yes, sir.

6 Q Yeah.

7 A Chases him around and then tries to leave. There's  
8 some testimony from the State that he fell into a hole and  
9 broke his ankle while he was trying to leave, gets in his  
10 car and drives off. Some time passes, he goes back to his  
11 house, he's trying some medical attention to himself.  
12 You'll have to forgive me, at some point thereafter he's  
13 arrested and here we are.

14 Q And I appreciate that, it sometimes makes the case  
15 flow easier to know what we're talking about.

16 A Yes, sir.

17 Q Now, he was LWOP'd; is that correct?

18 A Yes, sir. He had received notice before I took the  
19 case.

20 Q So this was a life without parole trial.

21 A For both charges, burglary first and the attempted  
22 murder.

23 Q Was he offered a plea?

24 A Yes, sir, he was, I apologize, I didn't look through  
25 my notes. But if I remember correctly I had him an eight

DAVID COOK - DIRECT

1 year offer, and I believe it started at maybe somewhere  
2 between 14 and 18 and I might have talked E. B. Springs,  
3 the solicitor, down to about eight if I'm not mistaken.

4 Q In hindsight, I guess, why did he not accept the plea?

5 A You know, I have wondered that often. Quite frankly  
6 my assessment of Mr. Brown was that he wasn't making good  
7 decisions at this time during the trial and even during  
8 the incident, and I encouraged him to pursue not guilty by  
9 reason of insanity verdict. I think that -- I don't know  
10 why he didn't take the plea offer. I know that at the end  
11 of the trial before his sentencing he said on the  
12 record -- and he looked like he had a moment of lucidity  
13 and he was sincere and he said that he wished he had on  
14 the record.

15 Q I'll ask you this question: Did he believe -- or I  
16 guess was there some indication of not being guilty of  
17 these crimes? You had a defense?

18 A Well, I mean, in his assessment -- well, it was  
19 difficult in preparing a defense with Mr. Brown, and I met  
20 with him often. And -- you know, so we would go through a  
21 litany of possible defenses, whether it's self-defense, I  
22 told him that that -- we discussed that, and I discussed  
23 cooling time with him, the fact that he had an opportunity  
24 to leave but went -- if the State's version of events were  
25 to be believed he had an opportunity to leave but went in

DAVID COOK - DIRECT

1 the trunk of the car, got a machete and reentered the  
2 house, so I didn't --

3 Q This wasn't a stranger's residence, this was a good  
4 friend of his.

5 A Yeah. He'd been building a fence out there, he knew  
6 the place. I didn't think that would have been his  
7 strongest defense. Then, you know, Mr. Brown entertained  
8 the notion that he had never entered the house and didn't  
9 have a machete and they -- I told him I thought that that  
10 would be difficult to overcome since Mr. Calvert was set  
11 to testify and, you know, was going to point him out  
12 during the trial, which, in fact, happened. And then  
13 finally I settled on, you know, not guilty by reason of  
14 insanity. And it was kind of a dance for awhile. Mr.  
15 Brown was on board with that defense. I used a large --  
16 the majority of my retainer to pay a psychiatrist -- a  
17 psychologist, and I'm not complaining about that but just  
18 mentioning the numbers I probably charged around 10,000, I  
19 was probably paid around six and I paid her I think about  
20 four just to show that my level of commitment. I thought  
21 that was the only way he could get off.

22 Q Was that the Dr. Carol Walser (phonetically)?

23 A Walser, yes, sir.

24 Q And she spent quite some time with Mr. Brown.

25 A She testified that she met with him more than three

DAVID COOK - DIRECT

1 times and spent over 13 hours with him. And the more I  
2 would speak with her the more she would compel me that she  
3 thought that it was a case where he didn't -- he met the  
4 statutory requirements to get that type of verdict.

5 Q Because he didn't know what he was doing at the time.

6 A He had no clue in her assessment. If I may continue,  
7 you know, he defecated in his pants when he was hit and  
8 she says that's a telltale sign and -- the way that the  
9 dressing after it had been stapled continued to -- she had  
10 medical reasons that the recovery seemed to indicate it  
11 was a very traumatic brain injury.

12 Q He had a fractured skull; is that right?

13 A He had a fractured skull.

14 Q And I apologize for my lack of medical knowledge --

15 A That's quite all right.

16 Q -- that traveled into two different, I guess, orbits  
17 or two different parts -- bones of the brain. It was one  
18 fracture but it was in two different parts.

19 A Yes, sir. And I share your lack of medical  
20 understanding, but that's correct.

21 Q Now, how did you -- let's kind of go step by step. So  
22 you met with Mr. Brown and at that point in time you  
23 started developing a theory of defense?

24 A Yes, sir, I mean, I did. I met with him -- I didn't  
25 keep a record and I really need to start, but I would

DAVID COOK - DIRECT

1 easily think it was probably around ten times and each  
2 time was well over an hour. And I did -- the first  
3 thing -- well, just to be candid, I met with Mr. Brown and  
4 I didn't think that he was very lucid. So of course -- I  
5 can't remember if I requested, but I made sure that the  
6 Blair and the M'Naghten evaluations had been done.

7 Q So he went to Columbia for that.

8 A He did. And unfortunately they both indicated that  
9 he did not lack capacity at any time, he could stand trial  
10 and at the time he committed the alleged offense.

11 Q And I think that you agreed that he had the capacity  
12 to assist you at trial, that portion of it. -

13 A No. I was actually making the argument that he  
14 wasn't assisting me at all and that he shouldn't be able  
15 to attend the trial. But the Judge said -- we discussed  
16 this in chambers, I made a motion for funding for my  
17 expert witness which was denied. And while we were having  
18 this in-camera discussion I was expressing to the Judge  
19 that I don't think he -- well, you know, I definitely  
20 never thought that at the time of the alleged commission  
21 of the crime he knew what he was doing. Could he stand  
22 trial or not? I didn't think so, that was a close call.  
23 Of course, I'm not an expert but they determined that he  
24 could. I know that it was very difficult in preparing his  
25 defense. And as I was saying when I first met with him, I

## DAVID COOK - DIRECT

1 noticed some disconnect and so I really started talking  
2 with David Sample and Phil Smith at that point.

3 Q And I guess in evaluating this case, was there some  
4 question about who the aggressor was?

5 A I mean, in his mind that was a possible defense that  
6 he was wanting me to put forward, but in the discovery  
7 evidence there was never any in my assessment, no, sir.

8 Q Because Calvert is the one that hit him.

9 A With the tire iron, yes, sir.

10 Q Or gearshift or whatever it was.

11 A Yes, sir. But there were three witnesses in the  
12 house that testified that he reentered and so I didn't --  
13 you know, in my assessment I wasn't going to hang my hat  
14 on that defense, but -- I hope that answers your question.

15 Q Let me ask you -- so he went for the competency  
16 evaluation.

17 A Yes, sir.

18 Q And I guess the lady from -- I guess she was a  
19 psychiatrist?

20 A Ms. Walser, Dr. Walser, yes.

21 Q No. Not the one you used, the one from the department  
22 from mental health.

23 A Understood, yeah.

24 Q She was -- had a fellowship; is that correct?

25 A I suppose. You know, she was terminated -- her

DAVID COOK - DIRECT

1 employment was terminated after the evaluation and she  
2 wasn't with the State when I subpoenaed her for the trial.

3 Q Did she come to the trial?

4 A No, sir, I couldn't get ahold of her, tried real hard  
5 in her new practice. So one of the things I objected to  
6 is they had this psychiatrist from Columbia come up to  
7 testify that had never met Mr. Brown, and he was reviewing  
8 her notes and trying to explain to the jury his assessment  
9 through her notes. Of course, I cross examined him and  
10 tried to make light in closing that my psychologist had  
11 spent 13 hours with Mr. Brown and this gentleman had never  
12 met him.

13 Q And that made me think about, did you agree to the  
14 introduction of the reports from the doctor in Columbia; is  
15 that correct?

16 A I'm sorry, I haven't reviewed the transcript as  
17 thoroughly as I perhaps should have, so --

18 Q And I can't put my hand on it, but would you disagree  
19 with me if you said that you did agree -- you did not  
20 object to the introduction of the written reports?

21 A Once again, you know, I'm glad if you want to direct  
22 me to the transcript of that certain area, I'll agree or  
23 disagree with you. I hope -- I should have objected if I  
24 didn't.

25 Q And also I didn't see in the transcript an objection

DAVID COOK - DIRECT

1 to the doctor coming from Columbia who was, I guess, her  
2 supervisor who had signed off on her report. I didn't  
3 see -- and I may be wrong but I didn't see in the  
4 transcript to any objection to him testifying.

5 A I'll just be candid, that surprises me, I thought I  
6 objected to that.

7 Q And he was called as a rebuttal witness?

8 A Yes, sir.

9 Q After you put your doctor on the stand who I think did  
10 an excellent job by the way.

11 A I agree.

12 Q Yeah. But you did not object to him taking the stand.  
13 Did he have any personal knowledge at all of Mr. Brown?

14 A No. Not at all, no, sir.

15 Q All right. And did -- so he had not spent any time  
16 with Mr. Brown?

17 A No, sir.

18 Q And do you remember -- would it be accurate to say  
19 that the lady, the physician that did do the exam, that she  
20 had seen him for an hour?

21 A I think that it was less, I think that it was maybe  
22 30 minutes.

23 Q Okay. And the doctor that you had retained had spent  
24 a lot of time with him.

25 A Yes, sir.

DAVID COOK - DIRECT

1 Q And with numerous tests.

2 A Yes, sir.

3 Q Do you believe that the -- when you got to that stage  
4 of this trial that the insanity was the strongest defense  
5 that you had?

6 A By far, yes, sir.

7 Q All right.

8 A I could talk about that, but just the simple answer  
9 to your question is it's the only defense that he had.

10 Q And the statements made by the supervisor physician  
11 for mental health didn't help you any, did it?

12 A No, it didn't.

13 Q And they said was it -- well, what was their finding  
14 in regards to --

15 A You're talking about the psychiatrist? My memory is  
16 there was a --

17 Q The psychiatrist from the department of mental health?

18 A Yeah. He came and he was -- my impression of him was  
19 that E. B. called him up kind of nervous knowing that my  
20 expert witness -- he was very aware of what her testimony  
21 was going to be, he was aware that the psychologist for  
22 the State, the female lady that had performed the tests  
23 had been terminated and was nonresponsive, so I think he  
24 was kind of trying to tread water, he brought this expert  
25 witness in. But like I said, he was reading from her

DAVID COOK - DIRECT

1 notes. I'm amazed I didn't object. But at the same time  
2 I thought that that was something that I could bring out  
3 on cross examination. I thought the jury would perhaps  
4 give weight to the fact that he never met with Mr. Brown  
5 and he was reading somebody's notes that was not with the  
6 State anymore, but apparently --

7 Q And I don't mean to be jumping around but I was kind  
8 of thinking about it so I don't forget. Let's go back to  
9 the 911 tape.

10 A Yes, sir.

11 Q Now, Mr. Brown had concerns about the tape why?

12 A You know, from my memory Mr. Brown seemed to think  
13 there was a tape out there that had people adulterated,  
14 that had people laughing on the background on it, or that  
15 somebody was laughing in the background and the State had  
16 erased the tape, I suppose he thought that they were just  
17 making a prank call on it. Of course, the reality that  
18 the jury was going to see was that a gentleman had his  
19 thumb cut off with a machete. But I never -- I asked the  
20 solicitor about the existence of the tape, solicitor said  
21 had had no knowledge of anything other than the original  
22 tape that he had planned and did introduce into the trial,  
23 I can't remember on the record, but I believe I asked the  
24 911 operator when she was making it authentic. But I  
25 never ever saw any other tape, and the only time I ever

DAVID COOK - DIRECT

1 heard about it was when Mr. Brown would discuss it.

2 Q Do you remember whether or not you agreed to the  
3 admission of the 911 tape? I didn't see authentication  
4 colloquy in the --

5 A I'll be completely honest with you, I'm pretty bad  
6 about stipulating to things just to move things along. I  
7 did speak with the 911 operator on the phone before the  
8 trial and I asked her the authentication questions and she  
9 said she was going to come testify to it, so I may have  
10 stipulated.

11 Q Okay. And also Mr. Parrish that testified earlier,  
12 you didn't put him on the stand, did you?

13 A Parrish? Was that the boss?

14 Q The gentleman that came in about the --

15 A No, sir, I did not. And quite frankly that was a  
16 strategy. I believe I spoke with Mr. Parrish before the  
17 trial on the phone and talked with him and I just didn't  
18 think the reason for his termination -- I didn't want to  
19 cloud the issues.

20 MR. THOMAS: Your Honor, may I approach?

21 Q Let me show you, Mr. Cook, this is page 146 and 147 --

22 A Okay.

23 Q -- of the transcript. If you want to look at mine,  
24 mine is highlighted. If you want to just kind of read  
25 through that and then I've got some questions for you.

DAVID COOK - DIRECT

- 1 A Okay.
- 2 Q Mr. Brown was concerned about the 911 tape that he
- 3 actually addressed Judge Hayes about it.
- 4 A Yes, sir, apparently so.
- 5 Q All right. And he raised those issues about that he
- 6 felt like the tape had been changed in some manner.
- 7 A That's correct.
- 8 Q And also I think you indicated that you had some
- 9 concern that the whole tape was not played.
- 10 A That wasn't my concern. I was trying to express my
- 11 client's concern just to preserve it for the record.
- 12 Q But, in fact, the State did not play the whole 911
- 13 tape.
- 14 A You know, I don't know if they did or if they didn't
- 15 because I don't know how long the tape was. I know at the
- 16 trial I thought they had played the whole tape.
- 17 MR. THOMAS: May I approach, Your Honor?
- 18 THE COURT: You may.
- 19 Q Okay. But did you get a copy of the tape in
- 20 discovery?
- 21 A I'm sorry, I can't definitively answer that. I
- 22 remember listening to the tape, it might have been in E.
- 23 B.'s office. I seem to think that I did get a copy of the
- 24 tape in discovery.
- 25 Q Let me bring your attention to --

DAVID COOK - DIRECT

1 MR. THOMAS: Your Honor, page 155 and it's lines 13  
2 through 20.

3 Q At that point you withdraw any objection that you had  
4 to the 911 tape?

5 A Yes, sir. I'm not sure in the whole scheme of the  
6 transcript, but it seems right there -- I said I didn't  
7 want the tape played again, I certainly wouldn't have  
8 wanted the jury -- I don't know if they were talking about  
9 playing before it in front of jury or not. But it would  
10 have been a strategy for me for not wanting the jury to  
11 hear that tape again, it was damning.

12 Q Now, in this trial they had basically Mr. Michael  
13 Mahoney testify first?

14 A Yes, sir.

15 Q And Mr. Mahoney was a friend who actually -- he was  
16 the owner of the property?

17 A Correct.

18 Q And then there was testimony -- who was Christopher  
19 Calvert?

20 A Yes, sir.

21 Q Who was Mr. Calvert?

22 A He was the friend of Mr. Mahoney's who was in the  
23 yard when Mr. Brown allegedly struck Mr. Mahoney and Mr.  
24 Calvert was in a car and he removed the gearshift and came  
25 and struck --

DAVID COOK - DIRECT

1 Q Did these individuals have criminal records, do you  
2 remember?

3 A I don't remember. Actually I do remember, yeah.  
4 Calvert had a very extensive criminal record and I  
5 think -- obviously -- I'm fairly certain I crossed him on  
6 that.

7 Q I didn't know if you were able to bring him in court  
8 about his criminal record.

9 A I'm sure I did, yeah. Well, I'm not sure but I think  
10 I did.

11 Q All right. Now, there were couple of things --

12 MR. THOMAS: And if the Court would bear with me, Your  
13 Honor.

14 THE COURT: Sure.

15 Q On page 59 --

16 MR. THOMAS: May I approach, Your Honor?

17 Q Let me ask you to look at that -- and it might be  
18 easier because mine is marked. That's one of the deputies  
19 from the -- that was on the scene?

20 A Yes, sir.

21 Q And they -- the solicitor asked -- is it her or him, I  
22 can't -- I apologize, I can't remember which one --

23 A I believe it is a he.

24 Q Is the name up here?

25 A Yeah, Mark Whitesides.

DAVID COOK - DIRECT

1 Q Okay. So they asked Mr. Whitesides about his wound?

2 A Yes, sir.

3 Q And he says what?

4 A They asked, "Have you ever seen someone wounded by a  
5 knife or a blade? Yes, I have. And from that experience  
6 what type of injury did Mr. Calvert have? It appeared to  
7 be caused by a large heavy bladed object."

8 Q And the allegation -- the allegation was that this  
9 injury --

10 THE COURT: What page and line was this? I just want  
11 to make sure.

12 MR. THOMAS: It was page 58 and it's lines seven  
13 through ten.

14 Q The allegations were that this injury was caused by a  
15 machete?

16 A Yes, sir.

17 Q Did they ever find the machete?

18 A I can't remember, I don't think so.

19 Q Did you object to this officer giving their opinion as  
20 to what this injury was caused by?

21 A I did not.

22 MR. THOMAS: And Your Honor, if I can beg the Court's  
23 indulgence just for a second.

24 (Break in proceedings.)

25 (A new roof was being put on the courthouse, the

DAVID COOK - DIRECT

1 Majority of the work was over our courtroom. The work  
2 Started at this time causing a lot of disruptive  
3 Noise.)

4 MR. THOMAS: Your Honor, I would direct the Court's  
5 attention to page 89, it would be line four through seven,  
6 23 through 25 on page 88 or nine would be lines ten through  
7 14.

