

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Chesterfield County

Honorable Brooks P. Goldsmith, Circuit Court Judge

JULIUS CALVIN CURRY, SR.

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-002004

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF CHESTERFIELD</u>	)	2013-GS-13-0697
		2013-GS-13-0698
		2013-GS-13-0699
		2013-GS-13-0700

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
JULIUS CURRY	)	
<u>DEFENDANT</u>	)	

March 3-5, 2014
 Chesterfield, South Carolina
 Volume Number 01 of 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

KERNARD REDMOND, DEPUTY SOLICITOR
 Attorney for the State

ADAM FOARD, ASSISTANT SOLICITOR
 Attorney for the State

MATTHEW SWILLEY, PUBLIC DEFENDER
 Attorney for the Defendant

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

MARSHALL WRIGHT, Victim

SHIQUAN WRIGHT, Victim

JIMMY COOMBS, Chesterfield County Sheriff's Office

DANA WALLACE, Chesterfield County Sheriff's Office

WAYNE JORDAN, Chesterfield County Sheriff's Office

BRIANNA DAVIS, Chesterfield County Sheriff's Office

HATTIE O. GORDON
Circuit Court Reporter

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	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	1	D.V.D.	38	100
4	2	Knife	38	67
5	3	Tazer Cartridge	38	125
6	4	Tazer Prong	38	125
7	5	Tazer Prong	38	125
8	6	Photo	38	154
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10	8	Photo	38	154
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VOIR DIRE OF THE JURY

1
2 THE COURT: At this time the Court will call for
3 trial the first case, and I will defer to the Solicitor to
4 actually read the case into the record as far as the
5 indictment.

6 MR. REDMOND: Thank you, Your Honor. May it please
7 the Court. Before you seated at the Defense table with
8 his attorney, Mr. Swilley, is Julius Curry. He's before
9 you, first, on 2013-GS-13-697 for criminal domestic
10 violence high and aggravated nature. 2013-GS-13-698 is
11 for assault and battery second degree. 2013-GS-13-699 is
12 for resisting arrest with a deadly weapon. And, finally,
13 2013-GS-13-700 is for attempted murder.

14 Your Honor, the State is not going forward on
15 2013-GS-13-696. That's actually a second count of
16 attempted murder. The State is not going forward on that
17 count, but we are going forward on the other four counts.

18 THE COURT: All right, ladies and gentlemen of the
19 jury venire, the Court calls for trial the indictments
20 697; that's 2013-697, the State v. Julius Curry. Charged
21 in the Bill of Indictment by the Grand Jury of
22 Chesterfield County with the offense of criminal domestic
23 violence of a high and aggravated nature. Indictment
24 2013-698, an indictment true billed by the Chesterfield
25 County Grand Jury. The charge of assault and battery

1 second-degree. Also indicted by the Chesterfield County
2 Grand Jury is Indictment 2013-GS-699 for resisting arrest
3 with a deadly weapon. And also Indictment 2013-700, true
4 billed. The Chesterfield County Grand Jury has true
5 billed the offense of attempted murder.

6 Mr. Curry is present in Court represented by Attorney
7 Swilley. At this time I'm going to ask Mr. Curry to stand
8 and face the jury to see if anybody might be related to
9 you. Thank you, sir. You may be seated. I need the
10 witness list, too.

11 Anybody on the panel related by blood or by marriage
12 or have any business, social, religious or fraternal
13 relationship in any way with the Defendant, Julius Curry?
14 If so we need you to stand at this time and give us your
15 name. Yes, ma'am.

16 POTENTIAL JUROR: Darlene Myers. I know him by my
17 fiance's nephew.

18 THE COURT: Thank you. Anyone else? Anyone on the
19 panel connected or related by blood or marriage or have
20 any business, social, religious or fraternal relationship
21 in any manner with the following individuals. If they are
22 present I'm going to ask them to stand. Some of them are
23 not present, but some may be. Marshall Wright, Shiquan
24 Wright, Sergeant Jimmy Coombs with the Sheriff's
25 Department, Sergeant Dana Wallace, Lieutenant Wayne

1 Jordan. He was in earlier. Administrator Sheila
2 Gillespie with the Sheriff's Department.

3 POTENTIAL JUROR: Wayne Jordan is a cousin of mine.

4 THE COURT: Your name.

5 POTENTIAL JUROR: Michael Garrell.

6 THE COURT: All right, sir. Thank you. All right.
7 For the two that stood during those first two questions I
8 have another question to pose to the two of you. Would
9 the fact that you have the relationship that you quoted to
10 us, if that would affect your ability to be a fair and
11 impartial juror I need you to stand at this time but don't
12 make any comment, please. Thank you. I may talk with you
13 just a little bit later, okay.

14 Do I have anyone who has any personal knowledge or
15 you have develop an opinion or about the guilt or
16 innocence of the Defendant we need you to stand at this
17 time. When I say, 'personal knowledge' I'm talking of the
18 charges, the alleged allegations in the indictments.

19 Does anybody on the panel have any moral beliefs or
20 you have developed any personal biased or prejudice
21 towards the Defendant or anyone else's name that I have
22 called that you feel that you could not be a fair and
23 impartial juror we need you to stand at this time.

24 Now, other than the juror that's already acknowledged
25 a few seconds ago about her relationship with the

1 Defendant if you know of any reason whatsoever why you
2 could not be a fair and impartial juror in this case we
3 need you to raise your right hand at this time. All
4 right. I'm going to ask the two of you to step up here to
5 the court reporter's box.

6 THE BAILIFF: Juror Number 83.

7 THE COURT: Come around, please. She's got to hear
8 everything we say, but we don't want everybody else to
9 hear.

10 POTENTIAL JUROR: I'm Charlotte Marsh, and my husband
11 was murdered in Union County on July 7th 2012. I'm not
12 sure that I can be on a murder charge.

13 THE COURT: Okay.

14 POTENTIAL JUROR: We haven't gone to Court yet.

15 THE COURT: All right. Now, this is attempted
16 murder.

17 POTENTIAL JUROR: Yeah.

18 THE COURT: Not murder.

19 POTENTIAL JUROR: Yeah.

20 THE COURT: Okay. So you're telling me at this time
21 that you could not be fair and impartial?

22 POTENTIAL JUROR: I'm afraid I couldn't be.

23 THE COURT: Thank you.

24 POTENTIAL JUROR: I was afraid of that.

25 THE COURT: Thank you for coming forward. Okay. We

1 may need you for the next case.

2 POTENTIAL JUROR: Yeah.

3 THE BAILIFF: Juror Number 98.

4 THE COURT: Good morning.

5 POTENTIAL JUROR: Good morning.

6 THE COURT: She's got to hear what we say, but we
7 don't want behind the bar to hear it.

8 POTENTIAL JUROR: All right.

9 THE COURT: Can you tell us why you feel like you
10 couldn't be fair and impartial?

11 POTENTIAL JUROR: Because we have been to together,
12 and when we have family gatherings we get together, talk
13 and communicate and stuff like that.

14 THE COURT: Okay. And because of that you feel like
15 you could not be fair and impartial?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: Thank you.

18 THE BAILIFF: Juror Number 48.

19 THE COURT: Good morning.

20 POTENTIAL JUROR: Sorry, Your Honor. I didn't
21 realize the question, but I was concerned about knowing
22 Dana Wallace. Did you bring out his name?

23 THE COURT: Yes.

24 POTENTIAL JUROR: He lives with my cousin and they
25 have children together.

1 THE COURT: Okay. Would that affect your ability to
2 be a fair and impartial juror if you were seated on this
3 case?

4 POTENTIAL JUROR: No, sir.

5 THE COURT: You're sure?

6 POTENTIAL JUROR: Yes.

7 THE COURT: Okay. Thank you.

8 THE BAILIFF: Juror Number Three.

9 POTENTIAL JUROR: I can't sit on this case because my
10 best friend was murdered last week. So -- in Lugoff. So
11 I would be extremely biased in this.

12 THE COURT: I'm sorry about that. I saw that in the
13 paper.

14 POTENTIAL JUROR: Just because it's a murder.

15 THE COURT: Right. I have to ask you this. Taking
16 that into consideration if you were to be seated on this
17 case could you be both fair and impartial to the Defendant
18 and the State?

19 POTENTIAL JUROR: I honestly think I would be very
20 unfair about it because of the word, 'murder'.

21 THE COURT: Okay. Thank you very much.

22 THE BAILIFF: Juror Number 131.

23 THE COURT: Good morning.

24 POTENTIAL JUROR: Good morning. I'm not sure I can
25 be a fair juror. I have a friend that was murdered.

1 THE COURT: All right. Where did that occur?

2 POTENTIAL JUROR: Here in Chesterfield County.

3 THE COURT: What was his name?

4 POTENTIAL JUROR: Murry Johnson. It was State v.
5 John McIntyre.

6 THE COURT: Got you. All right. Now that you've had
7 time to reflect on it I have to ask you this question. If
8 you were to be seated on this jury could you be fair and
9 impartial to the Defendant as well as the State?

10 POTENTIAL JUROR: I really don't think so.

11 THE COURT: Thank you very much. You may be seated.
12 We've got to draw another jury. That one's out, too. I
13 guess I'll stay right here. All right. Do I have anybody
14 on the panel who is presently represented or represented
15 in the past by the Solicitor's Office?

16 Do I have anybody on the panel who is presently
17 represented or represented in the past by the Public
18 Defender's Office? Okay.

19 This Number One, that could be opening up a can of
20 worms.

21 MR. REDMOND: That's why I was questioning that.

22 THE COURT: Can I cut it down to the last year?

23 MR. REDMOND: Sure.

24 THE COURT: Has anybody in -- anybody on the panel
25 received any assistance from any deputy employed by the

1 Chesterfield County Sheriff's Office within the last year?
2 Anybody on the panel personal friends or you have a family
3 member who is close personal friends with a current or
4 former deputy sheriff or the Sheriff of Chesterfield
5 County? If y'all will stand we need you to give your name
6 or your juror number. We will start at the front and
7 moving to the back. Mr. Kee, you can lead off.

8 POTENTIAL JUROR: I'm close friends with Ethan Ford.

9 THE COURT: Thank you, Mr. Kee.

10 POTENTIAL JUROR: And, Dana Wallace, he stays with my
11 cousin.

12 THE COURT: And we need y'all's number or either your
13 name.

14 POTENTIAL JUROR: Forty-eight.

15 THE COURT: Forty-eight.

16 POTENTIAL JUROR: Sixty-nine.

17 THE COURT: Sixty-nine on Mr. Kee.

18 POTENTIAL JUROR: Number 83. Deputy Carnes with the
19 Deputy Sheriff.

20 POTENTIAL JUROR: Number 33. Joseph Carnes is a
21 member of my congregation.

22 THE COURT: Thank you, sir.

23 POTENTIAL JUROR: 127, Michael Smith. I'm the Town
24 Administrator for Cheraw.

25 THE COURT: What was your number again?

1 POTENTIAL JUROR: 127.

2 MR. FOARD: He said he's the Town Administrator for
3 Cheraw and he knows a good number of law enforcement.
4 That's what he said.

5 THE COURT: Yes, sir.

6 POTENTIAL JUROR: Twenty-two. I'm friends with Ethan
7 Ford.

8 THE COURT: Thank you. In the back.

9 POTENTIAL JUROR: Diane Driggers, Number 38.
10 Sergeant Taylor.

11 THE COURT: Sergeant who?

12 POTENTIAL JUROR: Taylor.

13 THE COURT: Taylor. Thank you.

14 POTENTIAL JUROR: Number 65, Heidi Johnson. My
15 husband worked for the Detention Center for six years
16 before working for D.O.T.

17 THE COURT: Thank you.

18 MR. FOARD: Did you say you or your husband?

19 POTENTIAL JUROR: My husband.

20 MR. FOARD: Worked for the Detention Center for six
21 years before his current job?

22 POTENTIAL JUROR: Right.

23 MR. FOARD: Okay. All right.

24 THE COURT: That was 65, right? Yes, sir.

25 POTENTIAL JUROR: Michael Tarleton. I don't know my

1 number, but I'm friends with Wayne Jordan.

2 THE COURT: We need that number again.

3 POTENTIAL JUROR: I'm not sure of the number, but
4 it's 130 something. I'm not sure what it is.

5 THE COURT: What's your last name?

6 POTENTIAL JUROR: Tarleton.

7 THE COURT: Carlton?

8 POTENTIAL JUROR: Tarleton.

9 THE COURT: Tarleton. Friends with Wayne Jordan.
10 Thank you, sir. Yes, ma'am.

11 POTENTIAL JUROR: Juror Number 121. My husband was
12 the fire chief in McColl, and we're affiliated with a lot
13 of sheriff's deputies.

