

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Lexington County

Honorable Frank R. Addy, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAVID PAUL MERRITT,

APPELLANT

APPELLATE CASE NO 2019-000365

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #1 (DVD)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
	)	2018-GS-32-03741
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DAVID PAUL MERRITT,	)	
DEFENDANT.	)	
_____	)	

February 25 & 26, 2019
Lexington, South Carolina

B E F O R E:

THE HONORABLE FRANK ADDY, JUDGE.

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

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Attorney for the Defendant

BETHANIE CREPPON
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(State's Exhibits)

1	DVD		81
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All Exhibits were retained by the Clerk of Court for Lexington County.

1 free to go. Take care.

2 (WHEREUPON, the remaining jury panel was released.)

3 THE COURT: All right. Before we begin with this
4 case, I was told that something needed to be put on the
5 record about the second case up for trial, I think, Mr.
6 Williams case; is that correct?

7 (WHEREUPON, a short recess was taken.)

8 THE COURT: All right. Are we good to move forward
9 on State vs. Merritt? Does anyone need a brief break?

10 MR. PINCELLI: My cocounsel stepped out. We're
11 waiting on him. I think we'll have a Jackson vs. Denno.

12 THE COURT: Let's go ahead and take a comfort break.
13 You can let your client take a comfort break. Are we good
14 on the stipulation as far as the medical condition that we
15 spoke about in chambers? Are we good on that?

16 MR. PINCELLI: I think we're good on that, Your
17 Honor.

18 MR. STORY: And, Your Honor, I would like to give the
19 Court a copy of -- this is, essentially, a printout from
20 the Mayo clinic that I wanted to introduce that kind of
21 describes what Crohn's Disease is. Part of it is redacted
22 by request of the solicitor.

23 THE COURT: Do you have any objection to a definition
24 of -- I think most people know what Crohn's is, but --

25 MR. PINCELLI: Right, no objection to that, Your

1 Honor. I have not yet seen any medical reports.

2 MR. STORY: That's true, Your Honor.

3 THE COURT: Are those coming from the jail or --

4 MR. STORY: We have -- I just got a copy and I'm not
5 sure we're going to introduce those. It's a pretty thick
6 medical file, Judge, and there could be things that we
7 want redacted or the State wanted redacted, so it's
8 looking unlikely that we would introduce those.

9 THE COURT: Very good.

10 We'll be at ease for a few moments so that your
11 client and anyone else can have a brief comfort break.
12 We'll be back on the record in about 10 minutes.

13 MR. STORY: Thank you, Your Honor.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: Anything we need to address further on
16 this particular case before we begin in earnest?

17 From the State.

18 MR. PINCELLI: Your Honor, just a very brief Jackson
19 vs. Denno.

20 THE COURT: Sure. Very well. Call your first
21 witness, please.

22 MR. PINCELLI: The State calls Clayton Anderson.

23 CLAYTON ANDERSON

24 being first duly sworn, testified as follows:

25 THE WITNESS: I affirm.

1 THE CLERK: Have a seat, sir. Once you're seated,
2 speak up loud and clear, state your full name, spelling
3 your last, please.

4 THE WITNESS: My name is Clayton Anderson, last name
5 is spelled A-N-D-E-R-S-O-N, first name, Clayton,
6 C-L-A-Y-T-O-N.

7 DIRECT EXAMINATION

8 BY MR. PINCELLI:

9 Q Do you go by Clayton?

10 A Everybody at work call me Tripp.

11 Q You mind if I call you Tripp?

12 A Don't mind.

13 Q All right, Tripp, where are you currently employed?

14 A At the Lexington County Detention Center in
15 Lexington, South Carolina.

16 Q And how did you become involved in this case?

17 A I'm the victim in the case.

18 Q Okay. And so at the time of the incident, where were
19 you employed?

20 A At Lexington County Detention Center.

21 Q And what's your position there?

22 A Right now, I'm a master deputy, which is a corporal.

23 Q And at that time, what was it?

24 A I was a corporal then, also.

25 Q Okay. And at that time, can you tell me about the

1 condition of the Defendant when he came into the jail?

2 A Yes, he came in -- he was intoxicated, had alcohol on
3 his breath.

4 Q Okay. Did he appear to you to -- so you say he was
5 drunk. Did he appear to you to still be able to
6 understand what he was doing?

7 A Yes, sir, he had good comprehension.

8 Q Where did you speak with the Defendant?

9 A The incident took place inside the men's restroom in
10 the booking area.

11 Q Can you just describe that for me?

12 A Yes. The men's bathroom is a sink, it's a small
13 little bathroom sink, just like a little common area for a
14 bathroom, just a sink and a toilet.

15 Q Could you pick out somewhere in this room and show us
16 about how big it was or point to it and describe it?

17 A If you cut off the wall right here, from that door to
18 like this area here.

19 Q And inside that bathroom, did you ask the Defendant
20 any questions or make any commands?

21 A Yes, I did. I told him I smelled alcohol on his
22 breath and I told him that why would you come in smelling
23 like alcohol when you knew you was going to turn yourself
24 in and do weekend duty. I told him weekend duty is a
25 privilege, it is not a must. I told him you get weekend

1 duty because the Judge gives you an opportunity to keep
2 your job through the week and come in and serve your time
3 on the weekend.

4 Q Did he make a response to that?

5 A Yeah, when I had the confinement uniform, he stated
6 that, Y'all -- excuse my language, Here y'all go with this
7 shit again. And I said, No, you do it because you're come
8 in here smelling like alcohol. And I told him, This is
9 not your first time smelling like alcohol when you come in
10 to do your time.

11 Q Were any other statements made by him to you inside
12 that bathroom?

13 A Yeah, he came storming with derogatory statements
14 saying that me and Officer Stevens is not worth nothing
15 and his truck is worth more than both our lives, then
16 became aggressive and resistant.

17 Q Who else was in that bathroom with you, if anybody?

18 A Corporal Stevens, also.

19 Q So can you name just everybody in the bathroom for
20 me?

21 A Myself and William Stevens.

22 Q And the Defendant?

23 A Right, and the Defendant, David Merritt.

24 Q So those things that he told you and Corporal Stevens
25 were not in response to any questions?

1 A No.

2 MR. PINCELLI: Beg the Court's indulgence, Your
3 Honor.

4 THE COURT: Yes, sir.

5 (Pause.)

6 BY MR. PINCELLI:

7 Q You said this occurred in the bathroom at the jail.
8 This was during your ordinary course of duty?

9 A Right.

10 Q You're just doing your job, essentially?

11 A Yes, sir. He's a weekender. And when the weekenders
12 come in, they have a certain time to come in, certain time
13 to leave. Every weekender that comes in, we do an
14 automatic strip search on them every time they come in
15 because they're weekenders.

16 Q But did you ever have to pull a taser or anything
17 like that?

18 A No, I didn't pull a taser. When he became resistant,
19 I asked him to put his hands behind his back and I did
20 pull handcuffs to attempt to handcuff him because he
21 was --

22 Q Was that -- I'm sorry to cut you off, but was that
23 when he was making a statement or did he make any
24 statements after that point?

25 A Yes. He sat down and tensed up in the bathroom and

1 said he's not doing nothing else until he get his keys.
2 And I told him I didn't have his keys because I didn't
3 take his keys. And I told him that once he dresses out
4 like he would normally do, then I'd go look for his keys
5 and if his keys were here, I will put them in his
6 property. All his clothing, shoes, keys, any personal
7 property they bring would go in a personal property bag.

8 Q All right. Thanks, Tripp. And again, he seemed to
9 understand any commands you were giving?

10 A Yes, he did.

11 Q And did he ask any questions about anything that was
12 going on?

13 A No, sir, he didn't.

14 Q All right. Do you believe any statements made were
15 freely and voluntarily given?

16 A All statements made was freely and voluntarily given.

17 MR. PINCELLI: Thank you, Tripp. That's it.

18 THE COURT: Mr. Story.

19 MR. STORY: Thank you. May it please the Court.

20 CROSS-EXAMINATION

21 BY MR. STORY:

22 Q Good morning, Corporal Anderson.

23 A Good morning. How are you doing, sir?

24 Q Good. Couple questions. You testified he was
25 arguing about his keys. You didn't take his keys?

1 A I did not.

2 Q Essentially, what are your duties as the booking
3 officer? So -- and what I'm asking you is where does the
4 process begin for you when you're booking an inmate in?

5 A As a weekender or a regular inmate?

6 Q Well, since we're talking about a weekender, for a
7 weekender?

8 A Right. Normally, an officer would go meet them at
9 visitation. An officer would pat them down to make sure
10 that they're not bringing anything extra they're not
11 supposed to have, any type of contraband. Then they will
12 come in, they'll walk through the visitation hallway
13 single file line and they would come in and they would
14 stand on the wall. And then me or another officer would
15 ask for their clothes, shoe size and we would dress them
16 out and perform a strip search because they're a
17 weekender.

18 Our policy, every weekender that come in every
19 weekend have to do a strip search. We'll strip search
20 them, provided nothing is found, you know, and then we'll
21 have them sit in the waiting area until we process them in
22 and then they'll go to the housing unit. And there's also
23 a medical screening.

24 Q So, does the -- do you work as the -- so,
25 essentially, what I'm getting at is another officer has

1 them wait and pats them down before they get to you?

2 A Right. Whoever goes to receive them, pat searches
3 them.

4 Q So they move from the visitation area to the booking
5 area?

6 A Right.

7 Q And that's when you get them, take them in the
8 bathroom to strip search them?

9 A Right, whoever, the guys up there, right. Whoever
10 the two guys up there.

11 Q Do the weekenders -- so, for example, his keys, does
12 he hand his keys over to anybody?

13 A Yeah, we would normally take their keys -- if it was
14 me, I would normally take the keys at the visitation area
15 and put it in a small property bag once they get dressed
16 out and verify, hey, man, your keys are in the bag.

17 Q Thanks. And that applies to keys, wallets, any
18 personal items?

19 A We only let them bring their keys and ID for the
20 weekend time because we don't have -- our policy say no
21 money or nothing supposed to come in, no cell phone, just
22 keys and ID.

23 Q So he -- so you took Mr. Merritt into the bathroom
24 and did you begin the process of changing him out?

25 A Tried to.

1 Q Tried to. And so what does that mean? Did he begin
2 removing his clothes or --

3 A I told him I smelled alcohol on his breath, then I
4 went and got him in confinement. If you come in smelling
5 like alcohol on the weekend, we put you in confinement.
6 Because, like I say, you know you're coming in to do
7 weekend time and coming in smelling like alcohol is
8 against our policy.

9 Q Was he still fully clothed?

10 A Fully clothing when?

11 Q So you said he smelled of alcohol, essentially?

12 A Right.

13 Q Did he begin dressing out or what did he do?

14 A I told him he smelled like alcohol when we was
15 outside in the dress out room. We went into the bathroom
16 because the dress out room was being occupied, went into
17 the men's restroom, got the confinement uniform. Then he
18 saw that confinement uniform, he said, verbatim, Here
19 y'all go with this shit again. And once he saw the
20 confinement uniform, it went downhill from there.

21 Q So what do you mean -- okay, let me -- so the dress
22 out room was occupied?

23 A Right.

24 Q And usually, you go to the dress out room?

25 A Right.

1 Q But this time, because it was occupied, you took him
2 to the bathroom?

3 A To the men's room.

4 Q Are there cameras in the dress out room?

5 A Negative.

6 Q No cameras anywhere you're going to strip search him,
7 right?

8 A Right.

9 Q So y'all start talking, here you go with this shit
10 again. At any point, did he begin undressing before the
11 alleged incident occurred?

12 A He did take his pants and his shoes off.

13 Q Just pants and shoes?

14 A Just his pants and his shoes.

15 Q And let me ask you this: Obviously, you were in the
16 bathroom, so he was free to go to the bathroom. Was he
17 free to leave at that point?

18 A Free to leave as in?

19 Q So if he needed something, could he go back to
20 visitation or --

21 A No.

22 Q Could he get a drink of water?

23 A There's a water fountain in the booking area.

24 Q So you would allow him to leave the bathroom to go
25 get a drink of water in booking?

1 A Not until he got finished getting processed, getting
2 dressed out.

3 Q So before he gets done getting dressed out, he's not
4 free to leave that area?

5 A Right. Once we do the strip search and dress you
6 out, all movement stops until we finish that process. And
7 then he's free to go sit in the lobby and get a drink of
8 water or use the bathroom or use the telephone whatsoever.

9 Q So let me ask you this: You were in your uniform at
10 that time?

11 A Correct.

12 Q And this is, obviously, a different uniform than the
13 one you're wearing now?

14 A Correct.

15 Q It's probably your work uniform?

16 A This is my dress blue uniform.

17 Q Okay, this is your dress blue. Do you call those
18 dailies or -- what do you call your normal work uniform?

19 A Work uniform.

20 Q Thank you. So you were equipped with handcuffs at
21 the time?

22 A Yes, I had handcuffs.

23 Q Did you have a firearm?

24 A I have a taser.

25 Q Okay. So you were equipped with a taser?

1 A Yes, no firearms allowed in the jail.

2 Q Did you have like a baton?

3 A Negative.

4 Q No baton. Did you have a cell phone with you?

5 A Negative, we're not allowed to have cell phones.

6 Q No cell phones. And just so we're clear, you say he
7 smelled like alcohol?

8 A Yes, he did.

9 Q He was not free to leave at that point?

10 A Right.

11 Q But you said he had good comprehension?

12 A Yes.

13 Q Because you were talking back and forth, essentially?

14 A Right. He understood every question that I asked
15 him.

16 Q Okay.

17 MR. STORY: That's all the questions -- or beg the
18 Court's indulgence real quick.

19 THE COURT: Sure.

20 (Pause.)

21 Q Briefly, did you read him Miranda rights?

22 A No, sir, we don't read Miranda rights in the jail,
23 sir.

24 Q Was he in custody at that point?

25 A For a -- well, he turned himself in. He was doing

1 weekend time. I don't know if you call that custody. The
2 Judge sentenced him to do weekend time, so he turned
3 himself in to do weekend time.

4 Q Are you aware what would have happened if he had not
5 showed up or --

6 A No, sir. I mean -- we don't deal with that.

7 MR. STORY: And beg the Court's indulgence one more
8 time.

9 THE COURT: Sure.

10 (Pause.)

11 BY MR. STORY:

12 Q And you testified as to some of the statements he
13 made. Did you ask him any questions at any point?

14 A I asked him -- the same thing I told you earlier. I
15 told him, Why would you come in intoxicated when you know
16 you're coming to turn yourself in to do weekend time.

17 MR. STORY: Thank you. No further questions.

18 THE COURT: Nothing on redirect?

19 REDIRECT EXAMINATION

20 BY MR. PINCELLI:

21 Q What was his response to that question?

22 A He didn't really reply. He just said, Y'all do this
23 shit again, once he found out he was going to confinement.
24 As he got his pants and his shoes on, he said -- excuse my
25 language, he said, Fuck this shit, and then he sat down on

1 the toilet.

2 Q He said something along the lines of, Here we go
3 again or something with this shit again?

4 A Yes.

5 Q Did he make that in response to your question or in
6 response, you think, to what was occurring at the time?

7 A He made that in response to when I went and got the
8 confinement uniform.

9 Q Thank you, Tripp.

10 MR. PINCELLI: No further questions.

11 THE COURT: Anything on recross?

12 MR. STORY: No, Your Honor.

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

14 I would generally agree the Defendant was in custody
15 at the time that he made the statement in the sense that,
16 obviously, he was doing weekend time, but for Miranda to
17 apply, we also have to have interrogation and it needs to
18 be focused on some particular subject matter. And the
19 Defendant --

20 Y'all care to argue this, Mr. Story, or --

21 MR. STORY: No, Your Honor.

22 THE COURT: Nothing from the State then?

23 MR. PINCELLI: Nothing further from the State, Your
24 Honor. We feel any question asked was not custodial
25 interrogation. It was voluntary statements.

1 THE COURT: I tend to agree. It sounds like in the
2 context of what was taking place was more of a situation
3 where the Defendant, Mr. Merritt, may have shown up and
4 this is just the communication that takes place between an
5 officer trying to book somebody in for weekend time. And
6 it sounds like, perhaps, Mr. Merritt maybe had a bit to
7 drink before he came in. It's just interaction as opposed
8 to any kind of genuine interrogation.

9 Anything else?

10 Yes, sir?

11 MR. STORY: I have two more brief motions, Your
12 Honor.

13 THE COURT: Sure.

14 MR. STORY: One, I believe all the statements the
15 officer made about he had done this before or he had come
16 in drunk before, I think those are barred under 404(b).
17 Those are prior bad acts I would argue should not be
18 admissible.

19 THE COURT: Does the State take a position on that?

20 MR. PINCELLI: Your Honor, we've given the witness
21 instructions not to bring up any past incidents with this
22 Defendant. We would argue that his drunkenness at that
23 time is a contemporaneous bad act and not a prior one.

24 THE COURT: I would tend to agree, as long as you
25 stay away from the prior ones. And Corporal Anderson can

1 simply testify he came in that day and was intoxicated and
2 he was chastising Mr. Merritt for having shown up
3 intoxicated to serve his weekend time. That's how you
4 intend to elicit that testimony; is that right?

5 MR. PINCELLI: That's correct, Your Honor.

6 MR. STORY: Finally, Your Honor, I'd ask the Court to
7 sequester all the witnesses except for the lead
8 investigator and the victim.

9 THE COURT: There are only three.

10 Do you have a position on that?

11 MR. PINCELLI: I don't have a position on that, Your
12 Honor.

13 THE COURT: The other two witnesses -- I mean, the
14 two witnesses that were there at the same time -- Mr.
15 Anderson is the victim, correct?

16 MR. PINCELLI: That's correct, Your Honor.

17 THE COURT: Then the other --

18 MR. PINCELLI: Mr. Stevens.

19 THE COURT: Right, was present and then Sandy Black
20 is --

21 MR. PINCELLI: Is the lead investigator.

22 THE COURT: Lead investigator, okay.

23 Mr. Stevens, if you don't mind, be comfortable
24 outside somewhere for a few moments, okay, until we can
25 get to the -- we probably won't get --

1 If you're going to lead with Mr. Anderson, then Mr.
2 Stevens could probably go out and take a lunch and be back
3 around 2:00 or so.

4 MR. PINCELLI: Thank you, Your Honor.

5 THE COURT: Very good.

6 Well, he can stay, I guess, for openings.

7 Any objection, Mr. Story, with Mr. Stevens staying
8 for the openings?

9 MR. STORY: I don't.

10 THE COURT: If he wants to stay for opening argument,
11 that's fine. If he wants to just go ahead and take a long
12 lunch, that's fine, too, whatever he wants to do.

13 MR. POGUE: I believe the State is going to call Mr.
14 Stevens first.

15 THE COURT: Oh, okay. Very good then.

16 Let's have the jury, please.

17 (WHEREUPON, the jury enters the courtroom at 11:56
18 a.m.)

19 THE COURT: All right. The record will reflect the
20 jury is back and seated.

21 Ladies and gentlemen of the jury, the Court's first
22 order of business before I have the clerk administer your
23 oath to you is to appoint a foreperson.

24 Who is Mr. McCarter? I'd like to make you the
25 foreperson, okay? No heavy lifting involved in this.

1 by the witness, prejudice of any witness, the opportunity
2 for the witness to have seen the things about which they
3 testify. You can also consider the way they act on the
4 witness stand. You can consider anything that's in the
5 record in this case which will help you evaluate the
6 testimony of the witnesses. That means it's your
7 obligation to pay close attention to them, listen to them,
8 observe them and try to keep your thoughts from wandering.
9 If you give strict attention to what's happening here in
10 the courtroom, I assure you at the conclusion of the
11 trial, you'll be in as best position as possible to render
12 your verdict under the oath that you have just taken.

13 With that, we will now move on to opening statements.

14 Mr. Pincelli, sorry I messed up your name earlier,
15 sir. You're recognized for your opening.

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

18 THE COURT: Yes, sir.

19 OPENING STATEMENT BY MR. PINCELLI

20 MR. PINCELLI: This is a serious case. This is a
21 case where the victim had one of the most degrading things
22 done to him that one person can do to another one. With
23 that said, it's not a very complicated case; and, frankly,
24 it shouldn't last all that long. You're not going to have
25 to hear from too many people. There's not heaps and heaps

1 of evidence, mounds of information to analyze. Y'all
2 walked in here today with about all you need, your common
3 sense.