8 Q Mr. Cook, if you would look at those briefly for me.

9 A Can I answer a question you asked me earlier that I  
10 just remembered an answer to?

11 Q Certainly.

12 A You asked me why did Mr. Brown not take the eight  
13 year offer and I remembered a conversation I had with him  
14 while I was on the stand here where he says he has some  
15 rare blood disease and he didn't think he would be alive  
16 for those eight years. I'm sorry, you were directing me  
17 to --

18 Q The starred sections of the transcript.

19 A Uh-huh, yes, sir.

20 Q Is that another police officer?

21 A No, this says Michael Mahoney.

22 Q So Michael Mahoney is the owner of the home.

23 A Yes, sir.

24 Q And they asked him about red spots.

25 A They did, red stuff on it looks like --

## DAVID COOK - DIRECT

- 1 Q And he identifies that to the solicitor as blood?
- 2 A Yes, sir.
- 3 Q Did you object to any of that?
- 4 A I did not.
- 5 Q Was he qualified to identify the blood?
- 6 A He was not.
- 7 Q Do you know whether or not there was any forensics
- 8 done on these spots pretrial?
- 9 A I was not made aware of any forensics.
- 10 Q And let me ask you about this, too.
- 11 MR. THOMAS: Your Honor, I'm looking at page 94, it
- 12 would be lines 14 through 25, and on page 95 with the lines
- 13 one through five.
- 14 Q Do you need it, Mr. Cook, or do you have it?
- 15 A No, I have it. Thank you, sir.
- 16 Q If you would look at that. I was confused, were
- 17 there -- there were allegations about a text message?
- 18 A I beg your pardon for one moment. I don't see
- 19 anything on page 94 about a text message.
- 20 Q Yeah, looking at line 22.
- 21 A Okay, I see now. Yes, sir. There's mention of a
- 22 text message by Mr. Mahoney when he is being direct
- 23 examined by Solicitor Springs.
- 24 Q And the essence of that text was supposedly "I want --
- 25 I'm going to get you or finish the job"-- or do you

DAVID COOK - DIRECT

1 remember any memory of that?

2 A Well, no, sir, I don't remember it. But before the  
3 text is mentioned on line 22 it says, "Well, actually it  
4 was a text message. Me and him didn't speak personally,  
5 he sent me two messages." Before that -- I couldn't  
6 answer your question. I don't think that there's anything  
7 about fighting up to that point about the text message but  
8 I may be wrong.

9 Q Did you have anything in discovery in regards to the  
10 text messages?

11 A I'm so sorry, I just can't -- I don't remember.

12 Q Did you object at that point in time to that attempt  
13 to introduce that testimony regarding the text message?

14 A No, I did not.

15 Q Let me ask you, too, about page 120. And basically  
16 I'm looking at lines 17 through 19.

17 A Yes, sir.

18 Q Now, there is a picture that I guess was -- there were  
19 pictures that were introduced into evidence in regards to  
20 allegedly blood; is that correct?

21 A Yes, sir.

22 Q And you're saying that to the best of your knowledge  
23 there was never any forensics that identified these stains  
24 of blood.

25 A That's correct.

DAVID COOK - DIRECT

1 Q And my client was hit in the back of the head with a  
2 gearshift and was bleeding profusely.

3 A Yes, sir.

4 Q So there was no way to determine if it was blood, and  
5 secondly, who the blood belonged to.

6 A Correct.

7 Q Now, this testimony says that -- "Whose blood is  
8 splattered on the wall?" And this is Christopher Calvert  
9 who is the victim, says "Mine."

10 A Uh-huh.

11 Q Did you object to that?

12 A No, sir.

13 Q Let me ask you --

14 MR. THOMAS: Your Honor -- we're just about through --

15 Q Page 142, and we're looking at lines one through  
16 three.

17 A Okay. Yes, sir.

18 Q And this is Detective Tracy Strickland?

19 A That's correct.

20 Q She is -- well, she testifies to what in line through  
21 three?

22 A It's actually he, and --

23 Q He, I'm sorry.

24 A That's all right. He's testifying that -- I'm sorry,  
25 what lines did you say again?

DAVID COOK - DIRECT

1 Q One through three.

2 A Right. He was answering a question and his answer  
3 was he had a severe laceration on his right hand almost  
4 cut off with a large knife, machete type instrument which  
5 almost chopped off his thumb.

6 Q Was he qualified to know what had caused this injury?

7 A You know, I thought about that and I don't know the  
8 answer to that question. He was a police officer, yeah, I  
9 believe that they qualified him as an expert witness at  
10 some point. Whether he's an expert to determine the cause  
11 of injuries I'm not sure.

12 Q But you didn't object to that.

13 A No, sir.

14 Q And the alleged weapon was a machete.

15 A Allegedly.

16 Q But they didn't ever find the machete.

17 A That's correct.

18 Q I wanted to ask you about this, Mr. Cook. Look at  
19 pages -- starting on 156, this is testimony again of  
20 Detective Tracy Strickland.

21 A Yes, sir.

22 Q And if you would look at the beginning of page 156  
23 line 17, there's a question by the solicitor that says,  
24 "And what crime did your suspect, Hubert Brown, commit" --  
25 or committing I think is what their's says. If you would

DAVID COOK - DIRECT

1 like at that and kind of refresh yourself all of the way  
2 over to 157.

3 A Yes, sir, I just did.

4 Q Okay. And is he asking for an illegal opinion? I  
5 mean, he's asking about the elements of these crimes and  
6 basically he's asking -- it appears he's asking for guilt.

7 A Yeah. He says, "What crimes did you suspect Hubert  
8 Brown of committing?"

9 Q Right. And then he goes further to say, "So for  
10 instance if a man breaks into a woman's house," bla, bla,  
11 bla.

12 A Right.

13 Q On 157. Did you object to that?

14 A No, I did not.

15 Q Okay. And do you believe that he was qualified to  
16 give that opinion?

17 A Again, you know, to be candid I don't know. He's a  
18 police officer, qualified as an expert witness. I'm not  
19 sure whether one would think they would need to know the  
20 elements of crimes, however I don't know the answer to  
21 your question, sir.

22 Q Let me ask you in general, there is testimony in the  
23 transcript one of the police officers goes over and goes to  
24 Mr. Brown's home, they do a search on the premises of his  
25 car.

DAVID COOK - DIRECT

1 A Uh-huh.

2 Q And they testified in court again that there was blood  
3 in the car and blood in the trunk.

4 A Correct.

5 Q Do you know whether or not there was ever any DNA  
6 analysis of those stains?

7 A I do not.

8 Q And do you remember whether or not you objected to the  
9 introduction of any of that evidence?

10 A I do not think I objected.

11 Q Let me ask you -- this is something I just saw the  
12 other day. In regards to Judge Hayes' charge, and you and  
13 I talked about this, he makes -- there are two comments  
14 that he made. And one -- actually they're really kind of  
15 brought to the forefront by the solicitor's office. And if  
16 you look at page 363 of the transcript beginning with line  
17 14, and I think it runs kind of really through the bottom  
18 of that page.

19 A Yes, sir.

20 Q There is some objection or something brought to the  
21 Court's attention by the solicitor's office about a weapon  
22 in the charge.

23 A Uh-huh.

24 Q And I would assume that what we're talking about is  
25 implied malice with the use of a weapon?

DAVID COOK - DIRECT

1 A Correct.

2 Q Okay. Did you object to that?

3 A No, I did not.

4 Q And on 372, if you begin on line 21 on 372, there's  
5 another issue that's brought before Judge Hayes' attention  
6 by Mr. Springs.

7 A Yes, sir.

8 Q And that is a concern about in the attempted murder  
9 charge as well whether or not there's general or implied --  
10 general or a specific intent.

11 A Correct.

12 Q And did you object to that?

13 A No, sir.

14 Q All right.

15 MR. THOMAS: Your Honor, if I can beg the Court's  
16 indulgence.

17 (Break in proceedings.)

18 MR. THOMAS: Your Honor, we have no further questions.

19 THE COURT: Before -- I'm sorry, I need five minutes  
20 myself. Fortunately the tennis shoes have stopped in the  
21 dryer (referring to the roof construction) which is good.  
22 I have not had a chance to fully review the transcript.  
23 Just on that last point you said that was 372 concerning  
24 specific intent, was the instruction given in this case  
25 about specific intent for attempted murder or was it

DAVID COOK - DIRECT

1     general intent?

2             MR. THOMAS:  It was general, Your Honor.

3             THE COURT:  Thank you.

4             MR. THOMAS:  Now, in all candor, Your Honor, I  
5     apologize because I don't know this answer right off, I  
6     know that I discussed this matter with appellate defense, I  
7     know it went up for appeal, my conversation with appellate  
8     defense was they had some concern about those two issues  
9     because they felt like that they were not preserved to  
10    argue in front of the Supreme Court.  I know the attorney  
11    general has a copy of the appeal and we would be glad to  
12    submit that to the Court because I want to make sure I'm  
13    correct.

14            THE COURT:  All right.  I understand, I do understand  
15    where you're coming from.  There is a case directly on  
16    point.

17            MR. THOMAS:  There is, Your Honor.

18            THE COURT:  It was 2014, or when did that come out?

19            MR. THOMAS:  I can't remember offhand, Your Honor.

20            THE COURT:  We'll do some checking.

21            MR. THOMAS:  All right.

22            (A break was taken.)

23            THE COURT:  We will go back on the record in Mr.  
24    Brown's case.  At this point in time cross?

25            MR. HUNTER:  May it please the Court, Your Honor?

DAVID COOK - CROSS

1 CROSS EXAMINATION

2 BY MR. HUNTER:

3 Q Mr. Cook, when did you become involved in this case,  
4 how far before the trial?

5 A Maybe three months.

6 Q And during that time did you feel like you had  
7 everything you needed or at least access to everything you  
8 needed?

9 A Oh definitely, yeah. If I remember correctly there  
10 was even a continuance at one point, so I feel like I was  
11 prepared.

12 Q And at pretrial I think it was discussed that there  
13 were competency reports that found him competent, but  
14 didn't you tell the Court you still planned on using the  
15 insanity defense?

16 A I did.

17 Q So you feel like despite the Judge's findings you felt  
18 like you had a strong enough case on insanity?

19 A I felt that way, I did.

20 Q And just continuing on with the insanity portion,  
21 essentially in your closing is it a fair statement to say  
22 your argument was our expert is better than their expert?

23 A Yes, sir, it was a swear off.

24 Q And so despite not objecting to Mr. Frierson, the  
25 supervisor, despite not objecting to his testimony you felt

## DAVID COOK - CROSS

1 like you still did a good job on attacking him on cross?

2 A I did. If I remember correctly the jury was out for  
3 a long time in deliberation, I think that there was a lot  
4 of them on the jury panel that were convinced. On that  
5 point explicitly as a defense attorney I relished cross  
6 examining him. It was ridiculous how little preparation  
7 he'd done for the entire case, and my assessment --  
8 realistically he was reading a couple of handwritten notes  
9 from one of his employees and I was going to tear it up on  
10 closing arguments, and thought I did.

11 Q And he signed off on her notes; is that correct? Is  
12 that how he came --

13 A Sure. He was backing everything that -- he was  
14 bolstering her assessment.

15 Q Do you think you would have had a reason to object to  
16 his testimony regarding her assessment?

17 A No. You know, there's always a reason to object to  
18 something but apparently I wasn't compelled to.

19 Q But you feel like your cross examination of him was  
20 sufficient?

21 A Oh, definitely. You know, it was -- I definitely  
22 think it was sufficient. I don't want to go as far to say  
23 it was strategy to not object, but I think that had no  
24 bearing on the case. I think had I objected Judge Hayes  
25 would have let his testimony in, he was a state

## DAVID COOK - CROSS

1 psychologist or psychiatrist.

2 Q And as far as -- I believe you said earlier the  
3 insanity was the only defense you really had here.

4 A The only defense I saw.

5 Q Did he provide you with any alibi witnesses?

6 A Mr. Brown? No, sir.

7 Q I just want to be clear about the 911 tape, you said  
8 you listened to it. How many times do you think before  
9 trial that you listened to that tape?

10 A I think maybe twice or three.

11 Q Did you ever have a reason to doubt it's authenticity  
12 or its contents?

13 A No, sir.

14 Q And you said you never saw or heard of another tape  
15 that existed?

16 A I didn't.

17 Q And regardless you still brought this to the Judge's  
18 attention, correct?

19 A I did, yes, sir.

20 Q In regard to his employer, Mr. Parrish, I believe you  
21 had him on your witness list; is that correct?

22 A Yes.

23 Q And chose not to call him?

24 A It was -- I just thought it was irrelevant.

25 Q Can you explain that a little bit more?

## DAVID COOK - CROSS

1 A I'm sitting here trying to advance a not guilty by  
2 reason of insanity, I'm wanting them to focus on my expert  
3 witnesses and the relevancy as to how hard the injury was,  
4 what was the medical condition of my client. The reason  
5 he left the job eight months before that, which had  
6 nothing to do with the trial, I thought would just cloud  
7 the issues for the jury.

8 Q Just to clear up --

9 A More importantly it kinds of goes towards the  
10 aggression on the defendant's part, everybody is thinking  
11 were you or were you not fired. Even when he testified  
12 today I wouldn't have wanted the jury to have heard that,  
13 "Well, we didn't fire him, he just didn't show up for  
14 work."

15 Q So essentially you had what you felt were pretty good  
16 reasons not to call him.

17 A Sure, definitely.

18 Q Now, just to cover a little bit of background, were  
19 you provided everything in the discovery that the State  
20 had?

21 A I was.

22 Q Were you missing anything?

23 A No, sir. They didn't introduce anything that I  
24 hadn't already seen.

25 Q As far as the blood evidence or blood identification

## DAVID COOK - CROSS

1 is concerned, did you see any reason to object to Calvert  
2 identifying his own blood?

3 A Yeah. I didn't want to bring anymore attention to  
4 that than I already had to. I didn't want some long  
5 lengthy objection as to whose blood that was, I don't  
6 think that would have helped my client's case if I would  
7 have drawn that out. I was ready to move along.

8 Q So do you think had you objected to this blood  
9 identification by Mr. Mahoney and Mr. Calvert it would have  
10 changed the outcome of the case?

11 A No, I don't think it would have changed the outcome  
12 of the case. I think it would have highlighted in the  
13 jury's mind there was blood everywhere while the jury was  
14 deliberating.

15 Q Now, let's talk about the weapon or the opinion of  
16 Detective Strickland. Did you have any concerns when he  
17 testified that it seemed to be cutoff with a machete type  
18 instrument?

19 A You know, I am the most novice defense attorney, but  
20 still to this -- I still think that's something that a  
21 police officer who has been certified as an expert witness  
22 can attest to but maybe I'm wrong.

23 Q Do you remember when that came out, was he talking  
24 about his investigation or was he talking about his expert  
25 opinion?

## DAVID COOK - CROSS

1 A No, I think he was talking about the investigation.  
2 He was basically just saying through his investigation --  
3 I read the sentence that we're referring to, I can't quote  
4 it, but I don't think that he stated that it was a  
5 machete.

6 Q Okay. And he was the investigating officer; is that  
7 correct?

8 A Yes, sir, the lead investigator.

9 Q Now, about these text messages, the supposed text  
10 messages that were sent, did you have any reason to object  
11 to the testimony there?

12 A No. Once again, my failure to object regarding to  
13 the text messages is just that it's not what I wanted to  
14 highlight, it's not where I was trying to attack. I don't  
15 think that it would have changed the outcome of the trial  
16 if the jury would have gotten wrapped up in some  
17 evidentiary issue as to whether the text messages were  
18 admissible or not.

19 Q Do you think that would have changed the fact or do  
20 you think that would have made any difference on whether or  
21 not he could be found guilty of committing that --

22 A Yes, exactly, absolutely not. The case didn't hinge  
23 on the text messages. I can't remember whether he --  
24 well, I'll stop there.

25 Q Talking about I think it was Strickland again who

## DAVID COOK - CROSS

1 discussed the elements of the crime.

2 A Yeah.

3 Q I believe you testified earlier that you're not sure  
4 if he was qualified to give that opinion. My question is  
5 do you think he's giving a legal opinion or giving the  
6 results of his investigation?

7 A I just think he was giving the results of his  
8 investigation, he didn't use the word elements.

9 Q And just to be clear, the Judge still charged the  
10 elements at the end, correct?

11 A Of course, yeah.

12 Q Now, did you -- what were your conversations like with  
13 Mr. Brown here pretrial about his likelihood of being found  
14 guilty or not guilty?

15 A I told him that I was, you know, really concerned  
16 that he would be found guilty. I'm sorry, I don't mean to  
17 be -- I just -- it's a situation where you have the  
18 alleged victim whose going to testify during the trial --  
19 I went over this with Mr. Brown, I said attempted murder  
20 trials are harder than murder trials. You have the victim  
21 sitting there pointing at you, "Yes, it was him, that's  
22 him," you're going to have that to overcome. You're have  
23 the 911 tape to overcome, which I won't be able to keep  
24 out of evidence, and then certainly this is where the  
25 adulterated parts come in. And I was kind of upset, for

## DAVID COOK - CROSS

1 the longest he was on board with the not guilty by reason  
2 of insanity, then right at the last second -- when he was  
3 participating at first he didn't want to, then he agreed  
4 to, then he participated through all of the sessions with  
5 Dr. Walser, we get to the trial it was kind of where -- I  
6 can't analyze people but it was almost an ego thing where  
7 he didn't want people to think he lacked capacity at the  
8 time. And I said to him -- oh, I was begging him to take  
9 that eight year offer, you only serve 75 percent of it and  
10 "I don't know about your blood condition but, you know,  
11 you're going to be dead on the outside or the inside of  
12 jail, wouldn't you rather be dead on the outside of jail,"  
13 having these types of discussions with him.