14 THE COURT: Okay. All right. Is anyone or anyone in
15 your immediate family ever claimed to have been a victim
16 of criminal domestic violence?

17 Has anybody on the jury panel ever been involved in
18 an incident in which law enforcement was called and
19 responded?

20 All right. If y'all will stand and give us your name
21 and a little brief description.

22 POTENTIAL JUROR: My number is 90. My name is Latoya
23 Miller. It was about the incident that I spoke with you
24 earlier.

25 THE COURT: Thank you.

1 POTENTIAL JUROR: My number is 37. My name is Amber
2 Dixon. My cousin called the law on my dad for pulling a
3 shotgun on my mom.

4 MR. FOARD: What number was that, ma'am?

5 POTENTIAL JUROR: Number 37.

6 MR. FOARD: Thirty-seven.

7 THE COURT: Thirty-seven. Yes, sir.

8 POTENTIAL JUROR: A couple of years ago a guy was
9 caught in our yard.

10 THE COURT: Trespasser?

11 POTENTIAL JUROR: Yes, sir.

12 THE COURT: Okay. Well, I think Five is included in
13 Four. Yes, ma'am.

14 POTENTIAL JUROR: I'm not sure of my number. My name
15 is Earnestine Williams. It happened to me about two years
16 ago.

17 THE COURT: Did y'all get her name? We need your
18 last name.

19 POTENTIAL JUROR: Williams.

20 THE COURT: Williams.

21 MR. FOARD: She's Juror 147.

22 THE COURT: Yes, sir.

23 POTENTIAL JUROR: Juror 48. I had an incident where
24 someone from the law was called out to our property for
25 trespassing.

1 THE COURT: Thank you. Does anybody on the jury
2 panel hold a personal belief that a police officer is more
3 likely to tell the truth as opposed to any other witness?

4 Does any person on the jury panel believe that a
5 police officer is more likely to tell the truth as opposed
6 to any other witness? All right. We need you to stand
7 and give your numbers, please.

8 POTENTIAL JUROR: Number 83, Charlotte Marsh.

9 POTENTIAL JUROR: Matthew Catoe. I'm not sure of my
10 number.

11 THE COURT: Thank you, Mr. Catoe.

12 POTENTIAL JUROR: 127, Michael Smith.

13 POTENTIAL JUROR: Diane Driggers, Number 38.

14 THE COURT: Thank you, Ms. Driggers. Do I have
15 anybody on the panel who feels that they could not be a
16 fair and impartial juror for anyone who has used illegal
17 drugs?

18 Is there anyone on the panel who is a member or a
19 contributor to any law enforcement oriented group such as
20 Mothers Against Drunk Driving, Students Against Drunk
21 Driving. That's M.A.D.D., S.A.D.D., C.A.V.E., C-A-V-E,
22 Trooper's Association, any Solicitor or any law
23 enforcement officer affiliated association? If you would
24 stand and just tell us if you're a member of such
25 association or if you were just a contributor. We need

1 your name or number.

2 POTENTIAL JUROR: Number 98, and Patrol.

3 THE COURT: Highway Patrol?

4 POTENTIAL JUROR: Yes, sir.

5 POTENTIAL JUROR: Number 21, Matthew Catoe, and State
6 Highway Patrol Association.

7 POTENTIAL JUROR: Number 33, Jonathan Cox.

8 Contributor to the Trooper's Association.

9 THE COURT: Thank you, Mr. Cox.

10 POTENTIAL JUROR: Number 132, a contributor to the
11 Sheriff's Department.

12 THE COURT: All right. Anything else from the State?

13 MR. SWILLEY: No, sir.

14 MR. REDMOND: No, sir.

15 THE COURT: All right. Now that you've had time to
16 reflect if you've not already responded and you have
17 realized that you could not be fair and impartial in this
18 particular case we need you to raise your right hand but
19 don't say anything. Those of you already responded, we've
20 got that. Okay.

21 SELECTION OF THE JURY

22 All right. We've got to do a little computer work up
23 here. When we get to the point where your name is called,
24 if and when it is called, and we ask you to come around
25 come right here where I am. Turn and face both tables

1 where they can get a good look at you, and they will let
2 you know whether you are going to be seated or not seated.
3 Please do not leave because we've got to draw another jury
4 in just a few minutes. If you're not chosen on this case
5 you may be chosen on the next. So don't leave us, okay.
6 You may proceed.

7 CLERK OF COURT: Okay. When I call your name and
8 number please come forward. Robert Cash, Number 20. What
9 says the State.

10 MR. REDMOND: Please present Mr. Cash.

11 CLERK OF COURT: Defense.

12 MR. SWILLEY: Please swear Mr. Cash.

13 CLERK OF COURT: Have a seat in the jury box. Number
14 127, Michael D. Smith. What says the State.

15 MR. REDMOND: Please present Mr. Smith.

16 CLERK OF COURT: Defense.

17 MR. SWILLEY: Please excuse Mr. Smith from the trial
18 of this case.

19 CLERK OF COURT: Please return to your seat. Number
20 5 is Andrew W. Baricska. What says the State.

21 MR. REDMOND: Please present Mr. Baricska.

22 CLERK OF COURT: Defense.

23 MR. SWILLEY: Please swear Mr. Baricska.

24 CLERK OF COURT: Have a seat in the jury box, please.
25 Number 144, William H. Watkins. What says the State.

1 MR. REDMOND: Please present Mr. Watkins.

2 CLERK OF COURT: Defense.

3 MR. SWILLEY: Please swear Mr. Watkins.

4 CLERK OF COURT: Have a seat in the jury box, please.

5 Number 48, Calvin D. Gibson. What says the State.

6 MR. REDMOND: Please present Mr. Gibson.

7 CLERK OF COURT: Defense.

8 MR. SWILLEY: Please excuse Mr. Gibson from the trial
9 of this case.

10 CLERK OF COURT: Number 89, Otis J. McManus. What
11 says the State.

12 MR. REDMOND: Beg the Court's indulgence. Please
13 excuse Mr. McManus from this trial.

14 CLERK OF COURT: Please go back to your seat. Number
15 66, Wesley C. Johnson. What says the State.

16 MR. REDMOND: Please present Mr. Johnson.

17 CLERK OF COURT: Defense.

18 MR. SWILLEY: Please swear Mr. Johnson.

19 CLERK OF COURT: Have a seat in the jury box. Number
20 37, Amber N. Dixon. What says the State.

21 MR. REDMOND: Please present Ms. Dixon.

22 MR. SWILLEY: Please excuse Ms. Dixon from the trial
23 of this case.

24 CLERK OF COURT: Please return to your seat. Number
25 109, Anita G. Powell. What says the State.

1 MR. REDMOND: Please present Ms. Powell.

2 CLERK OF COURT: Defense.

3 MR. SWILLEY: Please swear Ms. Powell.

4 CLERK OF COURT: Have a seat in the jury box, please.

5 Number 32 is Anna E. Cosom. What says the State.

6 MR. REDMOND: Please excuse Ms. Cosom from this
7 trial.

8 CLERK OF COURT: You may return to your seat. Number
9 21, Matthew C. Catoe. What says the State.

10 MR. REDMOND: Please present Mr. Catoe.

11 CLERK OF COURT: Defense.

12 MR. SWILLEY: Please excuse Mr. Catoe from the trial
13 of this case.

14 CLERK OF COURT: Return to your seat. Number 46,
15 Michael E. Garrell. What says the State.

16 MR. REDMOND: Please present Mr. Garrell.

17 CLERK OF COURT: Defense.

18 MR. SWILLEY: Please swear Mr. Garrell.

19 CLERK OF COURT: Have a seat in the jury box, please.

20 Number 67, Darlene M. Jones. What says the State.

21 MR. REDMOND: Please present Ms. Jones.

22 CLERK OF COURT: Defense.

23 MR. SWILLEY: Please swear Ms. Jones.

24 CLERK OF COURT: Please have a seat in the jury box.

25 Number 108, Dennis M. Porter. What says the State.

1 MR. REDMOND: Please present Mr. Porter.
2 CLERK OF COURT: Defense.
3 MR. SWILLEY: Please swear Mr. Porter.
4 CLERK OF COURT: Have a seat in the jury box, please,
5 sir. Number 52, William F. Gordon, Sr. What says the
6 State.
7 MR. REDMOND: Please present Mr. Gordon.
8 CLERK OF COURT: Defense.
9 MR. SWILLEY: Please swear Mr. Gordon.
10 CLERK OF COURT: Have a seat in the jury box, please.
11 Number 33, Jonathan M. Cox. What says the State.
12 MR. REDMOND: Please present Mr. Cox.
13 CLERK OF COURT: Defense.
14 MR. REDMOND: Madam Clerk, I have five and two are
15 the strikes?
16 CLERK OF COURT: That is correct.
17 MR. REDMOND: Thank you.
18 CLERK OF COURT: Number 101, Caleb A. O'Neal. What
19 says the State.
20 MR. REDMOND: Please present Mr. O'Neal.
21 CLERK OF COURT: Is there any cause for challenge.
22 MR. SWILLEY: No, there is not.
23 CLERK OF COURT: Have a seat in the jury box. Number
24 65, Heidi Johnson. What says the State.
25 MR. REDMOND: Please present Ms. Johnson.

1 CLERK OF COURT: Is there any cause for challenge
2 from the Defense.

3 MR. SWILLEY: There is not.

4 CLERK OF COURT: Have a seat in the jury box, please.
5 Number 13, Maxie D. Brown. What says the State.

6 MR. REDMOND: Please present Ms. Brown.

7 CLERK OF COURT: Is there any cause.

8 MR. SWILLEY: There is not, Madam Clerk.

9 CLERK OF COURT: Have a seat in the jury box, please.
10 Okay. The next ones are all alternates. 121, Judy R.
11 Sellers. What says the State.

12 MR. REDMOND: Please present Ms. Sellers.

13 CLERK OF COURT: Defense.

14 MR. SWILLEY: Please excuse Ms. Sellers from the
15 trial of this case.

16 CLERK OF COURT: Number 80, Joan Lowery. What says
17 the State.

18 MR. REDMOND: Please present Ms. Lowery.

19 CLERK OF COURT: Defense.

20 MR. SWILLEY: No cause.

21 CLERK OF COURT: You may have a seat in the jury box.
22 Number 106, Marion C. Platt, Jr. What says the State.

23 MR. REDMOND: Please present Mr. Platt.

24 CLERK OF COURT: Defense.

25 MR. SWILLEY: Please swear Mr. Platt.

1 CLERK OF COURT: Have a seat in the jury box.

2 THE COURT: Any matters concerning jury selection?

3 MR. REDMOND: None from the State, Your Honor.

4 MR. SWILLEY: None from the Defense, Your Honor.

5 THE COURT: All right, counsel, y'all approach
6 please.

7 (WHEREUPON, a bench conference was held off the
8 record in the presence of the jury, but out of the
9 hearing of the jury.)

10 THE COURT: Ladies and gentlemen on Jury Number One,
11 you've already heard that we've got other matters that
12 we've got take care of. We've got to seat another jury
13 and then we've got a roster meeting this afternoon. So we
14 need you back here at 9:30 in the morning. Y'all will
15 report to this the jury room back here, okay. That door
16 right there.

17 Remember don't discuss this case with anyone. Don't
18 even discuss this case with your family members. Should
19 anybody try to approach you in any form or fashion,
20 contact you about this case do not carry on any
21 conversation with them or any communication and notify the
22 Sheriff's Department. Okay. All right. We thank you for
23 coming. We will start this case in the morning. I've
24 discuss with counsel, and I think won't take a tremendous
25 amount of time, but all cases are important. So we will

1 need you bright eyed and bushy tailed and ready to listen.
2 Okay.

3 That's the key to being a good juror is to be able to
4 listen. All right. See you in the morning. Everybody
5 else remain seated while this jury departs for the
6 morning.

7 (WHEREUPON, the jury panel was excused from the
8 courtroom at 11:59 a.m.)

9 (WHEREUPON, other Court-related business was
10 conducted on the record but not related to the trial
11 of this case and not included in this transcript of
12 record.)