4 You see on May 12th, 2018, Clayton Anderson showed up
5 to work to do his job. You'll hear Clayton, who goes by
6 Tripp, he's a correctional officer at Lexington County
7 Detention Center. And you'll hear from Clayton, you'll
8 hear from Tripp, you'll hear from the other correctional
9 officer, Mr. Stevens. And you'll hear that being a
10 correctional officer is not always the most pleasant job.
11 Sometimes you deal with things you'd like not to. But
12 there's one thing a correctional officer should really
13 never have to deal with and there's a law against it
14 because of that. And that's having bodily fluids thrown
15 on him. Unfortunately, that's why we're here.

16 The Defendant, David Merritt, came in to serve
17 weekend time. He showed up at the jail. Tripp's doing
18 his job. The Defendant didn't follow all the
19 instructions. And, ultimately, what occurred is the crime
20 that we're here for. David Merritt defecated himself,
21 took his feces, human excrement and intentionally wiped it
22 on Tripp's uniform. I don't know if I could have
23 controlled my emotions at that point. Tripp is a better
24 man than I because he was just doing his job. He did not
25 retaliate, just doing his job.

1 Now, y'all have a job today and you just took an
2 oath. Your job is to rule over the facts. What do you
3 think the facts are of this case? What's believable,
4 what's not, what's important. What does that mean to you?
5 And you put all that together and you deliberate. And I
6 think when you do that, you'll see this for what it was.
7 You'll use your common sense and you'll find that man,
8 David Merritt, guilty of throwing bodily fluids on a
9 correctional officer.

10 THE COURT: Thank you, Mr. Pincelli.

11 Mr. Story.

12 MR. STORY: May it please the Court.

13 THE COURT: Yes, sir.

14 OPENING STATEMENT BY MR. STORY

15 MR. STORY: Members of the jury, Corporal Anderson is
16 going to tell you that when David Merritt was being booked
17 into the jail on May 12th, he knew he was going to be
18 trouble. But there was something he didn't know at that
19 time, that David Merritt suffered from Crohn's Disease.
20 That is a chronic disease that causes, among other things,
21 chronic diarrhea.

22 They go into the bathroom to change David Merritt out
23 into his jail uniform. And David Merritt had what people
24 with Crohn's Disease often call a flair up. He felt like
25 he was about to have to go to the bathroom. And at that

1 time, Corporal Anderson was giving him commands and he
2 felt like David was not obeying them. So he performed a
3 take down move, essentially, to get him to comply. At
4 that time, David Merritt defecated himself, he had an
5 accident. And during the ensuing struggle, Corporal
6 Anderson got feces on his shirt, on his uniform by
7 accident. And that's what the evidence will show
8 happened.

9 But it doesn't really matter what I believe happened,
10 it certainly doesn't matter what the prosecutor believes
11 happened. What matters is what you believe happened.
12 Because, as the Judge just told you, you are the deciders
13 of fact and what you believe is, ultimately, what matters
14 and whether or not you believe the State has proven every
15 element of the offense that David Merritt is charged with.

16 David Merritt is charged with throwing bodily fluids
17 on a corrections officer. The State has to prove several
18 things, that he was an inmate at the time, that he threw
19 bodily fluids on a corrections officer. They have to
20 prove it beyond a reasonable doubt. Importantly, they
21 have to prove to you beyond a reasonable doubt that he did
22 this intentionally.

23 So I'm not going to get into it that much right now
24 because, obviously, y'all are going to be the ones to
25 decide that. But I want y'all to think about what it must

1 be like to be a corrections officer. He told you it's not
2 always a pleasant job and I, obviously, completely agree
3 with that.

4 But they're going to try to bring your emotions into
5 the equation in a lot of ways. They're going to try to
6 make you angry, and that's okay. You're going to hear
7 some things during the course of some of these officers'
8 testimony that is going to make you angry, going to make
9 you a little grossed out. And again, that's okay because
10 we're talking about very personal matters during this
11 trial. Again, that's okay.

12 But despite the feelings you may have during that
13 testimony, I ask you to reserve judgment until all the
14 testimony has come out, until the end of this trial.
15 Because you may feel one way about something and then
16 later on, you may change your mind. And I just want you
17 to remain open to that. I want you to hold the State to
18 their burden of proof and I want you to consider the
19 witnesses, watch the witnesses. And I'd like you to
20 consider what evidence the State presents or lack of
21 evidence.

22 Because I believe at the end, this will show that
23 this unfortunate incident was an accident and you will
24 find David Merritt not guilty.

25 THE COURT: Thank you, Mr. Story.

1 Mr. Pincelli, call your first witness.

2 MR. PINCELLI: Thank you, Your Honor. The State
3 calls William Stevens.

4 WILLIAM STEVENS

5 being first duly sworn, testified as follows:

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Have a seat, sir. Once you're seated,
8 speak up loud and clear, state your full name, spelling
9 your last.

10 THE WITNESS: My name is William Stevens, last name,
11 S-T-E-V-E-N-S.

12 DIRECT EXAMINATION

13 BY MR. PINCELLI:

14 Q Good morning, Mr. Stevens.

15 A Good morning.

16 Q Where are you currently employed?

17 A Lexington County Detention Center.

18 Q And what do you do there?

19 A I'm a master corrections deputy, officer, supervisor.

20 Q Couple titles?

21 A Yes, couple titles go along with it.

22 Q How long you been there?

23 A Twelve years.

24 Q And were you employed there back on May 12th, 2018?

25 A Yes, sir.

1 Q I'll get more into that in just a little bit. 12
2 years being a corrections officer, what are some of the
3 general duties and responsibilities of what you do? What
4 do you deal with on a day-to-day basis?

5 A Booking inmates, housing inmates, central control,
6 watching cameras, et cetera, et cetera.

7 Q What kind of things do you have to put up with as a
8 result of that job?

9 A Like --

10 Q Just behavior --

11 A Oh, just -- I mean, you get all kind of people from
12 all different walks of life. So you get some people that
13 come in there that are just model inmates, and you get
14 some people that come in there and they're taking
15 everything out on you. So it's just --

16 Q So you said you work at Lexington County Detention
17 Center. Can you explain to the jury what that is if
18 people don't know exactly?

19 A What, working at Lexington County Detention Center?

20 Q What is the detention center is.

21 A It's, basically, where all the agencies in the state,
22 you know, when they make arrested, they bring them all to
23 us. We house all the inmates in the county from all the
24 agencies.

25 Q Would you say it's a jail?

1 A Yes.

2 Q And are there cameras inside the jail?

3 A Yes, sir.

4 Q Are there cameras in every room?

5 A Not every room.

6 Q What are some of the rooms that do not have cameras?

7 A Dress out rooms, restrooms.

8 Q Do you wear a body camera?

9 A No, sir.

10 Q Do any of the correctional officers wear body
11 cameras?

12 A No, sir.

13 Q I'm going to ask you a question about a specific kind
14 of inmate. You said you deal with all the inmates there.
15 What is a weekender?

16 A A weekender is somebody that's -- with the court --
17 the Judge, instead of them doing straight time, which is
18 be a regular inmate, they'll let them Monday through
19 Friday work their job and then come in, turn themselves
20 in, and work -- stay in the jail till Sunday and then they
21 go back to work. So they have their home life and usually
22 special conditions go along with being a weekender.

23 Q So as the name kind of states, when does the
24 weekender come in?

25 A Yes, sir, they just come in on Friday nights about

1 7:30.

2 Q And once they come in, when are they free to leave?

3 A Sunday afternoon about 7:30 or 8:00.

4 Q So once they come in the jail, they're yours; is that
5 correct?

6 A Yes, sir.

7 Q They're not free to leave?

8 A No, sir.

9 Q And what are they, essentially, classified as?

10 A Inmate.

11 Q And what is the process of booking in a weekender?

12 A When they show up at the front at visitation, you
13 have an officer go up there, pat them down, take their
14 property from them, which shouldn't be much, shouldn't be
15 nothing but ID and keys, take them back to the booking
16 area, get them dressed out, strip searched, then dressed
17 out, and then they see medical screening. Once they get
18 done with medical screening, we get them housed and send
19 them to the housing area.

20 Q Is that process at all different if someone comes in
21 under the influence of drugs or alcohol or --

22 A As far as being a weekender or --

23 Q Being a weekender, the booking in process?

24 A If you come in under the influence, you go on
25 confinement because you knew you're coming to jail, so

1 you're coming to jail intoxicated.

2 Q What does confinement mean?

3 A It's -- when you go on confinement, you're locked
4 down 23 hours, 23 and one, 23 hours and one hour on rec.

5 Q And explain to the jury, Mr. Stevens, what's
6 different about confinement when you get booked in? Is
7 there a -- do you go to a different place? Do you do
8 different things?

9 A You go to a different place, what we call first
10 floor, which is where we keep our confined at. Rather
11 than he's going to B dorm or to a pod where he can watch
12 TV and have two or three recs a day, you only get one hour
13 rec a day and you're behind a door.

14 Q How about their uniforms, are those different?

15 A Yes, sir, they're in black and white.

16 Q Okay. Let's talk about the incident that we're here
17 for today. You said earlier that you were working on May
18 12th of 2018, didn't you?

19 A Yes, sir.

20 Q And what was your title at that time?

21 A Master correctional officer, which is corporal.

22 Q So what were you doing that evening as a corporal?

23 A I was working central control.

24 Q Can you explain that to the jury?

25 A Central control is where you sit and watch all the

1 cameras and open the doors and stuff, which is connected
2 right there at booking.

3 Q And what caused you to come into contact with the
4 Defendant on that night?

5 A They needed another male out there to help strip
6 search the weekender. And one of the officers come and
7 relieved me and I went out there with MCO Tripp and that's
8 when I came in contact with Mr. Merritt.

9 Q So you know who Mr. Merritt is?

10 A Yes, sir, he's been there a couple times.

11 Q Can you point out Mr. Merritt for the jury?

12 A White shirt.

13 THE COURT: Record will reflect the witness has
14 identified the Defendant.

15 Q And I think you mentioned weekender, so was Mr.
16 Merritt a weekender at that time?

17 A Yes, sir.

18 Q So that was the evening of May 12th, 2018. And you
19 were called to help book in Mr. Merritt? Or why were you
20 called?

21 A To perform a strip search. You have to have two
22 people to do a strip search. You can't do a strip search
23 by yourself.

24 Q Where do you perform those strip searches?

25 A In the bathroom or dress out room. But at that time,

1 the dress out room was being occupied, so we went to the
2 men's restroom.

3 Q And those are two of the areas that you told me
4 earlier do not have any cameras?

5 A Don't have no cameras.

6 Q When someone gets to the point in the jail that
7 they're being strip searched, are they free to leave?

8 A No, sir.

9 Q Are they inmates at that time?

10 A Inmates at that time.

11 Q So you get to the scenario, you said you got the
12 Defendant there, you take him to be strip searched. Who
13 else was with you at that time?

14 A MCO Tripp -- MCO Anderson, excuse me.

15 Q Anderson?

16 A Yeah.

17 Q Everybody calls him Tripp?

18 A Tripp.

19 Q Can you break down what happens when you get into
20 that strip search room? Just kind of break down the
21 sequence of events and explain it to the jury. They were
22 there, so tell them what happened.

23 A As soon as we went in there, that's when MCO
24 Anderson, you know, explained to him that he come in
25 smelling like alcohol. He said he was going to find -- he

1 got the black and white uniform, took it in there to the
2 restroom with him to get him to strip search. He was
3 upset about his keys and said, you know, here we go doing
4 this shit again.

5 MR. STORY: Objection, Your Honor, subject to your
6 previous ruling.

7 THE COURT: Subject to the earlier ruling.
8 You can continue, please.

9 THE WITNESS: He took his shoes, took his pants off
10 and then he sat down on the toilet refusing to do anything
11 else until we got his keys. We tried to explain to him
12 once we get you dressed out, we'll get your keys. You
13 know, we talked about 10 minutes, you know, didn't go
14 nowhere. That's when MCO Anderson pulled his handcuffs
15 out and was going to attempt to handcuff him. We
16 struggled with him and we took him down to the floor to
17 secure him. Once we got him down to the floor, that's --
18 Mr. Merritt's arms was locked up around his chest, you
19 know, where we couldn't cuff him. And as he went down,
20 his hand come up and that's when he had feces on his hand
21 and put it on MCO Anderson's shirt.

22 BY MR. PINCELLI:

23 Q Thank you, Mr. Stevens. I'm going to back you up
24 just a little bit. What was he supposed to do when he got
25 in that room? You eluded to the model inmate earlier.

1 What would the model inmate have done in that situation?

2 A Obeyed all orders which were given.

3 Q And your orders were what?

4 A Perform the strip search, you give us one piece of
5 clothing at a time. And then once we get done with the
6 strip search, we give you your clothes and you go out the
7 door and have a seat in booking.

8 Q And you said he took off his pants and his shoes?

9 A And his shoes.

10 Q What was he wearing after that?

11 A He was wearing boxers and a shirt.

12 Q And this was inside the bathroom. Can you describe
13 that space for us?

14 A Real small. I mean, as far as size-wise or --

15 Q Is it like a public bathroom with a whole bunch of
16 stalls?

17 A No, you walk in, you've got a sink, toilet and three
18 walls. It's a small area.

19 Q Where was Mr. Merritt, where was the Defendant in
20 that bathroom during this time?

21 A Standing towards the toilet. You know, because
22 that's the only place he had really for the strip search.
23 We try to be as far away as possible from them when we do
24 a strip search. We don't like to be on top of somebody
25 when they take their clothes and stuff off. And that's

1 when he become agitated and had a seat on the toilet.

2 Q Now, he sat on the toilet, but was wearing his
3 underwear. Did he take his underwear off?

4 A No, sir. He still had underwear on. He was just
5 refusing.

6 Q Where were you in that small space? You're a large
7 man, where were you standing?

8 A In front of the toilet in the corner.

9 Q Okay. And where was Tripp standing, where was
10 Officer Anderson standing?

11 A Right in front of the sink, right as soon as you shut
12 the door. So he was like in between us.

13 Q So at what point -- go back to where you said there
14 was 10 minutes of talking back and forth and nothing
15 happened. And then what happened next?

16 A After we, you know, talked to him about 10 minutes,
17 you know, at one time, we thought it looked like he was
18 going to comply and then he went back to agitation. And
19 finally, we just made a decision we're going to handcuff
20 him. And once we pulled the handcuffs out and went to
21 grab his arm, he went to tussling and that's when we had
22 to take him to the floor.

23 Q So he was not complying, he goes to the floor. Where
24 were you?

25 A When we went to the floor, I was on top of him.

1 Q And where is Tripp?

2 A Tripp was to the right of him.

3 Q Standing -- is he on the floor?

4 A He was coming down with me, and that's when I seen
5 the hand come out from under him like he was trying to
6 push Tripp off of him, but when he did, he had a handful
7 of feces.

8 Q So who's grabbing his hands at that point?

9 A What, as we was tussling with him?

10 Q That's right.

11 A Both of us. We was trying to get control of him, but
12 he locked out.

13 Q So then what happened with his hands?

14 A When he went down, his hand come up and pushed off on
15 Tripp and that's when he had the feces on him.

16 Q And he was still wearing clothes at this point?

17 A Yes, he still had his boxers and shirt on.

18 Q How did your uniform look after this?

19 A It was clean because I was on top of him.

20 Q And what about Tripp's uniform?

21 A It had feces all over the front of it.

22 Q How about the floor?

23 A Nothing on the floor.

24 Q What happened immediately after the feces being
25 smeared across Tripp's uniform?

1 A Well, by then, two other officers showed up and
2 opened the door to come in and assist us. When they see
3 what was going on, they told us to get up, go out, let
4 Tripp clean up. I went out with him and the two other
5 officers took over. They got him up, walked him around to
6 the dress out room so he could clean himself up and shower
7 and all. And they bagged his clothes and stuff up to be
8 sent to the laundry to get it cleaned up for him.

9 Q So you just got up and left?

10 A Left and the other two officers come in.

11 Q And what about -- what do you remember Tripp doing
12 after that point?

13 A Tripp walked up to the booking desk and took his
14 shirt off and put it in a trash bag. And he was sent home
15 so he could get another uniform top.

16 Q Why was that again?

17 A Because he had feces on him.

18 Q And who did it? Who caused that?

19 A David Merritt.

20 Q And during that time in the bathroom, was there any
21 point of -- was there any request to use the bathroom?

22 A No, sir.

23 Q Were there any complaints about feeling sick?

24 A No, sir.

25 MR. PINCELLI: I beg the Court's indulgence.

1 THE COURT: Yes.

2 (Pause.)

3 BY MR. PINCELLI:

4 Q We've been talking about this being in the bathroom,
5 Officer Stevens. I can't remember if you touched on it.
6 Why were you in the bathroom rather than a different room?

7 A The dress out room was being occupied right now.
8 Somebody else was getting dressed out in there, so we went
9 ahead and went to the bathroom to get it done.

10 Q And again, y'all are wrestling with the Defendant, he
11 gets one of his hands free; is that correct?

12 A Yes, sir.

13 Q What did his hand do? What did he do with his hands
14 at that point?

15 A I seen him extend it out and he had poop on it or
16 feces.

17 Q Did you see the hand before it had feces on it?

18 A No, sir, because he was locked out. He went down --

19 Q So he goes down with his hands?

20 A He goes down, like he wouldn't let his hands up and
21 then he swiped it and that's when it went all over him.

22 Q So when you were wrestling with him, what was on his
23 hands?

24 A Nothing. When we went down wrestling with him, there
25 was nothing on his hands. And then once we couldn't get

1 his arms, we went back to go get them again and that's
2 when his hand come out.

3 MR. PINCELLI: Thank you, Officer Stevens.

4 THE COURT: Mr. Story.

5 MR. STORY: Thank you.

6 CROSS-EXAMINATION

7 BY MR. STORY:

8 Q Corporal Stevens, I'd like to back up to the
9 beginning a little bit. You stated that Corporal Anderson
10 called you to help with the strip search. That was your
11 testimony, correct?

12 A Uh-huh.

13 Q So Corporal Anderson told you to come in and help him
14 change out David Merritt?

15 A Yes, sir.

16 Q Now, you said he was sitting on the toilet?

17 A Uh-huh.

18 Q He was not -- he had begun dressing out, correct?

19 A Yes, sir.

20 Q But he was not finishing dressing out?

21 A Yes, sir.

22 Q And you were obviously ordering him to do that?

23 A Yes, sir.

24 Q He was refusing. And that's when Corporal Anderson,
25 I can't remember exactly how you put it, but did his move,

1 right? How would you describe it, what he did on David
2 Merritt?

3 A What?

4 Q When he put his hands on David Merritt's pressure
5 point. Do you recall that?

6 A I'm trying to see what you're trying to ask me here.
7 Because I know we're trying to handcuff him. Are you
8 talking handcuffing him or taking him down?

9 Q Which came first, him taking him down or handcuffing
10 him?

11 A We went to attempt to handcuff, we were going to put
12 the cuffs on, then he started fighting us. And then we
13 had to take him down to the ground to secure him so we
14 could try to handcuff him.

15 Q So it was you and Corporal Anderson who took him
16 down?

17 A Yes, sir.

18 Q What did taking him down entail? What exactly --
19 when you say take him down, where did you place your hands
20 on David Merritt?

21 A We was grabbing his hands, he pulled away from us,
22 locked out, so we grabbed the upper part of the arms. We
23 took him down and we was trying to fight with him to get
24 his hands loose so we can get him cuffed.

25 Q So you grabbed his -- would it be his left hand?

1 A Left hand, yes, sir.

2 Q And Corporal Anderson was on the other side grabbing
3 his right hand?

4 A Yes, sir, trying to get his right hand.

5 Q And he pulled his hands away, right?

6 A Pulled his hands away and locked out.

7 Q So at this point, was he on the floor?

8 A He was on the floor.

9 Q Okay. So he was on the floor and you and Corporal
10 Anderson were, essentially, on top of him?

11 A Uh-huh -- well, I was on top of him. Anderson was
12 fixing to come down and -- everything just happened so
13 quickly.

14 Q So you actually were, essentially, putting some
15 weight on him to keep him down?

16 A Uh-huh.

17 Q About how much do you weigh at that time?

18 A 390, 400.

19 Q And it's your testimony you actually got his left
20 hand, correct?

21 A I got his left hand free, yes, sir.

22 Q You had control of his left hand?

23 A I was gaining control of his left hand until he did
24 what he -- with the --

25 Q And you said, essentially, it was like he was trying

1 to push off of him and it was a wipe down his shirt?