14 Q And so do you think that he was ready for trial when  
15 trial commenced?

16 A I'm sorry?

17 Q Do you think he was ready for trial when trial  
18 commenced?

19 A No, absolutely not. What do you mean by that?

20 Q As in able to help or assist your defense?

21 A No. He did not help or assist in my defense  
22 whatsoever.

23 Q Is that why you brought competency up at the beginning  
24 to the Judge?

25 A Yes.

## DAVID COOK - CROSS

1 MR. HUNTER: Beg the Court's indulgence one second.

2 THE COURT: Yes, sir.

3 (Break in proceedings.)

4 Q Regarding Judge Hayes' charge, you didn't object to  
5 any of the charges, correct?

6 A Correct.

7 Q And did the Judge -- do you remember if the Judge  
8 charged the inference of malice by deadly weapon?

9 A I can't recall much of anything about this, but no, I  
10 don't recall it.

11 Q Okay.

12 A Yeah. If it's in the transcript then I just have a  
13 bad recollection.

14 Q If he had charged that, do you think you would have  
15 objected to it?

16 A If he had charged --

17 Q If he would have charged the inference of malice by  
18 use of a deadly weapon, do you think you would have reason  
19 to object?

20 A Oh yes, definitely.

21 Q And regarding the general and specific intent of  
22 attempted murder, I believe that was an issue raised by the  
23 solicitor --

24 A Uh-huh.

25 Q -- did it seem contrary to law at the time?

## DAVID COOK - CROSS

1 A No. I disagreed with the solicitor's take on that.  
2 And we had discussed that in-camera before it went on the  
3 record and it was kind of nebulous the way that the  
4 solicitor explained it to the Judge, and I remember Judge  
5 Hayes just saying, "Well, I don't really understand your  
6 argument but my charge is in the book," you know.

7 Q So he charged from his bench book?

8 A Yes, sir. And I just remember not understanding it  
9 enough to -- E. B. said, "Well, I want to put it on the  
10 record; is that okay?" And I said, "Sure."

11 Q And if you would have seen any problem with it you  
12 would have objected?

13 A Yeah, I would have but I didn't.

14 MR. HUNTER: Beg the Court's indulgence one minute.

15 (Break in proceedings.)

16 MR. HUNTER: No further questions.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION

19 BY MR. THOMAS:

20 Q Mr. Cook, we were talking about objecting to the  
21 report from the psychologist in Columbia from mental  
22 health.

23 A Correct.

24 Q And she was not available, was she? She was gone.

25 A Yes, sir, she was not available.

## DAVID COOK - REDIRECT

1 Q So she was out of state?

2 A Yes. She had started a private practice somewhere  
3 and was non-responsive to my attempts.

4 Q So there was no way for the State to compel her to be  
5 present.

6 A Not effectively.

7 Q And would it have benefited your case and your  
8 argument for that report and that information not to have  
9 come in?

10 A Oh, it definitely would have.

11 Q You had a strong witness.

12 A Yes.

13 Q It was your witness.

14 A Yes, it would have benefited me.

15 Q And the testimony from the department of mental health  
16 did not help you.

17 A Not at all.

18 Q Okay. Now, you're talking about -- you said that Mr.  
19 Parrish's testimony was kind of irrelevant, I guess, and  
20 that you would not have wanted him to testify.

21 A Uh-huh.

22 Q Wouldn't some of that have gone to motive, though?  
23 Wasn't there some indication in the record about him being  
24 fired on his job?

25 A Frankly I don't think so. The motive wasn't whether

DAVID COOK - REDIRECT

1 he was fired from his job, it was whether he'd been paid  
2 for that fence.

3 Q All right. And the blood ID, not objecting to the  
4 blood, would that issue have gone to the -- wouldn't that  
5 issue of the blood have gone to who was the aggressor? If  
6 they were trying to use the blood to say this was Calvert's  
7 blood, this was everywhere, doesn't that tend to imply that  
8 Mr. Brown is the aggressor in this case.

9 A You know, I wasn't thinking about it in those terms  
10 at the time, but now that you mention it -- I disagree  
11 with your analysis, but if that was put forward somebody  
12 could think that it was the aggressor who had the least  
13 amount of blood at the scene, right.

14 Q And the issue of the weapon, talking about a machete,  
15 a machete was never found.

16 A Correct.

17 Q And you said that he was talking about the text  
18 messages. Well, weren't the text messages damaging in that  
19 they are contrary to your theory of the defense, being that  
20 he had a traumatic brain injury and was incompetent at the  
21 time that these alleged crimes had occurred, wouldn't the  
22 text messages and the alleged threat on those messages tend  
23 to show that he's thinking this through, that he's making  
24 these threats and is continuing this attack?

25 A I mean, I really couldn't comment one way or another

## DAVID COOK - REDIRECT

1 to be frankly honest about what that would intend to --

2 Q Yes, sir.

3 MR. THOMAS: No further questions, Your Honor.

4 THE COURT: All right. I was unable to connect the  
5 O-drive where the transcript is saved so I'm clearly going  
6 to be taking this under advisement, but just so I can just  
7 get this clear in my head, did you request any  
8 lesser-included offenses of the trial court that you  
9 recall?

10 THE WITNESS: No, sir, not that I recall.

11 THE COURT: Okay.

12 MR. HUNTER: Your Honor, I believe they did do all of  
13 lesser-includeds.

14 MR. THOMAS: They were cargoed.

15 THE WITNESS: I should have read over the transcript  
16 better, Your Honor, I apologize.

17 THE COURT: The doctor for mental health, did you  
18 explore with the doctor who came down and did testify  
19 anything about the reasons that she was let go, or do you  
20 know whether it was malfeasance or --

21 THE WITNESS: Yes, sir -- and I apologize, I didn't  
22 mean to interrupt Your Honor.

23 THE COURT: Go ahead.

24 THE WITNESS: Yes, sir. I believe it's on the record,  
25 but in my memory I cross examined the psychiatrist very

## DAVID COOK - REDIRECT

1 hard about that trying to bring that out to light in front  
2 of the jury so that I believe the jury knew that she was  
3 terminated and he wouldn't comment on why she was  
4 terminated. And the jury knew that he had never met with  
5 Mr. Brown.

6 THE COURT: Did you have any other independent  
7 knowledge about why she was terminated? Or did you try to  
8 get ahold of her employment records under a FOIA request --  
9 I guess a FOIA wouldn't apply, but did you follow-up with  
10 anything like that to find out whether it was incompetence,  
11 lack of education, something like falsifying reports or  
12 anything along those lines?

13 THE WITNESS: No, sir, I'm sorry, I did not.

14 THE COURT: I was just curious. Follow-up based on my  
15 questions?

16 MR. THOMAS: No, sir, Your Honor.

17 MR. HUNTER: Nothing, Your Honor.

18 THE COURT: Thank you for coming, you are free to go.  
19 Will he be your last witness?

20 MR. THOMAS: Yes, sir. Are y'all going to call  
21 anybody?

22 MR. HUNTER: No, sir, Your Honor.

23 The witness, HUBERT BROWN, was first duly sworn and  
24 testified as follows:

25 DIRECT EXAMINATION

## DAVID COOK - REDIRECT

1 BY MR. THOMAS:

2 Q Mr. Brown, let me ask you before I forget, you heard  
3 trial counsel testify that he had brought in front of the  
4 jury -- brought out the information about the psychiatrist  
5 that you saw for mental health about her being discharged.

6 A He never did.

7 Q Do you remember that?

8 A No, sir, he didn't. I didn't even know she had been  
9 discharged, I'm learning it now.

10 Q Okay. You are serving time for what?

11 A Attempted murder and first degree burglary.

12 Q And you got life without parole?

13 A Yes, sir.

14 Q How long have you been incarcerated?

15 A Four years.

16 Q All right, sir. Let me ask you kind of -- we've gone  
17 through these issues with Mr. Cook so I would like to  
18 pickup this with you and let's talk about these things that  
19 you are concerned about. Now, you and I have discussed,  
20 and you said that you thought there was some discrepancy  
21 between the solicitor's opening statements?

22 A It was definitely some. Basically when he opened he  
23 said that -- the first thing that caught my attention he  
24 said that I was dressed in a white shirt. None of the  
25 evidence that they gave me, no witnesses came and

HUBERT BROWN - DIRECT

1 testified that I was dressed in a white shirt. And a lot  
2 of people would think what difference does it make? It  
3 makes a lot of difference once you get into the testimony  
4 of Officer Cheryl Beck -- Crystal Beck, excuse me.

5 Q And you felt like Mr. Cook was deficient in not  
6 addressing these things, these comments that were made in  
7 opening statement because they were never proven, right?

8 A Yes, sir. If you excuse me, one thing that I wanted  
9 to address, I never had a problem with him putting forth  
10 the insanity or doctor testifying that I wasn't in my  
11 right mind. I basically told him that I wanted to also  
12 argue the fact that -- argue the evidence, you know,  
13 dispute the State's case. And even the Judge in his  
14 charge said that just because the defendant has put forth  
15 an insanity defense, the State still must prove the  
16 elements of these crimes beyond a reasonable doubt. But  
17 he didn't see it that way. He just put forth an insanity  
18 defense and basically let the State come in and do  
19 anything he wanted to do.

20 Q Because you felt like that you were not the aggressor.

21 A I wasn't the aggressor.

22 Q Okay. And you felt like that the victim in this case  
23 was the actual aggressor.

24 A Yes, sir, he was.

25 Q Now, you're suffering from a traumatic brain injury.

## HUBERT BROWN - DIRECT

1 A I have been diagnosed with PTSD and -- yes, sir.

2 Q And that was also part of your defense at trial was  
3 that you were hit, there were allegations or the testimony  
4 that you were mumbling and you were incoherent.

5 A Yes, sir.

6 Q How badly were you injured?

7 A I was -- I was knocked out. And then when I got up  
8 even the victim said I -- the alleged victim said I laid  
9 there for awhile after I got hit. I was knocked out, I  
10 got up and I couldn't really hear nothing, I could know  
11 that people was trying to talk to me, I could understand  
12 all of that but I couldn't hear. And I looked and I saw  
13 my then wife running and the guy was chasing her.

14 Q Okay. Mr. Calvert?

15 A Yes, sir..

16 Q And you've had some memory problems as a result of  
17 this blow?

18 A Yes, sir. Not altogether memory, just -- you know, I  
19 find myself paranoid a lot and I ain't never been like  
20 that never in my whole life. And there's no history of  
21 ever any kind of mental health issues with me at all until  
22 this issue, and now they've diagnosed me with fear of my  
23 life and PTSD. But it's something else I wanted -- he  
24 told me that -- he said up here that he had a eight year  
25 plea. There was never -- I have a letter right here where

HUBERT BROWN - DIRECT

1 my attorney -- the attorney that I had is in the back  
2 there, Mr. Phil Smith, and I've terminated him and I come  
3 in this courtroom in front of Judge Hayes and Judge Hayes  
4 was going to make me represent myself -- and the solicitor  
5 wrote a letter stating that the whole outcome of that --  
6 that I was trying to fire Mr. Smith and that I'd been told  
7 that I had a deadline for my eight to 15 year plea and  
8 then after that deadline there would be no more plea, and  
9 that was September 21st was the plea. I have the paper  
10 right here, there was never no more plea. That was  
11 September 21st of 2012, he became my lawyer in January of  
12 2013.

13 Q So the plea offer had been withdrawn?

14 A Yes, sir, that was withdrawn. Nobody ever told me  
15 about a plea offer after Mr. Phil Smith was gone.

16 Q Were you laid off from your job?

17 A No, sir.

18 Q And why do you think that's important?

19 A Because the State basically said -- in their opening  
20 statement they said it's clear as a bell what happened  
21 here and you'll see as we go through that Mr. Brown got  
22 laid off and then he said I got fired, and then -- but the  
23 part that really I guess keyed in on it in his closing  
24 statement, it was clear Mr. Bell -- I mean, Mr. Brown was  
25 as mad as he could be, he was just as mad as he could be

HUBERT BROWN - DIRECT

1 about being laid off from his job and it's clear as a bell  
2 that he went there looking for trouble that night, and  
3 that was far from the truth.

4 Q And that wasn't true.

5 A It wasn't true.

6 Q Now, we talked about the text messages. Do you have  
7 any knowledge about the text messages?

8 A Yes, sir. They tried to make it look like that I was  
9 basically sending him a threatening text message saying  
10 that I came there with the intent and that I'm coming back  
11 to finish the job, and the text message doesn't say  
12 anything of that. It's kind of ironic, if he would have  
13 reviewed the case and looked at the text messages he could  
14 have disputed other issues that was brought up at my  
15 trial, where the victim testified that he stayed in the  
16 hospital a week. He was actually out of the hospital the  
17 next day and they sent text messages saying it, it was on  
18 the same page.

19 Q Okay. But they didn't have copies of the text  
20 messages.

21 A Who didn't?

22 Q The State. Nobody had copies of text messages, they  
23 didn't have written copies, they didn't have copies of --

24 A Yes, sir. Everything that I got -- everything that  
25 was ever went over with me as far as evidence,

HUBERT BROWN - DIRECT

1 photographs, text messages, everything, Mr. Phil Smith  
2 back there went over it with me, no one else did.

3 Q But Mr. Cook didn't go over it with you.

4 A No, sir. He mentioned where I said in my -- he  
5 mentioned that I said to the Judge at closing about I wish  
6 I would have took the plea. And it also says -- if you  
7 look it says that I had someone to go over the evidence  
8 with me, it says that and that's what I said to the Judge  
9 at sentencing, that I wished I would have had someone to  
10 go over it with me because he never did. Every time he  
11 came to see me he would always -- there was another guy  
12 named Donald Colby, he would sit down 30 or 45 minutes  
13 with him, I guess he was a paying customer, and when I  
14 would get in there he would tell me he had two minutes so  
15 I would get irate with him. And naturally, I'm sitting  
16 here facing life and you're telling this guy he's going to  
17 go home on probation and you're spending two minutes with  
18 him and 35 with him. So yes, I did get a little bit  
19 irritated.

20 Q Now, you and I talked about -- you mentioned Rule 5  
21 problems with stuff like that. With Mr. Cook you never  
22 actually had an opportunity to really discuss any of the  
23 discovery with him?

24 A Any of it. That was one of the main reasons why I  
25 told him that I didn't trust him, I never trusted him.

HUBERT BROWN - DIRECT

1 Because when I first met him he came to see me over here  
2 in the jail and he had, you know, something that I  
3 recognized, because every time Mr. Phil Smith would come  
4 to see me he had a folder with a pretty big case file in  
5 it, he wasn't even my attorney then. This is when -- it  
6 was on a Friday and he come and said he is thinking about  
7 taking my case, he had talked to my wife, he had that case  
8 file laying on the table and I asked him how he got that.  
9 I said, "How did you get that?" And he said there was  
10 secretaries at the public defender's office that just  
11 makes copies of it. His first -- this is what he told me,  
12 he said, "We're going to go into the courtroom, I'm going  
13 to put you on the stand, we're going to admit to  
14 everything that the State has said and I'm going to  
15 nullify the jury." And I said, "What is nullify?" I was  
16 kind of ignorant to it then, but he explained nullify to  
17 me and I kind of got irate with him and called him crazy  
18 and walked out.

19 Q What's nullifying the jury?

20 A I guess it's just making the jury think that they  
21 would have done the same thing in that situation.

22 Q Okay. Now, you indicated to me that you had a problem  
23 with the testimony saying that you entered the home twice.

24 A Yes, sir. You've got a forensic interviewer who went  
25 out there and she took all these pictures of this blood.

HUBERT BROWN - DIRECT

1 Anytime you've got the police that goes to a crime scene  
2 naturally they're going to do a perimeter check and look,  
3 and I can't figure out, you know, why she took all of  
4 these blood -- these pictures of this blood and she never  
5 took no pictures of no blood on the back porch. I was  
6 bleeding really bad. And they talk about the blood in  
7 these pictures and he said that he didn't want to bring it  
8 back up and didn't want to highlight it. Well, it got  
9 highlighted because of the fact that you had the solicitor  
10 sit here and ask Mike Mahoney to identify a picture of the  
11 front walkway and there was blood everywhere and he  
12 identified it. He said, "Is that a true and accurate  
13 picture of what your front walkway looked like that  
14 night?" He never asked him whose blood that was. Then he  
15 showed him a picture of the front porch, that's in the  
16 transcript in Mike Mahoney's testimony, he showed him a  
17 picture of the front porch, he said, "Is that a true and  
18 accurate picture of your front porch?" He said, "Yes,  
19 sir." He said, "What is that red stuff?" He said,  
20 "Blood." And he said, "Yeah, it's a lot of it." Then he  
21 showed him a picture of the front screen door he said,  
22 "What is that right there?" He said, "That's my front  
23 screen door." He said, "What is that on the door handle?"  
24 He said, "Is that a true and accurate picture of what your  
25 door handle looked like that night?" And he said, "Yes."