13 END OF TRANSCRIPT OF RECORD
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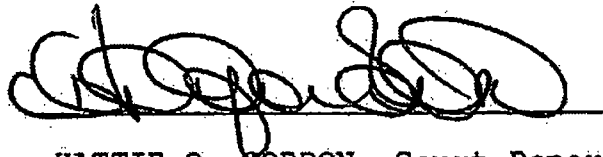
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th 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
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 3rd day of
March, 2014.

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

April 8, 2014



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF CHESTERFIELD</u>	)	2013-GS-13-0697
		2013-GS-13-0698
		2013-GS-13-0699
		2013-GS-13-0700

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JULIUS CURRY	)	
<u>DEFENDANT</u>	)	

March 3-5, 2014
 Chesterfield, South Carolina
 Volume Number 02 of 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

KERNARD REDMOND, DEPUTY SOLICITOR
 Attorney for the State

MATTHEW SWILLEY, PUBLIC DEFENDER
 Attorney for the Defendant

COLLOQUY

1
2 THE COURT: Now, we're ready.

3 MR. SWILLEY: Your Honor, the motion that I have is
4 regards to the motion to suppress or exclude the evidence
5 in regards to jail phone calls that were utilized using
6 Mr. Curry and one of the witnesses in the case, Marshall
7 Wright who I think is one of -- potentially one of the
8 victims.

9 Mr. Redmond alerted me last week that these,
10 actually, calls were in existence. We were not able to
11 listen to these calls and still do the -- due to the
12 State's inability to produce them they never put them on a
13 disk. We listened to them together for the first time
14 yesterday, I believe.

15 The calls -- there are four calls that I think, and
16 we listened to part of them. It's involves Ms. Marshall
17 Wright and Mr. Curry discussing whether or not Ms. Wright
18 and her daughter want to assist the State in the
19 perpetuation of the case. He is charged with C.D.V.H.A.N.
20 and assault and battery against her daughter,
21 respectfully.

22 Your Honor, I haven't been able to listen to all of
23 these tapes thus far, and Mr. Redmond hadn't either.
24 These are calls from September -- I believe September the
25 13th and September the 17th and September the 21st of

1 2013. The first time I've been able to listen to them is
2 yesterday, Your Honor.

3 Under Rule Five, you know, the State has to allow the
4 Defense to copy, inspected any kind of statements of the
5 defendant the State wants to use in their case in chief.
6 I don't think I've been afforded that opportunity as the
7 rule would mandate.

8 Judge, I have a case that I'd like to hand up. I
9 have a copy for Mr. Redmond as well. It's the State v.
10 Gary Thomas Hill, and in this case -- I only have one copy
11 of this case. No, I have two. Here you go.

12 It discusses Rule Five with regards to a probation
13 violation. And it does go on to say that knowledge of
14 this even though it was not in the control -- it was never
15 in the control of the Solicitor until yesterday, but it
16 was in control of the State as far as the County Detention
17 Center, the Sheriff's Office, was not produced or made
18 known to the State until last week. And I don't doubt
19 that. And the first time that I've been able to examine
20 it just in part was yesterday.

21 And, essentially, the Sheriff's Office has
22 unilaterally decided what may be relevant and they
23 produced a summary giving it to Mr. Redmond. That was
24 given to me last week. A summary of where the deputy
25 listened to the tapes and summarized what was relevant and

1 maybe damaging to Mr. Curry. But I haven't been able to
2 adequately inspect and listen to these recordings so that
3 I can make any kind of substantive motion. I mean I don't
4 know. I've never listened to the initial caveat by the
5 assistant who says he called me to the Court.

6 I can't tell whether or not they violated the Wire
7 Tap Act or not. I haven't had enough time to look at
8 these recordings to see if there is undoubtedly cross
9 examining potential witnesses in the case.

10 And so, Your Honor, I just ask the Court to look at
11 Pages 6 through 8 of the case where it says that if the
12 violation -- if the Rule Five violation is material it
13 will prejudice the defendant in his ability to prepare the
14 case, and I would move the Court to exclude these
15 materials, these recordings, on that ground as well as
16 under the Fifth Amendment that the defendant's right to
17 due process -- well, the Sixth Amendment of the
18 Constitution regarding his right to confront the witness
19 against him and present a defense if necessary.

20 MR. REDMOND: May it please the Court, Your Honor.
21 Obviously, the State would oppose said motion by the
22 Defense on the grounds that -- well, just as further
23 background. Last Thursday, to be clear, I met with my
24 officers here and regarding the case in preparation. And
25 at that time they actually reminded me that there was this

1 summary of those calls that was done by Chris Page while
2 he was with the Sheriff's Office after listening to some
3 of these calls. That summary, and I'll be honest with
4 you, the summary got buried on my desk.

5 And after meeting with them we actually found it and
6 got another copy so that we can give it to Mr. Swilley.
7 And I actually made him aware of it as soon as I got it
8 and brought it to him. Now, he is correct that we did not
9 get a chance to actually listen to the recordings until
10 yesterday, yesterday morning. The sections are not long.
11 I think the longest section that we're look at is maybe
12 three and a half minutes. It's four separate calls.

13 But with that said, Your Honor, the existence of
14 these recordings did come to everyone's attention last
15 week even though I had them previously. Like I said as
16 soon as I got -- as I saw it on my desk I went and got it
17 to Mr. Swilley. And it does outline in summary what those
18 calls was about. So it's not like -- the reason I want to
19 be clear on that the content of the calls is contained in
20 the summary that was received by Mr. Swilley last
21 Thursday.

22 Because of the way the system is set up and
23 Lieutenant Jordan with the Sheriff's Office actually
24 called me. He and I have been communicating back and
25 forth. He actually cannot download this onto a disk or a

1 flash drive. So that is why we actually had to listen to
2 it on his office computer. But from the discovery
3 standpoint I just want to be clear that the Sheriff's
4 Office had actually given us this summary previously.

5 So it wasn't a situation where they did not tell us
6 about it. They did give us that information previously.
7 But as it relates to being able to download it and play it
8 the only way we can actually play it is through -- and
9 they can explain it further. I've got Administrator
10 Gillespie and Lieutenant Jordan here for any proffer that
11 might be necessary. They can address those issues.

12 But with that said, Your Honor, we think that the --
13 given the nature of the recordings, given the fact that at
14 least the existence did become known to the Defense at
15 this point -- I guess that would be about four or five
16 days ago; that that is enough for us to still go forward.
17 One of the things that I think is a misconception, I think
18 it needs to be made clear, is that there is no rule that
19 says the investigation of a case ends up to a certain
20 point before trial. Sometimes we may find things the
21 night before. That's just the nature of the beast,
22 unfortunately, and the cases do continue to be
23 investigated.

24 Now, with that said, Your Honor, I think that -- and
25 we are prepared to make a proffer. But I don't think the

1 Defense has been any way prejudiced by this because they
2 were aware of the existence of these recordings, like I
3 said, last Thursday prior to us pulling the jury on this
4 particular case. And I did provide, like I said, the
5 written transcription or the written summaries that were
6 provided by law enforcement up to them on Thursday as
7 well.

8 So with that, Your Honor, we would submit that Rule
9 Five has not been violated and that we should be entitled
10 to have the jury hear this evidence. We do think that
11 it's very substantive evidence as it relates to this
12 trial. And, again, we are prepared to make a proffer at
13 the appropriate time.

14 THE COURT: We talking about this past Thursday?

15 MR. REDMOND: Yes, sir, this past Thursday.

16 THE COURT: No, sir. You're not going to wait until
17 the last second and turn information over to him like
18 that. Now, I can understand with all this docketing we've
19 got and all these pending cases why something like this
20 would happen. But the best I can do here is I'm going to
21 grant his motion unless you move for a continuance and we
22 will try this case later on so he can have more time. But
23 this mess, now, is waiting until the week before has got
24 to stop.

25 MR. REDMOND: And, Judge, just to be clear, cause I

1 know a lot of times we have those issues as it relates to
2 law enforcement getting stuff to us, but this is my fault
3 because the documents were on my desk. I just did not see
4 them. Actually, when Sergeant Coombs and Sergeants --
5 Sergeants Coombs and Wallace came to the office they
6 actually reminded me about it, and digging through, sure
7 enough, yeah, I did have it. So that's on me. I'm not --
8 you know, nobody else can be faulted for that in this
9 circumstance but me. But with that said ---

10 THE COURT: That's just too close.

11 MR. REDMOND: Yes, sir.

12 THE COURT: If it was another week or something,
13 that's fine, but that's four days before this case was up
14 to seat that jury yesterday.

15 MR. REDMOND: Yes, sir. Now, with that said, Your
16 Honor, and as much as I hate doing it, but the content of
17 these recordings is important enough, Your Honor, that the
18 State would request -- respectfully request a continuance.
19 Our next term of Court is the 23rd of April. And this
20 case, the Defendant has been in jail since August, I
21 believe. So we have not reached the threshold under the
22 new case management where we're dealing with an old case.

23 But since he is incarcerated that's one of the
24 reasons why we are -- we wanted to go ahead and try the
25 case here, I guess, six months in.

1 THE COURT: All right. That throws the ball back in
2 your court. He's going to say in jail. We'll try it next
3 time. If it's so important that you think that you need
4 more time to review those cases you better take about a
5 few minutes and discuss this issue with him. He knows who
6 he's taking part in thi process that's seated on this
7 jury. So before we make a final decision or I make a
8 final decision you better sit down and talk with your
9 client and make sure. I guess there is an old saying,
10 'Sometimes you get more than what you asked for'. That
11 could apply here. you better have a little discussion.

12 MR. SWILLEY: I understand, Your Honor. Thank you.

13 (WHEREUPON, a short break was taken.)

14 (WHEREUPON, State's Exhibit Nos. 1 THROUGH 26 were
15 marked for identification only.)

16 MR. SWILLEY: Your Honor, I think the fact of the
17 matter is I can't -- I don't believe that I can
18 competently go forward without me being able to listen to
19 these jail recordings and adequately prepare. I think
20 that if I did there is a good chance that is going to come
21 back on P.C.R. So I would consent to a continuance for
22 Mr. Redmond if that's what they seek. But and that's -- I
23 mean that's my position.

24 THE COURT: All right. We have a little time this
25 morning, and what -- how many time of tapes do you intend

1 to present when and if you can?

2 MR. REDMOND: Approximately, not even -- I don't
3 think it's ten minutes total for the tapes. Four calls,
4 but most of them less than two minutes. Anywhere from 10
5 to 12 minutes total, I think.

6 THE COURT: Can you sit down with the Defense and
7 play exactly what you want to present and let them hear it
8 and then they can make a final decision?

9 MR. REDMOND: Yes, sir, that's no problem. We've got
10 it queued up.

11 THE COURT: Would that help any, counsel.

12 MR. SWILLEY: Yes, Your Honor. And I think I'm still
13 going to move at the appropriate time to exclude the
14 recording. It's actually under Rule 403 as well just to
15 preserve the objection for the record.

16 THE COURT: You think you are, but you and your
17 client sit down and listen to it and then make a final
18 decision, okay?

19 MR. SWILLEY: Yes.

20 THE COURT: And if you do that's fine. I'm just --
21 I'm trying to utilize our time the best we can. I do have
22 a settlement that I can do while y'all do that.

23 MR. REDMOND: And I think there may have been a plea
24 or something that can be done while we are doing that as
25 well. And I apologize, like I said. That's on me. I

1 didn't get it to him, and I apologize.

2 THE COURT: All right. Can y'all quickly set up
3 somewhere? The jury is in here. My chambers is
4 available.

5 MR. REDMOND: I think we can go back to the multi
6 purpose room.

7 THE COURT: Okay.

8 (WHEREUPON, other Court-related business was
9 conducted on the record but not related to the trial
10 of this case and not included in this transcript of
11 record.)

12 MR. SWILLEY: Your Honor, I'd like let the record
13 reflect that we went back and we listened to the jail
14 recordings. And I'll go ahead and withdraw my objection
15 under Rule Five being that I know you're inclined to let
16 it in. And I still, just to protect myself on the record,
17 move to exclude under Rule 403. I'm ready to proceed if
18 that's the way you're going to rule.

19 THE COURT: You withdraw your Rule Five objection?
20 All right, you're withdrawing your motion based on Rule
21 Five?

22 MR. SWILLEY: Correct.

23 THE COURT: Okay. And tell me what you are going
24 forward with.

25 MR. SWILLEY: Your Honor, I just, and I'll make a

1 contemporaneous objection when it comes in during the
2 trial, but I just move to exclude the recordings under
3 Rule 403 that they're more prejudicial than probative.
4 And, you know, based upon my listening to the recordings
5 they really touch on more ancillary issues in regard to
6 the case rather than substantive matters.