2 A Uh-huh.

3 THE COURT: That's a yes?

4 THE WITNESS: Oh, I'm sorry.

5 THE COURT: It makes it easier for her.

6 THE WITNESS: Yes, sir.

7 MR. STORY: Thank you.

8 Q Again, I think you testified to this. You would say
9 that the bathroom -- it was very small, correct?

10 A Yes, sir.

11 Q Essentially, past that witness box, would you say
12 it's about that big?

13 A About that size, yes, sir.

14 Q So if you were to sort of close off this witness box
15 from the jury, that's about how big the bathroom was?

16 A Yes, sir.

17 Q And there were three of you in the bathroom?

18 A Yes, sir.

19 Q Essentially, after you got David Merritt secure, you
20 said you called two other officers to come in, correct?

21 A Yeah. By the time -- technically, we never got him
22 secured. When the two officers come in, that was after he
23 done wiped the feces on his shirt. When the door opened
24 up, they seen what was going on. They told us to step
25 out, get our composure, get his shirt off and they went in

1 got him secured and put him in the dress out room so he
2 could take a shower.

3 Q Okay, thank you. And you left after that?

4 A Yes, sir.

5 Q And you never got any feces on you?

6 A No.

7 MR. STORY: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 (Pause.)

10 MR. STORY: No further questions, Your Honor.

11 THE COURT: Redirect?

12 MR. PINCELLI: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. PINCELLI:

15 Q Officer Stevens, you testified you were on top of the
16 Defendant?

17 A Uh-huh.

18 Q And you were asked how much you weighed and you said
19 390 or 400 pounds?

20 A Uh-huh.

21 Q Was very much of your body on top of him?

22 A I mean, I wasn't laying like, you know, flat --

23 Q But you're making a lot of contact with him?

24 A Right, my hands are pushing him down trying to get
25 his left hand.

1 Q Did you get any feces on you?

2 A Huh-uh.

3 Q Did David Merritt use his hands on you at all?

4 A No, sir.

5 MR. PINCELLI: No further questions.

6 THE COURT: You may step down, sir.

7 You got a witness you think we can do in 25 minutes?

8 MR. PINCELLI: I do not, Your Honor. This next
9 witness, we're going to play a video.

10 THE COURT: All right.

11 Ladies and gentlemen, we're going to go ahead and
12 take a break for lunch. And I'm going to ask if you could
13 to be back in your jury room, please, around 2:00, that
14 should give everybody sufficient time to grab a bite.
15 Please don't discuss the case while we are on break. Wear
16 those badges back when you come back. Thank you.

17 (WHEREUPON, the jury exits the courtroom at 12:36
18 p.m.)

19 THE COURT: All right. We'll be at ease until 2:00.
20 See y'all then.

21 (WHEREUPON, a lunch break was taken.)

22 THE COURT: Anything before we bring the jury out?

23 MR. PINCELLI: Judge, before we bring the jury out,
24 can we just make sure our DVD is operable?

25 THE COURT: Go right ahead, please.

1 (Pause.)

2 MR. PINCELLI: Thank you, Judge.

3 THE COURT: Let's go ahead and bring the jury in.

4 (WHEREUPON, the jury enters the courtroom at 2:09
5 p.m.)

6 THE COURT: All right. The record will reflect the
7 jury is back and seated.

8 Ladies and gentlemen, we're still in the State's case
9 in chief.

10 So at this point, Solicitor, if you will call your
11 next witness.

12 MR. PINCELLI: State calls Officer Clayton Anderson.

13 CLAYTON ANDERSON

14 being first duly sworn, testified as follows:

15 THE WITNESS: I affirm.

16 THE CLERK: Have a seat, please, sir. Once you're
17 seated, speak up loud and clear, state your full name,
18 spelling your last, please.

19 THE WITNESS: My name is Clayton Anderson, last name
20 spelled A-N-D-E-R-S-O-N.

21 DIRECT EXAMINATION

22 BY MR. PENCILLI:

23 Q Officer Anderson, you stated your name was Clayton
24 Anderson. Do you go by anything else?

25 A At work, they call me Tripp.

1 Q Do you mind if I call you Tripp today?

2 A I have no problem with that.

3 Q Tripp, where are you employed?

4 A I'm employed at Lexington County Detention Center
5 here in Lexington, South Carolina.

6 Q And how long have you been employed there?

7 A Tomorrow will be my 12th year anniversary.

8 Q Congratulations. What is your title there at the
9 detention center?

10 A I'm a master deputy, also known as a corporal.

11 Q And you've been employed there 12 years, has that
12 been 12 years straight?

13 A 12 years straight.

14 Q So you were working there back on May 12th, 2018?

15 A Affirmative.

16 Q As a corporal, what are some of your general duties
17 and responsibilities at the jail?

18 A I'm part of the shift supervisors. I book people, we
19 house people, we classify people. We deal with all types
20 of people. Some people come in all right, some people
21 come in rudely, angry. Some come in disorderly, some
22 mental. We deal with all types of general people.

23 Q And as part of that, do you work with booking people
24 into the jail? When they get to the jail, you book them
25 in?

1 A I do.

2 Q And how is that process like for a weekender?

3 A The process for a weekender, the visitation officer
4 will let us know that the weekender is there, and around
5 about 7:30, an officer will go get the weekenders. And
6 when they get them, they do a pat search on them, make
7 sure they're not bringing nothing extra inside the
8 facility. They're allowed to have keys and an ID or
9 driver's license. Then we bring them back to the booking
10 area, we'll get their uniform sizes and shoes. If it's a
11 male, you have to have two male officers. If it's a
12 female, you have to have two female officers. Because we
13 have to perform a strip search for every weekender that
14 come in every weekend that they come in.

15 Q And about how many weekenders, give or take, on any
16 given weekend are you dealing with?

17 A Anywhere from maybe six to ten at the most.

18 Q And about how many people are at the jail at any
19 given weekend total?

20 A Anywhere from about 650 to 750.

21 Q So in comparison, weekenders are a very small amount
22 of the jail population?

23 A Yes, it's a selected few.

24 Q You described the process for booking in weekenders.
25 What happens if someone comes in drunk as a weekender?

1 A If someone comes in intoxicated as a weekender, our
2 policy states that they go in confinement.

3 Q So it's a pretty clear rule or is that one of the
4 rules?

5 A It's a clear rule.

6 Q And explain one more time -- I think the jury heard
7 it from Officer Stevens, but what does confinement mean?
8 What does that entail?

9 A Confinement means you violated a facility policy or
10 rule and we put you -- or confine you or put you on lock
11 up, keep you behind a door 23 hours a day. You do get one
12 hour of rec for walking around recreation or your shower
13 time.

14 Q Are they housed in a different part of the jail?

15 A They are. They have them in a place what we call --
16 mostly on the first floor.

17 Q Are there anything that makes them look different
18 than the other --

19 A They're dressed out in what we call a confinement
20 uniform, which is a black and white uniform. We call it
21 stripes for a nickname.

22 Q Generally speaking, do people want to go in
23 confinement?

24 A Generally speaking, nobody wants to go in confinement
25 unless it's an issue or something. But just going in

1 confinement no, sir.

2 Q Let's get to the incident we're here about today.

3 Were you working -- you said you were employed by the
4 Lexington County Detention Center back on May 12th of
5 2018. Were you working that night?

6 A Correct.

7 Q And what were your duties that night?

8 A That night, I was the booking officer at that
9 particular time.

10 Q So you would have been in charge of booking everyone,
11 including weekenders?

12 A I wasn't the booking sergeant at that time, I was the
13 booking officer. I was working booking that night.

14 Q And that night, do you remember seeing the Defendant
15 come into the jail, David Merritt?

16 A Yes, he came -- I wasn't the one that went and got
17 him from visitation, but once he came through the
18 visitation door, yeah, I do remember seeing him.

19 Q Can you point him out for us? Is he here today?

20 A Yes, he's sitting over there with the white and
21 burgundy tie.

22 Q What was your interaction with the Defendant when he
23 was there?

24 A As far as in?

25 Q Why did you have to talk to him? What were you doing

1 as a booking officer interacting with him as an inmate?

2 A I was going to be the officer to do the strip search
3 on him. That was my interaction with him.

4 Q Where was that going to take place?

5 A Normally, we do it in the dress out room, but the
6 dress out room was occupied, so we went to the men's
7 bathroom and did the strip search.

8 Q Was there anything about his appearance or attitude
9 of note when he got to the jail?

10 A Yes, sir, he smelled like alcohol.

11 Q Did you confront him about this?

12 A I did.

13 Q And how did that go?

14 A It didn't go well. When I confronted him about the
15 alcohol and told him he was going to confinement, he
16 became upset, angry and agitated.

17 Q Was he aware of the rules as weekenders? You told me
18 one of the things they're not supposed to do is show up
19 drunk?

20 MR. STORY: Objection, Your Honor. I believe this is
21 subject to your ruling.

22 THE COURT: I think that would be common knowledge
23 for someone reporting on the weekend. But it is subject
24 to my earlier ruling, so it is sustained.

25 MR. PINCELLI: I'll just go off the common knowledge

1 understanding, Your Honor.

2 Q And you stated that you were there as part of your
3 duties to strip search the weekender as part of booking;
4 is that correct?

5 A Correct.

6 Q Okay. And at that time in booking -- when someone
7 enters the jail as a weekender, at what point do they stop
8 being a civilian and start being an inmate?

9 A When an officer goes to visitation and receive you.

10 Q When did that happen? Was that before you saw him?

11 A Yes, before I saw him.

12 Q So by the time you saw him, what was he classified
13 as?

14 A A weekender inmate.

15 Q And you are working and what was your title?

16 A I'm still a corporal.

17 Q Right, a correctional officer at that time, an
18 employee?

19 A Right.

20 Q All right. So getting to you're in the bathroom now
21 because you said the dress out room is occupied; is that
22 correct?

23 A Correct.

24 Q What was supposed to happen there?

25 A We was supposed to go in there and dress him out into

1 his confinement uniform. We was also supposed to do a
2 strip search because every weekender that comes in, we do
3 a strip search on them every time they come in.

4 Q You said it took two people to do that. Who else was
5 with you?

6 A Me and Corporal Stevens.

7 Q And what kind of instructions did you give that night
8 to Mr. Merritt?

9 A I asked him to go ahead and hand one article of
10 clothing at the time. When he hand it to us, we check it
11 to make sure there's no contraband in his clothing in case
12 the other officer missed it during the pat down. He took
13 his shoes and blue jeans off and then he got agitated and
14 stopped and he just sat on the toilet. He refused to do
15 anything else.

16 Q So he did not comply with your commands?

17 A Correct.

18 Q Did he remove some of his clothing?

19 A Yes, his pants and his shoes.

20 Q What was left on him after that?

21 A His T-shirt and underwear.

22 Q And the jury heard earlier the description of that
23 bathroom. Where were you placed in that bathroom? Where
24 were you standing?

25 A In front of the sink.

1 Q And where was the Defendant?

2 A By the toilet.

3 Q And how about Officer Stevens?

4 A On the other side.

5 Q And it's not very big, is it?

6 A No, it's not, it's not big.

7 Q So when he failed to comply, what did you do? What
8 was your next course of action after he failed to comply
9 with getting all the way undressed?

10 A Once we tried talking to him and seen we wasn't
11 getting anywhere, I asked him to stand up and put his
12 hands behind his back because he was refusing all my
13 directives. He locked up, wouldn't move at all. So I
14 tried to secure him so we could place him in handcuffs and
15 he began to resist and he was secured to the floor.

16 Q You said he was secured to the floor. You're a large
17 man, I trust that you can do that. Can you explain to the
18 jury how you did that?

19 A We tried to --

20 Q Where was the Defendant when it happened, where were
21 you and what was the process like?

22 A Well, he was sitting on the toilet, so we had to get
23 him off the toilet. And once we got him off the toilet,
24 he then resisted and we secured him to the floor. We
25 couldn't get him by his hands, so we had to grab him by

1 his upper part right here and was able to get him on the
2 floor -- well, get his knees on the floor. We were never
3 able to get him fully secured, to get him handcuffed.

4 Q So you're on the floor. Is Officer Stevens on the
5 floor with you?

6 A He's on one side and I'm on the other side.

7 Q And you're trying to get his hands?

8 A Right.

9 Q What was the purpose to get his hands?

10 A So we could cuff him, secure him and place him in the
11 tank to maybe he would calm down, and, eventually, he'd get
12 process and dressed out.

13 Q You said you never really did secure his hands. What
14 was happening with his hands?

15 A He was on top of him, had him like this right here,
16 so we had to grab him by the upper part of his arms.

17 Q At any point during this, when he comes in the room,
18 when he sits on the toilet, when he's on the floor, does
19 he complain about any medical issue?

20 A No, never complained about no medial issue, no, sir.

21 Q Did he tell you that he needed to use the bathroom?

22 A No, he did not.

23 Q Did he tell you that he had, in fact, used the
24 bathroom?

25 A No, he did not.

1 Q So you got him on the ground, he won't give you his
2 hands, what happens next?

3 A My partner told me, he said -- like I said, they call
4 me Tripp. He said, Tripp, look at your shirt. I didn't
5 know what happened. He said, Tripp, look at your shirt.
6 I looked at my shirt and I had feces on my shirt from my
7 chest about midway to my stomach.

8 Q Now, when you walked into the bathroom to do the
9 strip search, what did your uniform look like?

10 A Clean black shirt and clean black pants.

11 Q I'm just assuming there's no feces on there?

12 A No feces.

13 Q When you went to the floor, what did your uniform
14 look like?

15 A It was clean for a moment. And then when my partner
16 told me to look at my shirt, I had feces on my shirt.

17 Q In what matter of time do you think that occurred?
18 Were you rolling on the ground for minutes? Did it happen
19 in the blink of an eye?

20 A Maybe 30 to 45 seconds, maybe.

21 Q While you were on the ground?

22 A Right.

23 Q And then all of a sudden, you realize because why?

24 A My partner told me to look at my shirt. And I looked
25 at my shirt and I saw I had feces on my shirt.

1 Q You looked on your shirt and saw it?

2 A I did.

3 Q Did you see it anywhere else?

4 A Nowhere else.

5 Q Did you see it on the ground?

6 A Not on the floor, no.

7 Q Do you recall Officer Stevens having any on his
8 uniform?

9 A He didn't have none on his uniform, no.

10 Q Do you recall the Defendant having it on any part of
11 his body?

12 A No, sir, I didn't.

13 Q Okay. Did you lay on top of the Defendant?

14 A I did not.

15 Q You didn't lay on his rear end or anything?

16 A No.

17 Q Did you lay on the ground under where he'd previously
18 been?

19 A I did not.

20 MR. PENCILLI: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 (Pause.)

23 Q All right. Tripp, you said you realize that you have
24 feces on your person, on your uniform?

25 A Correct.

1 Q And what did you do immediately after that?

2 A By that time, Steve had called for one of the
3 sergeants to come to the booking area. Once the sergeant
4 came and got us out, I immediately went to the podium and
5 took my shirt off and put it in the trash bag.

6 Q What was your interaction with the Defendant after
7 you realized he had put feces on your shirt?

8 A I was upset, but I held my composure. I didn't do
9 what a normal person would do. I just backed off and went
10 and tried to get the feces off me quick as I could.

11 Q Now, just speaking specifically that night, have you
12 had an otherwise pleasant interaction with Mr. Merritt?

13 Were you happy up until that point with him?

14 A Yeah, up until that night, I never had an altercation
15 with him.

16 Q But that night in particular, you confronted him
17 about being drunk; is that correct?

18 A Correct.

19 Q And how did he act toward being put in confinement?

20 A He got upset and got very agitated and started saying
21 derogatory statements towards me and MCO Stevens.

22 Q So you get him in there, he says that and then -- was
23 that during -- while he's not complying or was that
24 before?

25 A While we was in the bathroom in the process of trying

1 to get him to dress out, that's when all that took place.

2 Q And during that time when you're leaving, do you look
3 at the Defendant's hands at all? When you're disengaging,
4 you've got him on the ground, you've called other officers
5 in, you're walking out, what do you see as you're walking
6 out? Did you look at the Defendant at all?

7 A No, I didn't, I just backed out to remove myself from
8 the situation.

9 Q All right. I'm going to pass you up something. Do
10 you recognize what this is?

11 A This is a video of the booking area.

12 Q And how do you know that?

13 A Because I watched it and I initialed it.

14 Q So can you -- where are your initials on that?

15 A Right here where it says CA.

16 Q That's for Clayton Anderson?

17 A Clayton Anderson.

18 MR. PINCELLI: Your Honor, I'd move this into
19 evidence. It's already been marked as State's 1.

20 THE COURT: Any objection?

21 MR. STORY: No objection.

22 THE COURT: Without objection, it will be admitted at
23 State's 1.

24 (WHEREUPON, State's Exhibit No. 1 was admitted into
25 evidence.)

1 You can go ahead and publish if you wish. This video
2 is about 25 minutes long or so?

3 MR. PINCELLI: Yes, Your Honor. At this time, it's
4 my intention to skip around and play very specific parts.

5 THE COURT: Oh, okay. I was going to give him the
6 opportunity to step off the bench if it was going to be 30
7 minutes or so. That's fine.

8 BY MR. PINCELLI:

9 Q All right. You said you've seen this video before.
10 So I'm going to play parts of it and have you explain some
11 of it to the jury because I believe there's a good chance
12 none of them have been inside the building that we're
13 going to be looking at.

14 (WHEREUPON, State's Exhibit No. 1 was played.)

15 Q Tripp, what are we looking at?

16 A We're looking at the booking area of the Lexington
17 County Detention Center.

18 Q So this is where you work?

19 A Yes.

20 Q The past 12 years, same spot?

21 A Different location, but most of my time there, I've
22 been in the booking area.

23 Q Is it fair to say you're familiar with what's on this
24 video?

25 A Correct.

1 Q Where this is.

2 Okay. Before it gets too far into things, I'm going
3 to ask you to describe -- we're looking at a big desk
4 here. Is all that area the booking area?

5 A Yes, the whole area is the booking area.

6 Q Where do you eventually go into? What part of this
7 picture -- do you see my cursor there?

8 A I do.

9 Q Let's pretend this is a square instead of a circle.
10 Where do you go in to do the strip search?

11 A You see where the wall is like a light blue with the
12 wood panel on the corner?

13 Q Would it be easier if you came down and pointed to
14 this?

15 THE COURT: It might be easier if he came down.

16 Q All right, Tripp. You don't have to click anything,
17 you can just use the cursor there.

18 A The bathroom is right there. The men's bathroom is
19 on the other side of this door right here.

20 Q Okay. Thank you. I'm going to skip forward a bit.
21 All right, who is this man here, Tripp?

22 A That's Corporal Stevens.

23 Q And he's in the room today?

24 A Yes, he is.

25 Q And we heard from him earlier, didn't we?

1 A Correct.

2 Q Okay. Corporal Stevens looked like he walked up to
3 the top of the screen. What's up on that top part of the
4 screen that we can't see?

5 A On the wall side, that's the regular dress out room.
6 If you go to your right, there's another door there and
7 another right, another door. That's where we have the
8 uniform and the shoes for the inmates to wear.

9 Q All right. And I think we just missed -- I'm going
10 to pause it real quick. Who's coming around the corner
11 here?

12 A It would be me right there.

13 Q All right. Who's this? I'll back it up and let you
14 watch it in real time, okay? Let's check up toward that
15 bathroom that you just described. There will be several
16 people coming around the corner. When you see them, I
17 want you to go ahead and tell me who you think those
18 people are.

19 A Okay, walking with the black and white uniform,
20 that's David Merritt. The second person is myself and the
21 third person is MCO Stevens.

22 Q What are you doing right now?

23 A We going to the men's bathroom to do the dress out
24 and the strip search.

25 Q And I asked you a lot of questions about what

1 happened in the bathroom. All those answers, that's when
2 that happened?

3 A Correct.

4 Q Okay. And you told me yourself that this went on for
5 several minutes, trying to make everything happen. And so
6 I'm going to skip forward because y'all are in the
7 bathroom all this time, people walking around. Why don't
8 you describe for us real quick, what are these other
9 people doing?

10 A Right there, that's Sergeant Bailey. She's over the
11 booking area.

12 Q But they're just -- are they just other employees?

13 A Right, the guys in blue are inmate workers.

14 Q All right. I'm going to skip forward. Back up a
15 little bit. Let's keep our attention still on the
16 bathroom. I believe that you and Officer Stevens and the
17 Defendant are still in there. So based on what you know
18 of the incident, what do you think is going to happen now?
19 Or maybe you can see it now, what's going on here?

20 A By that time, that's when MCO Stevens had called for
21 Sergeant Davenport to come to the men's restroom.

22 Q And why were they coming?

23 A Because of the situation that happened, I had got the
24 feces on my shirt.

25 Q Okay. And then Officer Steven s told us that once

1 they got there, he eventually just walks out. And you
2 tell me that you leave, too. Who's the bald guy that just
3 walks up there?

4 A That's Officer Horne.

5 Q What's he doing there?

6 A He's coming to assist.

7 Q Keep watching. Just a couple seconds, we'll see some
8 other people come out. And this is -- can you tell how
9 this is playing? This looks to be real time. One second
10 equals one second. It's a little choppy.