HUBERT BROWN - DIRECT

1 He never asked him whose blood that was outside. And if  
2 you look at the Deputy Mark Whitesides' testimony, the  
3 arriving officer, when he got there he found Christopher  
4 Calvert, the alleged victim, with his hand in the freezer.  
5 Mike Mahoney said when he allegedly got cut in the  
6 bathroom he handed him some rags. And Calvert, the  
7 alleged victim, testified that after he left the bathroom  
8 he went to the freezer where the responding officer found  
9 him. So how did all of this blood outside get to be at  
10 Calvert's? And the solicitor knowingly deceived the  
11 witness and the jury by allowing the witness to testify  
12 that it was Chris Calvert's blood. He never asked him  
13 whose blood it was. He went on to the pictures of the  
14 bathroom, and then he showed him the picture of the  
15 bathroom and he identified the bathroom as his bathroom, a  
16 true accurate picture of what it looked like that night  
17 and then he showed him -- then he went back and showed him  
18 a picture of the outside, and I think it was like Exhibit  
19 26 or something. And then he went back to the bathroom  
20 picture and he said, "Mr. Mahoney, whose blood is this?"  
21 And he's showing him a picture of the bathroom with the  
22 blood in it. And, of course, Mahoney told the truth  
23 because he was looking at the picture of the bathroom and  
24 he told him it was Chris Calvert's blood and it made it  
25 look like all the blood was his.

## HUBERT BROWN - DIRECT

1 Q And you felt that was important because you had some  
2 concern about who was the aggressor.

3 A Right.

4 Q And they were saying that you were the aggressor.

5 A Right.

6 Q And you felt like Mr. Calvert was the aggressor.

7 A He definitely was the aggressor. And they sit  
8 here -- if he truly had my best defense at heart -- and he  
9 sits here talks about the 911 tape, and the 911 tape was  
10 altered (sic). I don't want to hear no new 911 tape,  
11 listen to the trial tape and play that 911 tape for them.  
12 I told him -- when I told him in the courtroom I said the  
13 911 tape is altered (sic). Every time someone testified  
14 to something that was bogus or not in line with their  
15 statements and I said something to him he would go like  
16 this, "It's irrelevant to my defense." They were trying  
17 their best to entice me because of the fact that I have  
18 been aggressive with him or irate with him, I bet -- he  
19 probably bet his career that I was going to cause a  
20 mistrial and he kept telling me, "The jury can't find that  
21 out that you're facing life in prison, if they do it's  
22 going to be a mistrial." It's stuff that they did that  
23 ties into that. Because they even had my wife come in  
24 here and testify to something about, you know -- the  
25 solicitor asked her something about stopping the car, and

HUBERT BROWN - DIRECT

1 at the end of the conversation he said, "Who told you to  
2 say that?" And she said, "It ain't what they told me to  
3 say, it's what they told me not to say." Any solicitor  
4 whose trying to convict anyone, you can't convince nobody  
5 in this courtroom, his next question would be, "Well, what  
6 are they trying to tell you not to say?" He didn't ask  
7 that because he knēw, he knew, he told her not to tell the  
8 jury that I was facing life without parole. And they want  
9 sit here -- he kept -- the closer it got to the end of the  
10 trial the closer it got to the end of the trial --

11 THE COURT: Sir, one second. Please call out there  
12 and tell them to stop and they can start back tomorrow.  
13 Somebody is going to get a piece of concrete on their head,  
14 so call out there and tell them to just top it for the day.

15 Q You heard some allegations that you stepped in a hole  
16 and broke your ankle and you had some concern about the  
17 gearshift knob.

18 A It was a gearshift. E. B. Springs, the solicitor,  
19 testified that the man picked it up off the ground. It  
20 was an old gear-shifter laying on the ground they were  
21 working with. And man, he premeditatedly unscrewed that  
22 gearshift in that truck. He was standing there with that  
23 gear-shifter in his hand while I was talking to Mike.  
24 Mahoney. I'm the one that I put the transmission in the  
25 truck. It's a granny transmission, it's called a granny

HUBERT BROWN - DIRECT

1 transmission with a long gear-shifter handle on it and it  
2 screws down on a one inch bolt. It takes time, you just  
3 don't pull it up, he unscrewed that. What did he unscrew  
4 it for?

5 Q To hit you.

6 A Obviously.

7 Q So it still goes to your contention that you're  
8 talking about as far as that there were actual defenses to  
9 this case, that you truly believed that Chris Calvert was  
10 the aggressor in this case?

11 A Absolutely. I never had no specific intent to hurt  
12 no one. I never went there with that -- I had three  
13 children and a pregnant wife in my car, why would I even  
14 attempt to go there to someone who I considered my best  
15 friend's home looking for trouble? I think the jury would  
16 have been -- that would have been a good thing. Why  
17 wouldn't anybody in here want to know that, that I never  
18 went there looking for any trouble? But they were allowed  
19 to believe that I went there looking for trouble with the  
20 loss of my job with three children and a pregnant wife in  
21 the car, and there was evidence to show that I wasn't.

22 Q Was there any DNA evidence in regards to talking about  
23 the blood?

24 A Absolutely. She done swabbed -- I have the evidence  
25 report where Detective Forensic Investigator Paula Neely

## HUBERT BROWN - DIRECT

1 was at the scene -- the arriving officer there at the  
2 scene and she done a swab of the shovel outside of the  
3 front steps the, the front screen door and all of that  
4 blood who the jury believes is my -- Chris Calvert's  
5 blood. I promise you, if you look at it it's my blood.

6 Q Was any of that testimony introduced?

7 A What do you mean?

8 Q As far as forensic testimony.

9 A None of it, she wasn't even in the courtroom. And I  
10 know why, because they sit here and said I run through the  
11 house. I never knew anyone -- no one never told me they  
12 were going to come in here and say I run through the house  
13 twice and I chopped down into the -- where was the blood  
14 on the front porch and why wasn't the forensic interviewer  
15 here to testify that there was no blood on the back porch?

16 Q Just to kind of clarify things, they said that you ran  
17 through the house and in anger chopped a piece of the  
18 railing of the porch?

19 A Yes, sir.

20 Q And that's -- and there was blood on the back porch  
21 too, but that was after you'd been hit in the head?

22 A Yes, sir. There's something I want to bring here,

23 I'm sorry to interrupt you. But he sit here and said

24 "Yeah, you could get convicted, look at the 911 tape."

25 After he gets me a life sentence he sits here and writes

HUBERT BROWN - DIRECT

1 me a letter, and I have it right here, where he tells me  
2 he knows the 911 tape and the photographs were hearsay but  
3 gooder (sic) lawyers don't object to it, I have the letter  
4 here, he recognizes it's hearsay. And E. B. Springs told  
5 a newspaper after I get convicted that I was convicted due  
6 to a 911 tape. So my trial attorney is telling me I was  
7 convicted because of hearsay? I don't understand that.

8 (The roof construction work stopped.)

9 Q Well, let's talk about the 911 tape. You actually  
10 addressed Judge Hayes about it?

11 A Yes, sir.

12 Q You got a chance to talk to the Judge.

13 A I did. He didn't want me to. I tried to tell him  
14 that the tape has been altered, I leaned over and tried to  
15 be as quiet and possible and respectful as possible. And  
16 every time I ever told him anything concerning the  
17 testimony -- they had a deputy get up here and testify  
18 different than what she put in her report. But she -- I  
19 told -- when I told him that he said, "It's irrelevant to  
20 my defense." And what had happened is right before -- you  
21 know, in Christopher Calvert's and Mike Mahoney's  
22 statement alone and if you listen to the 911 tape, they  
23 entered it, it totally disputes if they say that they came  
24 out of the bathroom after they heard Amy Mahoney  
25 screaming. They played this tape in the courtroom. There

HUBERT BROWN - DIRECT

1 was never no -- the original one that Mr. Phil Smith back  
2 there played for me, it said "Hello, you have reached 911,  
3 what is your emergency?" And Amy Mahoney told him that  
4 there was someone running through her yard with a machete,  
5 they need to get someone out here quick, and that was her  
6 exact conversation. The next words were, "What is your  
7 address?" Amy Mahoney went to giving her address and  
8 while she went to give her address Christopher Calvert and  
9 Mike Mahoney was in the bathroom laughing and it was on  
10 the 911 tape. At trial -- and then when you hear them  
11 laughing, then she goes to screaming, and that's when  
12 their statements they say they come out of the bathroom  
13 after they heard her screaming. But the 911 tape they  
14 played at trial before she goes to screaming you hear a  
15 fight, it sounds like a ruckus in there. And that  
16 wasn't -- and I stopped it and I asked them  
17 specifically -- it's in the transcript -- to call Phil  
18 Smith or Pat Kiefer, Pat Kiefer I think his name is  
19 Kiefer, for the public defender's office, Investigator Pat  
20 Kiefer, I told him to call one of them, you could call  
21 anybody in here, they heard the tape, it was laughing on  
22 that tape right before she goes to screaming. And I said  
23 that in the transcript and they told me basically to sit  
24 down.

25 Q You had told them to try find a copy of that unaltered

HUBERT BROWN - DIRECT

1 911 tape. You had indicated to me that your wife has --  
2 she has that.

3 A She paid \$5, I think, to get a copy from the 911  
4 operator's office, which you know, apparently with a lay  
5 person trying to get it they don't give the address part,  
6 and that's the part that's detrimental to what I'm saying  
7 where she's giving the address you can hear them laughing  
8 on here. And at the end -- but at the end of the one that  
9 she has that she got from the 911 operator it says -- the  
10 911 operator -- Mike Mahoney gets the phone from Amy and  
11 he says, "You need to send someone out here, one of my  
12 buddies has cut my other buddy with a machete." She said,  
13 "Why did he cut him with a machete?" He said, He hit him  
14 in the head with a pipe." She said, "Well, why did he hit  
15 him in the head with a pipe?" Mike Mahoney said clear as  
16 a bell, "I don't know, he didn't have to, the situation  
17 was under control." Why wouldn't you want a jury to hear  
18 that?

19 Q Now, is that in the unaltered 911 tape?

20 A That's in the tape that -- the copy she played for me  
21 over the telephone.

22 Q Okay.

23 A It doesn't have the address there because they said  
24 they had to do a screening and I guess the attorneys over  
25 there or whatever, they took the address part out because

HUBERT BROWN - DIRECT

1 she was part of the public.

2 Q Okay. Do you believe that your wife still has that  
3 copy?

4 A I have no idea.

5 Q I have spoken with her through an email and she had  
6 told me she would be here, I don't know where she  
7 physically is but she's not here today.

8 A Okay. That's fine.

9 Q You've also brought to my attention the testimony by  
10 the police officers about speculation about what type of  
11 weapon that was used.

12 A Yeah. They said they identified that I had a  
13 machete. They were going to enter a 5-foot machete in the  
14 courtroom, they had one -- it was real long and they were  
15 going to try to enter that. And that's one of the things  
16 that he objected to -- which he objected twice, to that  
17 and the jury wasn't present and he objected to one more  
18 thing that was detrimental to me -- he says in this  
19 letters that good attorneys don't object to anything  
20 unless they're trying to highlight it, and the other  
21 objection he clearly highlighted something that destroyed  
22 his defense.

23 Q What was that?

24 A That I was driving a vehicle.

25 Q Okay. And who was driving the vehicle?

HUBERT BROWN - DIRECT

1 A My wife was driving. She said in her statement that  
2 I stopped her before I got to the end of the driveway.

3 Q She testified to that?

4 A Well, they didn't ask for that. Why wouldn't you?  
5 You've got the solicitor sitting here telling the jury  
6 that I drove the car. And when he had his doctor on the  
7 stand his doctor said -- he told his doctor, "If someone  
8 drives a vehicle some miles after they get hit in the head  
9 after this incident, would that show that they have a  
10 clear way of thinking?" And he stands up and objects to  
11 that. But, you know, he -- "Objection, Your Honor.  
12 Nobody has never said my client was driving the vehicle."  
13 But why didn't you ask my wife who was driving the  
14 vehicle? She said it in her statement.

15 Q Why do you think that was important?

16 A Because they were sitting here -- and evidence of  
17 flight is evidence of guilty knowledge, the same thing  
18 that falls back on Deputy Cheryl Beck when she took the  
19 stand. She wrote a statement -- two months after the  
20 alleged incident she wrote a statement on June -- August  
21 10th of 2012, I have a copy of the statement, the  
22 statement is true and exactly what happened. She pulled  
23 in my yard -- I have two little small girls, Katelyn was  
24 two, Arianna was one at the time and every time I go to  
25 the door they was wanting to go with me, it didn't matter,

HUBERT BROWN - DIRECT

1 if the sun was shining everybody knows they're going out  
2 that door with me period. So when I went to open the door  
3 they were trying to come out the door, I pushed my  
4 children back and told my wife that the police were here.  
5 I walked out on the porch and she told me to raise my  
6 hands over my head due to a machete being involved, that's  
7 her statement, she told me to raise my hands over my head.  
8 And they sit here -- and that's true, that's to a T. But  
9 she sit here and testified that when she drove in my yard  
10 that my wife came to the door, basically said my wife had  
11 to go back there and talk me into coming out. That was  
12 just another key to try to make the jury think I was  
13 trying to elude the police. That's why they even had the  
14 detective testify that I left York County -- "Oh, he left  
15 York County the next day." Don't you think the jury would  
16 have wanted to know I was in this very building at traffic  
17 court downstairs at Judge Benefield's office? I was at  
18 the unemployment office the next Tuesday. I never left  
19 the next day. There was evidence that showed I was in  
20 York County and he knew it.

21 Q And this was important to you because of flight?

22 A Because they made it look like I was eluding -- it  
23 says guilty knowledge -- evidence of flight is guilty  
24 knowledge and that's what the State was -- to try to avoid  
25 a directed verdict that's what the State was trying to

HUBERT BROWN - DIRECT

1    prove and he was helping them prove it.

2    Q     And actually you ended up in a different county.

3    A     Yeah, Walterboro, Colleton County. That's where my  
4    mother lives.

5    Q     Why did you end up in Walterboro?

6    A     My mother lives there, she's in the audience out  
7    there. Naturally you get hurt that bad, they talked me  
8    into coming down there and we went down there. In fact,  
9    she Money-grammed me the money to Wal-Mart to come home on  
10   and that's what I did. I never knew there was no warrant  
11   out for me or anything, that was the last thing on my mind  
12   that they was going to put a warrant on me after I went  
13   there peacefully to get \$495 owed to me and then I get hit  
14   in the head with a pipe.

15   Q     Was any of that brought out at trial?

16   A     No. You know, he had the weapon laying over there  
17   and he never even entered the weapon, and he allowed E. B.  
18   Springs to tell the jury, "People drop boxes on their head  
19   at work all the time and nothing ever happens, they don't  
20   go around wanting to kill people." Well, why he didn't  
21   let the jury see this heavy gear-shifter with a five inch  
22   cast iron rod at the end of it that's as big as a roll of  
23   half dollars and screws down on a one inch bolt, why  
24   didn't he let them see that? He told me, "Nobody  
25   identified it." But E. B. Springs identifies it in his

HUBERT BROWN - DIRECT

1 testimony that he give he identified it, basically that's  
2 what his opening statement was, a testimony, and he sit  
3 here, he identified it. And there was no dispute, no one  
4 disputed it, so did Mike Mahoney, so did Christopher  
5 Calvert, no one was disputing that I got hit with that  
6 gear shifter. He could have very easily entered that and  
7 allowed the jury to hear that. He didn't want anything to  
8 be entered. They were doing their best to try to cause  
9 me to -- why would my wife tell me the next day that the  
10 solicitor's investigator walked up to her in the --  
11 because she was the only one sequestered out of  
12 everything, she was made to sit out in the thing and she  
13 said the solicitor's investigator walked up to her in the  
14 hallway and said, "Everybody don't feel the same way about  
15 this case the way that E. B. Springs does." They were  
16 just trying to plant the seeds for me to cause a mistrial  
17 and I truly believe that.

18 Q So your concern was that by not -- the question about  
19 who was driving the car, the State's position was that you  
20 drove the car and made a conscious decision to turn around  
21 and come back.