7 And I think that the entry of this in the record, the
8 recordings, is going to be -- the prejudicial impact will
9 by substantially outweighed by any probative value that it
10 may have. So it is under that reasoning I would move to
11 suppress it there, but I will withdraw my Rule Five
12 objection.

13 THE COURT: All right. We'll go forward and when the
14 time comes be sure and renew your motions at the time they
15 attempt to introduce comes, okay?

16 MR. SWILLEY: Yes, sir.

17 THE COURT: And then I'll have to handle it from
18 there.

19 MR. SWILLEY: And, Your Honor, I also move to
20 sequester the witnesses during the course of the trial.

21 MR. REDMOND: And, Your Honor, I don't know if there
22 are any witnesses. I usually just ask that it be
23 reciprocal. I do ask that my first witness be allowed to
24 stay in. And, obviously, Officer Coombs, who is the
25 victim -- well, one of the victims in this case, we ask

1 that he be allowed to remain in the courtroom.

2 THE COURT: The victim has a right to be present.
3 Who is your lead investigator?

4 MR. REDMOND: Well, actually, technically, it's also
5 Sergeant Coombs as well based on the nature.

6 THE COURT: Okay. If you will take care of the rest
7 of them.

8 MR. REDMOND: And so, Your Honor, on my first witness
9 is going to be Ms. Marshall Wright. And I just ask --
10 usually I ask that my first witness and the lead person on
11 the case or victim be allowed to remain in the courtroom.
12 And, actually, and let me back up a minute. Based on the
13 charges, actually, Shiquan Wright is also a victim because
14 she is the victim of this A and B second charge.

15 And Ms. Marshall Wright is the victim on the C.D.V.
16 H.A.N. charge. So I'd ask that they be allowed to remain.

17 THE COURT: Victims have a right to be here under the
18 law as I understand it especially the victims.

19 MR. REDMOND: Thank you, Your Honor.

20 THE COURT: --- of Act -- whatever they call it.

21 MR. REDMOND: Thank you, Your Honor.

22 THE COURT: But the rest of the folks the motion is
23 granted. All right. Ready for the jury.

24 MR. REDMOND: State is ready, Your Honor.

25 THE COURT: Bring them in please, Madam Bailiff.

1 (WHEREUPON, the jury panel enters the courtroom at
2 10:13 a.m.)

3 THE COURT: Good morning, ladies and gentlemen.
4 First of all I want to apologize to you for the delay this
5 morning, and I want to thank you for your patience with
6 us. We had some preliminary matters that we had to take
7 care of, get the case ready to go. And also I had two
8 other matters that had nothing to do with this case that
9 were scheduled several weeks ago that we had to work in.

10 So wouldn't have been able to do that without y'all's
11 patience, and I thank you for working with us. I know
12 it's rather confined space back there, and hopefully we
13 will be able to free up some larger area for you to work
14 with later on. We're ready to get started with this case,
15 and the first thing we've go to do is get you sworn. I'm
16 going to -- is everybody has reported.

17 Mr. Garrell, if you will move down to this seat. I'm
18 appointing you foreperson of the jury. You will need to
19 keep that seat for the rest of the trial. The rest of you
20 it doesn't matter where you sit except the alternates need
21 to stay to the far right. All right, Madam Clerk.

22 CLERK OF COURT: Ladies and gentlemen, please stand
23 and raise your right hand.

24 (WHEREUPON, the jury panel was sworn in at
25 10:15 a.m.)

1 THE COURT: I'm going to make a few opening remarks
2 to you let you know how we're going to proceed. Once
3 again thank you for bearing with us this morning. We took
4 up an hour of your time. And I won't belabor the point.
5 I just need to let you know the stages of the trial and
6 what sort of expect.

7 As soon as I finish my opening remarks to you I'll
8 turn it over to counsel for opening statements. They're
9 not mandatory, but they do have the option to make an
10 opening statement to you, and it's basically to outline
11 their position in the case if they so desire to do that.

12 After that will come the evidentiary portion of the
13 case where you will receive the evidence. Evidence may
14 take different forms. It maybe testimony from this
15 witness stand. It maybe photographs, documents, physical
16 type items. Whatever the evidence is I urge you and
17 instruct you to carefully observe and listen to the
18 evidence.

19 Why? Because you are the finders of the facts in
20 this case. A jury listens to the evidence, decides what
21 the true state of evidence is and then applies that to the
22 law that I will give you at the conclusion of the case and
23 thus reach a verdict.

24 Verdict is a Latin derivative word which in effect
25 means a true saying. So if can be said that a jury seeks

1 the truth. This is a criminal case. The burden of proof
2 is on the State of South Carolina to prove the guilt of
3 the defendant beyond a reasonable doubt.

4 This defendant and all defendants in South Carolina
5 and in the United States are presumed innocent until
6 proven guilty. And that presumption lasts with them right
7 through a trial until you the jury complete your
8 deliberations and reach a decision. If you reach a
9 decision, a verdict of guilty, then that presumption ends.
10 But that presumption stays with them up until that point.

11 Now, after the evidentiary portion of the trial is
12 over will come closing argument time when both sides, both
13 attorneys, the attorneys involved will be given ample
14 opportunity to try to persuade you to see the evidence as
15 they see it.

16 Now, whatever they say is not evidence. They may
17 repeat the evidence or quote evidence or refer back to
18 evidence, but what they say is not necessary evidence. So
19 you have to keep that in mind and keep that sorted out as
20 you begin your deliberations.

21 Now, don't deliberate this case. Don't even discuss
22 it amongst yourselves until deliberation time comes, okay.
23 All right. After we get through with the closing
24 arguments then it will be my time to do my job, and that
25 is to give you the law of the State of South Carolina.

1 You are the triers of the facts. I am the judge of the
2 law. I don't get involved in the facts. I neutral. I
3 stay out of that.

4 I sit up here as a neutral referee, and I have to
5 make sure that, to the best of my ability, that the rules
6 of procedure and evidence are followed. So if an
7 objection is entered, and I have to rule on it don't think
8 that I side with one side or the other concerning guilt or
9 innocence..

10 Sometimes I may have to send you out of the courtroom
11 to handle matters of law because that's my job. And
12 sometimes it may take a little time for me to do that. So
13 please beer with us if that happens.

14 All right. Only after the Judge's charge given to
15 you will you be asked to deliberate the case. Once again
16 don't discuss this case with anyone. Don't even discuss
17 it amongst yourselves until that time comes. When you are
18 asked to reach a verdict you will have to reach a verdict
19 on each and every indictment. Twelve jurors that
20 deliberate will have to be in agreement on whatever the
21 verdict may be on each and every indictment.

22 During this trial, please, don't fall asleep on me.
23 If we need to take a break and get some coffee or Coca
24 Cola or whatever to keep you awake let me know. We will
25 do that. That normally doesn't happen in the morning, but

1 in the afternoon, especially if you've eaten a heavy
2 lunch. I have had jurors start nodding off on me, and
3 that can cause problems. So if you feel yourself nodding
4 off let me know so we can try to take care of that. Okay.

5 All right. Other than that I don't have anything
6 else to tell you except one other thing. That's notes. I
7 don't forbid notes, but if you want to keep them, that's
8 fine. But there is one rule you've got to go by. You
9 can't share them with anybody else. They would be your
10 personal notes.

11 From my college days if I were a juror I wouldn't
12 keep notes because unless you can listen to two or three
13 things or comprehend things more than I can, if you're
14 listening -- if you're taking notes and you're trying to
15 listen, and you've got your mind devoted to that note pad
16 and something is said while you're writing that note down
17 you may miss something important. If y'all's brain works
18 like mine.

19 Some people are capable of listening to two or three
20 things at one time and comprehending all of them, but I'm
21 not that way. And I learned back in college days that
22 you've got to be careful about note taking because that
23 can happen to you so. You know, that will be up to you if
24 you decide you want to do that. But you've got to keep
25 them to yourself.

1 All right. The State has the burden of proof in this
2 case. So that means the State's attorney which in South
3 Carolina we call the Solicitor. On t.v. you usually hear
4 State's attorney or the district attorney. In Virginia
5 and in South Carolina it's Solicitor. He will have the
6 right to go first in the opening statement.

7 OPENING STATEMENT BY MR. REDMOND

8 MR. REDMOND: Thank you, Your Honor. May it please
9 the Court, ladies and gentlemen, Mr. Swilley. My name is
10 Kernard Redmond. I'm a Deputy Solicitor here for the
11 Fourth Circuit. I work at the pleasure of Will Rogers,
12 our elected Solicitor. We cover Chesterfield, Darlington
13 Marlboro and Dillon. I'm headquartered here in
14 Chesterfield and in fact live here in chesterfield County.
15 It's a pleasure to be here before you today.

16 Obviously, as a prosecutor if I am before you as a
17 jury that means that the State is alleging that someone
18 committed a crime. In this case we are doing exactly
19 that. That person, the Defendant, Julius Curry, we submit
20 on the 30th of August of last year did commit the crimes
21 of criminal domestic violence high and aggravated, assault
22 and battery second degree, resisting arrest and attempted
23 murder. I'll get to some of the factual background in
24 just a minute.

25 But let me just address the burden of proof that His

Opening Statement by Mr. Redmond

49

1 Honor indicated to you. The State has the burden of
2 proving to you that beyond a reasonable doubt that the
3 defendant in fact committed these crimes as charged. That
4 burden is a burden which we welcome because, obviously,
5 everybody has a right to a fair trial and we have no
6 intention of denying the defendant that today.

7 But it is not beyond all doubt. It's beyond a
8 reasonable doubt. That doubt, that reasonable doubt, is
9 instructed sometimes as a doubt that causes a reasonable
10 person to hesitate to act. It's also been described as
11 leaving you firmly convinced. In other words, if firmly
12 convinced that the person is guilty then that satisfies
13 the standard beyond a reasonable doubt.

14 We submit to you at the close of the case that you
15 will feel exactly that way. Now, you may see -- right now
16 I'm at the table by myself, but just so you will know
17 Assistant Solicitor Zack Farr will probably be sitting
18 with me during parts of the trial. We also have Assistant
19 Solicitor Adam Foard who works with us part time who will
20 probably be coming in and out as well during this case.

21 Now, I'm going to be brief in my opening statements
22 because it's just that. An opening statement describing
23 what happened, describing why it is we feel that the
24 defendant is guilty. You will hear more of the details
25 through testimony and exhibits which we will present to

1 you during the course of the case.

2 As I indicated the Defendant is charged with C.D.V.
3 high and aggravated. Ms. Marshall Wright, who you will
4 hear from shortly, was involved in a relationship with the
5 defendant. On this particular day, in the evening, the
6 Defendant and Miss Wright got involved in an argument.
7 And you will find out and she will tell you what caused
8 that argument.

9 That argument led to a physical confrontation. Not
10 just with her, but also involving her daughter, Shiquan
11 Wright, who's also here and you will hear from her today
12 shortly as well. That physical confrontation escalated to
13 a point where law enforcement had to be called, and where
14 in fact a knife was presented. And you will hear the
15 details of that.

16 Sergeant Jimmy Coombs with the Sheriff's Office
17 responded to that incident, and at the time of his
18 response, and you will hear from him, but at the time of
19 his response and trying to defuse the situation ultimately
20 caused him to be involved in the fight for his life.
21 Because during that time the Defendant, armed with a
22 knife, attempted to stab Sergeant Coombs, and he will be
23 able to describe that for you. And he will also be able
24 to describe to you the things that were being said to him
25 even before the confrontation and during this

1 confrontation.

2 During the course of this confrontation fortunately
3 Sergeant Dana Wallace responded to the scene as well and
4 was able to assist Sergeant Coombs and in essence saved
5 his life.

6 Ladies and gentlemen, this going to be a fairly short
7 case given the serious nature of the charges, but it's
8 nevertheless an important case based upon what occurred
9 that night. Now, I indicated criminal domestic violence a
10 high and aggravated, assault and battery second degree
11 against Ms. Shiquan Wright because she was also hit during
12 the course of this confrontation.

13 Resisting arrest: As Sergeant Coombs tried to arrest
14 the defendant he engaged in resisting with a deadly
15 weapon. And then the attempted murder because while armed
16 with a knife, both through comments and through actions,
17 again, Sergeant Coombs became involved in the fight for
18 his life.