11 A You see where myself and Officer Stevens exit the
12 bathroom?

13 Q That's you?

14 A That's me coming up on the podium.

15 Q What are you doing right here?

16 A You see I took my handcuffs off and laid them right
17 there. And I'm taking my duty belt off and I'm taking my
18 shirt off because I got feces on my shirt.

19 Q Okay. Who is this again?

20 A MCO Corporal Stevens.

21 Q So at this point, you're just removing everything?

22 A Yes.

23 Q Why did you remove that?

24 A Because I had feces on my shirt.

25 Q All right. And that's supposed to be all black. You

1 can see a badge on there, but, otherwise, it should have
2 been all black?

3 A Right.

4 Q What are you looking for now?

5 A Looking for a trash bag.

6 Q Have you ever had this happen to you before?

7 A Negative.

8 Q But this just seems like -- why would you --

9 MR. STORY: Objection, Your Honor. He's leading.

10 He's been leading a little bit and I haven't objected yet,
11 but that question is leading.

12 THE COURT: Go ahead.

13 MR. PINCELLI: I'll rephrase.

14 Q Why do you have to bag that up, the shirt?

15 A Because there's feces on my shirt.

16 Q And I think you went around, down at the bottom of
17 the screen, what are you doing over there?

18 A I got some purple gloves, I went to get more gloves
19 so I can put the shirt in the bag.

20 Q What did you do after all this? Now, you're out of
21 your uniform, you're cleaning up. What goes on from here?

22 A I leave to go home and take me a shower and get me
23 another uniform to put on.

24 Q All right. Thank you, Tripp. This is going to be it
25 for the video that I'm going to show now. I'm going to

1 pause that and take this off the screen.

2 Just real quickly to recap, you came out of that room
3 and had to clean up. What happened to the Defendant
4 afterward?

5 A He was allowed to go to the dress out room to take a
6 shower and clean himself up. And his clothes were sent
7 down to the laundry to be washed and cleaned and dried so
8 he would have clean clothes when he leave.

9 Q Did he need any other treatment other than just
10 washing up?

11 A Negative. No other treatment was needed.

12 Q And one more time, you walked out of the room.
13 Before you walked out, where did you see feces?

14 A On my shirt.

15 Q And was it anywhere else?

16 A It was on him.

17 Q Do you remember where on him it was?

18 A Like I said, when they walked in, I was removing
19 myself from the situation. But I know I did see feces in
20 the back of him and I saw it on my shirt.

21 Q And nowhere else in the room?

22 A Nowhere else in the room, nowhere else was feces.

23 MR. PENCILLI: Thank you, Tripp. No further
24 questions.

25 THE COURT: Mr. Story:

1 MR. STORY: May it please the Court?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. STORY:

5 Q Good afternoon, Corporal Anderson.

6 A How are you doing?

7 Q Good. You testified at this time, you had been a CO
8 for about 11 years?

9 A Twelve years tomorrow.

10 Q But until tomorrow, you've been a CO for 11 years?

11 A You can say that.

12 Q If you don't mind me asking, about how much do you
13 weigh?

14 A 350.

15 Q 350 now?

16 A Right.

17 Q Did you weigh about 350 then?

18 A Around about the same, give or take maybe a few.

19 Q So how long have you worked in booking specifically?

20 A Maybe nine, ten years.

21 Q And during that time, you've probably booked
22 hundreds, if not thousands of people, correct?

23 A Correct.

24 Q And you testified when he came in and you smelled
25 alcohol, you informed him he was going to be put in

1 confinement?

2 A Correct.

3 Q And that was, essentially, your decision to give him
4 the confinement uniform, right?

5 A It's policy.

6 Q And to put him in confinement?

7 A Right.

8 Q So you inform him of this, that's when he started
9 becoming agitated?

10 A Correct.

11 Q Let me ask -- so it's been your testimony that you
12 were telling him to dress out, he sat on the toilet and
13 refused to get up?

14 A Correct.

15 Q After he had taken off his shoes, correct?

16 A Correct.

17 Q As well as his pants?

18 A Correct.

19 Q And so that's when you and Corporal Anderson decided
20 to sort of force him to comply, correct?

21 A What you mean by force him?

22 Q Well, he was being defiant, so that's when you went
23 on either side of him to put him in handcuffs, correct?

24 A Yes.

25 Q Do you remember stating that you actually applied

1 pressure under his jaw?

2 A A pressure point.

3 Q So could you just describe a little further. What do
4 you mean when you put pressure on his pressure point?

5 A I did a pressure point right here up under his jaw to
6 get him to release his hands so I can secure him in
7 handcuffs.

8 Q Is that basically like a choke hold?

9 A Negative.

10 Q So what's the purpose of the pressure point?

11 A So he will let his hands out so I can take his hands
12 to secure him in handcuffs. Once the pressure point was
13 no good, I released him. I didn't stay there just kept
14 holding the pressure point. Once it was no effect, I
15 released him.

16 Q And you didn't realize that he had defecated himself
17 until after you saw the feces on your uniform?

18 A Correct.

19 Q And that was after you had him on the ground, right,
20 and after you had put pressure on his pressure point,
21 correct?

22 A Correct.

23 Q So the first time you see it is when you look down
24 and see the feces on your shirt?

25 A Correct.

1 Q Okay. Thank you. Were you aware he had Crohn's
2 Disease at that time?

3 A I was not.

4 Q Okay. And so after you did that, you -- excuse me,
5 after the other two officers come in, you left the room,
6 right?

7 A I did.

8 Q And it's been your testimony, you did see some feces
9 on him, correct?

10 A From his back side.

11 Q And so then you saw it on your shirt?

12 A Right.

13 Q And you exited?

14 A I did.

15 Q And you went and took off your shirt and put it in a
16 trash bag, correct?

17 A I did.

18 Q Did you do anything with it after that?

19 A I washed it.

20 Q So you actually took it back home and washed it?

21 A Right.

22 MR. STORY: I beg the Court's brief indulgence.

23 THE COURT: Yes, sir.

24 (Pause.)

25 BY MR. STORY:

1 Q Before you took your uniform home, did you take
2 pictures of it or anything like that?

3 A I did not.

4 Q And you just washed it. Did you wear it again after
5 that?

6 A No.

7 Q So briefly, when you decided that he was not being
8 compliant, you and Corporal Anderson --

9 A You mean, Corporal Stevens?

10 Q I apologize, you're Corporal Anderson.

11 A Right.

12 Q You and Corporal Stevens made a move, you each got on
13 one side of him and grabbed each arm?

14 A Right.

15 Q You then put him on the ground?

16 A Secured him to the floor.

17 Q Secured him to the floor?

18 A Yes.

19 Q Tried to get his hands?

20 A Right.

21 Q And then you put the pressure point -- you apply
22 pressure to the pressure point?

23 A Right.

24 Q And you did not realize that there was feces on your
25 shirt until you saw it?

1 A Right.

2 MR. STORY: That's all the questions I have. Thank
3 you.

4 THE COURT: Redirect?

5 MR. PINCELLI: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. PINCELLI:

8 Q There's a lot of mention about a pressure point
9 there. Where were you and where was the Defendant when
10 that technique was applied?

11 A On the side of him.

12 Q And where was the Defendant?

13 A On his knees.

14 Q He was -- was he on the toilet? I'm trying to get a
15 picture for where he is in the room.

16 A No, sir. He was on his knees at that time.

17 Q Okay. And that pressure point is where on the body
18 that you're applying?

19 A Right here.

20 Q Right there?

21 A Yeah.

22 Q And how long do you apply that?

23 A Maybe three to five seconds tops. When I saw it was
24 no effect, I disengaged on the pressure point.

25 Q Are you lying on top of him when this happens?

1 A No, sir.

2 Q So your chest wasn't on his back side or anything
3 like that when you're applying?

4 A Negative.

5 Q Do you remember any time during the tussle your chest
6 on top of the Defendant?

7 A I was never on top of the Defendant.

8 Q Were you ever on the floor where the Defendant had
9 been?

10 A No, sir.

11 Q You said there was feces on you, feces on the back
12 side of the Defendant. What -- can you -- I know it's an
13 uncomfortable topic. What -- you said his back side, you
14 mean his buttocks?

15 A Right.

16 Q Now, is that on top of his underwear? Where on his
17 butt is --

18 A In his underwear. You could see it through his
19 underwear.

20 Q Did you see it anywhere else?

21 A No, sir.

22 MR. PINCELLI: No further questions.

23 THE COURT: Recross?

24 MR. STORY: Briefly.

25 RECROSS-EXAMINATION

1 BY MR. STORY:

2 Q What type of underwear was he wearing?

3 A Briefs like.

4 Q So they were white briefs, basically?

5 A I don't remember the color.

6 Q Okay. You had testified previously after you saw it
7 on your shirt, you were pretty upset, right?

8 A Uh-huh.

9 MR. STORY: Thank you. No further questions.

10 THE COURT: All right, sir. Thank you. You can step
11 down.

12 Solicitor, call your next witness, please.

13 MR. PINCELLI: Your Honor, at this time, the State
14 rests.

15 THE COURT: Ladies and gentlemen, I need to take up a
16 brief issue of law with the attorneys. Then I anticipate
17 moving forward with this case. Go back there and get a
18 bottle of water and refresh yourselves. I'll have you
19 back out here in about five or ten minutes. Don't talk
20 about the case.

21 (The jury exits the courtroom at 2:48 p.m.)

22 THE COURT: I assume the Defense renews all prior
23 motions and moves for a directed verdict?

24 MR. STORY: Yes, Your Honor, we do move for a
25 directed verdict on several grounds. There's no evidence

1 that David Merritt was an inmate at that time. He was in
2 the process of being booked and I don't know that he meets
3 the definition of inmate.

4 There's also no evidence that any throwing was
5 involved. I think the only testimony was smearing or
6 putting on the shirt.

7 So taking all the evidence in the light most
8 favorable to the State, we'd ask for a directed verdict at
9 this time.

10 THE COURT: Okay. What does the State say about
11 that?

12 MR. PINCELLI: Your Honor, I believe there was
13 testimony elicited from both Officers Stevens and Anderson
14 as to the process of booking and at what point a civilian
15 becomes an inmate. And I believe it was indicated most
16 recently by Tripp's testimony from the stand that the
17 Defendant was an inmate after he passed visitation, which
18 he had.

19 As to the throwing issue, Your Honor, I believe
20 that's a matter of statutory interpretation. I believe
21 it's stated in State V. Morgan language must be construed
22 in the light of the intended purpose of the statute. And
23 then Duke Energy Corp vs. South Carolina Department of
24 Revenue. Your Honor, I'm just going to quote that case;
25 however, regardless of the plain ordinary meaning of the

1 words in the statute and, in this case, it would be
2 throwing, courts will reject the meaning when to accept it
3 would lead to --

4 THE COURT: Absurd result.

5 MR. PINCELLI: -- absurd result, yes, Your Honor,
6 that could not have been intended by the general assembly.
7 I believe limiting an airborne projectile of bodily fluids
8 to mean throwing would be an absurd result here. I
9 believe the general assembly intended to limit any kind of
10 bodily fluid being transferred in any means and chose the
11 verb throw rather than list a laundry list of other verbs,
12 Your Honor.

13 THE COURT: I'm sure the Defense will reply that
14 criminal statutes are to be strictly construed against the
15 State as a general point of interpretation. Let me let my
16 clerk pull this up and I'll look at exactly what the
17 language is. We're missing Title 24 on the shelf behind
18 me.

19 MR. PINCELLI: I would agree with you, Your Honor,
20 that that would most likely be the argument. There is an
21 unpublished opinion from 2012 that deals, in fact, with
22 the statutory interpretation with this statute. It's
23 about spitting. And the court of appeals -- while it's an
24 unpublished opinion, the court of appeals ruled that while
25 spitting is not in common variance -- well, that does not

1 equal throwing, spitting was affirmed as a throwing bodily
2 fluids case.

3 MR. STORY: And, Your Honor, an unpublished opinion
4 has no precedential value. Of course, spitting is
5 something completely different than what we have here.
6 They're still projecting it through the air onto someone.

7 THE COURT: And the last time I relied on an
8 unpublished opinion, I'm in the process of getting
9 reversed for exactly that reason. Hold on a second, my
10 clerk has found it.

11 MR. PINCELLI: Your Honor, I would also argue that if
12 you look at some of the common definitions of throw, I
13 mean, one person throws a punch. Their fist never leaves
14 their hand. So in that regard, I believe you could say
15 the feces was thrown on Officer Anderson.

16 MR. STORY: But, Your Honor, a fist does fly through
17 the air.

18 MR. PINCELLI: And so did the feces in this case,
19 Your Honor.

20 THE COURT: As I read 24-13-470, if you're looking at
21 subsection B, that kind of helps clarify some of what the
22 legislature may have intended here. Obviously, in
23 drafting the statute, the legislature wanted to prevent
24 any detention center employee or officer from being
25 subjected to the indignity of having any bodily fluid

1 thrown at them. Clearly, that's within the explicit
2 definition of the section.

3 But if you look at B, we're not concerned only with
4 the indignity of having any kind of excrement thrown or
5 anything of that nature. Clearly, the intent of the
6 legislature, when they talk about blood born disease that
7 the Defendant can be tested or a person accused of this
8 can be tested within 72 hours of the incident for blood
9 born diseases, obviously, there's also a desire there to
10 make sure that any substance, whether that's spit,
11 excrement, what have you, is not transferred from an
12 inmate to a detention center employee.

13 So I can -- I do believe that if you look at the
14 section and you read it as a whole, the clear intention
15 here is first to prevent any officer from having to suffer
16 that kind of indignity; and second, just to generally
17 protect the health of the correction's employees by
18 prohibiting this kind of conduct. If the objective is to
19 protect health, then it would not matter whether the
20 substance is intentionally thrown or it's otherwise
21 intentionally wiped or transferred in some manner from the
22 inmate to the officer.

23 So reading the statute as a whole, the Court will
24 conclude that, perhaps, the general assembly could have
25 used a more precise word to describe what they're meaning

1 here, but I'm interpreting throw as to mean transfer --
2 transfer, wipe -- I guess transfer is probably the best
3 synonym as they intend throw to mean.

4 But your point is well taken, Mr. Story, and the
5 Court, however, will be denying your motion. And to the
6 extent I need to say it, I think there's sufficient
7 evidence that the Defendant in this case was an inmate.
8 If you care to make that issue an issue to the jury, feel
9 free. I don't think that's necessarily going to be the
10 case that you're putting in front of the jury.

11 Do y'all intend to present a defense?

12 MR. STORY: I believe so, Your Honor.

13 THE COURT: All right. I assume your client -- does
14 your client intend to testify?

15 MR. STORY: That's my expectation.

16 THE COURT: You've already reviewed with him his
17 Fifth Amendment rights and the ramifications of all this?

18 MR. STORY: I have.

19 THE COURT: I don't see any reason to go over if you
20 don't. Does he have any crimes that we need to take up in
21 terms of impeachment?

22 MR. STORY: I believe so.

23 THE COURT: Do y'all agree as to which ones can be
24 used for impeachment?

25 MR. STORY: He -- I don't believe he has anything

1 that would be classified as a felony, but I know he has a
2 domestic violence second degree that he was doing this
3 weekend time for. And he has, also, I think, an assault
4 and battery second degree.

5 My argument would be that under 403 analysis, those
6 would be more prejudicial than probative. The probative
7 value would not greatly outweigh its prejudicial effect.
8 The assault and battery, I believe, was from 2014. And
9 there was also -- I see a conviction from 2013 assault and
10 battery. So those are over five years old, Your Honor,
11 and I would argue time-wise, they're -- they're not crimes
12 of dishonesty, so they're not relevant to truth telling.
13 All they would really do is prejudice my client.

14 THE COURT: You want to speak to that, Solicitor?

15 MR. PINCELLI: The State would not intend to impeach
16 based on any of those convictions unless the door is
17 opened for some opportunity to speak on it, which I don't
18 expect it to be.

19 THE COURT: Very good. And I assume the lady seated
20 behind you is your client's mother. Was she going to
21 testify or have you decided on that yet?

22 MR. STORY: Your Honor, I am not planning on calling
23 her as a witness.

24 THE COURT: All right. In that case, why don't we
25 talk a few moments for ourselves since we've been out here

1 for about an hour. I'm going to ask my clerk to go ahead
2 and e-mail to you the instructions that she's already
3 worked up and the verdict form. These are identical to
4 some instructions that were crafted out of Edgefield some
5 time ago.

6 So y'all take a look at those and if there's any
7 suggestions or additions, we'll modify them accordingly.
8 I think we may need to pull the part about the Defendant
9 not testifying. Be at ease for about ten minutes, okay.

10 (WHEREUPON, a short break was taken.)

11 THE COURT: All right. My clerk will go ahead and
12 give you the proposed instructions, a hard copy of those.
13 Cocounsel can be looking at those while we're addressing
14 the Defense.

15 Let us have the jury, please.

16 (WHEREUPON, the jury enters the courtroom at 3:18
17 p.m.)

18 THE COURT: All right. The jury is back and seated.
19 Mr. Story.

20 MR. STORY: Your Honor, at this time, the Defense
21 calls David Paul Merritt.

22 DAVID PAUL MERRITT

23 being first duly sworn, testified as follows:

24 THE WITNESS: I do.

25 THE CLERK: Have a seat, sir. Once you're seated,

1 state your full name, spelling your last.

2 THE WITNESS: My name is David Paul Merritt,
3 M-E-R-R-I-T-T.

4 DIRECT EXAMINATION

5 BY MR. STORY:

6 Q Good afternoon, Mr. Merritt, or if I can call you
7 David?

8 A That's fine.

9 Q David, let's begin by telling the jury who you are
10 and where you're from?

11 A My name is David Merritt. Originally, I'm from
12 Bridgeton, New Jersey, that's where I was born. Moved
13 here in 1995 to Lexington County.

14 Q Why did you move to Lexington in 1995?

15 A Better job options.

16 Q Did you have a job opportunity at that time?

17 A I did. I was trimming the power lines for SCE&G.

18 Q David, I'd like to talk a little bit about your
19 medical history. You're -- are you familiar with Crohn's
20 Disease?

21 A Yes, sir.

22 Q And have you been diagnosed with Crohn's Disease?

23 A Yes, sir, in approximately 2002 by -- it's
24 Consultants in Gastroenterology, they confirmed I had
25 Crohn's Disease.

1 Q What type of symptoms were you having at that time?

2 A Actually, I wasn't having any symptoms yet. My
3 oldest brother, who was 15 years -- he's deceased now. At
4 the time, he was 15 years older than me. He had Crohn's
5 Disease and he recommended and wanted me to get checked
6 for it.

7 Q Have you had any symptoms since?

8 A Yes, sir.

9 Q What kind of symptoms do you have?

10 A Constant diarrhea, I have to watch, you know, my
11 diet, gassy foods. I have to be -- pay attention to where
12 bathrooms are when I'm in public, like Wal-Mart or --

13 Q When you say constant diarrhea, how often do you have
14 it?

15 A Approximately five to eight times a day.

16 Q Do you take medication for Crohn's?

17 A Yes, I take a medication like Imodium that helps to
18 firm my stool up, so it's, you know, not as much of a
19 problem.

20 Q What kind of problems have you -- well, let me back
21 up, have you had any medical procedures because of Crohn's
22 Disease?

23 A Yes. In 2008, I woke up in the morning, it was a
24 Sunday morning, and I had excruciating pain in the abdomen
25 area. I had to have my wife at the time take me to

1 Lexington Medical Center in Swansea where they transported
2 me to Lexington Hospital. They figured out that I had an
3 obstruction in my large intestine from the Crohn's that
4 was eating away at my intestine and caused a blockage. I
5 had approximately two and a half foot of my large
6 intestine into my colon removed that was damaged.

7 Q Did that have any effect on your symptoms of Crohn's?

8 A Yes. That made it -- actually, that made it worse
9 because now, naturally, whatever I eat has less distance
10 to travel before, you know, naturally it needs to come
11 out.

12 MR. STORY: Beg the Court's indulgence briefly.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. STORY: And Your Honor, at this time, I would
16 like to enter into evidence what's been marked Defendant's
17 Exhibit No. 1, which has already been stipulated to.

18 THE COURT: Without objection?

19 MR. PINCELLI: Without objection, Your Honor.

20 THE COURT: All right. Defendant's Exhibit 1 is in
21 evidence.

22 MR. STORY: Thank you.

23 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
24 into evidence.)

25 BY MR. STORY:

1 Q David, let me take you back to May of 2018,
2 specifically, May 12th, 2018.

3 A Yes, sir.

4 Q What did you do that day?

5 A I work at Love's Chevrolet. I went to work -- on
6 Saturday, I work half a day until 2:00. I left work. I
7 went home, I believe I watched some TV and took a short
8 nap, that's what I normally did after I got cleaned up,
9 naturally. And then I went to Chili's to get something to
10 eat before I had to go into Lexington County Detention
11 Center. I'm not positive on what time that was. I would
12 say approximately 7:00ish.