22 A No. They said that I drove the car, made a conscious  
23 decision to drive a car some miles is what he said, down  
24 to my home and I never drove the car to my home. And what  
25 he used again to say that I drove the car and this is --

HUBERT BROWN - DIRECT

1 he used some pictures that Officer Crystal Beck took that  
2 night at my home, she supposedly took -- no one ever told  
3 them to search my car, no one ever told them to take  
4 pictures. They never entered no search -- I noticed that  
5 Amy Mahoney signed a paper authorizing them the authority  
6 to search and gather evidence from her home, and I thought  
7 no one asked me for permission to search my car or take  
8 pictures of my car. She took pictures supposedly of my  
9 car that night and it had some blood drops on the driver's  
10 side of the car and some blood drops at the trunk. But  
11 you know, what's real damaging about the photos that she  
12 entered was she entered a photo now. She took these  
13 pictures at night and Mr. Phil Smith showed me these  
14 photos -- and he done a great job by the way -- he showed  
15 me these photos, and when they entered photos at the court  
16 that she supposedly took, they entered the photo of the  
17 door seal with -- by the way, it's a red car with  
18 something clear on the door seal. How do you know that's  
19 blood? But she identified it as blood and they used that  
20 to show -- to say that that's the driver's side of the car  
21 to make the jury think I got in the driver's side of the  
22 car, and they showed the back bumper with the blood drops.  
23 But they showed another picture -- and you remember in the  
24 beginning I told you that E. B. Springs said I was dressed  
25 in a white shirt. They showed a picture of my trunk and

HUBERT BROWN - DIRECT

1 it had a balled up rag in that trunk by a cherry red juice  
2 jug of my little girl's. It balled up like you would ball  
3 up a piece of paper and put it in there, and they entered  
4 it and put it on the screen. No one held it up, no one  
5 showed it to the jury, she identified that as a white  
6 T-shirt is what she said. That's the white shirt they  
7 allege I drove (sic) and that put me in the trunk. You  
8 know, I can come in here and say it's a cherry red juice  
9 that did that, you know. I could easily -- there's  
10 evidence right beside the photograph that there's a cherry  
11 red juice drink right there. And my little girl, who's  
12 Katelyn, she likes to say big girl and take the top off  
13 and pour it all over her so you take rags and get it up,  
14 but I'm not going to say that because it's not true. The  
15 truth is it is my T-shirt and it wasn't in that trunk.  
16 The T-shirt was in the yard at Mike Mahoney's. The night  
17 she took them pictures of my car, if you look at them  
18 pictures it was nighttime. If you look at the pictures  
19 they entered into the courtroom it was daytime. She never  
20 took -- nobody never took no pictures of my car in the  
21 daytime, she took them pictures at night. And another key  
22 thing to that is the following night -- I got out of the  
23 hospital that Saturday. That Saturday night I went to --  
24 my wife drove me to the -- on the corner of Celanese and  
25 Herlong there's a Walgreens I think it is, or a CVS drug

HUBERT BROWN - DIRECT

1 store right there, I filled my prescription of pain pills.  
2 And once I filled them she turned the car off while we  
3 were waiting on them to fill, and when she went to try to  
4 crank the car up she called her mother and her father to  
5 come give us a jump. But before they got there there was  
6 a lady pulled up who -- I pushed the car, got out with a  
7 cast on my leg because my leg had been broke during this  
8 incident -- I never stepped in -- was never anywhere near  
9 a hole -- I pushed the car out and a lady pulled up, she  
10 said that she had jumper cables in her car, she gave me a  
11 jump. At the same time my wife's mother and father pulled  
12 up and we told them that we had got a jump and dad said,  
13 "You better take the jumper cables with you just in case  
14 it cuts off again." He got out of his jeep and put the  
15 jumper cables in the trunk of my car and that was Saturday  
16 night. Friday night them jumper cables wasn't in my car,  
17 but the picture they entered into the evidence in the  
18 court of the white T-shirt them cables was in there. My  
19 father-in-law and mother-in-law know those jumper cables  
20 wasn't even in my car on the Friday night.

21 Q And there were no objections made by Mr. Cook.

22 A No. And I sat down here and tried to tell him this  
23 and he wouldn't even listen to me.

24 Q You had some concern about the pictures that were  
25 shown about the thumb injury?

## HUBERT BROWN - DIRECT

1 A About the what?

2 Q The injury to Chris Calvert's thumb.

3 A Yeah. You've got the court reporter who is sitting  
4 right here and he points me out like this in the  
5 courtroom, you know, he made a good showing up here and he  
6 points me out like this, he had his thumb folded in his  
7 hand. The court reporter right here, she puts in the  
8 transcript "victim points defendant out with missing  
9 thumb." But his thumb is in the picture -- he never  
10 pointed out in the picture -- he's smiling now but it's  
11 nothing funny about it, but he never pointed out in the  
12 picture that the guy's thumb was on there.

13 Q So you think there was some confusion as to whether or  
14 not the thumb was severed or whether or not.

15 A Why would you not ask the solicitor -- I asked him,  
16 "Well, you have got his medical records." They won't  
17 release them to him. I said, "What do you mean? They  
18 won't give them to us." But had he my medical records, I  
19 never released them to him. So you've got a person up  
20 here who's saying that his thumb got cut severed off, cut  
21 all the way off. I stayed in the hospital a week. He  
22 testified that he didn't come directly to the police  
23 station to give his statement of what happened because he  
24 stayed in the hospital a week. Well, I know for a fact  
25 that I was -- the police come to my house, detectives --

HUBERT BROWN - DIRECT

1 officer -- Sergeant Sean Thompson he said, "You hurt bad,  
2 man." He got me to sit down, he got me to the Piedmont  
3 Medical Center, he called an ambulance and they rushed me  
4 to Piedmont Medical Center. Piedmont Medical center put  
5 11 staples, not seven, in my head and told me I had a  
6 cracked skull and I needed to go to the trauma center and  
7 they sent me to the trauma center in North Carolina.  
8 While we was there there was a guy being irate in a little  
9 glass booth over there and my wife got to looking and it  
10 was Chris Calvert. They had called the Charlotte Police  
11 in there, Dr. Sherry Failes was there, she knows it, and  
12 my wife told her he was the guy who hit me in my head and  
13 she said he's about to go to jail or he was about to leave  
14 the hop, and we watched him leave out of the hospital.  
15 And yet he sat on this stand and he testified that he  
16 didn't come directly to the police because he was in the  
17 hospital a week later and he wasn't, he got out that  
18 night. All he was trying to do is stretch his injuries  
19 out. He's got a cut with staples, why didn't we want the  
20 jury to know that he's got his thumb and -- he never had  
21 no cast on his hand. It was seven days later that the  
22 police took a picture of his hand with stitches in it and  
23 he had his thumb clear -- I have a picture in here, he had  
24 his thumb out like this, but yet he pointed me out in the  
25 courtroom like this.

HUBERT BROWN - DIRECT

1 Q Yeah.

2 A And that was something he never tried to argue.

3 Q We talked about, too, the testimony of Detective  
4 Strickland and the elements -- we asked Mr. Cook about that  
5 and you testified you had some concern that he was  
6 testifying as to your guilt.

7 A Basically the solicitor asked him -- Solicitor Jones  
8 asked him, he said, "Do you have -- he said, "When you  
9 went to this [REDACTED], did a crime take place  
10 that occurred there?" He said, Yes." He said, "What  
11 crime is that?" He said "Burglary." And he described the  
12 elements of burglary and he told him it matched them  
13 elements. He asked him was there any indication of  
14 self-defense there and he said no, none of it met  
15 self-defense. He was kind of -- he appeared to be shocked  
16 or throwed off by the question and he had to ask him again  
17 and he told him it was no self-defense. And I thought --  
18 I was under the impression that was for the jury to  
19 decide.

20 Q Let me ask you about the plea. Did you ever talk to  
21 Mr. Cook about accepting the plea offer?

22 A Never. He never even talked to me about a plea. He  
23 said the plea is no longer on the table.

24 Q And what did he tell you about your likelihood at  
25 trial?

HUBERT BROWN - DIRECT

1     A     He told me and my family -- I told my family -- I  
2     told my mother I didn't trust him. My mother -- and  
3     that's another thing. My wife got him from somewhere, I  
4     don't know where she got him from, I think family court  
5     somewhere, but he -- my mother gave him -- specifically  
6     went and borrowed \$3,000 for specific reasons, a doctor,  
7     to give Dr. Walser. They said Dr. Walser would take the  
8     case for \$3,000, my mother specifically went and borrowed  
9     \$3,000 to give to that doctor, not to him. My wife was  
10    paying him somehow and she paid him -- he's right, he got  
11    \$6,500 and I have the receipts to that too where she paid  
12    him \$6,500. He first took my case on credit. In January  
13    he took it --

14   Q     I think it's more important -- let's talk about.

15         THE COURT: I think we need to take a break. We are  
16    done until around 2:30, okay?

17         (A lunch break was taken.)

18         THE COURT: We'll go back on the record. Thank y'all  
19    for affording me that break, I assure you I desperately  
20    needed it, I was fading fast. We have Mr. Brown back on  
21    the stand and he is still under oath. Go ahead.

22   BY MR. THOMAS:

23         MR. THOMAS: May I just hand this material to him?

24   Q     Mr. Brown, we were talking about what you thought --  
25    what your perception of what was going to happen when you

HUBERT BROWN - DIRECT

1    went to trial and you'd spoken to Mr. Cook about these  
2    cases, about your case. What, if anything, did you have in  
3    regards to understanding about what your chances of being  
4    successful at trial were?

5    A    He told me he could have me home sitting on the couch  
6    watching TV in 120 days.

7    Q    Why was that?

8    A    I guess because if they had found me not guilty by  
9    reason of insanity I would have to go to the department of  
10   mental health for a 120 day evaluation.

11   Q    Okay. And that's what you thought that your exposure  
12   was, you thought that's what was going to happen to you?

13   A    Yes, sir. That's what he told me he could do. He  
14   even told my family if he could get me to trust him that  
15   he would have me home -- he told my mother he would have  
16   me home in 120 days sitting there watching TV. And you  
17   know, that's -- I told him in the beginning that, you  
18   know, I didn't mind the doctor testifying to the affect  
19   that I wasn't thinking clearly, because I wasn't, I mean  
20   anybody, who would take a lick like that in the head  
21   wouldn't be thinking clearly. But at the same I asked him  
22   to -- I specifically told him I wanted to argue the facts  
23   in the case, and that's when he came in, he pled me -- the  
24   transcript -- and before the jury he pled me not guilty  
25   and told the jury "You're looking at an innocent man right

HUBERT BROWN - DIRECT

1 there." He made me believe that he was going to put up an  
2 argument and he didn't. I don't understand why he didn't  
3 tell the jury then that we were putting up an insanity  
4 defense if that's all he was going to do. He sat there  
5 and told the jury that they're looking at an innocent man  
6 and then allowed the State to prove different.

7 Q Because you felt like you were factually innocent of  
8 the crime. You felt like you were innocent of the crime?

9 A Innocent?

10 Q Yeah.

11 A Well, yeah, of attempted murder definitely.

12 Q Right.

13 A Yeah. Innocent of stupidity? No. But I was a  
14 little stupid, I guess anybody would be.

15 Q But you didn't have any intent to --

16 A I never had any intent to hurt anyone. I never went  
17 there with no intent. Why wouldn't you -- if that's your  
18 case, if you're coming in here to prove that I didn't have  
19 the intent and put a doctor on the stand to say that I  
20 lacked the capacity to conform, why wouldn't you want to  
21 have my boss testify that I never went there over the loss  
22 of my job with the intent to hurt anyone or start any  
23 trouble. It's a whole lot of other things that he could  
24 have did to prove that I lacked the intent of going there  
25 looking for any trouble with anyone.

## HUBERT BROWN - DIRECT

1 Q How many times did you meet with Mr. Cook?

2 A How many times what?

3 Q Did you meet with him to prepare this case for trial?

4 A Probably about like he said, ten times.

5 Q Okay.

6 A But if you add the minutes, probably ten minutes or

7 20 minutes.

8 Q Now, did you understand the insanity defense? Did you

9 talk to him about that?

10 A I talked to -- the only person that really talked to

11 me any kind of about it was -- and you know, I stress the

12 fact, he never talked to me about anything. He didn't

13 even want -- the only reason he decided to go with the

14 insanity defense was the fact that -- you know, he was

15 wanting to go with a defense of to annul (sic) the jury or

16 whatever.

17 THE COURT: Nullification.

18 A Nullification. And I wasn't -- I had never even

19 heard that. And I told him, you know, I said, "David

20 Sample came in" -- and that was my attorney -- I said, "He

21 told me that he wanted to -- he told me something about an

22 insanity defense, that it was clear -- it would be clear

23 to anyone. I wouldn't be in my right state of mind, David

24 Sample is the one that said that. And I told him that and

25 the next thing he know he was telling me that he was

## HUBERT BROWN - DIRECT

1 listening to my phone conversation in the Judge's chambers  
2 with Judge Hayes and E. B. Springs, phone conversations  
3 with my wife, and he agrees and they agree that after  
4 hearing my phone conversation that I needed a  
5 psychological evaluation, and then that's when they took  
6 me to the department of mental health. And at that time  
7 it was a licensed social worker named Carol Davis, and I  
8 told him, she was there and witnessed everything that  
9 happened. A lady came in -- Ms. Carol Davis was talking  
10 to me first and a lady came in and introduced herself as  
11 Dr. Shannon Henson. I don't know if she's a doctor. Can  
12 anyone in here prove that she's a doctor? She wasn't in  
13 this courtroom to say she was a doctor. But I done a  
14 little research on her. She went to school from 2007 to  
15 2011, evaluated me as an intern at the department of  
16 mental health. I don't know that she was even qualified  
17 to even evaluate me, I don't know that, she wasn't in here  
18 to say her qualifications. But at the same time she -- he  
19 come in here and he told the jury, no one else, David  
20 Cook, if you look at this transcript right here, told the  
21 jury that she basis her opinion as me being drunk, that my  
22 alcohol level was 129. Well, who says my alcohol was 129?  
23 I didn't test it, did he test it? Did she test it? The  
24 tester of -- the ambulance that tested it wasn't in here,  
25 and he had the audacity to say whatever 129 is. Well, if

HUBERT BROWN - DIRECT

1 you're saying that she based her opinion on 129, why don't  
2 you know what 129 is? And you know, it took me doing  
3 research to find out what it was. It's exactly 0.08. And  
4 up until two or three years before that it was legal to be  
5 0.08 in the State of South Carolina and that wasn't even  
6 considered drunk, but he told the jury I was drunk, she  
7 based her opinion on my being drunk. And nowhere in her  
8 report -- I have it right here -- does she say that I was  
9 drunk and she based her opinion on that. He's the one  
10 that told that. He opened for the solicitor to say that I  
11 was drunk and as mad as I could be and went there looking  
12 for trouble, and that's exactly what he said in the  
13 closing argument.

14 Q Now, we talked about the flight, that you were  
15 concerned about the insanity defense of them trying to  
16 prove that you were fleeing and I guess that you fled.

17 A I never fled nowhere, I never fled. I went to my  
18 mother's house. I talked to the -- that's another thing.  
19 While I was at my mother's house I had a phone call from a  
20 detective -- actually I had a call on Thursday, I think it  
21 was like the 15th or 14th, I'm not sure about the date,  
22 it's June 14th I believe, and I had the call while I was  
23 in the truck with my stepfather right there, we was  
24 leaving my mother's -- where my mother worked. And he  
25 pulled his truck over and stopped the truck and I had a

HUBERT BROWN - DIRECT

1 call from an Officer Sean Thompson from Clover and he told  
2 me that the Detective Tracey Strickland was trying to  
3 contact me, and the phone records that they had of mine  
4 showed that he tried to call me. I was in Walterboro,  
5 South Carolina at my mother's house and I was on pain  
6 pills, Hydrocodone, and I was sitting in the truck, my  
7 stepfather pulled the truck over, cut his truck off so I  
8 could hear and Sean Thompson told me -- he scheduled a  
9 phone call for me to talk to a Detective Tracy Strickland  
10 the next morning. Detective Tracy Strickland recorded  
11 that phone call, I had no idea he was recording it. He --  
12 but I told him he could record it, I wasn't thinking --  
13 you know, I was -- they entered that statement against me.  
14 And he did some kind of little thing in here about the  
15 statement but I don't understand why he didn't challenge  
16 the statement in the Jackson versus Denno on the  
17 voluntariness of. If he had this alleged victim get up  
18 here and testify that he wasn't thinking clearly a week  
19 later, the man said, "I wasn't thinking clearly a week  
20 later because I was on high-powered pain pills," well,  
21 this was four days later and I was on high powered pain  
22 pills plus a injury to my head.

23 Q You're talking about Chris Calvert.

24 A Yeah. He testified that he wasn't thinking clearly a  
25 week later and that's the reason he didn't go to the

HUBERT BROWN - DIRECT

1 police, and the fact that he wasn't thinking clearly. And  
2 he didn't even challenge the statement on voluntariness of  
3 it, the fact that I had -- I wasn't -- I had water  
4 draining out of my ears, nose, it was a big old water bag  
5 on the side of my head and I was on -- this was three or  
6 four days later. I even told him and I told Phil Smith to  
7 check the records here at the jail and to pull the medical  
8 records. I didn't know -- I still didn't know -- I know  
9 now what a brain injury was, I didn't know. And I was  
10 going to the medical every week, they got tired of seeing  
11 me. I was complaining with my sinuses and my ears and  
12 smelling a bad odor and I didn't know what it was. But  
13 here at the jail the lady kept coming to see me and come  
14 to find out it was a brain injury, and that's a cause --  
15 that's signs of a brain injury. And, you know, I don't  
16 know why he didn't do any of that, no kind of footwork.  
17 He was just ready to go in here and basically do what he  
18 come to do on the first day, admit that they -- let the  
19 State put up their case, admit to it and throw up some  
20 little defense like he was doing something and he didn't  
21 do anything.

22 Q Now, as far as the brain injury, you met with your  
23 doctor how many times, the one that testified on your  
24 behalf?

25 A I met with her one time I think for a couple of hours

HUBERT BROWN - DIRECT

1 and then the next day like 13 hours. And she -- and Ms.  
2 Shannon Hanson, I met with her at first he said at trial  
3 an hour. I went in there -- basically what she asked me  
4 was how old I was, where did I go to school at, and she  
5 put in there -- the report had 11th grade, I've never went  
6 to no 11th grade. I appreciate the compliment but I'm  
7 not. And she asked me how old I was, about my family  
8 history, past criminal record and then she looked at me,  
9 and right in front of the licensed social worker she said,  
10 "I'm going to rule that you're highly competent to stand  
11 trial, however I'm going to rule that you lacked the  
12 capacity to conform during the commission of your crime."  
13 I came back, couldn't call him, couldn't talk to him so I  
14 called my wife.. My wife -- and I have the email where she  
15 emailed him and told him this and then he emails her back  
16 and he told her that "I was out at the jail today," and  
17 the email specifically says, "In passing -- seeing  
18 different solicitor's in passing I talked to the beach" is  
19 what he said, and she even texted back, "Who is the beach?"  
20 And he said "E. B." And he said he talked to the beach  
21 and he told him that Floyd thinks that the State doctor  
22 has ruled that he lacked the capacity and he said E. B.  
23 said he would believe it when he saw it and he still  
24 wasn't giving no plea. That's his email. But yet now he  
25 stood up here and told y'all that I was offered the plea

HUBERT BROWN - DIRECT

1 but that's his email saying that he still wasn't going to  
2 get no plea no matter what.