19 Let me just say this: We rely on law enforcement to
20 protect and serve. There's a problem, we feel threatened,
21 we call 911 and law enforcement arrives. We rely on them.
22 But we also owe them, and by that I mean that in a
23 situation like this when you have a defendant that
24 endeavors to take the life of a law enforcement officer we
25 all should regard that as a slap against all of us. As a

1 strike against all of us because we have asked them to
2 serve and to protect us. And then we find ourselves faced
3 in courtroom today because this defendant, rather than
4 respecting the authority and submitting to an arrest, that
5 was lawful decided to in essence take -- try to take the
6 life of Sergeant Coombs.

7 So this is our chance to protect them and thank them
8 for protecting us. And, again, you will hear the details
9 of just what transpired during that time. You will hear
10 in detail, obviously, from Sergeant Coombs and from
11 Sergeant Wallace and you will hear again in just a few
12 moments from Miss -- both Ms. Wrights.

13 I thank you in advance for your attention to this
14 case. It will not be a long case, but let me stress it
15 again. Length of a case does not equate to the importance
16 of a case. Just because we're not going to be here, as
17 the Court had indicated, for a long time as in some states
18 does not make this case any less important.

19 And we ask that through your verdict at the
20 conclusion of the case that you send a message to this
21 defendant that we have asked gentlemen like Sergeant
22 Coombs, Sergeant Wallace and others to protect and serve
23 us. But when they find themselves in a situation with a
24 citizen who decides to try to take -- I guess basically
25 take the life of one of these that we've asked to protect

Opening Statement by Mr. Swilley

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1 and serve us, this is our chance to stand up and, again,
2 not just say thank you. But this is our chance and this
3 is how we protect them. So, again, I thank you for your
4 attention, and I look forward to addressing you further in
5 my summation.

6 THE COURT: Counsel.

7 MR. SWILLEY: Thank you, Your Honor, Mr. Redmond.

8 MR. REDMOND: Mr. Swilley.

9 OPENING STATEMENT BY MR. SWILLEY

10 MR. SWILLEY: Good morning, y'all. My name is Matt
11 Swilley. I'm from Greenville. I grew up in Greenville.
12 I live here in Cheraw now and work here in Chesterfield.
13 This here is Julius Curry as Mr. Redmond pointed out.
14 Julius has lived here in Chesterfield County for about
15 eight years.

16 What really happened on August the 30th of 2013. I'm
17 going to go back a little far. Before this dispute ever
18 happened Julius and Marshall Wright, as Mr. Redmond just
19 mentioned, were drinking alcohol. A lot of it, and they
20 were using cocaine. Both of them. That's right. Not
21 covering anything up. My client was using cocaine on
22 August 30th 2013.

23 Now, they live out on [REDACTED]
24 [REDACTED]. It's about between Chesterfield and
25 Cheraw. A little closer to Cheraw, and you go down to a

1 trailer park. I'm still new here so I'm still trying to
2 get my bearings, but they live on down on the right in the
3 mobile home at [REDACTED]. And Marshall and
4 Julius, they walked up the trailer park to get some more
5 cocaine. And then on the way back they were walking back
6 and Marshall -- I keep wanting to say Shiquan. Shiquan is
7 her daughter.

8 Marshall Wright, Julius' fiance at the time, took a
9 ride from somebody back to their house. Julius didn't
10 take a ride, didn't want to get in the car. And quite
11 frankly was very irritated with the fact that she got in
12 the car with these two fellows just to get a ride. So he
13 gets back to the house and him and Marshall get in an
14 argument. And they get in the argument. Fairly bad. It
15 was fairly bad.

16 But, so, needless to say you already know from Mr.
17 Redmond, this argument got physical, okay. They started
18 hitting each other. I'm not telling you my client didn't
19 lay hands on his girlfriend because he did. Now, when he
20 did that Shiquan, Marshall's daughter, got involved in it.
21 They got into a affair of three people fighting physical.
22 At that point Shiquan goes and calls the police. the
23 police come. Officer Coombs comes over.

24 Julius and Marshall are still inside. You walk in --
25 you walk in their mobile home. Here is the front door.

Opening Statement by Mr. Swilley

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1 The bedroom door is about right back this way. It's a
2 medium sized mobile home as far as mobile homes go. So
3 what happened was, you know, first off, Julius was upset.
4 He's up Shiquan went and called the police.

5 While we're on the subject, Mr. Coombs -- Officer
6 Coombs gets -- Deputy Coombs, excuse me. Deputy Coombs
7 gets in the house, goes back, goes back in the bedroom and
8 finally gets to the door and sees Julius. And he sees
9 Julius and he's holding a knife. Okay. And when he sees
10 Julius holding that knife Deputy Coombs takes his tazer.
11 Now, and you're going to learn about what a tazer is and
12 this is important.

13 A tazer is what we call an electronic control device.
14 Most police now a days have them. It's a fairly new
15 invention. Well, not invention but it's a fairly new tool
16 or instrument that officers use for about the past ten
17 years. And what happens when you have a tazer is you take
18 that tazer out and it shoots out these prongs. And when
19 it hits you it connects.

20 The person who is on the other end of the tazer with
21 the actual tazer gun can shoot a current of about 5,000
22 volts into that person. And you don't have to be a
23 scientist to know that that's really, really painful.
24 Excruciating pain. And setting it off Sergeant Coombs saw
25 Julius with that knife. Whipped it out. Shot him one in

1 the neck and I believe one hit him in the stomach.

2 At that point Julius hit the floor. At some point
3 Officer Coombs comes over to Julius. He runs up the
4 current on him a couple more times. He's not doing what
5 he wants him to do right at that split second. That makes
6 Officer Coombs angry the fact that he's not complying.
7 Not complying with his demands. All right.

8 When he does that finally comes over to Julius. At
9 some point the knife comes out of Julius' hand, and Julius
10 didn't cooperate with him, struggled with them. Deputy
11 Wallace comes around. There is another struggle. He puts
12 Julius in handcuffs. They take Julius to the hospital.
13 All right. He has to have prongs surgically removed from
14 him, and he has to be treated for his injuries. I think
15 Deputy Wallace also had to have his hand looked at because
16 during the struggle the officers -- they beat him up
17 pretty good, okay.

18 And you're going to see that, but I'm sitting here
19 telling all this because I'm not sitting here telling you
20 my client is a choir boy. I'm not telling you that he's
21 the best person that ever lived. I'm not telling you that
22 he's going to be elected the president of the United
23 States. Okay. I'm telling you this story called Four
24 Works For All, as my grandma used to say. I'm not telling
25 you that Julius didn't break the law, but I am telling you

1 that Julius did not break the law for which he is indicted
2 for. He didn't commit attempted murder on a deputy
3 sheriff. He didn't resist arrest with a deadly weapon.
4 He didn't commit C.D.V. high and aggravated against his
5 fiance. He didn't commit assault and battery in the
6 second degree against Shiquan Wright, his fiance's
7 daughter.

8 He didn't break those laws, and that's why we're
9 here. You see in real life you see on t.v. you get these
10 impressions that, you know, you have these perfect people
11 sometimes that are on trial and you have people that are
12 -- often people that are on trial in real life situations
13 like this.

14 In this situation Julius didn't commit the crimes
15 that the State is saying that he committed. And that's
16 important. That's why your job is going to be tough.
17 It's going to be really important because you're going to
18 have to see through all the stuff that makes him look bad.
19 And there is going to be some stuff that makes him look
20 bad. But once you get past that stuff and really get down
21 to the facts and listen to the testimony and look to the
22 evidence you're going to see that he's not guilty of the
23 crimes as charge with.

24 And the C, and I won't go into this too much, but you
25 need to know that when the defendant or a person is

1 arrested by the police they go -- they have got to get a
2 warrant for them if the case is going to end up here in
3 what we call General Sessions Court. When they get a
4 warrant they go to a magistrate judge. The Magistrate
5 with probable cause will sign the warrant and the person
6 is formally charged with the crime.

7 In this case -- and then later on in order for that
8 person to come before a judge and jury like y'all there
9 has to be an indictment by a grand jury. Y'all are what's
10 called a petit jury of a particular trial. But a grand
11 jury goes over all the cases and has to decide whether
12 there is probable cause a reason to think that the
13 crimes -- a reason to think that the person did the crime.
14 Very low standard.

15 Through that whole process Julius does not get to
16 participate nor anybody else get to participate. Today or
17 yesterday rather when we picked the jury was the first
18 time he's gotten that participation to be himself in this
19 whole process. And that's extremely important as well.

20 Now, what Mr. Redmond touched on is that the State
21 has the burden of proof in this matter. Okay. And that's
22 right. The State does have the burden of proof. We don't
23 have to prove anything. Julius doesn't have to prove
24 anything, okay. He is presumed innocent up until the
25 State can, theoretically if they could, prove him guilty

1 beyond a reasonable doubt which they won't don.

2 And, third, and most important is that that burden of
3 proof is beyond a reasonable doubt. I'm going to get into
4 that later on in my closing, but you've got to understand
5 that that's theory there. A very high burden that the
6 State is not going to be able to meet. The State is not
7 going to be able to meet it because he did not commit
8 these particular crimes which he's charged with. For
9 which he's charged with. Excuse me.

10 You know, I just want to emphasize how important all
11 of y'all's jobs is collectively because every time I pick a
12 jury, and I'm still young. I haven't been doing this that
13 long. But you see people who want to get out of jury
14 duty. They don't want to be here. They want to go on
15 with their lives. And I always think of myself.
16 Everybody knows how much power they're going to have if
17 they get on the jury.

18 Unless y'all get elected to some office at some level
19 today this -- unless you get on another jury, this is the
20 most power any of y'all are going to have. Probably in
21 your whole lives. It is very, very, very important and
22 you're very, very, very powerful at this point. So we ask
23 that you exercise that power very responsibly and pay
24 attention during the course of this trial. And at the
25 conclusive of this trial I'm going to ask you to find

1 Julius not guilty of the crimes for which he's charged and
2 that's because he's not guilty. Thank you.

3 THE COURT: All right.

4 MR. REDMOND: May it please the Court, Your Honor.
5 The State would first call Ms. Marshell Wright.

6 THE COURT: Ms. Wright, if you will come around and
7 be sworn, please.

8 MARSHALL WRIGHT, after being duly sworn,
9 testified as follows:

10 CLERK OF COURT: You may be seated.

11 DIRECT EXAMINATION

12 BY MR. REDMOND:

13 Q. Ms. Wright, please state your name for the record.

14 A. Marshell Wright.

15 Q. And do you still reside at [REDACTED]?

16 A. I do.

17 Q. And that's I guess considered in the Cheraw area of
18 Chesterfield County?

19 A. Yes, sir.

20 Q. And is Shiquan Wright your daughter?

21 A. Yes, she is.

22 Q. All right. And let me just get straight to it. And
23 we heard it in opening statement, so let me ask you about
24 the 20th of -- excuse me. The 30th of August 2013. Were
25 you and the Defendant doing drugs that day?

1 A. Yes, we were doing drugs and drinking all day.

2 Q. Okay. Now, tell us leading up to the incident what
3 happened to cause y'all to get into the altercation?

4 A. Well, we left the trailer park.

5 Q. Now, which trailer park is this?

6 A. Magnolia. Magnolia Lane. Two guys and a ---

7 Q. Hold on just a moment.

8 THE COURT: Can we turn the system up a little bit.

9 BY MR. REDMOND:

10 Q. And while we're doing that, Ms. Wright, if you could
11 speak as loudly as you can. The acoustics in here aren't
12 the best. Okay. You can continue, please.

13 A. I left the trailer park. Two dudes in a car stopped
14 and asked did we want a ride. And we knew them, but
15 Julius was complaining that his feet were hurting. So I
16 told him let's go ahead and take the ride. We wasn't too
17 far from being home. Julius didn't want to ride, so I got
18 in the car with the guys. They come out their mailbox
19 where Julius could see that I got out home.

20 When he got home -- when I got inside the house I was
21 talking to my daughter. Julius came. He kicked the door
22 in and started fussing with me. He slapped me the first
23 one time then he slapped me again. And my daughter said,
24 "Julius, I'm not going to let you keep hitting my mother
25 like that." That's when he jumped on her.

1 Q. Let me stop you there, and I can tell that you are
2 eager to go ahead and let this jury know what happened, but
3 it's my fault. What's that nature of or what was the
4 nature of your relationship with Julius Curry, the
5 defendant, at that time?

6 A. His girlfriend.

7 Q. Okay. And how long had y'all been seeing each other?

8 A. A year and a half.

9 Q. Okay. And do you currently consider yourself in a
10 relationship with him?

11 A. Now?

12 Q. Yes, now?

13 A. No.

14 Q. Okay. Now, let me ask you this. Getting back to the
15 matter at hand, the incident, let's go back through a
16 little bit. When you got back to the house what was it
17 that he was mad about?