13 Q Had you turned yourself into Lexington County
14 Detention Center before?

15 A Yes, sir, I had to do 22 weekends.

16 Q Okay. So after you went and got something to eat,
17 you went to Lexington Detention Center. What happened
18 after that?

19 A Well, I parked in the parking lot, like I always did.
20 I went to visitation, rang the door bell for somebody to
21 come get me. It took approximately 20 minutes for
22 somebody to come and get me. They then took me to the
23 booking area where that person had me stand against the
24 wall until they was ready to take me into the changing
25 room like they normally did and dress me out.

1 Q Okay. So what happened after that?

2 A The two officers, Anderson, and I'm sorry, I forget
3 the other CO's name, but the two officers came and got me
4 and informed me of the -- we couldn't use the regular
5 changing room, so we had to go around to the men's
6 bathroom. We went into the men's bathroom. I took my
7 pants off, I took my shoes off. That left my socks, my
8 boxers, my T-shirt. I asked them where my car keys was
9 and they wasn't sure, so I got a little bit frustrated
10 with that because, you know, how was I going to leave?
11 But --

12 Q Did you begin arguing with them?

13 A Yeah, I was asking them where my keys was, you know,
14 I wanted to see them visually put back in my pants so I
15 knew that my belongings was together.

16 Q And let me ask you this: You said you had dinner.
17 Did you have something to drink at that time?

18 A Yeah, I drank two draft beers while I was there.

19 Q Thank you. Okay. Go ahead. What happened after
20 that?

21 A I started to get the feeling that I had to use the
22 bathroom. So I sat down on the toilet and told them I
23 have Crohn's Disease, I don't have long before I'm going
24 to go in my pants.

25 Q What type of feeling did you have specifically?

1 A Well, it's similar to what everybody gets, I just
2 know it's more urgent.

3 Q And if you don't mind --

4 A You know, my stomach starts to gargle, you know, gas.

5 Q Let me ask you this: You said you take medication.
6 Were you on medication at this time?

7 A Yes, I take, like I said, the Imodium, according to
8 what I'm going to be doing. I took it at the restaurant
9 before I went over there. And I thought I had enough time
10 to get inside and be able to use the bathroom. I didn't
11 know I'd be waiting at the door for 20 minutes and then,
12 you know, the delays.

13 Q How long does it usually take your medicine to take
14 effect?

15 A I guess, it varies. Sometimes I take one, sometimes
16 I take as many as four, depending on what I'm feeling
17 like. But on average, it's two, and it takes maybe an
18 hour.

19 Q Do you recall how many you took this night?

20 A I would say two.

21 Q Do you ever have symptoms of Crohn's despite taking
22 medication?

23 A It's worse if I don't take it. I could have to go 20
24 times in a day if I don't take it at all.

25 Q About how many times do you have to go if you do take

1 two pills, for example?

2 A On average, I would say seven times a day.

3 Q When you take the medication, do you still feel a
4 sense of urgency and some of the symptoms, things like
5 that?

6 A No, because I feel comfortable with taking the
7 medicine. I know, you know, under normal circumstances,
8 you know, that it works. I been doing this for what, over
9 -- since 2002 -- or 2008, my fault.

10 Q Okay. So you sat on the toilet?

11 A Right.

12 Q What happened after that?

13 A They told me that they couldn't let me use the
14 bathroom until they finished doing the change out and
15 everything.

16 Q How were you dressed at that point? You said you had
17 taken off your shoes and your pants?

18 A Right. I had my socks on, I had my boxer shorts on
19 and I had a white T-shirt on.

20 Q And what, if anything, did they tell you to do?

21 A They said turn around, and they tried to put
22 handcuffs on me.

23 Q Did you comply with that?

24 A No. I told them I haven't done anything wrong,
25 there's no reason for you to put me in handcuffs.

1 Q Why weren't you complying?

2 A I just -- I didn't feel like I should have to, you
3 know, I just had to use the bathroom.

4 Q Okay. So what happened after that?

5 A That's when they pushed me to the floor. CO Anderson
6 put both of his arms around my head, his right arm up
7 higher and his left arm down lower. And both of them was
8 pushing me to the ground. And I said, at least, three or
9 four times, I have Crohn's Disease, you're going to make
10 me go in my pants. And it only took maybe 30 seconds, you
11 know, and by bending me over and pushing me to the floor,
12 it made me go.

13 Q And were you feeling symptoms prior to this incident?

14 A Yes, I let them know when I was changing out that I
15 had to use the bathroom.

16 Q And -- okay. Thank you.

17 What do you remember after that? After they put you
18 on the ground and put his arms around you, put the
19 pressure points, what do you remember?

20 A Right. I went to the bathroom. It was a loud noise,
21 you know, like, you know, somebody having bad gas, so
22 there's no way they didn't hear it or smell it.

23 Q And so when you say you went to the bathroom, you
24 mean you defecated?

25 A Right, in my boxer shorts.

1 Q And what do you recall after that? Where were your
2 hands at that point?

3 A I had them like this and as they was putting more
4 weight on me, I put them down in front of me to try to
5 hold their weight up.

6 Q Did you do anything else with your hand?

7 A No, I just tried to hold them up.

8 Q What do you mean by hold them up?

9 A Well, they had their weight, you know, trying to push
10 me down onto the floor, you know, like my face towards the
11 floor.

12 Q Were they trying to put your hands in handcuffs?

13 A No. They did that in the beginning and then after I
14 stepped away from them, that's just when they started to
15 wrestle with me, I guess you could say.

16 Q So do you recall doing anything with your hands other
17 than holding yourself up?

18 A That's it. I just had my hands on the floor. And
19 then when I felt like I was going to lose consciousness
20 from all of his weight on me and his arms squeezing me. I
21 felt like, you know, I was going to lose consciousness.
22 That's when I took my left hand and tried to push him in
23 the chest to, you know, create enough separation where I
24 could breathe. But I went unconscious.

25 Q Do you recall feces on your hands at that time?

1 A No.

2 Q Do you recall putting your hands down your underwear?

3 A No.

4 Q Okay. After that happened, what happened after that?

5 A Well, I was unconscious and, naturally, I don't
6 remember anything what happened. Watching the video, I
7 seen them leave. And it was quite a while before I came
8 out, which is when I regained consciousness and they told
9 me to get up and go get a shower.

10 Q Were there other officers in the bathroom at that
11 point?

12 A I don't remember anybody in there, just me sitting on
13 the floor.

14 Q Do you recall seeing anything on Corporal Anderson's
15 shirt?

16 A When I come walking out of booking, across the front
17 of the desk, he was holding up, I guess, his T-shirt or
18 wearing his T-shirt or something and it looked like a
19 handprint.

20 Q But you're changed out at this point, though, right?

21 A No.

22 Q No?

23 A I still needed to go in and get a shower.

24 Q All right. And did you eventually go get a shower?

25 A Yeah. I went straight in and got a shower and

1 dressed and then that's when they took me to the first
2 floor with the restrictions or --

3 Q Let me ask you this: Did you -- when you realized
4 that you had defecated, did you intentionally put feces on
5 your hands and place it on Corporal Anderson's uniform?

6 A Absolutely not.

7 MR. STORY: Brief indulgence, Your Honor.

8 THE COURT: Yes, sir.

9 (Pause.)

10 MR. STORY: Thank you. That's all the questions I
11 have at this time.

12 THE COURT: Mr. Pincelli.

13 CROSS-EXAMINATION

14 BY MR. PINCELLI:

15 Q David, were you aware that you're not supposed to
16 show up to weekend time intoxicated?

17 A I was told not to come in drunk, and I was clearly
18 not intoxicated. I drank two beers at Chili's.

19 Q So you knew not to come in intoxicated, but you chose
20 to drink two beers, you said, around 7:00. What time do
21 you usually have come in to check in?

22 A After they get the shift change and everything
23 cleared up and out of the way, 7:00, 8:00.

24 Q Okay. So you're testifying that you went and had two
25 beers at Chili's around 7:00, you're supposed to be there

1 at 7:00, but you're not supposed to be intoxicated? I
2 think those are all the same things you said.

3 A I mean, I went and I got something to eat. I drank
4 two beers. And then I went straight from there to the
5 jail. I was not --

6 Q So you showed up with alcohol in your system to the
7 jail?

8 A Yes.

9 Q Was that because you didn't care about following the
10 rule about not being intoxicated?

11 A No. I was not breaking any rule to the best of my
12 knowledge. I was not intoxicated. Two beers, I was not
13 intoxicated.

14 Q And are you aware of when you're in the facility,
15 you're not allowed to refuse any commands from the
16 correctional officers?

17 A I mean, I'm a good person. I, you know, go along
18 with everything. But --

19 Q I'm not questioning your morals. But when you're in
20 there, you understand that you're supposed to follow the
21 rules? When someone tells you what to do, you're supposed
22 to do those things?

23 A Right, yes, sir.

24 Q Your attorney asked you why you were not complying.
25 You said, didn't feel like I had to. Is that because you

1 just don't feel like you need to follow rules?

2 A I had to go to the bathroom. Have you ever --

3 Q I'll be asking the questions, I'm sorry, Mr. Merritt.

4 When you got there and you refused to comply with Mr.

5 Anderson's directions, I believe you testified you were

6 arguing with him about some keys; is that correct?

7 A Yes, sir, we had some words about my keys.

8 Q Do you recall what you said? Did you say anything to

9 the effect of that -- his truck was worth -- your truck

10 was worth more than their lives?

11 A No, sir. I wouldn't say anything like that.

12 Q Did you continue to argue with them?

13 A I just told them that I had to use the bathroom when

14 they tried to put me in handcuffs. I stepped away from

15 them and said I haven't done anything wrong, I have to use

16 the bathroom and informed them that I have Crohn's

17 Disease.

18 Q Were you in there to get strip searched?

19 A Sometimes, they did it and sometimes, they didn't do

20 it. Sometimes, it was one CO that did it, sometimes,

21 there was two.

22 Q Why do you think they took you there that day in the

23 bathroom? What did you think was going to happen?

24 A They needed to change me out of my street clothes

25 into my jail uniform.

1 Q But it was a special jail uniform, wasn't it? Was it
2 confinement uniform?

3 A I didn't see a uniform until after I got out of the
4 shower.

5 Q Did they tell you you were going to be in confinement
6 because you showed up drunk?

7 A No.

8 Q That was not part of the argument you had?

9 A No.

10 Q But you understood you were going in there to change?

11 A Right, yes, sir. Every weekend I went in to the
12 changing room to get changed out of my street clothes and
13 into the jail uniform.

14 Q So when they told you to take off your clothes, why
15 didn't you just do that so you could get changed out and
16 go to the bathroom?

17 A Because I didn't have that long. I had to go then,
18 not time to change anything.

19 Q So when you didn't feel like you had to comply with
20 their orders, you were pushed on the ground; is that
21 correct?

22 A Yes, sir.

23 Q And you would not let the officers put you in
24 handcuffs; is that correct?

25 A When we were standing up, that's correct.

1 Q And when you were on the ground?

2 A I just sat on the floor with my hands like this and I
3 said, I haven't done anything wrong. I have to use the
4 bathroom.

5 Q Was that a comfortable position for you?

6 A Well, I mean, not on the hard floor, no.

7 Q So why didn't you just comply with their commands at
8 that point?

9 A Because I didn't want to go in my pants. I was
10 trying to avoid that.

11 Q So not complying was going to help you not go to the
12 bathroom?

13 A I thought that they would be nice enough to say okay,
14 you have Crohn's Disease, the toilet is right there, go
15 ahead and use it, then we'll finish doing what we need to
16 do. That's what makes the most sense to me.

17 Q At what point did you realize you had defecated in
18 your pants?

19 A After they pushed me to the ground. You could hear
20 it and smell it.

21 Q So immediately when you're on the ground?

22 A It might have taken ten seconds after they was both
23 pushing down on me.

24 Q How long did they stay on top of you after you
25 defecated, do you believe?

1 A Long enough for him to choke me unconscious.

2 Q How long do you think that might have been?

3 A 45 seconds to a minute.

4 Q You don't think that when somebody realized there was
5 feces around, they might want to get off of somebody else?

6 A He held on until I was unconscious.

7 Q But when there was -- when you had, essentially,
8 pooped your pants, that didn't affect anybody's behavior,
9 is that what you're saying?

10 A Yeah, that's when he got rougher and actually started
11 jerking my neck around.

12 Q So he got more on you after you pooped your pants,
13 that's what he did? He put more of his body on your body
14 --

15 A Applying more of his strength around my head.

16 Q And what part of his body was on you when that
17 happened?

18 A Possibly, his upper body, you know, leaning on me.

19 Q Was it on your butt at all?

20 A Not that I'm aware of.

21 Q And you said your hands were down below you?

22 A At first, and then after the weight got to be too
23 much, I put them straight down in front of me to try to
24 hold up their weight from pushing down on me.

25 Q At what point did you realize that you had poop on

1 your hand?

2 A I guess when I went to get a shower. I didn't -- him
3 with his hands around my head, I couldn't see anything.

4 Q Do you need -- do you need to see to feel something?

5 A I was focused on him choking me.

6 Q So you never realized that you had feces on your
7 hand?

8 A Not until after the fact that I woke up from being
9 unconscious.

10 Q Are you saying that you knowingly -- well, you did,
11 you said you knowingly put your hand on Correctional
12 Officer Anderson's chest, you did that?

13 A Yeah, to try to push him away a little bit so I could
14 breathe. Because I couldn't breathe, I was about to go
15 unconscious.

16 Q But you didn't know at that point you had feces on
17 your hand?

18 A No, sir.

19 Q How long do you think you were in that bathroom for
20 about?

21 A I don't -- seemed like approximately ten minutes.

22 Q How did you leave that bathroom?

23 A I walked.

24 Q So how long after you were choked out before you
25 walked out on your own?

1 A You watched the video.

2 Q Wasn't very long, was it?

3 A It was a that while I sat on the floor unconscious
4 after they walked out.

5 Q Well, they walked out after other officers came in,
6 is that true?

7 A Yeah, according to the video. I had never seen --

8 Q According to the video, I'm not going to argue with
9 the video, but you don't remember seeing other officers
10 come in the room?

11 A No, I was unconscious until somebody told me to get
12 up and go get a shower.

13 Q You'd been before to Lexington County Detention
14 Center, booked in as this weekend process; is that true?

15 A Yes.

16 Q Did you ever talk to a nurse there?

17 A Yes.

18 Q You ever talk to them about your condition at all?

19 A Yes, they all know that I have Crohn's Disease.

20 Q And how many -- have you talked to different nurses
21 there? How many people have you told that?

22 A If I'm not mistaken, every single one of the nurses
23 know I have Crohn's Disease and I take Imodium for it.

24 Q Do you talk to them every time you're there? Do you
25 see a nurse every time you check in?

1 A Yeah.

2 Q How many are on duty at one time, do you know?

3 A There's one in the booking area, then there's more
4 back at the, I guess, the nurses' office and then there's
5 two or three that go around and deliver the medications to
6 people that need them.

7 Q So when did you go see a nurse after you got choked
8 out? Did you see one?

9 A When they come around to give me my Crohn's
10 medication and my anxiety medicine and my other -- I take
11 other medication other than for Crohn's.

12 Q Do you think if you were choked out that might have
13 -- that bathroom was pretty much right in booking, right?

14 A Yes, sir.

15 Q And you said there was a nurse at booking. Didn't
16 you just say that?

17 A Yeah. When people come in off the street they deal
18 with or whatever, but they didn't do me that night.

19 Q You don't think a nurse would have been called if
20 somebody was unconscious in the bathroom?

21 A Maybe they just didn't want to say anything.

22 Q But they walked you right out past where the nurse
23 was; isn't that correct?

24 A If she was there. I don't know if she was there or
25 not. She doesn't stay there. She just comes out when a

1 new person comes in off the street.

2 Q Were you angry about your keys missing?

3 A I mean, I was concerned.

4 Q Concerned enough to argue?

5 A I don't -- I don't understand.

6 Q Were you frustrated enough to argue with the
7 correctional officers?

8 A The only thing -- I mean, I was concerned about my
9 keys. I said that I would like to see my keys in my pants
10 so that I know somebody is not going to steal it or
11 whatever.

12 Q Right, but was that making you angry that you
13 couldn't find your keys?

14 A I was frustrated. I wasn't angry.

15 Q Were you frustrated that you were going into
16 confinement?

17 A He never told me that until after I come out of the
18 shower, so after I found out about that, I was like, you
19 know, I didn't do anything wrong.

20 Q Do you know what a confinement uniform looks like?

21 A Yeah, it's black and white.

22 Q When you were undressing in a very small bathroom,
23 you didn't see a uniform that you were supposed to be
24 getting into?

25 A Originally, when they took me in there, I had a red

1 outfit that I wear up until that point every weekend.

2 They didn't decide to put me in the black and white until
3 after I come out of the shower after the incident. So I
4 wasn't mad about that because I didn't know about it.

5 Q So one more time, explain to me, you've just
6 defecated yourself, where are you?

7 A I'm on the floor.

8 Q Where is Officer Stevens?

9 A The last time I seen him, he was standing next to the
10 door.

11 Q Where is Officer Anderson?

12 A To my right side with his arms around my head.

13 Q But he's not laying -- is he laying on top of you?

14 A Short of his feet being off the ground, I would say,
15 yeah. He -- he, you know, was -- you know, he was trying
16 to put as much weight on me as possible.

17 Q Can you demonstrate? I don't want you to get on the
18 ground, but I'm going to come up here and tell me when
19 I'm -- is he behind you? Is he all the way behind you?

20 A He was like right over in this area.

21 Q And you're on the ground?

22 A Yes, sir.

23 Q And you're laying down and he's kind of laying on top
24 of you?

25 A I'm sitting on my knees.

1 Q You're on your knees?

2 A Right.

3 Q How do you reach your hand around?

4 A How do I reach my hand around where?

5 Q When you say you eventually pushed him in the chest?

6 A His chest was like right here, so I tried to push him
7 away to be able to breathe.

8 Q Yeah. So after you pushed him, you said you walked
9 out. What shape did you see of feces on his uniform that
10 looked like a handprint?

11 A Yeah, it looked like a handprint.

12 MR. PINCELLI: Beg the Court's indulgence.

13 (Pause.)

14 MR. PINCELLI: Your Honor, may we approach?

15 THE COURT: Sure.

16 (WHEREUPON, a bench conference was held.)

17 THE COURT: Solicitor, please continue.

18 MR. PINCELLI: Thank you, Your Honor.

19 Q David, we're going back to uniforms. You said you've
20 never been put in anything but a red uniform; is that
21 correct?

22 A During my weekend time, yes, sir.

23 Q So you had never been put in confinement before
24 during your weekend time?

25 A No. That was -- I was always in red and they usually

1 sent me to C'pod.

2 MR. PINCELLI: Beg the Court's indulgence.

3 (Pause.)

4 Q So you're saying you didn't walk in there with a
5 black and white uniform?

6 A No, sir.

7 Q Also, you said you were passed out in the bathroom.
8 You talked about that?

9 A Yes, sir.

10 Q For some extended amount of time?

11 A I'm not sure how long because, you know, I was
12 unconscious. I just know that --

13 Q You think somebody saw you like that? Unconscious?

14 A Yeah. The -- probably all four of them seen me
15 unconscious.

16 Q Are you aware it's a policy if somebody is found
17 unconscious that a nurse would have to come check on that
18 person?

19 A I don't know what their policies are, but I know that
20 the two of them left me in the bathroom sitting on my
21 knees on the floor unconscious.

22 Q So you're accusing those two men and other two
23 officers that saw you unconscious of a flagrant violation
24 of their conduct -- of their rules to call a nurse when
25 they find somebody unconscious?

1 A If that's what it's called. I know he choked me
2 unconscious and --

3 MR. PINCELLI: No further questions.

4 THE COURT: Redirect?

5 MR. STORY: No redirect, Your Honor.

6 THE COURT: All right, sir, thank you. You can step
7 down.

8 Any additional witnesses from the Defense?

9 MR. STORY: Your Honor, at this time, the Defense
10 rests.

11 THE COURT: Solicitor, anything in reply?

12 MR. PINCELLI: Your Honor, we're going to have
13 several reply witnesses. We'd like a brief recess.

14 THE COURT: If we recess, we're probably in a
15 position of needing to do it for the day. I think
16 somebody has to be somewhere at 5:00. How long do you
17 anticipate these witnesses taking? And I assume they're
18 not here.