3 Q Hubert, we've talked about a lot of stuff and you and  
4 I have met a number of times and gone through all of this  
5 stuff piece by piece, what I want to do is make sure we've  
6 covered everything, okay? Now, I ask you this question,  
7 I'm not asking you because I think I have left something  
8 out and I'm not saying that I'm suggesting that you have to  
9 answer but I just want to make sure we've brought  
10 everything to the attention to the Court that you wish to  
11 be brought before the Court. Is there anything else that  
12 we have left out that you want to comment on?

13 A Well, I mean probably getting hauled back there I can  
14 think of 1,000 things, but not really. Just the 911 tape  
15 was confusing to me. If I stood up in the courtroom --  
16 and I don't have any doubt if you was sitting there and  
17 you was my trial attorney and I told you that a 911 tape  
18 as altered (sic) up here and you had a copy of the 911  
19 tape sitting right in front of you, why did the Judge --  
20 he didn't want to do nothing so I told the Judge. And you  
21 know, if this is your trial and you're the Judge why  
22 didn't the Judge say for the cureness (sic) of the record  
23 "Let's play the one you got in front of you." But you  
24 could see where they flimflammed and ropey-doped and come  
25 back with for strategy purposes "I don't object to the 911

HUBERT BROWN - DIRECT

1 tape." But yet he's got the audacity to write me and tell  
2 me and admit that he knows that the 911 tapes are hearsay,  
3 and if you know that's hearsay and you know the  
4 photographs is hearsay why didn't you object to them?

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

6 THE COURT: Cross?

7 MR. THOMAS: Well, go ahead.

8 A Let me also say this right here. If you look at -- I  
9 would like for you to look at Tracy Strickland's  
10 testimony, he kind of boosted -- he boasted the State's  
11 case for the jury, and you would swear that he was an eye  
12 witness, that he was there. I didn't see him but he talks  
13 like he was there. He even said I stepped in a hole.

14 Q Who is he?

15 A Tracy Strickland is supposed to be the investigating  
16 detective. And the porch that I was supposed to cut, the  
17 picture that he entered was taken in the daytime. Again,  
18 the pictures that was taken in forensics was taken in the  
19 nighttime, so obviously forensic didn't know anything  
20 about no porch that I was supposed to have cut. So the  
21 picture was taken the next day by Detective Strickland I  
22 suppose, but it was entered as evidence along with a  
23 picture out by the road of some holes that I stepped in.

24 Q You're talking about the cut that was in the railing  
25 on the back porch.

## HUBERT BROWN - CROSS

1 A Yeah, on the back porch. There was no blood on the  
2 back porch. Nobody seen no blood. Why didn't they take  
3 pictures of that blood? There wasn't none back there.  
4 But they said I stepped in a hole way out by the road, I  
5 was never around no hole. He said that he learned that  
6 from his investigation but nobody asked him who did he  
7 learn it from, so I was under the impression that he may  
8 have been there, I'm not sure.

9 MR. THOMAS: You can answer any questions that the  
10 attorney general may have for you, okay?

11 THE WITNESS: Yes, sir.

12 MR. HUNTER: May it please the Court, Your Honor?

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION

15 BY MR. HUNTER:

16 Q So you said you met with Mr. Cook ten times but it  
17 wasn't very long.

18 A No, sir.

19 Q Did you ever ask if you could meet for longer than the  
20 amount of time that y'all were meeting for?

21 A Excuse me?

22 Q Did you ever ask him if you could meet for longer?

23 A Yes, sir.

24 Q And he just told you no?

25 A No, sir. I didn't -- he just wouldn't -- he would

## HUBERT BROWN - CROSS

1 walk out, we would put the phone up, we would argue. I  
2 would ask him -- he said he got two minutes and he  
3 basically talked to my wife and my mother back there.  
4 And, you know, the only thing he would -- I told them that  
5 I didn't trust him because he wouldn't sit down and talk  
6 to me and that was the reason I didn't trust him, and they  
7 persuaded me to believe and trust him because he promised  
8 them that he would have me home in 120 days.

9 Q So you didn't trust him but you just figured might as  
10 well believe in him anyway and go to trial with him?

11 A Actually I did what, you know, any normal person  
12 would do, and I have the complaints over there. I wrote  
13 the South Carolina Supreme Court of Disciplinary Counsel a  
14 letter on him and complained about him, that he was  
15 selling me out, and I told them in a 15 page letter four  
16 months before my trial that he wouldn't come and sit and  
17 talk with me. They had the complaint and there is numbers  
18 over there on the complaint.

19 Q And you stuck with him anyway?

20 A I didn't have any choice. I was basically told --  
21 and you're right. I'm told by people all of time, "Why  
22 didn't you fire him?" I wanted to get rid -- I went  
23 through this little order with Mr. Phil Smith and  
24 basically the reason -- and really he's a good attorney,  
25 he told me -- this is what he told me that had me

## HUBERT BROWN - CROSS

1 skeptical of him, he told me, "It would be hard for the  
2 State to prove attempted murder on you but the burglary is  
3 what I'm worried about, you'd better take these eight  
4 years." Well, you know, at the time I wasn't thinking but  
5 now I wonder, if the State is not -- can't prove attempted  
6 murder on me, the number one element to a first degree  
7 burglary is entering the dwelling with an attempt to  
8 commit a crime. What crime did I commit?

9 Q Did you ever tell this to Mr. Cook?

10 A You can't tell nothing to Mr. Cook when he says  
11 you've got two minutes. And it started an argument,  
12 agitated an argument and I did argue with him about that,  
13 that's specifically -- everything we argued about is him  
14 not being able to sit down and discuss the case with me,  
15 and I said that at the closing of the trial. I told the  
16 Judge that I wished I would have had someone to discuss  
17 the case with me. If you want me to find that page --

18 Q No, I see it. Did you tell this to the Judge before  
19 trial?

20 A No, I didn't.

21 Q So do you think you were ready for trial?

22 A No, I wasn't.

23 Q You never told anybody?

24 A Mentally I wasn't.

25 Q You never told the Judge this?

## HUBERT BROWN - CROSS

1 A Who?

2 Q Did you ever tell the Judge this?

3 A No. I was kind of intimidated by the Judge. He  
4 already tried to make me represent myself one time. I  
5 have that letter here, too, where he told me -- if you  
6 want to see it -- for firing Phil Smith that I would have  
7 to represent myself, that's what they told me in this  
8 courtroom right here.

9 Q Okay. Now, this just briefly about the 911 tape, when  
10 did you hear this extended version, I guess, of the 911  
11 tape, the version that wasn't played?

12 A In the courtroom?

13 Q Yeah. You said you heard a different version of what  
14 was played in the courtroom, when was that?

15 A Yes, sir. I heard it probably in August of 2012, Mr.  
16 Phil Smith and Pat I want to say Kiefer.

17 Q So it was with them?

18 A Yes, sir. I never heard anything with him.

19 Q Okay.

20 MR. HUNTER: I have nothing else, Your Honor.

21 THE COURT: Anything on redirect?

22 MR. THOMAS: No, Your Honor, nothing further.

23 THE COURT: One quick question, sir. The prior  
24 conviction that they used to enhance this case to life  
25 without the possibility of parole, what was that?

## HUBERT BROWN - CROSS

1 THE WITNESS: First degree burglary and criminal  
2 sexual conduct.

3 THE COURT: And that took place in South Carolina?

4 THE WITNESS: In 1989, yes, sir.

5 THE COURT: Okay.

6 THE WITNESS: I was never even advised then that I  
7 would be facing life without parole afterwards.

8 THE COURT: Thank you, sir, for that information. You  
9 can step down. Any additional witnesses from the  
10 applicant?

11 MR. THOMAS: Your Honor, if it please the Court, that  
12 is the applicant's case.

13 THE COURT: Anything in reply?

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

15 THE COURT: Very good. I indicated earlier that I  
16 would take this under advisement at the request of counsel,  
17 I think y'all wanted 30 days to see if you could track down  
18 Mrs. Brown and perhaps obtain that other -- or the CD ROM  
19 of the 911 call that you all referenced, so --

20 MR. THOMAS: Thank you, Your Honor.

21 THE COURT: -- I will be happy to afford you that.

22 MR. HUNTER: Yes, sir.

23 THE COURT: Very good. Thank you.

24 (End of the hearing.)

25

1 I, the undersigned, Michael C. Watkins,  
2 Official Court Reporter for the Sixth Judicial  
3 Circuit of the State of South Carolina, do hereby  
4 certify that the foregoing is a true, accurate and  
5 complete transcript of the proceedings had and  
6 evidence introduced in the trial of the captioned  
7 case relative to appeal in the Court of Common Pleas  
8 for York County, South Carolina, on the 19th day of  
9 April, 2016.

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

12

13

August 18, 2016

14

15

16

  
Michael C. Watkins

17

Court Reporter

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## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP4604219

Hubert Brown

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);  
☐ Rule 43(k), SCRCP (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

**ORDER INFORMATION**

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: **ORDER GRANTING POST CONVICTION RELIEF**

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/ Frank R. Addy, Jr.  
Frank R. Addy, Jr.  
Circuit Court Judge

2159  
Judge Code

6/16/2016  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on **June 20, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **June 20, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Tommy Arthur Thomas PO Box 88 Irmo, SC 29063

Justin James Hunter PO Box 11549 Columbia, SC  
29211-1549

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

David Hamilton

**Court Reporter**

**David Hamilton - Clerk of Court**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS

HUBERT BROWN, )  
#161888, )

DOCKET NO.: 2014-CP-46-4219

Applicant, )

ORDER GRANTING POST  
CONVICTION RELIEF

v. )

STATE OF SOUTH CAROLINA, )

Respondent. )

FILED-RECEIVED  
2016 JUN 20 PM 12:55  
DAVID HAMILTON  
S.C. C.C.P. & G.S.  
YORK COUNTY, SC

THIS MATTER COMES BEFORE THE COURT pursuant to an Application for Post-Conviction Relief filed on December 31, 2014. The State filed their Return dated July 8, 2015. Present before the Court is Justin Hunter from the Office of the Attorney General representing the Respondent. The Applicant was present represented by his attorney Tommy A. Thomas. Plea counsel, David C. Cook, was also present.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted by the York County Grand Jury for burglary 1<sup>st</sup> (2012-GS-466-3185) and attempted murder (2012-GS-46-3187). Applicant proceeded to a jury trial before the Honorable John C. Hayes, III. Pursuant to S.C. Code Ann. §17-25-45, the State served notice of its intention to seek life imprisonment without the possibility of parole. On July 11, 2013, Applicant was found guilty as charged and was sentenced to imprisonment for a term of life without the possibility of parole on each charge.

Applicant filed a Notice of Appeal and a direct appeal was perfected by Appellate Defender, Carmen V. Ganjehsani of the South Carolina Commission on Indigent Defense, Division of Appellate Defense. After both parties briefed the issues, the South

Carolina Court of Appeals affirmed Applicant's conviction by unpublished opinion filed.

State v. Brown, Op. No. 2014-UP-425 (S.C. Ct. App. Filed November 26, 2014).

**ISSUES PRESENTED**

The allegations raised by Applicant regarding ineffective assistance of counsel are as follows:

- a. That Counsel did not point out inconsistencies in the Solicitor's opening statement. That these comments were not supported by any of the testimony or evidence presented at trial.
- b. That the motive for the alleged assault was that the applicant had been fired from his employment. That Counsel was ineffective for not bringing witnesses who could have testified that the Applicant had voluntarily left his employment.
- c. That the State failed to provide complete discovery through Rule 5 and/or Discovery processes. That Counsel was ineffective for failure to pursue this information.
- d. That counsel was ineffective for no objecting to lay witnesses identifying certain stains as blood. No proper foundation was laid for these witnesses to testify in regards to blood evidence.
- e. That counsel was ineffective for failure to object to lay testimony identifying the type of weapon or blade that caused the injuries to the victim.
- f. That counsel was ineffective for not clarifying evidence regarding a text supposedly sent by the Applicant to the victim stating that he would finish the job.

g. That counsel was ineffective for failure to object to Detective Strickland's testimony regarding the elements of Burglary 1<sup>st</sup> and Self Defense.

h. That counsel was ineffective for improperly advising the Applicant regarding the possibility of being found guilty at Jury Trial.

i. That counsel was ineffective for not properly consulting the Applicant regarding his case. Most of the case information was conveyed through the Applicant's wife and that Defense counsel very rarely met with the Applicant regarding preparation for trial.

j. That counsel was deficient in not properly presenting evidence to refute the allegations of the State that the Applicant had fled the scene.

k. That counsel was ineffective for not challenging the State's evidence of the Applicant's bloody shirt. When in fact this shirt was stained by a cherry red juice drink.

l. That counsel was ineffective for not properly challenging the expert testimony of Dr. Richard Friarson.

m. That counsel was ineffective for not challenging the introduction of the 911 tape. This tape appeared to be adulterated and the beginning and end of this recording were either erased or modified in some manner.

n. That counsel failed to object to the trial Court's general intent jury instruction.

#### **DISCUSSION OF LAW**

Pursuant to his Application, the Applicant has alleged ineffective assistance of trial counsel. In a PCR Action, the "burden of proof is on the applicant to prove his

allegations by a preponderance of the evidence.” *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC).

In *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984), the United States Supreme Court set forth a two-prong test applicable to claims of ineffective assistance of trial counsel. The first prong analyzes whether the trial counsel’s performance fell below an objective standard of reasonableness. *Id.* The second prong places the burden on the Applicant to show that but for the deficient performance the outcome would have been different. *Id.* The second prong is known as the “prejudice” requirement. This requirement is met if counsel’s actions or inactions resulted in prejudice to the Applicant. See *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 539 (1995).

#### **FINDING OF FACTS AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the entire record and has heard the testimony and arguments as presented at the hearing. This Court has also had the opportunity to observe each witness and pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Again, Applicant was tried and convicted of Attempted Murder and Burglary 1<sup>st</sup> degree. He was sentence to LWOP due to a prior conviction for a most serious offense.

After suffering a significant head injury in an altercation immediately preceding the acts giving rise to the charges, Applicant armed himself with a large knife, entered the home, swung the knife toward the victim, and severed the victim's thumb. Applicant immediately fled the home. Fortunately, the victim’s thumb was later surgically

reattached. Testimony at trial indicates that the Applicant did not attempt to repeatedly stab the victim during the altercation inside the home. In essence, Applicant left as soon as the victim's injury was inflicted.

Applicant maintains that trial counsel was ineffective for failing to object to the trial court's general intent instruction as it related to the attempted murder charge. Having reviewed the transcript, the Court finds that the capable trial judge did mistakenly instruct the jury that the State need only prove general intent as opposed to specific intent. *See* Trial Transcript, p. 350, line 25 – p. 351, line 4. The Assistant Solicitor did point this fact out to the trial court, but trial counsel did not join in the Assistant Solicitor's efforts to have the jury correctly charged on the law,<sup>1</sup> and the trial court declined to alter the erroneous instruction.

Significantly, the erroneous charge gave the jury the impression that they only had to find general intent to harm, as opposed to a specific intent to kill. *See State v. King*, 412 S.C. 403 (Ct. App. 2015) The fact that the jury may have struggled with this issue is evident in the jury's request for a recharge on the elements of attempted murder. Trial Transcript, p. 366, lines 14-19. In response to this request, the trial court again recharged general as opposed to specific intent. Therefore, twice the trial court mistakenly stated that specific intent to kill is not an element of attempted murder.

Additionally, for the reasons state in part B, the Court finds that the Applicant's mental state was the key issue in this case with regard to both the attempted murder charge and the burglary charge. With respect to the burglary charge, the State argued that

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<sup>1</sup> The Court of Appeals apparently found this issue was not preserved for direct appeal due to trial counsel's failure to join in the objection. *State v. Brown*, 2013-001543, November 26, 2014.

the crime the Applicant intended to commit once he entered the dwelling was the attempted murder. Trial Transcript p. 333, line 25 – p. 335, line 3. Therefore, although the attempted murder charge is technically the only charge affected by the erroneous instruction, the issue of Applicants *mens rea* is clearly relevant to both charges, so the burglary charge was also likely tangentially affected by this erroneous instruction.

The Court finds that trial counsel should have joined in the State's objection to this incorrect instruction and that a reasonable attorney would have objected. Factually, the victim's injuries resulted from a single swipe of the knife, which is quite different from the Applicant repeatedly attempting to stab the victim. Therefore, specific intent to kill, as opposed to general intent to harm, was a crucial issue in this case, and the jury likely struggled with this distinction in light of their request to be reinstructed on the attempted murder charge. Furthermore, the Court finds that Applicant has demonstrated sufficient prejudice in that, but for counsel's error, the outcome at trial would likely have been different. Accordingly, PCR is granted with respect to the attempted murder conviction on this ground.

Applicant also maintains that trial counsel was deficient for agreeing to the admission of Applicant's mental evaluation as authored by Dr. Shannon Hansen with DMH without Dr. Hansen being called to testify at trial. Trial Transcript p. 316, lines 10-11.

Significantly, Applicant's defense at trial was temporary insanity. Essentially, Applicant's trial counsel argued that the skull fracture and resulting temporary damage to Applicant's faculties rendered him incapable of discerning legal right from wrong.