18 A. That I got in the car and I left him.

19 Q. Okay. And about how far did you go in the car with
20 these guys before they dropped you off?

21 A. It wasn't far. He could see me whenever they dropped
22 me off.

23 Q. So it wasn't like you went and rode around ---

24 A. No.

25 Q. --- town or anything like that. Okay. So that made

1 him mad?

2 A. Um hum.

3 Q. And so once you got back to the house tell me --
4 again, tell this, the jury, what happened?

5 A. After he got to the house and he kicked the door in
6 and he slapped me a couple times. My daughter jumped in
7 it. He jumped on her. He choked her in the head, and he
8 hit her upside her head. And I ran outside trying to
9 distract him and get him off of her to come after me which
10 he did.

11 I ran behind our house. And he seen my shadow and he
12 came back in, and that's when he jumped on me. And she
13 jumped on his back and I bit him.

14 Q. Okay. Now, let me stop you there. Was this during
15 the time that he was attacking your daughter?

16 A. Um hum.

17 Q. Okay?

18 A. Yes.

19 Q. So you jumped on him and bit him?

20 A. Bit him in his back.

21 MR. REDMOND: And if the Court would indulge me.

22 This is marked as State's Exhibit Number Nine.

23 BY MR. REDMOND:

24 Q. Let me show you ---

25 MR. REDMOND: If I may approach the witness, Your

1 Honor.

2 BY MR. REDMOND:

3 Q. --- with what's been marked as State's Exhibit Number
4 Nine.

5 A. I bit him.

6 Q. Okay.

7 A. I did it.

8 Q. Okay.

9 MR. REDMOND: I would move to admit State's Nine into
10 evidence at this time.

11 MR. SWILLEY: No objection, Your Honor.

12 THE COURT: In without objection.

13 (WHEREUPON, State's Exhibit No. 9 was admitted into
14 evidence.)

15 BY MR. REDMOND:

16 Q. And you said you did that. Is that the bite mark
17 that you just described to the jury?

18 A. I did that.

19 Q. Yes. Okay. Now, at the time that you had to do that
20 to I guess come to the aid of your daughter was that the
21 end of this incident? Did it stop then or.

22 A. It kept going on.

23 Q. Okay. Tell us about that, Ms. Wright?

24 A. After that I told Shiquan to call the police cause he
25 had took my cell phone.

1 Q. Let me stop you there. There was something you
2 mentioned that I need to clarify. You said that he kicked
3 the door in?

4 A. Uh huh.

5 Q. When you got back to the house did you lock the door?

6 A. I locked the door. The door was locked.

7 Q. Why did you do that?

8 A. Because I knew.

9 Q. Could you repeat that? Why did you do that?

10 A. Because I knew Julius was going to start something
11 else.

12 Q. So you?

13 A. I knew.

14 Q. You knew he was going to be mad, and you locked the
15 door?

16 A. Um hum.

17 Q. So that's why he had to kick the door in?

18 A. Um hum.

19 Q. Okay. And, now, I apologize. Okay, could you slow
20 down. I know you're eager to go ahead and tell the jury
21 but if you could just slow down.

22 COURT REPORTER: I just need her to say yes or no.

23 BY MR. REDMOND:

24 Q. Now, and I interrupted you. So we were talking about
25 where you were I guess biting him to try to get him off of

1 your daughter.

2 A. Off of my daughter.

3 Q. Okay. And I asked you if that was the end of this
4 incident?

5 A. No.

6 Q. Tell us what else occurred?

7 A. After that I told my daughter to call the police
8 because he had took my cell phone. And she called the
9 police, and he ended up getting her cell phone so she had
10 to run to the neighbor's house to use her phone to call
11 the police. And she waited outside in the driveway
12 because she was scared. She didn't want to come back up.
13 She said she had grabbed the Hypnotic bottle cause J had
14 pulled a knife out on her.

15 Q. Okay. Let me stop you right there. Could you repeat
16 what you just stated?

17 A. He had -- she Shiquan had grabbed the Hypnotic, the
18 empty bottle. And J -- cause J had pulled a knife out on
19 her.

20 Q. Okay because he had pulled a knife out on her. Let
21 me approach what's been marked as State's Two.

22 MR. REDMOND: If may approach the witness, Your
23 Honor.

24 BY MR. REDMOND:

25 Q. I'm sorry. Have you seen that exhibit before?

1 A. Um hum.

2 Q. And could you tell the ladies and gentlemen of the
3 jury what is State's Exhibit Number Two.

4 A. That's Julius Curry's knife.

5 Q. That knife, is that the knife that he had that day?

6 A. Um hum. That's it.

7 Q. Okay.

8 MR. REDMOND: State would move to admit at this time.

9 MR. SWILLEY: No objection, Your Honor.

10 THE COURT: In without objection.

11 (WHEREUPON, State's Exhibit No. 2 was admitted into
12 evidence.)

13 MR. REDMOND: Okay. So, and again, I stopped you to
14 the point where he had the knife and Shiquan was leaving.
15 Start from that point and continue telling the jury what
16 happened?

17 A. After she got to the road she got down. She got a
18 chance to get away to go use a neighbor's phone. And I
19 was just talking to him and talking about -- I was telling
20 him to walk back up to the house and talk about it for him
21 to calm down just so he won't focus on her. So he walked
22 back to me and me and him walked back to the house
23 together. And we went inside.

24 He pushed one of the living room chairs to the door
25 and he still had the knife in his hand, still sniffing

1 coke, drinking liquor, and I was on the other side of the
2 chair.

3 When Jimmy Coombs got there he was talking to Julius
4 telling him that ---

5 MR. SWILLEY: Objection, Your Honor. Hearsay what
6 Mr. Coombs said.

7 THE WITNESS: He was just talking to Julius and ---

8 MR. REDMOND: Your Honor, I can phrase the question
9 in such a way I think that it would -- the State would
10 contend that actually constitutes an exception to the
11 hearsay rule if I can rephrase the question.

12 THE COURT: Okay.

13 BY MR. REDMOND:

14 Q. You had just indicated that Sergeant Coombs arrived
15 at the scene?

16 A. Um hum.

17 Q. And did Sergeant Coombs -- did he, I guess, say
18 anything? Without saying what he said did he say anything
19 when he arrived at the scene?

20 A. Yeah. He was just -- well, he knocked on the door.
21 He knocked on the door and he called Julius' name for him
22 to come out but he wouldn't come out.

23 Q. Okay. All right. Now, where were y'all at the time
24 that Sergeant Coombs initially -- when you first heard
25 him?

1 A. We were in the living room at first.

2 Q. Okay.

3 A. But when Jimmy was trying to get in he told me to get
4 up and go in the bedroom.

5 Q. Okay. So let me make sure we're clear on this. When
6 you say Jimmy are you talking about Sergeant Coombs?

7 A. Sergeant Coombs.

8 Q. Okay. So Sergeant Coombs was trying to get in, and
9 at that time the defendant had you to go into the bedroom?

10 A. Um hum. Yes.

11 Q. Was the Defendant still armed with the knife at the
12 time?

13 A. Yes.

14 Q. Okay. Now, was Sergeant Coombs able to get in at
15 that time?

16 A. Yeah. He pushed the door open cause the chair was in
17 front of the door.

18 Q. Okay. And so at some point was he able to get inside
19 the house?

20 A. Yeah, he got in.

21 Q. All right. At the time that he was getting -- that
22 he got inside the house did Sergeant Coombs give any
23 commands to the defendant regarding him being a law
24 enforcement officer regarding ---

25 A. Yeah. He was talking to Julius telling him to come

1 out.

2 MR. SWILLEY: Objection, Your Honor, that's hearsay
3 again.

4 BY MR. REDMOND:

5 Q. Let me ask you like this.

6 THE COURT: Be careful with the hearsay.

7 BY MR. REDMOND:

8 Q. Did Sergeant Coombs, as it relates to the manner that
9 he was speaking. Not what he was saying, but with regard
10 to the manner he was speaking, did Sergeant Coombs threaten
11 the defendant or anything like that?

12 A. No. No.

13 Q. How would you describe, not with what he said, but
14 how would you describe how Sergeant Coombs was talking?

15 A. Well, when knew Julius. When he came in he knew
16 Julius had a knife. He was telling him to drop the knife
17 and come out and he was going to talk to him.

18 Q. Okay. So with that did that end the incident? In
19 other words after the -- after Sergeant Coombs got in the
20 house did the Defendant comply with the request?

21 A. No.

22 Q. Okay. Did more things happen?

23 A. Yes.

24 Q. Could you tell us about that?

25 A. Yes. After -- well, when Mr. Coombs kicked the door

1 in and tazed Julius I ran out the room.

2 Q. Okay. Now, we're talking about in the bedroom?

3 A. In the bedroom.

4 Q. Okay. Now, Sergeant Coombs had to kick the door into
5 the bedroom. What was holding?

6 A. The door was locked.

7 Q. The door was locked. Okay. So he kicks in the door.
8 And he had to taze him?

9 A. Um hum.

10 Q. And what did you do at that point?

11 A. I ran out the room.

12 Q. Now, at the time Sergeant Coombs tazed him did the
13 defendant still have the knife in his hand?

14 A. Yes.

15 Q. Okay. And so he got tazed and you ran out the room?

16 A. Um hum.

17 Q. And after that what do you recall? What took place
18 to the best of your recollection from your observation
19 once you ran out the room?

20 A. I didn't see nothing else. I ran out the room.

21 Q. Okay. Now, did you see when -- did you see any
22 struggle take place between Sergeant Coombs and the
23 defendant?

24 A. No.

25 Q. Okay. In fact I believe at one time did you think

1 that he had been shot?

2 A. I thought he had been shot.

3 Q. As opposed to tazing him?

4 A. Um hum.

5 Q. Now, let me ask you this. Was your daughter also
6 there?

7 A. She was.

8 Q. And was your daughter actually closer to what was
9 going on that you were?

10 A. She was.

11 Q. And did Sergeant Dana Wallace subsequently come into
12 the house?

13 A. Yes.

14 Q. Okay. And did you see what took place while Sergeant
15 Wallace ---

16 A. Yes.

17 Q. Okay. And tell us what took place?

18 A. I saw him beating him.

19 Q. Now, did you see -- did Julius still have the knife.
20 while this was going on?

21 A. I can't recall.

22 Q. And so when Sergeant Wallace came in was Julius, from
23 what you could see, still resisting or whatever, tussling

24 ---

25 A. Yes.

1 Q. --- with the Sergeant Coombs?

2 A. Yes.

3 Q. And from what you saw was Sergeant Wallace going in
4 trying to assist Sergeant Coombs?

5 A. Yes.

6 Q. And when you talk about the fact that he was hitting
7 the defendant had the defendant been aggressive towards
8 law enforcement in ---

9 MR. SWILLEY: Objection, Your Honor. I think that's
10 leading.

11 MR. REDMOND: I can rephrase.

12 THE COURT: Okay.

13 BY MR. REDMOND:

14 Q. How was the defendant's demeanor towards Sergeant
15 Coombs and law enforcement in general that night? We're
16 talking about Sergeant Coombs and Sergeant Wallace. What
17 was his demeanor towards them? What was his -- how was he
18 acting towards them?

19 A. He was enraged. He was just enraged.

20 Q. All right. Now, did the defendant subsequently give
21 up the fight?

22 A. No.

23 Q. Okay. Was he -- were they subsequently, and when I
24 say 'they' were Sergeant Wallace and Sergeant Coombs
25 subsequently able to get him in custody? Get Julius in

1 custody?

2 A. No.

3 Q. Okay. Now, when I say 'in custody' did the fight
4 stop at some point?

5 A. After Dana Wallace got in it.

6 Q. Okay. So that's what I mean.

7 A. Yes.

8 Q. Once Dana Wallace got there, and I might have
9 confused you. I apologize. Once Dana Wallace got
10 there -- after Dana Wallace got there and had to hit him
11 did the fight stop?

12 A. It stopped.

13 Q. Okay. Thank you. Now, let's move forward a little
14 bit, and did you in fact tell law enforcement what took
15 place? I think on a couple of occasions you had the
16 opportunity to talk with them and tell them basically what
17 happened that night?