19 MR. PINCELLI: The only witnesses we intend to call
20 are here, Your Honor. We can take just a very brief
21 recess.

22 THE COURT: We'll be at ease for about five minutes,
23 ladies and gentlemen, and try and get this to you. No
24 promises, though. Adjourn to the back, don't talk about
25 the case. See you in a few minutes.

1 (WHEREUPON, the jury exits the courtroom at 3:58
2 p.m.)

3 (WHEREUPON, a short break was taken.)

4 THE COURT: Let's have the jury, please.

5 (WHEREUPON, the jury enters the courtroom at 4:09
6 p.m.)

7 THE COURT: All right. The record will reflect that
8 the jury is back.

9 Solicitor, your case in reply.

10 MR. PINCELLI: The State would call Correctional
11 Officer Stevens.

12 THE COURT: Officer Stevens, if you will come back
13 up. You're still under oath.

14 DIRECT EXAMINATION

15 BY MR. PINCELLI:

16 Q Officer Stevens, when the Defendant got to the jail,
17 what was his demeanor? How was he acting toward you?

18 A Agitated.

19 Q Did he say anything to you specific in his state of
20 agitation?

21 A Complained about his keys, being very derogatory.

22 Q What, if any, derogatory statements did he make?

23 A Said he's not going -- he said he's not going to get
24 dressed out until he gets his fucking keys.

25 Q And did he -- at any time during that, did he ask to

1 use the bathroom?

2 A No, sir.

3 Q Did you put anything in your report about him asking
4 to use the bathroom?

5 A No, sir.

6 Q Why do you think the reason was that he did not
7 comply?

8 MR. STORY: Objection, Your Honor, speculation.

9 THE COURT: Sustained.

10 BY MR. PINCELLI:

11 Q Were you in here earlier when the Defendant testified
12 that he had never been put in confinement?

13 A Yes, sir.

14 Q Do you know whether or not the Defendant had been
15 previously put in confinement?

16 A He has.

17 Q Do you remember when that was? You don't have to
18 tell me exactly.

19 A I think it was like two weekends before.

20 Q Was it during a weekend sentence?

21 A Yes, sir.

22 Q Based on your experience, did you believe the
23 Defendant to be drunk when he came in?

24 A Yes, sir.

25 Q When you were in the room, the small confined

1 bathroom with the Defendant, did you ever see him
2 unconscious?

3 A No, sir.

4 Q Did he ever complain about the feeling of losing
5 consciousness?

6 A No, sir.

7 Q Did you witness anything that might lead you to
8 believe that he could, in fact, lose consciousness?

9 A No, sir.

10 Q I'm going to play this video real quick for you.

11 Do you know there to be nurses' stations in the jail?

12 A Yes, sir.

13 Q And how many nurses are usually working?

14 A On night shift, usually, three or four.

15 Q Do you remember if there were nurses working that
16 evening?

17 A Yes, sir, there were nurses working.

18 (WHEREUPON, State's Exhibit No. 1 was played.)

19 Q Okay. Where -- can you point to where the nurses
20 would be or where -- in the booking area, do they have a
21 station?

22 A Yes, sir. If you look to the left, you'll see four
23 tanks there with lights on. The one right -- go down,
24 there, go back up, that's medical right there. And then
25 over to the windows over here, that's another nurses

1 station.

2 Q Right here?

3 A Uh-huh.

4 Q Do you see a nurse on the screen?

5 A I see two of them on there.

6 Q Where are they?

7 A There's one standing right below the camera and one
8 where you were just at.

9 Q So right here?

10 A Yes, sir.

11 Q And right there?

12 A Yes, sir.

13 Q And did they ever report to the bathroom that night?

14 A No, sir.

15 Q Were you in here when the Defendant testified that --
16 I believe it was either that he didn't -- that no uniform
17 was brought in the bathroom or that it was just a red one?

18 A Yes, sir, he said it was a red one.

19 Q Do you recall what color it actually was?

20 A It was black and white.

21 Q What does that signify?

22 A Confinement.

23 Q I think we played this earlier. I want you to watch
24 it. Who's that?

25 A That is David Merritt.

1 Q What's that in his hand?

2 A That looks like a black and white uniform.

3 Q I'll keep playing it for you so you can see the
4 context of this. Is that before or after he's going to
5 dress out?

6 A Before.

7 Q Is that you going in there?

8 A Yes, sir.

9 Q And again, what's the policy of somebody being passed
10 out in the jail, somebody unable to walk or stand or being
11 unconscious? Is there any kind of policy there?

12 A Yes, sir. It's -- we call medical emergency and
13 that's when the nurses show up.

14 Q Was that ever done on this night?

15 A Wasn't no need to.

16 MR. PINCELLI: No further questions.

17 THE COURT: Mr. Story, cross?

18 MR. STORY: Yes, Your Honor, briefly.

19 CROSS-EXAMINATION

20 BY MR. STORY:

21 Q Corporal Stevens, you just testified that he was
22 agitated when he showed up, correct?

23 A Uh-huh.

24 Q And the first contact you had with David Merritt was
25 when Corporal Anderson called you to help dress him out,

1 correct?

2 A Yes, sir.

3 Q You said that he had previously been put in
4 confinement about two weekends prior, correct?

5 A Yes, sir.

6 Q Was Corporal Anderson working with you that weekend?

7 A I believe that was on my shift. On this particular
8 night, I was on overtime. Corporal Anderson's shift, so
9 that would come in on my shift.

10 Q And you said that there was no reason for him to lose
11 consciousness?

12 A No, sir.

13 Q For any period of time?

14 A No, sir.

15 Q But did you see Corporal Anderson apply his hand to
16 the pressure point, as he described?

17 A He applied the pressure point to his jaw right here.

18 Q On David Merritt's neck?

19 A His jaw right here.

20 Q Under his jaw?

21 A Right there.

22 Q So this is right here?

23 A Right there.

24 Q And the point of that was to get him to comply with
25 commands?

1 A Comply.

2 MR. STORY: Brief indulgence.

3 THE COURT: Certainly.

4 (Pause.)

5 MR. STORY: No further questions, Your Honor.

6 THE COURT: All right, sir. Thank you. You can step
7 down again.

8 Anything further on reply?

9 MR. PINCELLI: Your Honor, the State calls
10 Correctional Officer Anderson.

11 THE COURT: If you'll come back up, sir. Of course,
12 you're still under oath.

13 DIRECT EXAMINATION

14 BY MR. PINCELLI:

15 Q Tripp, when the Defendant got there, what did you
16 observe his state to be?

17 A I could tell he had been drinking. I could tell he
18 had some alcohol in him.

19 Q What did you do as a result of that?

20 A I told him that coming in with alcohol on you is not
21 tolerated, it's against policy.

22 Q How did he respond? What were his actions?

23 A He kind of was like nonchalant with it, you know,
24 like he really didn't care what I was saying at the time.

25 Q Did you notify him he was going to be placed in

1 confinement?

2 A I did.

3 Q How was that done?

4 A I told him you're going to confinement for coming in
5 with alcohol on you and on your breath and I went and got
6 his confinement uniform. He knew then he was going to
7 confinement.

8 Q How did he react to that?

9 A He stated, Here we go with this shit again.

10 Q Did he at any point during that interaction ask to
11 use the bathroom?

12 A No, sir.

13 Q Was there anything in your report about asking to go
14 to the bathroom?

15 A No, sir.

16 Q At any time, do you recall him being unconscious?

17 A No, sir.

18 Q Was it in anybody's report that he was unconscious?

19 A No, sir.

20 Q Were any medical professionals -- what would the
21 policy be if somebody were found unconscious?

22 A We would call medical emergency and all nurses would
23 respond to a particular location to that particular
24 inmate.

25 Q You're sitting in here, but just to have another pair

1 of eyes on it, let me show you this again. What does a
2 confinement uniform look like?

3 A It's a black and white uniform.

4 Q Who's coming around the corner here with the black
5 and white?

6 A David Merritt.

7 Q Tell me who's following him.

8 A The next person following and then Corporal Stevens.

9 Q And what are y'all going to do here?

10 A We going to the men's restroom to do a strip search
11 and dress him out.

12 Q Tripp, did you ever place a choke hold on the
13 Defendant?

14 A No, I did not.

15 Q Do you know if the Defendant has ever been confined
16 before, put in confinement?

17 A Yes, I have.

18 Q How do you know that?

19 A I was aware of it. It was passed on through --
20 passed on information.

21 MR. STORY: Objection to hearsay, Your Honor.

22 THE COURT: Sustained.

23 That answer is stricken and the jury is instructed to
24 disregard, please.

25 Q When you were in the bathroom with the Defendant and

1 he -- I think you indicated several times already he was
2 not complying with your instructions, at any time, was
3 that because he asked to go to the bathroom?

4 A Repeat that one more time.

5 Q Was his failure -- what do you attribute his failure
6 to comply to?

7 A He was --

8 MR. STORY: Objection, speculation.

9 THE COURT: He can testify to what he observed and he
10 is testifying to what he attributed it based upon his
11 observations, so I'll let the question stand. If you need
12 it repeated, tell him to repeat it again.

13 THE WITNESS: Repeat it one more time.

14 BY MR. PINCELLI:

15 Q What do you attribute the Defendant's failure to
16 comply to?

17 A His failure to comply, he was upset about his keys.
18 He asked me to go get his keys and I informed him once you
19 dress out and comply, I will look for your keys and if
20 your keys are here, I'll place them in your property bag
21 with the rest of your clothes.

22 Q Do you recall any mention of using the restroom?

23 A No, sir.

24 MR. PINCELLI: No further questions.

25 THE COURT: Cross?

1 MR. STORY: Briefly.

2 CROSS-EXAMINATION

3 BY MR. STORY:

4 Q You were in a small bathroom with the Defendant,
5 correct?

6 A Correct.

7 Q And he had began undressing?

8 A Correct.

9 Q Before going to sit on the toilet, correct?

10 A Correct.

11 MR. STORY: Thank you. No further questions.

12 THE COURT: No additional witnesses in reply?

13 MR. PINCELLI: That's correct, Your Honor.

14 THE COURT: Any sur-reply?

15 MR. STORY: No, Your Honor.

16 THE COURT: Ladies and gentlemen of the jury, here's
17 where we are, essentially, we need to break this evening
18 around 5:00 due to some personal obligations of some court
19 people here. So what I'm going to do is ask if you would
20 to report back to the jury room tomorrow morning at 11:30.
21 I have several matters that I'll be hearing out here, one
22 of which is a bond hearing on a homicide case, those tend
23 to take a while, as you can probably imagine. I've got
24 about four or five other matters that I'm hopeful I can
25 knock out in about two hours, two and a half hours. So

1 with any luck, we'll be in a position to bring you in here
2 around 11:30 and resume with this case at that particular
3 time.

4 Remember the old adage, though, man plans, God laughs
5 and lately, he's been laughing a lot at me. So if I keep
6 you waiting, I apologize. If it looks like we're not
7 going to be able to resume tomorrow morning, I'm going to
8 kick y'all out of here and let you get some lunch and have
9 you come back at 2:00.

10 Right now, I'd like you to report at 11:30 tomorrow
11 to the jury room. Wear those badges home, wear them back
12 tomorrow. They'll help identify you as jurors and get you
13 through security a little bit quicker.

14 Ladies and gentlemen, after you break, I'll have a
15 discussion with the attorneys on the instructions that I'm
16 going to give you. While you're on break this evening,
17 please don't discuss the case with anyone. It's very
18 important that you also not perform any kind of research,
19 any sort of independent research about this case. Don't
20 go googling people's names. Don't do anything like that.
21 I assure you, the information you're getting here is under
22 oath, it's subject to questioning. The same ain't true
23 for what you find online.

24 I'll let you know that recently, one of my fellow
25 judges, Judge Hocker in the Eighth Circuit, he was faced

1 with a problem after they tried a case for four and a half
2 days, it was a murder case. On the final day, he learned
3 that some of the jurors had been violating that
4 admonition, they had gone online, searched the case, found
5 out all sorts of stuff. And I will tell you, he is not at
6 all happy. He hasn't quite decided what he's going to do
7 with those jurors, but I think they probably need to be
8 packing a toothbrush. I've never been put in that
9 position. Folks, don't put me in that position.
10 Hopefully, you've got better things to do this evening
11 than google people's names. So when you go home, enjoy
12 your evening. Don't talk about the case, don't do any
13 kind of research. And I'll see y'all tomorrow morning,
14 knock on wood, around 11:30. Have a great evening and see
15 y'all in the morning. Thanks.

16 (WHEREUPON, the jury is excused for the day at 4:28
17 p.m.)

18 THE COURT: All right. The jury is out.

19 Gentlemen, I assume you've had a chance to look at
20 the instructions. Aside from misspelling of Crohn's,
21 which has been corrected, any issues, anything that jumps
22 out at you that you may want?

23 MR. PINCELLI: Nothing from the State, Your Honor.

24 MR. STORY: Nothing from the Defense.

25 THE COURT: Just to let you know so they don't get

1 hung up over the explicit statutory verbiage, when it
2 comes to throwing bodily fluids and the instruction on
3 that charge, based on my earlier ruling, the transferring
4 of bodily fluids, intentionally transferring bodily fluids
5 qualifies under the definition of throwing, I'm going to
6 explain that so that they're not confused or otherwise
7 hung up on that particular verbiage.

8 Of course, the Defendant's objection to that portion
9 of the instructions can be made after I instruct them.
10 But I just wanted to let y'all know that that was my
11 intention to better define what it is that the legislature
12 intended when they wrote this statute. Perhaps, more
13 precisely defined, not that they ever ill define anything.

14 Anything else for the evening?

15 Is he still in custody or is he on bond?

16 MR. STORY: He's in custody, Your Honor.

17 THE COURT: Okay. Very good. We'll see y'all
18 tomorrow around 11:30 or so. Have a good night.

19 (WHEREUPON, court was adjourned for the day to be
20 reconvened on Tuesday, February 26, 2019.)

21 Tuesday, February 26, 2019

22 THE COURT: Are we okay to move forward or are we
23 waiting on anyone?

24 MR. PINCELLI: We're waiting on our victim and
25 cocounsel.

1 THE COURT: All right. We're back on the record in
2 the State vs. David Paul Merritt. The record will reflect
3 we had a brief conference in chambers a few moments ago
4 about possible sur-reply testimony and I think it's the
5 Defense's desire at this point, we're just going to go
6 forward with closings and charge, correct?

7 MR. STORY: That's correct.

8 THE COURT: Everyone is ready to proceed then,
9 Solicitor?

10 MR. PINCELLI: That's correct, Your Honor.

11 THE COURT: Let us have the jury then, please.

12 (WHEREUPON, the jury enters the courtroom at 12:04
13 p.m.)

14 THE COURT: Ladies and gentlemen, welcome back.
15 Thank you for being here. Thank you for being on time.
16 Sorry to keep you waiting. We're buying you lunch,
17 however, so you should have already gotten the menus.
18 Hopefully, by the time the parties finish their closing
19 and you've received the Court's charge, lunch will be here
20 for you.

21 With that, Solicitor, no further witnesses in reply,
22 correct?

23 MR. PINCELLI: That's correct, Your Honor.

24 THE COURT: And no further witnesses in sur-reply,
25 correct?

1 MR. STORY: That's correct, Your Honor.

2 THE COURT: Ladies and gentlemen, we've now reached
3 that portion of the trial where you're going to hear the
4 closing arguments of the attorneys. And I will let you
5 know that it's customary for the lawyers to refer to
6 testimony or facts or evidence in this particular case
7 during the course of their closing argument to you.
8 Obviously, though, if the lawyers say something about the
9 facts and it differs from what you recall the testimony
10 being, you go, of course, with your recollection because
11 you're the finders of facts, not the lawyers.

12 So the way we will proceed is the solicitor will go
13 first and followed by the Defense, and then the solicitor
14 will have an opportunity to reply to anything said by Mr.
15 Story.

16 Solicitor, you're recognized for your closing, sir.

17 MR. PINCELLI: Thank you, Your Honor. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 CLOSING ARGUMENT BY MR. PINCELLI

21 MR. PINCELLI: Common sense. That's how it started
22 yesterday. It's what I told you you'd need to know --
23 you'd need to use it to make a decision. And one of the
24 most important things you can do as a jury is determine
25 the credibility of a witness. And the tool to use for

1 that, common sense.

2 You see this turned into a he said, he said argument.
3 So you can choose to believe who's credible. You, as the
4 jury, determine who's credible. Do you believe two
5 correctional officers, each of them over a decade's worth
6 the experience, the integrity of the entire Lexington
7 County Detention Center, or do you believe a man who
8 showed up to jail drunk, showed up to do his weekend time
9 and told you he had some beers right beforehand, knew it
10 was against the rules, showed up and was unruly, argued
11 with the officers, belittled them, struggled with them?
12 He told you in his own words, he didn't think he had to
13 comply, that's why he didn't.

14 Do you believe the man that lied to you about never
15 having been in confinement before? Who lied to you about
16 knowing he was on confinement that night for showing up
17 drunk against the rules, something he knew he was not
18 supposed to do. Do you believe a man who told you he'd
19 never seen a confinement uniform, he'd only seen red, in
20 fact, there was not even a confinement uniform in the bath
21 room that night with him, when, in fact, that was shown to
22 be a lie? Top of the screen right there, black and white
23 stripes, confinement uniform. Another lie. As the jury,
24 you judge the credibility, you judge who to believe.

25 Now, we had that on video, you saw that's a lie.

1 What we don't have on video is the heinous accusations
2 that that man has made against the correctional officers,
3 that he was choked out unconscious. We don't have
4 anything corroborating that. Nothing backing up that
5 story. You watch that video later. You're going to have
6 it. You can take it and watch the whole video in your
7 jury room as you deliberate. You can see nurses walking
8 around. You heard Officer Stevens talking about the
9 nurses. You're going to see inmates walking around
10 sweeping floors and mopping. You're going to see other
11 officers walking around. You don't think somebody would
12 have looked in that room and realized somebody was
13 unconscious and there might be a little more buzz on this
14 camera, you might have seen something more going on?

15 Unfortunately, there is no video of the inside of
16 that bathroom because there's no cameras in the bathroom
17 or the other dress out room. Obviously, because there
18 can't be cameras in the room where people are strip
19 searched. But those two officers wish more than anybody
20 else there were cameras in there. Because that video
21 footage would show you the undistilled truth of what
22 happened in there.

23 What we do have is this video and the word of three
24 men that were in that bathroom that you heard from. Now,
25 one of those men stood up here before you, swore on the

1 Bible and lied to you. He lied.

2 Now, there are some things we can agree on.
3 Everybody seems to agree David Merritt had weekend time to
4 serve at the jail. That he showed up May 28th -- May
5 12th, excuse me, 2018, he showed up. You heard from
6 Officer Stevens, he got past visitation, he went into
7 booking. At that time, he was not free to leave. He was
8 in the custody of the jail. He was an inmate.

9 I think we can all agree that Tripp right here,
10 Officer Anderson, and Officer Stevens that you heard from
11 earlier, they are Lexington County employees of the
12 detention center. They are correctional officers. And by
13 the own words of the Defendant, you heard he pushed on
14 Tripp and that he saw a handprint of feces on Tripp's
15 uniform. You can watch that video. We saw Tripp having
16 to come out, take off his dirty shirt, put on gloves, bag
17 up that dirty shirt. You saw that.

18 You heard other testimony. You heard the officers,
19 you heard them say there was never any complaints about
20 going to the bathroom. That's not what this was about.
21 That's not why the Defendant was angry. He was angry
22 about not knowing where his keys were. He was angry about
23 being put in confinement, something he lied about. But he
24 was angry about being put in confinement for being drunk,
25 which was against the rules and he knew it. But he argued

1 with him, he belittled them, he resisted them, he did not
2 comply and it led to a struggle.

3 Now, we went back and forth and we heard a lot about
4 that struggle. But you heard the testimony from Officer
5 Stevens, they're struggling, they're trying to get him to
6 comply, they're trying to get those hands in cuffs, right
7 here. And you heard testimony at that time, his hands are
8 clean, there's no feces on those hands. But they lose
9 one. Tripp gets swiped on the shirt by the Defendant's
10 hand and there's feces on it. That's corroborated by the
11 statements the Defendant makes. He pushes off Tripp and
12 later, he sees the feces on the shirt. Credibility,
13 common sense.

14 Now, shortly, the Judge is going to give you
15 instructions on the law. He's going to instruct you on
16 the burden of proof. And briefly, I'll explain something
17 to you I think you've probably all heard, the phrase
18 beyond a reasonable doubt. And that is my burden today as
19 I represent the State's interest. I'm to prove to you
20 today beyond a reasonable doubt the Defendant's guilt.