Applicant's retained expert, Dr. Carol Walser, testified regarding her findings, and she was also subject to cross examination by the State. Having examined Applicant extensively, Dr. Walser opined that the severe blow to Applicant's head caused him to lose momentarily his ability to reason and thereby rendered him temporarily insane under the law. Eye witnesses to the altercation also described Applicant as appearing "dazed" after his skull was fractured during the initial altercation. Dr. Hansen's report also confirms Applicant's reported lack of memory concerning the events subsequent to his head trauma.

Inexplicably, Dr. Hansen was not required to testify concerning her findings. Having subsequently reviewed her report, this Court concludes that many of her findings would have supported Applicant's assertions and Applicant's expert's opinion. For example, Dr. Hansen stated in her report that Applicant reported having no memory of the events and continued to suffer from the injuries. Significantly, nowhere in her report did Dr. Hansen indicate that she had considered and excluded temporary insanity due to head trauma as a potential diagnosis, and trial counsel could have potentially brought this to the attention of the jury if the report's author had been required to testify. Furthermore, Dr. Hansen left the employment of DMH somewhat suddenly just prior to trial and no explanation was given for her separation from DMH; the Court notes that this departure from her employment could have been an area ripe and beneficial for cross examination.

Applicant had the burden of proving insanity by the preponderance of the evidence, and the State then had to prove sanity beyond a reasonable doubt. This Court is aware that, at times, a preferable trial strategy would be to deemphasize an expert

7 

witness' report by not objecting to that report coming into evidence despite the expert's absence. However, Applicant's trial counsel offered no explanation as to why he consented to the report's admission. More significantly and considering the specific facts of this case, by consenting to the admission of Dr. Hansen's report as substantive evidence, trial counsel undercut Applicant's sole defense and lessened the effectiveness of Applicant's expert's testimony. This report was furnished for the jury to consider without allowing the Defendant to challenge Dr. Hansen on her assumptions, methods, conclusions and whether she considered other potential diagnoses. In light of Applicant's lower burden of proof on this central issue, this Court finds trial counsel representation was deficient and that this deficiency clearly resulted in prejudice to the Applicant. This is particularly true in light of the erroneous general intent instruction as explained above and in light of the Assistant Solicitor emphasizing Dr. Hansen's report in his closing. Trial Transcript, p. 332. Put another way, Applicant's mental state was the sole issue in this case as it related to both the burglary and attempted murder charges, and Dr. Walser's testimony was key to Applicant's defense. Therefore, the errors with respect to the admission of the DMH report are compounded by the trial court's mistaken instruction on the attempted murder charge.

The Court also finds that, to the extent the State's reply witness, Dr. Frierson, was permitted to testify or allude to the contents of Dr. Hansen's report, trial counsel was also deficient in failing to object. The Assistant Solicitor also argued in closing that Dr. Frierson reviewed and approved Dr. Hansen's report, thereby bolstering a report authored by an unchallenged witness. Trial Transcript, p. 332, lines 12-19. Simply put, Dr.



Frierson never examined Applicant; therefore, by definition he could not offer any diagnosis.

Although this Court is aware that reports such as these are sometimes admitted by consent or under the business records exception, especially when admission is *pro forma* such as during a guilty plea, the Court is unaware of any circumstances by which an expert witness should be allowed to give their expert opinion to the jury on the sole and ultimate issue in the case without the benefit of cross examination. Accordingly, the Court grants Applicant's request for relief on this ground as it relates to both the burglary and attempted murder charges.

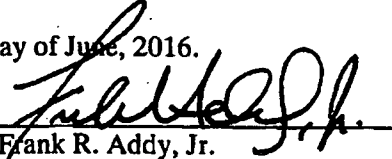
Although not raised by Applicant, the Court also wishes to note that the Assistant Solicitor's reference to Applicant's expert as a "lady doctor" on page 330 was an inappropriate, but potentially unintentional, comment on the Doctor's gender. Such comments are objectionable and should be discouraged.

The Court has considered Applicant's remaining grounds and denies relief on those grounds. To the extent any error may have been committed by trial counsel concerning the remaining grounds, Applicant suffered no prejudice.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post Conviction Relief be granted and that the Applicant's sentence be vacated, and
2. That the Applicant be released from the custody of SCDC and transferred to the custody of York County pending the disposition of his case.

**AND IT IS SO ORDERED** this 16<sup>th</sup> day of June, 2016.

  
Frank R. Addy, Jr.  
Judge of the Sixteenth Judicial Circuit

C STATE OF SOUTH CAROLINA  
COUNTY OF York  
STATE VS.  
Hubert Floyd Brown Jr

IN THE COURT OF GENERAL SESSIONS 550

INDICTMENT/CASE#: 2012GS4603185

AKA:

Race: WHITE Sex: M Age: 42  
DOB: 1969 SS#: 2015-11-2  
S.C. Code §: 16-11-0311  
CDR Code #: 0079

Address:

City, State, Zip:

DL#: SID#: SC00699830

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary 1st degree

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC § 17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BS Army  
Springs, E.B.

13568  
SC Bar#

Defendant

Attorney for Defendant

SC Bar# 15081

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of Life without Probation days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

### SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS

Recipient: \_\_\_\_\_

|                                        |              |
|----------------------------------------|--------------|
| *Fine:                                 | \$           |
| § 14-1-206 (Assessments 107.5%)        | \$           |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100 \$ 100 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100 \$     |
| § 56-5-2995 (DUI Assessment)           | \$12 \$      |
| § 56-1-286 (DUI Breath Test)           | \$25 \$      |
| Proviso 47.9 (Public Def/Prob)         | \$500 \$     |
| § 14-1-212 (Law Enforce. Funding)      | \$25 \$ 25   |
| § 14-1-213 (Drug Court Surcharge)      | \$150 \$     |
| § 50-21-114 (BUI Breath Test Fee)      | \$50 \$      |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea \$   |
| Proviso 90.5 (SCJA Surcharge)          | \$5 \$ 5     |
| 3% to County (if paid in installments) | \$           |
| TOTAL                                  | \$ 130       |

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Wanda Wilson

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2049

Sentence Date: 07-11-2013

## ARREST WARRANT

J-158716

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE

against

Hubert Floyd Brown, Jr

Address: 2263 Cabe Road

Clover, SC 29710

Phone: (803)818-5735

SSN:

Sex: M Race: W Height: 6 6 Weight: 200

DL State: SC DL #:

DOB: 1969 Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: T.L. Strickland - S5176

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge:

Date:

## RETURN

A copy of this arrest warrant was delivered to

defendant Hubert F. Brown, Jr  
on June 18, 2012 / 2:40 hrs

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

York County General Sessions  
1675 York Hwy  
York, SC 29745

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant T.L. Strickland

who

being duly sworn deposes and says that defendant Hubert Floyd Brown, Jr

did within this county and state on or about 06/08/2012

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The defendant did willfully and unlawfully enter the residence of Christopher Clavert, without consent, while being armed with a deadly weapon, a machete, and caused serious injury to Clavert while inside the residence. This crime occurred at York, SC; County of York. This being against the peace and dignity of the state and such laws as made and provided. Probable cause is based on Police Investigation and Witness Statements.

Signature of Affiant:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address: Moss Justice Center

York 29745-7428

Affiant's Telephone: (803)628-3059

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds believe that

on or about 6/8/2012 defendant Hubert Floyd Brown, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York) as set forth below

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable  
Sworn to and subscribed before me:

on 06/15/2012

Judge's Address: Moss Justice Center

York, SC 29745-7423

Judge's Telephone: (803)628-3029

Signature of Issuing Judge  
Lynne Horton Benfield

Judge Code: 5806

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

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ORIGINAL

S.C. Attorney General  
April 21, 2003  
SCCA 518

551

CERTIFIED TRUE COPY

2015 JAN 22 11:08 AM  
CLERK OF COURT  
YORK COUNTY, SCRECEIVED  
JUN 19 PM 4:26RECEIVED  
JUN 18 PM 10:00

STATE OF SOUTH CAROLINA) CERTIFIED COPY INDICTMENT

COUNTY OF YORK

2015 JAN -2 AM 8:35

DAVID HAMILTON  
CLERK OF COURT

At a Court of General Sessions convened on September 13, 2012, the Grand Jurors of York County present upon their oath:

**BURGLARY, 1<sup>ST</sup> DEGREE**

The Defendant, Hubert Floyd Brown, Jr., did in York County, South Carolina, on or about June 8, 2012, willfully and unlawfully enter the dwelling of Michael and Amy Mahoney and Christopher Calvert, located at \_\_\_\_\_, York, South Carolina, without consent and with the intent to commit the crime of assault on a person or persons inside the dwelling, and the Defendant did while inside the residence commit a brutal assault and battery upon and cause physical injury to Christopher Calvert, a person who was not a participant in this crime, and the Defendant was armed inside the dwelling with a deadly weapon, a large bladed instrument that looked like a machete, and did display that deadly weapon inside the residence and did use that deadly weapon to slash Christopher Calvert, and all of this was done in the nighttime. All in violation of Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*E B Sprague*  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS **553**

COUNTY OF York

STATE VS.

Hubert Floyd Brown Jr.

INDICTMENT/CASE#: 2012GS4603187

AKA:

A/W#: M604912

Race: WHITE Sex: M

Date of Offense: 6/8/2012

DOB: 1969 SS#:

S.C. Code §: 16-03-0029

CDR Code #: 3410

Address:

City, State, Zip:

DL#:

SID#:

SC00692830, COUNTY, SC

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: ATTEMPTED MURDER

SENTENCE SHEET

ORIGINAL

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-29

of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

Springs, E.B.

SC Bar# 13568

Defendant

Attorney for Defendant

SC Bar# 75081

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of Life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |         |
|----------------------------------------|---------|---------|
| § 14-1-206 (Assessments 107.5 %)       | \$      |         |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100  |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$      |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$      |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$      |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$      |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25   |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$      |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$      |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$      |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5    |
| 3% to County (if paid in installments) | \$      | \$      |
| TOTAL                                  |         | \$ 130- |

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: 17-25-45☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Wanda Wilson

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2049

Sentence Date: 07-11-2013

## ARREST WARRANT

M-604912

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE  
against

Hubert Floyd Brown, Jr

Address: 2263 Cabé Road

Clover, SC 29710-

Phone: (803)818-5735

SSN:

Sex: M Race: W Height: 6 Weight: 210

DL State: SC DL #:

DOB: /1969 Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: C. Bomar - B5804

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be  
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

## RETURN

A copy of this arrest warrant was delivered to

defendant Hubert F. Brown, Jr.

on June 18, 2012 / 2140 hrs

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

York County General Sessions

1675 York Hwy

York, SC 29745

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant C. Bomar who

being duly sworn deposes and says that defendant Hubert Floyd Brown, Jr

did within this county and state on or about 06/08/2012 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On June 8, 2012, in the County of York, the defendant, Hubert Floyd Brown Jr. did willfully and unlawfully violate the South Carolina Code of Laws by travelling to York, South Carolina, where he armed himself with a long knife, commonly known as a machete, and entered the residence without permission or consent and struck the victim, Christopher Calvert with the machete. Calvert sustained injuries to his body while defending himself and required medical treatment. The defendant then later sent a text message to the victim, stating he was "coming back over to finish the job"

\* Police investigation

\*\* Victim Statements

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address: Moss Justice Center

York, SC 29745-7428

Affiant's Telephone (803)628-3059

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/8/2012

defendant Hubert Floyd Brown, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me.

on 06/13/2012

(L.S.)

Signature of Issuing Judge

Norman Richard Watkins Jr

Judge Code: 7054

Judge's Address 1675-3C York Hwy

York, SC 29745-

Judge's Telephone (803)682-3095

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 518

554

CERTIFIED TRUE COPY

201200018963-2

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SCRECEIVED  
2012 JUN 18 PM 10:00  
OFFICE OF THE  
SHERIFF  
YORK COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA) CERTIFIED TRUE COPY INDICTMENT

COUNTY OF YORK )

2012 JAN -2 AM 8:34

DAVID HAMILTON  
CLERK OF COURT

At a Court of General Sessions convened on September 13, 2012, the Grand Jurors of York County present upon their oath:

**ATTEMPTED MURDER**

The Defendant, Hubert Floyd Brown, Jr., did in York County, South Carolina on or about the night of June 8, 2012, with malice aforethought, either express or implied, twice within a period of a few minutes around 10:30 at night, attempt to the kill the victim, Christopher Calvert. The first time the Defendant tried to kill the victim was when the Defendant chased the victim swinging a hatchet and trying to kill the victim with the hatchet as the victim ran from the Defendant. The second time the Defendant tried to kill the victim was a few minutes later when the Defendant returned to his vehicle, and exchanged his hatchet for a heavy bladed weapon that looked like a machete, and then the Defendant charged into the victim's dwelling and swung the machete with great force at the victim's head, striking the victim in the hand and slashing the victim grievously when the victim threw his hand up defensively to keep the machete blade from plunging into the victim's head. All in violation of Section 16-3-29 of the Code of Laws of South Carolina, (1976, 2010 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*E. B. Jr.*  
ASSISTANT SOLICITOR

9:00:32 Monday, February 02, 2015

556

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 02/02/15  
OMCOMITA RELEASE DATE SCREEN C056368  
SCDC# > 161888 LOC: BROAD RIVER  
BROWN, HUBERT FLOYD SCDC CLASSIFICATION... VIOLENT  
OFFENDER TYPE... ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... Y  
SEXUAL PREDATOR... PENDING  
DNA STATUS... COMPLETED  
GPS REQUIREMENT... N  
PREA DECISION...  
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...  
LIFE CURRENT SENT START DATE: 06/18/2012  
PROJECTED COMPLETION DATES  
MAXOUT DATE ..... 99/99/9999 CURRENT EWC ..  
YOA SIX YEAR DATE: CURRENT EEC ..  
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED ..... 000000 LABOR CREW/WORK PROG DATE: 99/99/9999  
TOTAL EARNED WORK CREDITS ... 000000 LABOR CREW DISQ REASON:  
TOTAL EDUCATION CREDITS ..... 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT  
TOTAL EXTRA EARNED CREDITS .. 000 SUPERVISED REENTRY DATE... 00/00/00  
TOTAL SERVICE TIME EARNED ... 000000 ISS.....

PFKEYS: 5:HISTORY OF DATE CHANGES

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
 RECORD SUMMARY REPORT DATED 02/02/15

C0239

BROWN, HUBERT FLOYD FBI # 666420KA0 SID# SC00699830 SCDC # 161888

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: BROAD RIVER CORR. INST.

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 999 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES SEPREQ

SOCIAL SECURITY #...: [REDACTED]

DORM.....: MA0164B

RACE....: W SEX...: M

PROJ MAXOUT DATE: 99/99/9999

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: WARDKEEPER ASSISTANT

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: WARD HELPER

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 45 DATE OF BIRTH...: [REDACTED]

## PREVIOUS NUMBERS:

\*\* NO PREVIOUS NUMBERS \*\*

| CURRENT OFFENSES    | SENTENCE<br>YRS MOS DYS COUNTY | SENTENCE<br>START V/NV CATEGORY |
|---------------------|--------------------------------|---------------------------------|
| BURGLARY-1ST DEGREE | 999 99 999 YORK                | 6/18/2012 V 4                   |
| ATTEMPTED MURDER    | 999 99 999 YORK                | 6/18/2012 V 4                   |

| PREVIOUS SCDC OFFENSES (COMPLETE) | SENTENCE<br>YRS MOS DYS COUNTY | SENTENCE<br>START V/NV CATEGORY |
|-----------------------------------|--------------------------------|---------------------------------|
| CRIMINAL SEX CNDCT 1ST DE         | 30 0 0 BERKELEY                | 7/24/1989 V 5                   |
| BURGLARY-1ST DEGREE               | 30 0 0 BERKELEY                | 7/24/1989 V 4                   |

PRIOR COMMITMENTS OVER 90 DAYS:

\*NO PRIOR COMMITMENTS OVER 90 DAYS\*

DETAINERS (HOLD, WANTED, NOTIFY):

\*NO DETAINERS\*

ESCAPES:

\*NO ESCAPE HISTORY\*

CRIMINAL CHARGES:

\*NO CRIMINAL CHARGES HISTORY\*

## ASSAULTIVE DISCIPLINARIES:

|                                   |           |                     |
|-----------------------------------|-----------|---------------------|
| 12/20/ 4 FIGHTING WITHOUT A WEAPO | DROPPED   | CHARG               |
| 6/19/ 4 FIGHTING WITHOUT A WEAPO  | CONVICTED | MAJOR               |
| 2/22/98 ROBBERY WITH FORCE        | CONVICTED | MAJOR INMATE WEAPON |
| 1/28/98 FIGHTING WITHOUT A WEAPO  | DROPPED   | MINOR               |
| 9/24/93 FIGHTING WITHOUT A WEAPO  | CONVICTED | MINOR               |
| 6/17/90 FIGHTING WITHOUT A WEAPO  | CONVICTED | MINOR               |