18 A. Yeah. Well, Julius also said that he was -- we were
19 getting high. He was real high, and he said that, "I feel
20 like I'm going to die tonight and I'm going to take ---

21 MR. SWILLEY: Objection, Your Honor.

22 THE COURT: Overruled. Go ahead.

23 BY MR. REDMOND:

24 Q. And let me be clear. Who said this?

25 A. Julius.

1 Q. Okay. And tell us again what the defendant said.

2 A. He said, "I feel like I'm going to die tonight, and
3 you know, if I do I'm going to take me a police with me."

4 Q. Okay. And at what point did he say that?

5 A. He said that before the police even got there.

6 Q. Okay. And this was while he was holding the knife?

7 A. Yeah. On me.

8 Q. On you. Now, when -- while he was in jail did the
9 defendant make any calls to you while he was incarcerated?

10 A. Yes.

11 Q. All right. Now. What -- in any of those calls did
12 the Defendant try to get you to not go forward with this
13 case?

14 A. Yes.

15 Q. Okay. Did the defendant try to get you to encourage
16 and even paid Shiquan Wright not to go forward with this
17 case?

18 MR. SWILLEY: Objection, Your Honor.

19 THE WITNESS: Yes.

20 MR. SWILLEY: I think he's leading the witness. He
21 eliciting yes or no questions.

22 MR. REDMOND: I can rephrase.

23 BY MR. REDMOND:

24 Q. Did he make any comments regarding Shiquan Wright?

25 A. Yes.

1 Q. And I'll just ask you. What was Julius Curry, the
2 defendant, trying to get you and -- to get you not to do
3 and to get Shiquan Wright not to do?

4 A. Drop charges.

5 Q. Okay. In other words he didn't want you to go
6 forward with this case?

7 A. No.

8 Q. Did he want Shiquan to go forward with this case?

9 A. No.

10 Q. Were there -- was it one phone call to that effect or
11 were there several phone calls?

12 A. I'll say about two or three.

13 Q. Okay. And on some of those calls did you indicate a
14 willingness to cooperate with him and if you did why was
15 that?

16 A. I can't remember.

17 Q. Okay. Now, were you still doing drugs at that time?

18 A. I was, but I'm not any more. I'm getting help.

19 Q. Okay. And we congratulate you on that and appreciate
20 you on that. And let me ask you this in conclusion. Is
21 what you told this jury to the best of your recollection
22 the truth based on what your recollection is of that
23 incident?

24 A. Yes.

25 Q. Did the defendant attack you and your daughter?

1 A. Yes.

2 Q. Did the defendant, I guess, try to avoid being
3 arrested by Sergeant Coombs?

4 A. Yes.

5 Q. And did he attack Sergeant Coombs? Did the defendant
6 attack Sergeant Coombs?

7 A. I didn't see that.

8 Q. You didn't see that part, but did you see -- had the
9 defendant been aggressive that whole evening?

10 A. Yes.

11 Q. And, lastly, did the defendant make a comment
12 regarding what was going to happen to the police?

13 A. Yes.

14 Q. And tell us again what he said?

15 A. That he was going to kill a police.

16 MR. REDMOND: Beg the Court's indulgence, Your Honor.
17 That will be all the questions at this -- I have at this
18 time. Permission to publish State's Nine and State's Two
19 to the jury.

20 THE COURT: Granted.

21 MR. REDMOND: Thank you. That would be all the
22 questions I have at this time. I may have one --
23 jurisdiction question that I forgot to ask. I always
24 forget to ask it.

25 BY MR. REDMOND:

1 Q. Is [REDACTED] in Chesterfield County?

2 Is that located within Chesterfield County?

3 A. Yes.

4 Q. Okay. Thank you.

5 MR. REDMOND: That would be all the questions that I
6 have.

7 CROSS-EXAMINATION

8 BY MR. SWILLEY:

9 Q. Marshall, you were with Julius that whole day, right?

10 A. Um hum.

11 Q. Okay. And you testified that he had been aggressive
12 that whole evening, right?

13 A. Yes.

14 Q. Okay. And you never called the police, did you?

15 A. No.

16 Q. Right. And until today you never mentioned that
17 Julius -- you never mentioned to anyone that Julius took
18 yours or Shiquan's cell phone, did you?

19 A. No, but that night I talk to ---

20 Q. But you never mentioned that before?

21 MR. REDMOND: Your Honor, she didn't complete her
22 answer. She's entitled to finish her answer.

23 THE WITNESS: That night Jimmy Coombs and Dana
24 Wallace know Julius took my cell phone.

25 Q. All right?

1 A. He ended up with both of our cell phones that night.

2 Q. Okay. Are you saying that Shiquan -- and then later
3 on after y'all got into that tussle Shiquan grabbed a
4 Hypnotic bottle, right?

5 A. Yes.

6 Q. And that's a liquor bottle, correct?

7 A. That's correct.

8 Q. And that's a very heavy liquor bottle, right?

9 A. Yes, it is.

10 Q. And subsequent to that is when Julius had that --
11 pulled a knife, right?

12 A. Um hum.

13 Q. Okay. After that, all right. And then after that
14 you guys go back in the house to try to calm Julius down,
15 right?

16 A. Um hum.

17 Q. Okay. It seems to be working at that point, right?

18 A. Yes.

19 Q. So and based upon your observations Julius was angry
20 that Shiquan had interjected herself into this argument,
21 correct?

22 A. That is correct.

23 Q. All right. And based upon your observations at that
24 point Julius goes back in the house and moves a chair in
25 front of the door, right? Okay. And then y'all go back

1 into the back bedroom and y'all were discuss -- you were
2 trying to calm him down still, right?

3 A. I was still trying to calm him down.

4 Q. And he is calming down, right?

5 A. He was calming down.

6 Q. He's holding the knife still, right?

7 A. Um hum.

8 Q. Never not once did he try to stab you that night?

9 A. No.

10 Q. Never not once did he threaten you with that knife,
11 did he?

12 A. No.

13 Q. Never not once did he point that knife at you, did
14 he?

15 A. No.

16 Q. Okay. And based upon your recollection he never
17 pointed that knife at anybody, correct?

18 A. I'm not going to say that.

19 Q. Okay. Now, Marshell, without pointing you said that
20 the first thing, and then when Jimmy Coombs gets to the
21 door, right, and Jimmy Coombs -- Mr. Coombs -- Deputy
22 Coombs, that is, he kicks the door in, doesn't he? Okay.
23 And the first thing Mr. Coombs does is he pulls that tazer
24 out and shoots, Julius, right?

25 A. I had ran from the room so I don't know about the

1 knife part or him pointing it at Jimmy Coombs. He could
2 have. I'm not going to say that he didn't, but he could
3 have.

4 Q. Well, I'm not asking you that. I'm asking you what
5 you recall. Is the first thing that you remember when you
6 were in that room is Jimmy shot him with the tazer?

7 A. And I ran out.

8 Q. Right. And, Marshell, when you ran out you could
9 hear Julius being tazed, right?

10 A. Um hum.

11 Q. I mean he was screaming, you remember?

12 A. He was calling my name.

13 Q. Was that a painful scream?

14 A. A little.

15 Q. Okay. Well, I mean -- all right. Was it a -- it
16 frighten you?

17 A. Yeah.

18 Q. Okay. And then you said you ran out the house,
19 right?

20 A. I ran into the kitchen.

21 Q. You ran into the kitchen, okay. And at that time
22 isn't it true you saw when Julius called your name, you
23 saw into that room, didn't you?

24 A. Um hum.

25 Q. Okay. You saw that room, and at no time did you ever

1 witness Julius trying to stab anybody, right?

2 A. No.

3 Q. Okay. You never witnessed that. And you're aware of
4 the rod that's in Julius' right arm, right?

5 A. Yes.

6 Q. And it's it true that based upon your knowledge that
7 he can't move his wrist very well, is that true?

8 A. That's true.

9 Q. Okay. And based upon your understanding it would
10 make it very difficult for him to maneuver that wrist to
11 stab anybody, correct? Is it yes or no?

12 A. Yes.

13 Q. Okay. So and then you said you recall after a short
14 time Deputy Wallace got there, right?

15 A. Yeah.

16 Q. Dana Wallace there, right? And then based upon your
17 recollection Deputy Wallace proceeds into the room, right?

18 A. Yes.

19 Q. And then you could see -- you saw Deputy Wallace taze
20 Julius with his tazer, too, right?

21 A. I didn't see that. No.

22 Q. Okay. You could hear it though, right?

23 A. I heard it.

24 Q. Okay. You heard the zilt, the jolt, right?

25 A. Um hum.

1 Q. Okay. And then you saw Dana Wallace punching Julius
2 repeatedly, right?

3 A. Yes.

4 Q. Huh?

5 A. Yes, sir.

6 Q. And you saw Jimmy Coombs head butting Julius, too,
7 right?

8 A. I didn't see Jimmy, Jimmy Coombs, head butt him. I
9 didn't see that.

10 Q. Okay. But you saw Dana Wallace punching him?

11 A. I saw Dana. I sure did.

12 Q. And you saw him put Julius in the handcuffs after
13 that?

14 A. Yes.

15 Q. A short time later. Okay. And then later on you saw
16 him put Julius into the ambulance, right?

17 A. Um hum.

18 Q. Okay. And at that time you recall Julius needing his
19 inhaler?

20 A. Yeah.

21 Q. Okay. Did you give his inhaler to the medical staff?

22 A. No. I took it to the jailhouse a couple of days
23 after that.

24 Q. Okay. So you took it a few days after that. All
25 right. And, Marshall, you --

1 MR. SWILLEY: Beg the Court's indulgence.

2 BY MR. SWILLEY:

3 Q. So you made a statement to Mr. Redmond's during his
4 direct examination that Julius said that he was going to
5 die tonight and he was going to take a police with him?

6 A. Yes, sir.

7 Q. And today is the first time that you ever said he
8 said that, right?

9 A. No.

10 Q. That's not in any of your prior interviews, is it?

11 A. Sir?

12 Q. That's not -- you're saying -- that's not in any of
13 your prior interviews, is it?

14 A. Well, when he -- well, a couple of times the
15 Sheriff's Office came out to the house and I mentioned
16 that.

17 Q. Okay. So you said the Sheriff's Office has been out
18 to your house several times, right?

19 A. About twice.

20 Q. Okay. And did that make you uncomfortable?

21 A. No.

22 Q. Okay. So they hadn't made contact with you after
23 that night?

24 A. No.

25 Q. In regards to what your story was going to be? Yes

1 or no.

2 A. Yes.

3 Q. Okay. And during that night, too, Julius never
4 stabbed Shiquan, did he?

5 A. No.

6 Q. Never pointed -- never tried to stab Shiquan, did he?

7 A. No.

8 Q. Never pointed the knife at Shiquan, did he?

9 A. He pulled the knife out and then he turned towards
10 her.

11 Q. Just took it out?

12 A. He took it out.

13 Q. Okay. Thank you, Marshall.

14 A. Um hum.

15 MR. REDMOND: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. REDMOND:

18 Q. Was the defendant angry this night during everything
19 that you've described?

20 A. Yes.

21 Q. And during a large portion of that was he angry and
22 had a knife?

23 A. Yes.

24 Q. Okay. And you were in the bedroom. When you went in
25 the bedroom, and I think you testified to it previously,

1 did he lock the door or lock the bedroom so that you
2 couldn't get out?

3 A. Yes.

4 Q. So -- and did he do this while he was holding a
5 knife?

6 A. Yes.

7 Q. Okay. So did you feel that you could leave the
8 bedroom?

9 A. No.

10 MR. REDMOND: That's all I've got, Your Honor.

11 THE COURT: Anything further?

12 MR. SWILLEY: Briefly, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. SWILLEY:

15 Q. Marshall, you never told anybody previous to today
16 that you didn't feel like you could leave the bedroom, did
17 you?

18 A. No.

19 Q. Right. Because that's the truth. You didn't feel
20 that way, did you? You just testified earlier when I was
21 asking questions that you recall you were in there calming
22 Julius down?

23 A. I was.

24 Q. Okay. And based upon your observations he locked
25 that door because he was scared, right?

1 A. Yes.

2 Q. Okay. Thank you.

3 MR. REDMOND: Just briefly to clarify.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. REDMOND:

6 Q. When you say he was afraid, and let me make sure
7 we're clear on this. At the time he went inside what is
8 it that he was afraid of since he was asked on recross?

9 A. Nothing.

10 MR. SWILLEY: Objection, Your Honor. That calls for
11 speculation.

12 THE COURT: You opened the door on it so she can
13 explain it.

14 BY MR. REDMOND:

15 Q. Was this also during the time that he made the
16 comment about the police -- him dying and taking a police
17 with him?