21 Now, what that means is I leave you without any
22 hesitation to act, that you are firmly convinced.
23 Importantly, what that does not mean is that you don't
24 have any doubt in your mind. Because we all know there
25 are very few things in life that we can be absolutely sure

1 of. So if you have a doubt, it's reasonable. That goes
2 back to common sense, folks.

3 You heard from the officers. You saw the officers,
4 pretty large guys. You heard about that little bathroom.
5 You heard about how they're laying on the ground all over
6 each other, rolling around. And you heard the testimony,
7 there's only feces in the Defendant's underpants and on
8 Tripp's shirt. The Defendant says he pushes Tripp's
9 shirt, sees feces and a handprint.

10 Now, if you want to believe it's reasonable that he
11 did not know he had feces on his hand, the only piece of
12 that puzzle that's missing, if that's reasonable to you,
13 then you let him walk. But if you find that unreasonable,
14 that he did not know he had feces on his hand during that
15 struggle, that he did not know when he pushed out and
16 later saw feces on Tripp's uniform, if that's unreasonable
17 thought that he didn't know he had some poop on his hand,
18 that man's guilty.

19 Now, you have a job today as the jury to listen and
20 deliberate, come to a decision, just like Tripp had a job
21 that day. Tripp had a job to maintain order in the jail
22 until he was made a victim. And when you're doing your
23 job, you remember all the things you heard and you
24 remember what you saw. I see a black and white uniform.
25 You remember your common sense. And when you, the jury,

1 put all that together, you will see that David Merritt is
2 guilty and you should find him guilty of throwing bodily
3 fluids on a correctional officer.

4 THE COURT: Thank you, Solicitor.

5 Mr. Story, you're recognized.

6 MR. STORY: May it please the Court.

7 THE COURT: Yes, sir.

8 CLOSING ARGUMENT BY MR. STORY

9 MR. STORY: Members of the jury, Corporal Anderson
10 decided very quickly that David was going to be trouble.
11 David goes in, goes through visitation, Corporal Anderson
12 decided because of his attitude, he smelled alcohol on his
13 breath, he was going to put him in confinement. He
14 decided then that he was going to be trouble. He called
15 Corporal Stevens in to help change him out. And all of a
16 sudden, David wasn't complying with their orders. So they
17 performed a take down move, each man pushing well over 300
18 pounds grabbed him by each arm and put him on the floor of
19 a bathroom in the jail. What they didn't know at the time
20 is that David had Crohn's Disease and he's subject to
21 having bouts of diarrhea. At that time, David defecated
22 himself and some of it transferred accidentally onto
23 Corporal Anderson's shirt, on his uniform.

24 My wife and I had our first child about a year and a
25 half ago. Up to that point, I had never changed a diaper

1 before, ever, not one time. Never changed a diaper. I
2 think at some point in my life, I'd seen a diaper get
3 changed before that, but I'd never actually changed it.
4 And my mom tells me, she's like, you can't do it, you
5 cannot change a diaper okay. You're not capable. You'll
6 be grossed out. Well, I showed her because since then,
7 I've changed many diapers. But I'll tell you, sometimes
8 that baby doesn't want to cooperate, sometimes they have
9 better things to do than get their diaper changed. So
10 sometimes, you'll be changing their diaper and they're
11 seeing how hard they can kick their legs or flail their
12 arms or something like that.

13 Those of you who have small children know exactly
14 what I'm talking about. If any of y'all have small
15 children in the future, trust me, you'll find out what I'm
16 talking about. One of my colleagues in a few months is
17 going to find out what I'm talking about. Sometimes, you
18 get the wipe, you clean the baby up, put on a dry diaper,
19 ball up the old diaper, throw it away and you're good.
20 And all of a sudden, oh, no, got some poop on my shirt.
21 It happens. It's an accident. It happens.

22 I couldn't help but think about that when Corporal
23 Anderson was testifying because remember what he testified
24 to, they go in there, they put him on the ground, they
25 were trying to get his arms and then they get up and walk

1 out. And what happened then? He didn't know that he had
2 anything on his shirt until Corporal Stevens told him,
3 hey, Tripp, brother, you got something on your shirt. Oh,
4 no. I do, I have feces on my shirt.

5 So let's go back through the State's case. Now,
6 remember, it is their job to prove the intentional
7 throwing of bodily fluids on a correctional officer beyond
8 a reasonable doubt. Remember what Corporal Anderson
9 testified, he didn't see it until somebody told him about
10 it. So he didn't see David do anything to his shirt. The
11 only person who got up here and testified that David put
12 feces on his hand and put it on Corporal Anderson's shirt
13 is Corporal Stevens. And what did he testify to?
14 Remember how he described it? It said it looked like he
15 was trying to push him away.

16 Remember, these are two 300-pound-plus guys pinning
17 him to the ground. And David is trying to get his arms
18 secure, testified he was trying to hold himself up. By
19 the way, they were trying to get his arms. And keep this
20 in mind, it was over pretty quickly. All this happened in
21 a short period of time, everybody agrees to that.
22 Everybody testified to that. He says that David was
23 trying to push him away. The only person who saw it
24 happen described it as him trying to push him off. Does
25 that sound like he intentionally put feces on his hand and

1 then tried to rub it on his shirt? No. It sounds like
2 there was a struggle, an accident.

3 Now, what do they do after this struggle incident,
4 after David was laying there on the ground? They left.
5 And two other officers -- they left it for two other
6 officers to deal with. That's when Corporal Anderson sees
7 the feces on his shirt after somebody else brought it to
8 his attention.

9 So what does he do with it? He takes it off, he puts
10 it in a trash bag, he takes it home and he washes it. He
11 washes away the best piece of evidence. If they had kept
12 that shirt, they could have brought it in here to show you
13 and show whether it looked like a handprint or a smear or
14 whatever it looked like. But they washed it away, they
15 simply got rid of it. On top of that, they didn't even
16 bother to take a picture of it before they washed it so
17 you could see up close what it looked like, bring it into
18 the courtroom. They didn't do it.

19 You really can't see anything on that video. The
20 State made a big deal about what was shown on the video.
21 They made a big deal about the uniform. Maybe David
22 doesn't remember every single thing that happened that
23 night because that was the night he came in and was put in
24 a take down move, thrown on the floor. And you heard
25 Corporal Stevens describe what Corporal Anderson did, he

1 called it a pressure point move. He put pressure below
2 his jaw, as he described it. I don't know what other body
3 is below your jaw besides your neck. The point of that
4 was to get him to comply, to incapacitate him. And it was
5 all over pretty quick. Maybe David passed out for a short
6 period of time. Maybe he just felt like he passed out.
7 Either way, he had just suffered a very, very embarrassing
8 moment in his life and the two other officers left and got
9 rid of the best piece of evidence in this case.

10 You know the State made a big deal about the video,
11 trying to convince you that he wasn't passed out on the
12 floor. Well, look. You know what else it doesn't look
13 like in that video? Like an officer had just gotten feces
14 thrown on him. There's no buzz about the place. There's
15 no commotion. There's nothing to indicate that a crime
16 had just been committed right there in that booking room.
17 No. All you really see on that video is an officer coming
18 out, taking off his shirt, taking off the evidence,
19 putting it in a trash bag.

20 The Judge told y'all that this was a good week to be
21 on a jury because it was going to be a very short trial.
22 The Judge was right about that. He didn't tell you it was
23 going to be a really comfortable trial. He didn't tell
24 you what the case was going to be about and I imagine
25 y'all didn't expect this sort of thing. This is a

1 subject, what happens when you go to the bathroom, it's a
2 very intimate part of our lives. Very, very few people
3 talk about this sort of thing with your friends. You
4 might talk about it with a medical provider, like a doctor
5 or a nurse, but nobody talks about it in polite company in
6 public.

7 David got up on that stand and he told you about his
8 struggles with Crohn's Disease and what happens when he
9 goes to the bathroom, what he's struggled with for over a
10 decade. And he shared that very intimate part of your
11 lives because he wanted you to have the entire story. To
12 know that this wasn't, as the State contends, he
13 intentionally defecated and then put feces on his hands to
14 rub it on an officer. This was an accident. What
15 happened on the ground after he got taken down was an
16 accident.

17 I never said David was perfect, we know he's not
18 perfect. Okay. His memory of that day or before may not
19 have been perfect. Nobody is. Nobody's memory is
20 perfect. But punish him for what he did, not an accident.
21 And I submit if you think it could have possibly been an
22 accident with all that was going on in that bathroom that
23 you heard on the witness stand, you must find him not
24 guilty.

25 You know, the State has also told you that being a

1 corrections officer is a tough job. Like I told you in my
2 opening, I don't disagree with that. You heard Corporal
3 Stevens talk about you get all kinds of people. It is a
4 tough job. There's lots of tough jobs out there that
5 require you to interact with people and do things that
6 you're not comfortable with. One that comes to mind is
7 our medical professionals, like I brought up earlier.
8 You're going to have to be in contact with people, things
9 are going to be uncomfortable, you're going to have to
10 deal with all sorts of things. But don't charge somebody
11 with a crime because you got in an argument and they
12 defecated on themselves and had an accident and during
13 that, feces accidentally got on their shirt.

14 It's not the State's job during closing to prove to
15 you beyond a reasonable doubt that this act was
16 intentional. It was their job during the course of this
17 trial to prove to you that it was intentional, from the
18 witness stand to prove beyond a reasonable doubt that it
19 was intentional.

20 Those COs, when they're in that booking area and when
21 they're in that jail, they get to make decisions about
22 what happens. If somebody comes in, they make a decision
23 this person is going to be difficult, they make a decision
24 about whether or not to put a person in confinement or not
25 at that point. They can decide what to do. In that

1 booking area, they are law enforcement. They are the
2 judges and the juries of the people that come through that
3 booking area. But here in this courtroom, you are the
4 jury and you are the ones who decide what happens.

5 I want to briefly finish by telling you a little
6 story. Back a long time ago in a village, there was an
7 old wise man. Everyone in the village came to him for
8 advice. One day, there was a young man and he decided he
9 was going to outsmart the old man, the old wise man. So
10 he caught a bird and he put it in his hands. He found a
11 tiny little bird. He said this is what I'm going to do to
12 outsmart the old wise man. I'm going to go to him and ask
13 him if the bird is alive or dead. If he says it's dead,
14 I'm going to open my hands and the bird is going to fly
15 away. Everybody will see that he was wrong. If he says
16 it's alive, I'm going to take my hands and snap its neck
17 and I'm going to kill it. Open my hands and show that the
18 bird is dead and everyone will know that the old wise man
19 was wrong. So he takes the bird and he goes to the old
20 wise man. In front of the entire village, he says is the
21 bird alive or dead. And the old wise man says, the bird
22 is in your hands.

23 On that day, on May 12th, David Merritt was in the
24 hands of the corrections officers, Corporal Stevens and
25 Corporal Anderson. They felt like he wasn't complying.

1 They did a take down move, put him on the cold floor of
2 the bathroom of the jail, put their hands around -- just
3 under the jaw around his neck and applied pressure to get
4 him to do what they wanted him to do. He struggles with
5 Crohn's Disease and constant diarrhea, he defecated on
6 himself. During this point, he was struggling to push
7 himself up, trying to get some sort of control.
8 Unfortunately, during that time, some feces got on
9 Corporal Anderson's shirt. It was an accident. Don't
10 punish him for the accident. Find David Merritt not
11 guilty. Thank you.

12 THE COURT: Thank you, Mr. Story.

13 Mr. Pincelli, your reply, sir.

14 CLOSING ARGUMENT BY MR. PINCELLI

15 MR. PINCELLI: Ladies and gentlemen, you heard a lot
16 of testimony yesterday, you heard my closing, you heard
17 Mr. Story's closing. What you just heard was a lot of
18 distraction. We heard a story about a bird. We heard a
19 story about some cute little babies and we heard a lot
20 about a medical disorder that's not been questioned. It's
21 stipulated to. Those are distractions. None of those
22 things are on trial. It's not a cute little baby on trial
23 today. It's David Merritt who was on trial for throwing
24 bodily fluids on a corrections officer. It wasn't a cute
25 little baby that got some feces somewhere accidentally.

1 It's a man who told you himself he was not complying.
2 There's no question about that. He admitted to not
3 complying. He said he didn't think he had to. It was
4 that grown man on the ground that wasn't complying that
5 caused feces to get on Tripp's shirt.

6 And there's no question -- there's no question about
7 what -- where it got or how it got there. The Defendant
8 tells you the shape of the print on the shirt. He tells
9 you that he saw feces on his shirt. That's not in
10 question there was feces on the shirt. If you have a
11 question about that, you can ask to have the record
12 replayed. You can hear the Defendant's own words of
13 seeing a handprint-shaped spot on Tripp's shirt with
14 feces.

15 Pressure points another distraction. And you heard
16 about that there wasn't any buzz about Tripp coming out
17 and having feces on his shirt. We already established,
18 the Defendant tells you there's a smear on his shirt.
19 We've already seen on the video that Tripp comes out and
20 has to take off that dirty shirt and put on gloves just to
21 put that shirt in the trash bag to take home to be washed.
22 Now, I'm sorry I didn't bring in that poopy shirt to show
23 you guys today because I know that really would have shown
24 you what was on there. But we already saw and we already
25 heard from the Defendant what was on it.

1 And you didn't see any buzz about it. Well, what was
2 Tripp supposed to do? Get real angry, run around the
3 booking area, yell at people? No, he was doing his job.
4 He stayed calm, he stayed collected. He didn't get angry.
5 He took off his dirty clothes and waited for justice to be
6 served another day, and that is today. And you will find
7 David Merritt guilty of throwing bodily fluids on a
8 correctional officer.

9 THE COURT: Thank you, Solicitor.

10 CHARGE ON THE LAW

11 THE COURT: All right. Now, ladies and gentlemen,
12 now it becomes my obligation to instruct you on the law
13 that applies in this particular case. And I will let you
14 know that when I started practicing in '93, the way most
15 judges did it, the way many judges still do it today is
16 they sit up here and would read you, basically, 11 pages
17 taken from the law books behind me and you're supposed to
18 learn in 10 or 15 minutes what took me three years to
19 learn. I always found that a little unreasonable.

20 So what I'm telling you is that, of course, you'll
21 have a copy of these instructions that you can refer to
22 during your deliberations if you need to. Please
23 understand that if you have any questions about these
24 instructions, I'm more than happy to help you. Just send
25 me a note, let me know what it is you're struggling with

1 and I'll try to answer any questions you might have about
2 the law that applies. If you have a factual question,
3 however, odds are, I'm not going to be in a position to
4 help you because there's no mechanism to reopen the record
5 and take any additional testimony. So if you have a
6 question about the facts, chances are I'm not going to be
7 able to assist you. You'll have to rely on your
8 recollection as it relates to any factual question.

9 Now, ladies and gentlemen, again, as I instructed you
10 yesterday, this indictment charges the Defendant, Mr.
11 Merritt, with the offense of throwing bodily fluids by a
12 prisoner. And I'll remind you that the fact that Mr.
13 Merritt was arrested, charged and indicted, of course, is
14 not evidence and cannot be considered by you as evidence
15 of guilt, nor does the indictment create any inference or
16 presumption of guilt. This is simply the means by which a
17 case is brought into court, it's the means by which these
18 charges are made against the Defendant. It's the formal
19 document by which a case is brought into court.

20 Again, Mr. Merritt has pled not guilty to this charge
21 and that plea puts the burden firmly on the State to prove
22 each and every element of this crime beyond a reasonable
23 doubt. I instruct you that a person charged with
24 committing a crime is never required to prove himself
25 innocent. It's an important rule of law that a defendant

1 in a criminal trial, no matter what the nature of the
2 charge may be is always presumed to be innocent of the
3 crime for which the indictment was issued unless guilt has
4 been proven by evidence satisfying you of his guilt beyond
5 a reasonable doubt.

6 Ladies and gentlemen, this presumption of innocence
7 does not end when you begin your deliberations, rather, it
8 accompanies the Defendant throughout the trial until you
9 reach a verdict of guilt based on evidence satisfying you
10 of his guilt beyond a reasonable doubt.

11 Presumption of innocence, ladies and gentlemen, is
12 often described as being like a robe of righteousness.
13 It's placed about the Defendant's shoulders and stays with
14 him until it's stripped from him by evidence satisfying
15 you of his guilt beyond a reasonable doubt. Again, the
16 presumption of innocence is not merely a legal theory,
17 it's not just a legal phrase, it's a substantial right to
18 which every defendant is entitled unless you are satisfied
19 from the evidence of his guilt beyond a reasonable doubt.

20 What is a reasonable doubt in the law? A reasonable
21 doubt is the kind of doubt that would cause a reasonable
22 person to hesitate to act. The State has the burden of
23 proving the Defendant's guilt beyond a reasonable doubt.
24 Some of you may have served as jurors in civil cases where
25 you were told that it's only necessary to prove that a

1 fact is more likely true than not true, such as by the
2 greater weight or preponderance of the evidence. In
3 criminal cases, however, the State's proof must be more
4 powerful than that. It must be proof beyond a reasonable
5 doubt.

6 Proof beyond a reasonable doubt is proof that leaves
7 you firmly convinced of the Defendant's guilt. Now, there
8 are very few things that we know with absolute certainty
9 in this life. And in criminal cases, the law doesn't
10 require proof that overcomes every possible doubt. If
11 based on your consideration of the evidence, you're firmly
12 convinced that the Defendant is guilty of the crimes
13 charged, you should find him guilty. If on the other
14 hand, you think there is a real possibility that the
15 Defendant is not guilty, you should give him the benefit
16 of the doubt and find him not guilty.

17 Again, ladies and gentlemen, during this trial, you
18 and I have certain duties to perform. And as the trial
19 judge, it has been my responsibility to preside over the
20 trial of this case and rule on the admissibility of any
21 evidence. You're to consider only the competent evidence
22 before you. So the testimony which was ordered stricken,
23 you have to disregard that testimony because you're to
24 consider only the testimony which has been presented from
25 the witness stand, the exhibits and any stipulations in

1 this case.

2 Again, I had the job to charge the law. As the
3 judge, I'm the sole judge of the law. It's your duty as
4 jurors to accept and apply the law as I state it to you
5 now. So if you already any idea as to what the law is or
6 what it should be and this idea doesn't agree with what I
7 tell you the law is, you have to abandon that idea because
8 you're sworn to accept and apply the law as I state it to
9 you now.

10 Again, you're the sole and exclusive judges of the
11 facts. Understand that the trial judge is not permitted
12 to intimate, state, comment on or make any statement to a
13 trial jury about the facts. Since you are the sole judges
14 of the facts, please don't infer from what I said during
15 this trial or anything that I say to you now that I have
16 any opinion about the facts. Ladies and gentlemen, the
17 law does not permit me to have any opinion about the
18 facts. This is a matter solely for you to determine. As
19 jurors, it's your duty to determine the effect, value,
20 weight and truth of the evidence presented during trial.

21 Now, typically, there are two types of evidence
22 presented, direct evidence and circumstantial evidence.
23 Direct evidence directly proves the existence of a fact
24 and does not require deduction, such as testimony by an
25 eyewitness. It's evidence which immediately establishes

1 the main fact to be proven. Circumstantial evidence is
2 proof of a chain of facts and circumstances which then
3 indicate the existence of a fact.

4 I instruct you that crimes can be proven by
5 circumstantial evidence and the law makes no distinction
6 between the weight or value to be given to either direct
7 or circumstantial evidence. However, to the extent the
8 State may rely on circumstantial evidence, all the
9 circumstances have to be consistent with each other and
10 when taken together, point conclusively to the Defendant's
11 guilt beyond a reasonable doubt. If these circumstances
12 merely portray his behavior as suspicious, then the proof
13 has failed. Again, the State has the burden of proving
14 the Defendant guilty beyond a reasonable doubt and this
15 burden rests with the State regardless of whether the
16 State relies on direct evidence, circumstantial evidence
17 or some combination of the two.

18 Now, as I briefly told you yesterday, part of your
19 job here is to determine the credibility of witnesses.
20 You are the sole judges of the credibility in this case.
21 And again, credibility just means believability. It
22 becomes your duty as jurors to analyze and to evaluate the
23 evidence and determine which evidence convinces you of its
24 truth.

25 In determining the believability of witnesses, you

1 may believe one witness over several or several over one.
2 You may believe part of the testimony of a witness and
3 reject the remaining portion of the testimony of that same
4 witness. You can believe the testimony of a witness in
5 its entirety or reject it entirely. You may consider
6 whether any witness has exhibited to you any interest,
7 bias or prejudice or other motive in this case. You may
8 also consider the appearance and manner of the witness
9 while on the witness stand.

10 Now, again, ladies and gentlemen, in this case, the
11 State and the Defendant have stipulated or agreed that the
12 Defendant in this case has Crohn's Disease, therefore, you
13 can accept that as a fact without any further proof.