## NON-ASSAULTIVE DISCIPLINARIES:

|                                      |           |              |
|--------------------------------------|-----------|--------------|
| 3/10/14 THREATENING TO INFLECT H     | CONVICTED | MAJOR        |
| 3/10/14 REFUSING OR FAILING OBEY     | CONVICTED | MAJOR        |
| 3/10/14 THREATENING TO INFLECT H     | CONVICTED | MAJOR        |
| 3/10/14 REFUSING OR FAILING OBEY     | CONVICTED | MAJOR        |
| 3/10/14 POSS. OR/ATTEMPT TO POSS     | CONVICTED | MAJOR        |
| 9/23/ 8 POSSESSION OF CONTRABAND     |           | OTHER        |
| 9/23/ 8 USE, POSS NARC, MARIJ, UNAU  | CONVICTED | MAJOR        |
| 2/ 1/ 8 POSSESSION OF CONTRABAND     | DROPPED   | MAJOR        |
| 2/ 1/ 8 POSS. OR/ATTEMPT TO POSS     | DROPPED   | MAJOR        |
| 7/12/ 7 USE OBSCENE, VULGAR, PROFA   |           | OTHER        |
| 4/18/ 7 POSSESSION OF CONTRABAND     | CONVICTED | ADMIN        |
| 11/ 9/ 6 VIOLATIONS WRITE/POST IN    | CONVICTED | ADMIN        |
| 10/11/ 6 INTERFERING WITH DUTIES     | CONVICTED | ADMIN        |
| 2/ 2/ 6 POSS. OR/ATTEMPT TO POSS     | CONVICTED | MAJOR        |
| 9/20/ 4 THREATENING TO INFLECT H     | CONVICTED | MAJOR INMATE |
| 10/18/ 3 I/M UNDER INFLUENCE/POSS    | CONVICTED | MINOR        |
| 2/26/ 3 I/M UNDER INFLUENCE/POSS     | DROPPED   | MAJOR        |
| 2/26/ 3 I/M UNDER INFLUENCE/POSS     | DROPPED   | CHARG        |
| 11/25/ 2 DAMAGE, DESTROY, PROP. VALU | DROPPED   | MAJOR        |
| 11/25/ 2 DAMAGE, DESTROY, PROP. VALU | DROPPED   | MAJOR        |

6/15/ 2 OUT OF PLACE

CONVICTED

MAJOR

BROWN, HUBERT FLOYD FBI # 666420KA0 SID# SC00699830 SCDC # 161888 (CONTINUED)

|          |                             |            |       |
|----------|-----------------------------|------------|-------|
| 5/15/ 2  | USE, POSS NARC, MARIJ, UNAU | CONVICTED  | MAJOR |
| 3/ 9/ 2  | USE, POSS NARC, MARIJ, UNAU | CONVICTED  | MAJOR |
| 2/27/ 0  | USE OBSCENE, VULGAR, PROFA  | CONVICTED  | MINOR |
| 1/ 1/ 0  | OUT OF PLACE                | CONVICTED  | MAJOR |
| 12/20/99 | REFUSING TO WORK            | DROPPED    | MINOR |
| 11/30/99 | VIOLATIONS WRITE/POST IN    |            | OTHER |
| 11/ 9/99 | REFUSING TO WORK            |            | OTHER |
| 10/18/99 | OUT OF PLACE                | DROPPED    | MINOR |
| 9/19/99  | USE OBSCENE, VULGAR, PROFA  | DROPPED    | MAJOR |
| 9/16/99  | SAFETY REGULATIONS          | DROPPED    | MINOR |
| 8/ 3/99  | THREATENING TO INFLICT H    | NOT GUILTY | MAJOR |
| 1/26/99  | SEXUAL MISCONDUCT           | DROPPED    | MAJOR |
| 1/21/99  | OUT OF PLACE                | CONVICTED  | MAJOR |
| 8/10/98  | POSSESSION OF CONTRABAND    | CONVICTED  | MAJOR |
| 2/23/98  | USE, POSS NARC, MARIJ, UNAU | CONVICTED  | MAJOR |
| 2/22/98  | USE, POSS NARC, MARIJ, UNAU | CONVICTED  | MAJOR |
| 11/16/97 | USE OBSCENE, VULGAR, PROFA  | CONVICTED  | MINOR |
| 11/16/97 | REFUSING OR FAILING OBEY    | CONVICTED  | MINOR |
| 10/19/97 | POSSESSION OF CONTRABAND    | CONVICTED  | MAJOR |
| 10/19/97 | I/M UNDER INFLUENCE/POSS    | CONVICTED  | MAJOR |
| 9/24/97  | OUT OF PLACE                | CONVICTED  | MINOR |
| 7/ 8/97  | THREATENING TO INFLICT H    | CONVICTED  | MAJOR |
| 7/ 8/97  | USE OBSCENE, VULGAR, PROFA  | CONVICTED  | MINOR |
| 7/ 8/97  | REFUSING OR FAILING OBEY    | CONVICTED  | MINOR |
| 4/14/97  | OUT OF PLACE                | CONVICTED  | MINOR |
| 2/19/97  | OUT OF PLACE                | CONVICTED  | MINOR |
| 8/ 8/96  | OUT OF PLACE                | CONVICTED  | MINOR |
| 1/ 1/95  | POSSESSION OF CONTRABAND    | CONVICTED  | MAJOR |
| 9/24/93  | REFUSING OR FAILING OBEY    | CONVICTED  | MINOR |
| 3/12/92  | POSSESSION OF CONTRABAND    | CONVICTED  | MAJOR |
| 5/16/91  | POSSESSION OF CONTRABAND    | CONVICTED  | MAJOR |

# HISTORY OF MOVEMENTS:

|          |             |                      |                              |
|----------|-------------|----------------------|------------------------------|
| 9/17/14  | BROAD RIVER | INCARCERATED         | ADMINISTRATIVE               |
| 9/17/14  | KIRKLAND    | INCARCERATED         | MEDICAL                      |
| 4/ 7/14  | BROAD RIVER | INCARCERATED         | LOCKUP-ADJUSTMENT COMM.      |
| 9/18/13  | MCCORMICK   | INCARCERATED         | ADMINISTRATIVE               |
| 7/16/13  | KIRKLAND    | INCARCERATED         | NEW ADMISSION                |
| 10/30/ 9 | UNK         | RELEASE              | EXPIRATION OF SENTENCE       |
| 9/15/ 9  | KIRKLAND    | INCARCERATED         | RETURN FROM SUPER.FURL.      |
| 7/17/ 9  | YORK CO     | AUTH ABSENCE (AWL)   | LOCKUP-FRM EPA, SF, PAR, PRB |
| 7/17/ 9  | UNK         | DEAD TIME            | WARRANT ISSUED               |
| 5/ 4/ 9  | YORK CO     | SFII-SUPERVISED FURL | SUPERVISED FURLOUGH          |
| 3/31/ 9  | EVANS       | INCARCERATED         | ADMINISTRATIVE               |
| 3/31/ 9  | KIRKLAND    | INCARCERATED         | MEDICAL                      |
| 12/11/ 8 | EVANS       | INCARCERATED         | ADMINISTRATIVE               |
| 12/11/ 8 | KIRKLAND    | INCARCERATED         | MEDICAL                      |
| 11/10/ 8 | EVANS       | INCARCERATED         | ADMINISTRATIVE               |
| 11/10/ 8 | KIRKLAND    | INCARCERATED         | MEDICAL                      |
| 8/26/ 8  | EVANS       | INCARCERATED         | ADMINISTRATIVE               |
| 8/26/ 8  | RICHLAND CO | AUTH ABSENCE (AWL)   | MEDICAL                      |
| 7/28/ 8  | EVANS       | INCARCERATED         | ADMINISTRATIVE               |
| 7/28/ 8  | KIRKLAND    | INCARCERATED         | MEDICAL                      |
| 11/20/ 6 | EVANS       | INCARCERATED         | ADMINISTRATIVE               |
| 10/18/ 6 | TYGER RIVER | INCARCERATED         | ADMINISTRATIVE               |
| 10/18/ 6 | PERRY       | INCARCERATED         | COURT/PAROLE HEARING VIA     |
| 7/27/ 6  | TYGER RIVER | INCARCERATED         | LOCKUP-ADJUSTMENT COMM.      |
| 11/ 6/ 3 | RIDGELAND   | INCARCERATED         | ADMINISTRATIVE               |
| 8/28/ 2  | KERSHAW     | INCARCERATED         | ADMINISTRATIVE               |

3/21/ 0 LIEBER  
1/20/ 0 KERSHAW

INCARCERATED  
INCARCERATED

ADMINISTRATIVE  
ADMINISTRATIVE

|                     |                 |                    |                           |
|---------------------|-----------------|--------------------|---------------------------|
| BROWN, HUBERT FLOYD | FBI # 666420KA0 | SID# SC00699830    | SCDC # 161888 (CONTINUED) |
| 1/13/ 0             | BROAD RIVER     | INCARCERATED       | ADMINISTRATIVE            |
| 1/12/ 0             | EVANS           | INCARCERATED       | ADMINISTRATIVE            |
| 1/ 1/ 0             | BROAD RIVER     | INCARCERATED       | LOCKUP-INVESTIGATION      |
| 10/19/95            | EVANS           | INCARCERATED       | ADMINISTRATIVE            |
| 8/29/95             | PERRY R&E       | INCARCERATED       | ADMINISTRATIVE            |
| 3/15/95             | KIRKLAND        | INCARCERATED       | ADMINISTRATIVE            |
| 3/ 8/95             | BROAD RIVER R&E | INCARCERATED       | LOCKUP-INVESTIGATION      |
| 2/ 9/95             | BROAD RIVER     | INCARCERATED       | ADMINISTRATIVE            |
| 12/31/94            | BROAD RIVER R&E | INCARCERATED       | LOCKUP-INVESTIGATION      |
| 7/29/94             | BROAD RIVER     | INCARCERATED       | ADMINISTRATIVE            |
| 7/21/94             | BROAD RIVER R&E | INCARCERATED       | RETURN FROM COURT         |
| 7/ 1/94             | DORCHESTER CO   | AUTH ABSENCE (AWL) | TO COURT                  |
| 12/11/92            | BROAD RIVER R&E | INCARCERATED       | ADMINISTRATIVE            |
| 11/18/92            | LIEBER R&E      | INCARCERATED       | LOCKUP-INVESTIGATION      |
| 11/ 1/92            | LIEBER          | INCARCERATED       | ADMINISTRATIVE            |
| 10/22/92            | LIEBER R&E      | INCARCERATED       | LOCKUP-INVESTIGATION      |
| 7/25/91             | LIEBER          | INCARCERATED       | ADMINISTRATIVE            |
| 7/23/91             | COUNTY HOSP     | AUTH ABSENCE (AWL) | MEDICAL                   |
| 6/11/91             | LIEBER          | INCARCERATED       | ADMINISTRATIVE            |
| 5/16/91             | LIEBER R&E      | INCARCERATED       | LOCKUP-INVESTIGATION      |
| 7/10/90             | LIEBER          | INCARCERATED       | ADMINISTRATIVE            |
| 6/17/90             | LIEBER R&E      | INCARCERATED       | LOCKUP-INVESTIGATION      |
| 1/12/90             | LIEBER          | INCARCERATED       | ADMINISTRATIVE            |
| 12/24/89            | LIEBER R&E      | INCARCERATED       | LOCKUP-INVESTIGATION      |
| 12/11/89            | LIEBER          | INCARCERATED       | ADMINISTRATIVE            |
| 12/ 1/89            | LIEBER R&E      | INCARCERATED       | NEW ADMISSION             |

## HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

| JOB DESCRIPTION      | START DATE | END DATE | TERMINATION REASON      | JOB LVL |
|----------------------|------------|----------|-------------------------|---------|
| WARDKEEPER ASSISTANT | 04/22/14   | 0/ 0/ 0  |                         | 3F5     |
| GENERAL WORKER       | 09/19/13   | 3/10/14  | PLACED IN ST/SP CUSTODY | 3F5     |
| CUSTODIAL WORKER     | 06/09/08   | 9/24/ 8  | PLACED IN ST/SP CUSTODY | 2F5     |
| CUSTODIAL WORKER     | 02/15/08   | 4/ 6/ 8  | PLACED IN ST/SP CUSTODY | 2F5     |
| CUSTODIAL WORKER     | 02/08/08   | 2/14/ 8  | MI ELIGIBLE FOR LEVEL 2 | 3F5     |
| CUSTODIAL WORKER     | 11/22/06   | 2/ 7/ 8  | ASLT/DRUG/MAJOR DISC    | 2F5     |
| COOK                 | 10/31/06   | 11/20/ 6 | INSTIT TRANSFER         | 2F7     |
| FOOD SERVICE AIDE    | 08/18/06   | 10/11/ 6 | PLACED IN ST/SP CUSTODY | 2F7     |
| FOOD SERVICE AIDE    | 08/16/06   | 8/17/ 6  | MI ELIGIBLE FOR LEVEL 2 | 3F7     |
| FOOD SERVICE AIDE    | 08/15/06   | 8/15/ 6  | LATERAL TRANSFER        | 2F5     |
| FOOD SERVICE AIDE    | 08/15/06   | 8/15/ 6  | CUSTODY REVIEW          | 3F5     |
| LANDSCAPE GARDENER   | 05/20/05   | 2/ 2/ 6  | PLACED IN ST/SP CUSTODY | 2F5     |
| LANDSCAPE GARDENER   | 11/02/04   | 5/19/ 5  | MI ELIGIBLE FOR LEVEL 2 | 3F5     |
| LANDSCAPE GARDENER   | 07/15/04   | 9/20/ 4  | PLACED IN ST/SP CUSTODY | 3F5     |
| MATERIAL CUTTER/MARK | 05/26/04   | 6/20/ 4  | PLACED IN ST/SP CUSTODY | 3F5     |
| LANDSCAPE GARDENER   | 11/12/03   | 5/25/ 4  | INMATE REQUEST          | 3F5     |
| WARDKEEPER           | 05/02/03   | 11/ 6/ 3 | INSTIT TRANSFER         | 3F5     |
| FOOD SERVICE AIDE    | 03/14/03   | 5/ 1/ 3  | INMATE REQUEST          | 3F5     |
| FOOD SERVICE AIDE    | 09/05/02   | 3/13/ 3  | CUSTODY REVIEW          | 5F5     |
| MECHANIC HELPER      | 08/22/01   | 3/ 9/ 2  | PLACED IN ST/SP CUSTODY | 2F5     |
| WARDKEEPER ASSISTANT | 06/08/01   | 8/21/ 1  | INMATE REQUEST          | 2F5     |
| WARDKEEPER ASSISTANT | 09/22/00   | 6/ 7/ 1  | MI ELIGIBLE FOR LEVEL 2 | 3F5     |
| WARDKEEPER ASSISTANT | 05/25/00   | 9/21/ 0  | CUSTODY REVIEW          | 5F5     |
| FOOD SERVICE AIDE    | 03/24/00   | 4/18/ 0  | INMATE REQUEST          | 5F5     |
| SR DINING ROOM OPERA | 01/28/00   | 3/21/ 0  | INSTIT TRANSFER         | 5F5     |
| FOOD SERVICE AIDE    | 09/10/99   | 11/10/99 | PLACED IN ST/SP CUSTODY | 5F5     |
| FOOD SERVICE AIDE    | 08/18/99   | 9/ 9/99  | CUSTODY REVIEW          | 7F5     |
| LANDSCAPE GARDENER   | 08/15/97   | 2/23/98  | PLACED IN ST/SP CUSTODY | 5F5     |
| LANDSCAPE GARDENER   | 07/15/97   | 8/14/97  | CUSTODY REVIEW          | 3F5     |

|                      |          |         |                           |     |
|----------------------|----------|---------|---------------------------|-----|
| LANDSCAPE GARDENER   | 08/01/96 | 7/14/97 | REMOVAL FROM 7 DAY CREDIT | 3F7 |
| LAUNDRY ROOM ATTENDA | 12/11/95 | 7/31/96 | LATERAL TRANSFER          | 5F7 |

BROWN, HUBERT FLOYD FBI # 666420KA0 SID# SC00699830 SCDC # 161888 (CONTINUED)

|                      |          |          |                      |     |
|----------------------|----------|----------|----------------------|-----|
| SENIOR MAINTENANCE O | 07/07/95 | 8/ 8/95  | LOCKUP-INVESTIGATION | 2F5 |
| PLUMBER              | 03/21/95 | 7/ 6/95  | PROMOTION            | 3F5 |
| CUSTODIAL WORKER     | 03/02/95 | 3/ 8/95  | INSTIT TRANSFER      | 7F7 |
| WARDKEEPER ASSISTANT | 11/21/94 | 11/28/94 | INMATE REQUEST       | 5F7 |
| FURNITURE REPAIR HEL | 08/09/94 | 10/27/94 | UNSAT JOB PERFORM    | 5F5 |
| SR TRAY LINE OPERATO | 08/06/91 | 8/ 8/91  | MEDICAL              | 3F7 |
| FOOD SERVICE AIDE    | 06/20/91 | 8/ 5/91  | PROMOTION            | 5F7 |
| WARDKEEPER ASSISTANT | 03/15/90 | 6/17/90  | LOCKUP-INVESTIGATION | 5F7 |
| CONSTRUCTION TRAINEE | 03/01/90 | 3/ 7/90  | UNSAT JOB PERFORM    | 7F5 |

## HISTORY OF EARNED EDUCATION CREDITS:

| EEC                       | START    | END      | TERMINATION             |
|---------------------------|----------|----------|-------------------------|
| DESCRIPTION               | DATE     | DATE     | REASON                  |
| BONUS 4-7 HRS/WK          | 09/14/04 | 9/20/ 4  | PLACED IN ST/SP CUSTODY |
| LVL 5 - FULL TIME(NO EWC) | 06/26/02 | 8/28/ 2  | INSTIT TRANSFER         |
| LVL 5 - FULL TIME(NO EWC) | 05/28/02 | 6/15/ 2  | PLACED IN ST/SP CUSTODY |
| LVL 7 - FULL TIME(NO EWC) | 11/07/95 | 12/ 8/95 | LATERAL TRANSFER        |

\*\*\*\*\* END OF REPORT \*\*\*\*\*