14 The Defendant in this case, ladies and gentlemen, is
15 charged with the offense of throwing bodily fluids on a
16 correctional facility employee. The State must prove
17 beyond a reasonable doubt therefore that the Defendant
18 while in the custody of a correctional facility threw
19 bodily fluids on an employee of that facility. Under the
20 statute, throwing means to intentionally transfer bodily
21 fluids. A correctional facility is defined as either a
22 state or local detention center. Bodily fluids include,
23 but are not limited to, of course, urine, blood, feces,
24 saliva and semen.

25 Now, ladies and gentlemen, there are two mutually

1 exclusive possible verdicts in this case.

2 And Mr. Foreman, I've prepared this verdict form.
3 It's about as simple as I can possible make it. You're
4 not an idiot, so I think you'll be able to get it, but the
5 law still makes me explain it, all right.

6 It makes the following statement: We, the jury, in
7 the above captioned case on the charge of throwing bodily
8 fluids unanimously find David Paul Merritt, two mutually
9 exclusive options, guilty or not guilty. Okay?

10 When the jury agrees on a verdict, you would simply
11 initial whichever one the jury agrees to, guilty or not
12 guilty, sign your name as foreman, knock on the door, let
13 the bailiff know, we'll get everybody reassembled and get
14 you back in here as soon as possible, okay? Of course,
15 there is no significance whatsoever to the order in which
16 I state the possible verdicts.

17 Now, ladies and gentlemen, understand that your
18 verdict has to be unanimous in this case, that means all
19 12 of you must agree on the outcome in this case. Other
20 states have majority verdicts. Other states are doing it
21 wrong, all right? So South Carolina, all 12 of you must
22 agree on the outcome whatever that outcome is.

23 Again, if you have any question about anything that
24 I've gone over as far as the law, just send me a note,
25 I'll be more than happy to try to help you with that.

1 Again, ladies and gentlemen, as I said yesterday, you've
2 been chosen as 12 individuals, 13 individuals who are fair
3 and impartial. You have no friends to reward and you have
4 no enemies to punish. Your job is to render a verdict
5 based solely on the evidence and the law as I have
6 instructed you.

7 Now, if you will return to your jury room. Don't
8 begin your deliberations yet. Your cue to begin
9 deliberations will be receipt of these instructions, the
10 verdict form and any evidence that was introduced. We'll
11 keep the video out here. Should you decide to see it
12 again, I don't think you have a --

13 They don't have a DVD player in there or anything
14 like that, do they?

15 Should you desire to see the video again for whatever
16 reason, let us know, we'll queue it up, we'll bring you in
17 here and we'll play it, okay? If you don't need to see
18 it, that's fine, too. Feel free to go ahead and start
19 working on your sandwiches if they are here and you know
20 your cue to begin your deliberations.

21 Mr. Alternate, if you will join them one last time.

22 Again, your cue to begin deliberations, your receipt
23 of all this stuff and my asking the alternate to step out.
24 Okay? Thank you all very much.

25 (WHEREUPON, the jury exits the courtroom at 12:44

1 p.m.)

2 THE COURT: No objection from the State as it relates
3 to the instructions?

4 MR. PINCELLI: None from the State, Your Honor.

5 THE COURT: With the exception of the objection as it
6 relates to my definition of transferring bodily fluids as
7 opposed to directly throwing or hurling, any other
8 exceptions or problems?

9 MR. STORY: No exceptions other than that, Your
10 Honor.

11 THE COURT: Very good. I think there was not a lot
12 of evidence introduced. Y'all just make sure that we're
13 good and we'll get this case to the jury.

14 MR. PINCELLI: Your Honor, I do believe this computer
15 doesn't have access to the internet. I think that would
16 be safe to send back to the jury to watch that video.

17 THE COURT: Let's see if they want it. If they want
18 it, we'll send it back. If not, we'll take it from there.
19 I'll offer the computer if they want to look at it back
20 there.

21 MR. PINCELLI: Thank you, Your Honor.

22 (WHEREUPON, court was in recess awaiting a verdict.)

23 THE COURT: I think the jury has reached a verdict.
24 Anything before the jury is received in the courtroom from
25 the State?

1 MR. PINCELLI: Nothing from the State, Your Honor.

2 THE COURT: From the Defense?

3 MR. STORY: Nothing from the Defense.

4 THE COURT: Let us have them, please.

5 (WHEREUPON, the jury enters the courtroom at 2:49
6 p.m.)

7 THE COURT: The record will reflect that the jury is
8 back and seated.

9 Mr. Foreman, I'm told the jury has reached a verdict
10 in this case; is that correct?

11 THE FOREMAN: That's correct.

12 THE COURT: And all 12 of y'all agreed on the
13 outcome?

14 THE FOREMAN: That's correct.

15 THE COURT: If you would, hand the verdict form,
16 please, to the bailiff.

17 Madam Clerk, if you'll publish.

18 VERDICT

19 THE CLERK: Indictment 2018-GS-32-03741, the State
20 vs. David Paul Merritt. We, the jury, in the above
21 captioned case on the charge of throwing bodily
22 unanimously find David Paul Merritt guilty. It is so
23 signed by the foreperson, February 26th.

24 Mr. Foreman, ladies and gentlemen of the jury, if
25 this is your verdict, please indicate, each of you, by

1 raising your right hand.

2 All hands raised, Your Honor.

3 THE COURT: The record will reflect all hands have
4 been raised.

5 Anything prior to discharge of the jury from the
6 State?

7 MR. PINCELLI: Nothing from the State, Your Honor.

8 THE COURT: From the Defense?

9 MR. STORY: Nothing from the Defense.

10 THE COURT: Ladies and gentlemen of the jury, I want
11 to thank you for your service here this week. As I
12 mentioned yesterday, this will finish you out for the
13 week. So if at any time in the next three years, you get
14 summoned for the Court of Common Pleas or the Court of
15 General Sessions and you don't want to serve, just call
16 your clerk, she'll check her records in February of this
17 year and it will reflect that you did, in fact, serve on
18 this jury, so you won't have to serve. If it's
19 magistrate's court, city court or federal court, can't
20 help you, you got to show up.

21 Now, ladies and gentlemen, I'll let you know you will
22 get a letter from me. It will probably be received by you
23 some time Thursday or Friday. The letter's purpose is to
24 formally thank you for your service here on this
25 particular case. I do have an ulterior motive, however.

1 It's also to solicit feedback. If there's anything you
2 liked about how court operated, let me know. If there's
3 anything you did not like, definitely let me know. Do not
4 hold back, I've been doing this as an attorney for 26
5 years, a judge for probably 20 of those years. So I've
6 got a thick skin, I can take it. You cannot insult me.
7 Do not worry about hurting my feelings or leaving me
8 crying. Let me know because I actually have changed how
9 court operates based on feedback from folks who have
10 served as jurors in my court. Judges and lawyers are not
11 the sole repositories of all knowledge in the world. We
12 need average people to come in off the street to tell us
13 how they want their court system to function. It belongs
14 to you guys, not to us, okay?

15 So with that, you'll have my contact information. If
16 you want to shoot me a letter, e-mail me, call me,
17 whatever the case may be. Definitely, let me know,
18 though, if there is anything you did not like.

19 With that, I'm not going to keep you longer. Checks
20 will be in the mail at some point. If you don't receive
21 them in about 10 days, give your clerk's office a call.
22 Otherwise, have a great week, take care of yourselves and
23 thank you for your work on this case.

24 If you want to stick around for sentencing, that's
25 perfectly fine, you can. For security reasons, though,

1 I'd ask that you simply have a seat out there in the
2 courtroom. You can grab your phones and just walk around
3 to the front of the courtroom and hang out if you want to.
4 If you don't want to stick around, that's cool, too.

5 But y'all have a great day and hope to see you again
6 under less formal circumstances. Take care of yourselves.

7 Mr. Foreman, I need your signature on the actual
8 indictment.

9 Let's give it a few moments for the jury to come
10 around and then we'll proceed with sentencing.

11 And, of course, you can make a motion for a new trial
12 at that point.

13 MR. STORY: Thank you, Your Honor.

14 (Pause.)

15 THE COURT: All right. Are we in a position to move
16 forward? I assume that the Defense does make a motion for
17 a new trial and, of course, renews all prior motions and
18 objections?

19 MR. STORY: That's correct, Your Honor.

20 THE COURT: The Court finds that motion should be
21 denied. There's sufficient credible evidence in which the
22 jury could reasonably conclude that Mr. Merritt was guilty
23 of this particular offense.

24 Solicitor, you shared with me earlier Mr. Merritt's
25 prior criminal history, but I cannot find it. Can you

1 refresh my memory as to that, please, sir?

2 MR. PINCELLI: Yes, Your Honor. Starting in 2013, I
3 have an assault and battery second, and I believe there
4 may be two counts of that, two separate counts. In 2014,
5 a public disorderly conduct and a violation of probation I
6 believe on that assault and battery second. In 2015, a
7 domestic violence second degree. In 2017, a violation of
8 probation. And in 2018, another assault and battery
9 second.

10 THE COURT: All right, but the assault and battery
11 second, he's actively on probation or not on probation?
12 That was the weekend time?

13 MR. STORY: My understanding is he's no longer on
14 probation.

15 THE COURT: Okay. All right.

16 Mr. Story, happy to hear from you. Anything you may
17 want to say --

18 Well, before I turn to you, did Officer Anderson want
19 to relate anything to me?

20 Obviously, this was an unpleasant situation for you
21 all around.

22 THE WITNESS: Yes, sir. I'm good. Thank you.

23 THE COURT: Mr. Story, happy to hear from you and
24 anything, certainly, that Mr. Merritt may want to say.

25 MR. STORY: Thank you, Your Honor. Obviously, we're

1 very disappointed in the outcome of this trial. But I'll
2 say Mr. Merritt is 48 years old. He didn't get in any
3 trouble whatsoever until 2013. He -- I don't know what --
4 obviously, what happened in the deliberation room. I can
5 just tell you as an officer of the court, he does -- I've
6 confirmed with -- he told me he suffers from Crohn's
7 Disease. I spoke with his mother as well as his doctor.

8 I'll also tell the Court, he developed a drinking
9 problem around 2013, according to his mother. We have --
10 his family has been getting in contact with Bobby Brazzle.
11 The plan before this was to try to get him into rehab.

12 In my experience, he's been very pleasant. And I
13 just want to make the Court aware there were no offers in
14 this case, however Your Honor feels about that. And Your
15 Honor, Jason Turnblad would like to address the Court.

16 THE COURT: Certainly.

17 Mr. Turnblad.

18 MR. TURNBLAD: Yes, Your Honor, as Mr. Story stated
19 about Bobby Brazzle. Bobby runs the Midlands Recovery
20 Center, which is a group here in Lexington County that
21 helps with addiction recovery and alcoholism recovery. In
22 fact, I was with Mr. Brazzle last night. I'm on the board
23 of directors now for the Midlands Recovery Center. And he
24 was asking about Mr. Merritt's case and Bobby was
25 concerned about it. Bobby likes -- wanted to relay to the

1 Court that he likes David and knows he's a good guy. He's
2 been working with him to get some treatment options
3 available for him.

4 I realize this statute is zero to 15 year statute.
5 It was written back in the early 90s. I think that was a
6 lot due to the HIV and AIDS scare. I think there should
7 be a sliding scale based on the how things are done here
8 and I ask that you take that into consideration.

9 THE COURT: Certainly.

10 Mr. Merritt, anything you want to say, sir?

11 THE DEFENDANT: Just that I do have an addiction to
12 alcohol. I went through a lot of problems with my ex-wife
13 and that's where it started, which is no excuse. I'm not
14 trying to make excuses. But I desperately need some help
15 and, you know, I would really appreciate it if you could
16 take that into consideration.

17 THE COURT: Very good.

18 All right. Anything further from anyone? No?

19 And I assume he's been in custody continually since
20 May the 12th, this incident?

21 MR. STORY: No, Your Honor. He bonded out after five
22 days and then he was picked up on a bench warrant. I have
23 131 days credit on the bench warrant plus five, so I
24 believe that would be 136.

25 SENTENCE

1 THE COURT: All right. Well, Mr. Merritt, I have
2 taken a number of things into account and, certainly, your
3 attorney, Mr. Turnblad, the point that he makes about this
4 statute having been passed in the 90s with the AIDS scare
5 and everything. I'm sure that was the genesis of probably
6 one of the reasons this statute was passed and why it does
7 carry zero to 15. I've also take into account, of course,
8 your prior criminal history and I can tell that you have
9 an alcohol addiction. And I sincerely hope that at some
10 point in time, Mr. Merritt, you get help for it.

11 Understand, though, Mr. Merritt as much as I'd very
12 much like for you to be able to participate in the
13 Midlands Recovery Center, that's just going to have to
14 wait for another day. It sends entirely the wrong message
15 to people who are in the detention center, to people who
16 are working in prisons, to anyone who has any interaction
17 with a police officer, sends the wrong message for
18 somebody to simply be able to walk out of this courtroom
19 today after something like this happens. I mean, there's
20 no greater insult, I think, than somebody throwing feces
21 or placing feces on some other person. I can't imagine
22 what Officer Anderson has to deal with on a daily basis.
23 And it sends the wrong message in terms of supporting them
24 and insuring that the jail is run in an orderly fashion
25 for you to simply get probation. I think you appreciate

1 that.

2 I've taken all this into account, though, and I've
3 taken your relatively lack of substantial criminal
4 history. You've had some brushes with the law, but
5 nothing as horrible as I've seen previously. I've taken
6 all that into account. I'm giving you a straight seven
7 years in this case. You will receive credit for 136 days
8 in jail. I'm asking that you be screened for the
9 addictions treatment unit while you're in the Department
10 of Corrections. So you've seven years to do, Mr. Merritt.
11 I wish you luck, sir. Take care of yourself.

12 THE DEFENDANT: Thank you.

13 THE COURT: And you do have 10 days to file any
14 notice of intent to appeal. Mr. Merritt, I would suggest
15 -- it may be the policy of the public defender's office to
16 file an appeal in any case where there's a conviction. If
17 you desire an appeal, that needs to be communicated to
18 your attorneys within 10 days. And after any appeal is
19 finalized, you have one year to file any action for
20 postconviction relief.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Anderson, good luck, sir.
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the trial of the captioned case,
relative to appeal, in Court of General Sessions for
Lexington County, South Carolina, on the 25th and 26th day
of February, 2019.

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

May 13, 2019

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

WITNESSES

Lexington County Sheriffs Department

Sandra K. Black

Law Enforcement Case #: 18009583

SMS

ARREST WARRANT NUMBER

2018A3210200879

ACTION OF GRAND JURY

TRUE BILL

Don B. Gray 12-3-18
Foreperson of Grand Jury
Date:

VERDICT

Guilty
[Signature]
Feb. 26, 2019

Foreperson of Petit Jury
Date:

DOCKET NO. 2018GS3203741

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

DECEMBER TERM 2018

THE STATE
vs.

David Paul Merritt

CDR #: 2526

Indictment for

Throwing of Bodily Fluids by Prisoner on
Correctional Facility Employees or Others

§ 24-13-0470

S.R. Hubbard III, SOLICITOR

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.O.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR

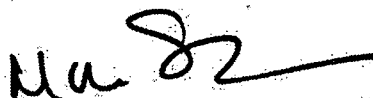
Throwing of Bodily Fluids by Prisoner on
Correctional Facility Employees or Others

§ 24-13-0470

At a Court of General Sessions, convened on December 2018, the Grand Jurors of Lexington County present upon their oath:

That **David Paul Merritt** did in Lexington County, South Carolina, on or about May 12, 2018, while he was an inmate, detainee, a person taken into custody, or person under arrest, attempted to throw or threw body fluids, including but not limited to, urine, blood, feces, vomit, saliva, or semen, on a correctional officer, such person being Clayton Anderson, employed at the Lexington County Detention Center, in violation of §24-13-470 of the 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.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 159

COUNTY OF Lexington
STATE VS.
David Paul Merritt

INDICTMENT/CASE#: 2018GS3203741

A/W#: 2018A3210200879

Date of Offense: 5/12/2018

S.C. Code § 24-13-0470

CDR Code #: 2526

AKA:

Race: White Sex: M Age: 48

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Rd

City, State, Zip: Swansea, SC 29160-9055

DL#: [REDACTED] SID#: [REDACTED]

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

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

☒ CONVICTED OF or ☐ PLEADS

TO: Prisoners / Throwing of bodily fluids by prisoner; detainee on state corrections or local law enforcement officer; corrections empl

in violation of § 24-13-0470 of the S.C. Code of Laws, bearing CDR Code # 2526

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms:

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: * ATV *☐ Appointed PD or appointed other counsel,§ Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2157

Sentence Date: 2-26-19

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)		\$

TOTAL

\$125.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Lisa Comer

S. Creppon



Crohn's disease

Overview

Crohn's disease is an inflammatory bowel disease (IBD). It causes inflammation of your digestive tract, which can lead to abdominal pain, severe diarrhea, fatigue, weight loss and malnutrition. Inflammation caused by Crohn's disease can involve different areas of the digestive tract in different people.

The inflammation caused by Crohn's disease often spreads deep into the layers of affected bowel tissue. Crohn's disease can be both painful and debilitating.

While there's no known cure for Crohn's disease, therapies can greatly reduce its signs and symptoms and even bring about long-term remission. With treatment, many people with Crohn's disease are able to function well.

Crohn's disease care at Mayo Clinic

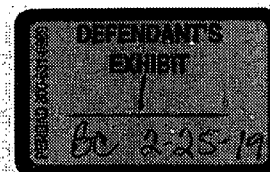
Symptoms

In some people with Crohn's disease, only the last segment of the small intestine (ileum) is affected. In others, the disease is confined to the colon (part of the large intestine). The most common areas affected by Crohn's disease are the last part of the small intestine and the colon.

Signs and symptoms of Crohn's disease can range from mild to severe. They usually develop gradually, but sometimes will come on suddenly, without warning. You may also have periods of time when you have no signs or symptoms (remission).

When the disease is active, signs and symptoms may include:

- Diarrhea
- Fever
- Fatigue



- Abdominal pain and cramping
 - Blood in your stool
 - Mouth sores
 - Reduced appetite and weight loss
 - Pain or drainage near or around the anus due to inflammation from a tunnel into the skin (fistula)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

When to see a doctor

See your doctor if you have persistent changes in your bowel habits or if you have any of the signs and symptoms of Crohn's disease, such as:

- Abdominal pain
- Blood in your stool
- Ongoing bouts of diarrhea that don't respond to over-the-counter (OTC) medications
- Unexplained fever lasting more than a day or two
- Unexplained weight loss

Causes

The exact cause of Crohn's disease remains unknown. Previously, diet and stress were suspected, but now doctors know that these factors may aggravate but don't cause Crohn's disease. A number of factors, such as heredity and a malfunctioning immune system, likely play a role in its development.

- **Immune system.** It's possible that a virus or bacterium may trigger Crohn's disease. When your immune system tries to fight off the invading microorganism, an abnormal immune response causes the immune system to attack the cells in the digestive tract, too.
- **Heredity.** Crohn's is more common in people who have family members with the disease, so genes may play a role in making people more susceptible. However, most people with Crohn's disease don't have a family history of the disease.

Risk factors

Risk factors for Crohn's disease may include:

- **Age.** Crohn's disease can occur at any age, but you're likely to develop the condition when you're young. Most people who develop Crohn's disease are diagnosed before they're around 30 years old.
- **Ethnicity.** Although Crohn's disease can affect any ethnic group, whites and people of Eastern European (Ashkenazi) Jewish descent have the highest risk. However, the incidence of Crohn's disease is increasing among blacks who live in North America and the United Kingdom.
- **Family history.** You're at higher risk if you have a close relative, such as a parent, sibling or child, with the disease. As many as 1 in 5 people with Crohn's disease has a family member with the disease.
- **Cigarette smoking.** Cigarette smoking is the most important controllable risk factor for developing Crohn's disease. Smoking also leads to more-severe disease and a greater risk of having surgery. If you smoke, it's important to stop.
- **Nonsteroidal anti-inflammatory medications.** These include ibuprofen (Advil, Motrin IB, others), naproxen sodium (Aleve), diclofenac sodium (Voltaren) and others. While they do not cause Crohn's disease, they can lead to inflammation of the bowel that makes Crohn's disease worse.
- **Where you live.** If you live in an urban area or in an industrialized country, you're more likely to develop Crohn's disease. This suggests that environmental factors, including a diet high in fat or refined foods, may play a role in Crohn's disease.

By Mayo Clinic Staff

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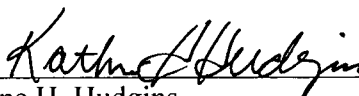
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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 4th day of March, 2020.

RECEIVED
MAR 04 2020
SC Court of Appeals