18 A. Yes.

19 Q. Okay. So when you were talking -- when you were
20 asked questions concerning that was it while the door was
21 locked that he made that comment concerning the police and
22 dying, too?

23 A. It was before they got there. He had said that back
24 in the bedroom.

25 Q. Okay. And who was the only person talking about law

1 enforcement -- you talked to law enforcement. You talked
2 with Mr. Curry, but you were asked this. Who is the only
3 person that asked you to change your story in this case?

4 A. Julius.

5 MR. REDMOND: I have nothing further, Your Honor.

6 THE COURT: Anything further?

7 MR. SWILLEY: Nothing else, Your Honor.

8 THE COURT: You may step down. Be careful with that
9 step.

10 MR. REDMOND: State would next calls Ms. Shiquan
11 Wright.

12 THE COURT: Ms. Wright, come around and be sworn,
13 please.

14 SHIQUAN WRIGHT, after being duly sworn,
15 testified as follows:

16 CLERK OF COURT: Please be seated. Please make sure
17 you answer all your questions with a yes or no.

18 DIRECT EXAMINATION

19 BY MR. REDMOND:

20 Q. Could you state your name for the record, Ms. Wright?

21 A. Shiquan Wright.

22 Q. Okay. And do you still reside at [REDACTED]
23 Road?

24 A. Yes, sir.

25 Q. Do stay with your mother?

1 A. Yes, sir..

2 Q. And let me ask you this. Do you know the defendant,
3 Julius Wright [sic]?

4 A. Yes, sir.

5 Q. And did he previously date your mother?

6 A. Yes.

7 Q. Now, do you recall the events of August 30th 2013?

8 A. Yes.

9 Q. And I guess was it after ten o'clock in the evening
10 when the incident we were going to refer to took place?

11 A. Yes.

12 Q. And could you tell the ladies and gentlemen of the
13 jury what happened in -- you know why you're here today,
14 right?

15 A. Right.

16 Q. Could you still us what happened in relation to the
17 reason that we're here today?

18 A. Okay. Well, I was sleeping at my mother and J was at
19 the trailer park. She told me that she had walked. They
20 were walking, and a couple of guys had picked them like to
21 take them home. J feet was hurting cause I guess he got
22 some calluses on his feet. And so she was trying to
23 reason with him to get him in the car so won't have to
24 walk because his feet was already hurting.

25 So J didn't want to get in the car, and mom, she

1 didn't want to walk anymore. So she got in the car. The
2 people dropped her off at the end of our dirt road, and
3 she walked on the rest of the way to the house. And she
4 got to the door and I let her in. And she locked the door
5 immediately and telling me that -- was telling me what had
6 happened.

7 And so after that, a couple of minutes, he kicked the
8 door. And so he started hitting my momma, and I jumped in
9 front of him so he won't keep on hitting her. So instead
10 he just go around me and was slapping her. And I was -- I
11 pushed her and I told J not to hit my mother anymore. And
12 so he asked me what was I going to do, and immediately he
13 hit her again.

14 And I pushed him again and he swung off on me. And
15 so after that me and J was tussling on the floor. And my
16 mother, you know, she was screaming. So she unlocked the
17 door and ran out the door and to get J off of me. And
18 then so after that I grabbed my shoes cause I knew I
19 wouldn't be able to call the police in my house.

20 And so I immediately grabbed the Hypnotic bottle and
21 I was making my way to go and call the police at my
22 neighbor's house.

23 Q. Why -- let me stop you there. Why did you grab the
24 Hypnotic bottle? Why did you feel that you needed to grab
25 the Hypnotic bottle?

1 A. Cause I knew he was going to stop me if I didn't.

2 Q. Okay. He being the defendant? Okay. Go ahead.

3 Continue. I'm sorry.

4 A. So I continued to walk down the dirt road. And J
5 pulled a knife on me. So I was like, okay, I got a bottle
6 in my hand. There is not too much he can do to me if I
7 swing at him with the bottle.

8 Q. Okay, and let me stop you right there. How was he
9 holding the knife? When you say he was holding the knife
10 how was he holding the knife?

11 A. Like this.

12 Q. Okay. Was it clear -- so in other words, cause it
13 was obvious that he was make ---

14 A. Yeah. It was obviously at me.

15 Q. Okay. Now, go ahead and continue. I'm sorry.

16 A. Okay. So I was -- we was just going back and forth,
17 you know, arguing. And so eventually he got the bottle
18 out of my hand and he threw it across the field. And so
19 my mom was sitting there, and she was talking and talking
20 and trying to get J's attention. And by that time I had
21 jetted down there to Diane's house. That's our neighbor.
22 And when I got to the door of her house I asked her could
23 I call the police off of her phone.

24 Q. Okay. And let me just ask you to repeat that, and if
25 I could get you to talk a little bit louder. The

1 acoustics here are bad and I just want to make sure that
2 everybody at this end can hear you.

3 A. After I got away from J I called the police. And I
4 went to the door and called the police at Diane's house
5 cause I thought it was an emergency.

6 Q. And the last thing you said you thought it was an
7 emergency?

8 A. Yes.

9 Q. Go ahead. So you called from Diane's house?

10 A. Yes.

11 Q. Tell us what took place? Well, let me back up real
12 quick just to clarify. During the time, I think you
13 talked about when you intervened because he was hitting
14 your mother, did you -- and again, clarify what took place
15 with you and the Defendant and I guess your mother once
16 you intervened. Did he hit at you?

17 A. Yes.

18 Q. And did y'all subsequently, I think, end up on the
19 floor ---

20 A. Yes.

21 Q. --- involved and who initiated the whole altercation?

22 A. J.

23 Q. Okay. Now, just I wanted to make sure that was
24 clear. Now, let's move forward to, again, you made the
25 911 call from Diane's house. Tell us what took place from

1 there?

2 A. Okay. I started walking back down there. I didn't
3 see either one of them so I -- they were at the house.
4 And so wasn't dare going back in that house. I sit there
5 and I waited on Jimmy to arrive, and I didn't get him on
6 ---

7 Q. And Jimmy being Sergeant Coombs?

8 A. Yes.

9 Q. Okay. All right?

10 A. And so I directed him where, you know, where the
11 house was. And so at that time I was, you know, with
12 Jimmy the whole time cause I was outside the door with him
13 when he was trying to reason with J to let him in.

14 Q. Okay.

15 A. And so after, you know, after a while he kept telling
16 J to let him in. I guess him and my momma went from the
17 living room to the bedroom. And I told Jimmy that the
18 door was already kicked in and that maybe just try to push
19 it in the way it was. It might be easy to open since it
20 was already kicked in.

21 Q. Okay.

22 A. And so that's what he did. He just pushed his way on
23 in. And we walked through about to the table where the
24 kitchen is. The bedroom is like right there.

25 Q. Okay. Now, at that point did Sergeant Coombs

1 continue to try to reason with the defendant?

2 A. Yes.

3 Q. Did the defendant comply with those requests?

4 A. No.

5 Q. Okay. And could you tell us then after y'all are in
6 the house were the defendant and your mom in the bedroom?

7 A. Yes.

8 Q. And tell us what happened from that point forward?

9 A. Okay. Well, he was keep on trying to get J to come
10 out and surrender. And so he walked on to the door and
11 told him to surrender and he just kicked the door in. And
12 he saw J left hand and he shot the tazer in him.

13 Q. Okay. Did J have the knife in his hand? At the time
14 he was shot with the tazer was J holding the knife still?

15 A. Yes.

16 Q. All right. Now, so J is holding the knife. Sergeant
17 Coombs kicks in the door. J is holding the knife. Your
18 mom was still in the bedroom?

19 A. She ran out as soon as the tazer hit.

20 Q. Okay. So he gets tazed and she runs out?

21 A. She runs out.

22 Q. Now, once the tazer -- once he's tazed did the
23 Defendant subsequently fall to the floor?

24 A. Yes.

25 Q. All right. And did Sergeant Coombs at that point

1 attempt to, I guess, attempt to initiate the arrest?

2 A. Yes.

3 Q. Did that to smoothly?

4 A. No.

5 Q. And tell us why it didn't go smoothly?

6 A. Well, he was telling J to, you know, lay down on the
7 ground. He was already on the ground. He didn't really
8 want to give up to the officer.

9 Q. So let me stop you. So despite being tazed was the
10 defendant still holding on to the knife?

11 A. Yes.

12 Q. Okay. Please continue.

13 A. Okay. So Jimmy probably tazed him like one more time
14 after that. Like he was already shot so he just pushed
15 the button on the tazer. So he walked over and tried to
16 get the handcuffs out of, you know, his pocket. And J had
17 took to the ground and they were struggling with the knife
18 on the floor.

19 Q. So when J turned around was he still holding the
20 knife?

21 A. Yes.

22 Q. And, in other words, well, Sergeant Coombs was trying
23 to initiate the arrest. The defendant turns around and is
24 still holding the knife when he turns around?

25 A. Yes.

1 Q. All right. And tell us what you saw and what you
2 observed from that point forward?

3 A. I saw them struggling with the knife. And then after
4 a couple of minutes Dana comes in the door. Our door was
5 already open, so he comes in the door and immediately
6 comes to help his partner.

7 Q. Okay. Could you repeat that, and again, I think your
8 voice is tailing off just a bit. Could you repeat that
9 last part?

10 A. Dana rushed in immediately because -- and come to the
11 aide of his partner.

12 Q. Okay. And so during the course of, I guess -- well,
13 let me just ask you like this. Based on your observations
14 who was the aggressor in this even as it relates to what
15 was taking place with Sergeant Coombs?

16 A. J was.

17 Q. Okay. And did the defendant at some point -- well,
18 was he holding the knife the entire time? Was he holding
19 the knife?

20 A. Yes.

21 Q. And how would you characterize, if you could -- well,
22 let me ask you this. During your observation and from
23 your observation and opinion did you view this as a
24 dangerous situation for Sergeant Coombs?

25 A. Yes, sir.

1 MR. SWILLEY: Objection, Your Honor. I would move to
2 strike that.

3 MR. REDMOND: I didn't ask to speculate. I asked
4 whether or not she viewed it as a dangerous situation for
5 the Sergeant.

6 THE COURT: I'll have to overrule that.

7 MR. REDMOND: Thank you.

8 BY MR. REDMOND:

9 Q. Did you -- let me repeat it. Did you view this as a
10 dangerous situation based on your observations of
11 everything for Staff Sergeant Coombs?

12 A. Yes.

13 Q. And I think you made the comment that Sergeant
14 Wallace came in to help his partner. Based on your
15 observations did Sergeant Coombs -- was he in need of
16 assistance at that time?

17 A. Yes.

18 Q. Okay. Any doubt in your mind about that?

19 A. No.

20 Q. Okay. Now, Sergeant Wallace, once he got in tell us
21 what took place. What finally ended up concluding this
22 whole sad situation?

23 A. Well, after that he had to, you know, get roughed up
24 to get the handcuffs on him.

25 Q. So in essence before he got roughed up was he

1 complying with them?

2 A. No.

3 Q. Okay. And based on your observation once they
4 were -- I mean once that had to hit him was that to try to
5 get the knife away from him and get him in custody?

6 A. Yes.

7 Q. Okay. Did he finally comply?

8 A. Yes.

9 Q. Okay. And at that point was he taken into custody?

10 A. Yes.

11 Q. Okay. Now, I think you also gave statements to law
12 enforcement on a couple of occasions as well?

13 A. Yes.

14 Q. Describing what happened?

15 A. Yes.

16 Q. And, again, the defendant actually attacked you in
17 this situation. Are you a victim in this situation?

18 A. Yes.

19 Q. Okay. Has anybody encouraged you -- has anyone in
20 law enforcement encouraged you to lie or change your story
21 in order to try to convict this defendant?

22 A. No.

23 Q. I think you testified earlier that when you called
24 911 you felt this was a dangerous situation?

25 A. Yes.

1 Q. Okay. Now, when the -- were you aware of any
2 discussions between your mom and the defendant to try to
3 get you to change your story?

4 A. No.

5 Q. No, okay. If he had asked you to change your story
6 or if she had asked you to change your story would you
7 have changed your story?

8 MR. SWILLEY: Objection. I think that's bolstering.

9 MR. REDMOND: I can rephrase. I don't think it's --
10 I don't understand the objection, but I'll just rephrase
11 the question.

12 THE COURT: Go ahead. Rephrase it.

13 BY MR. REDMOND:

14 Q. Is what you're testifying to the truth?

15 A. Yes.

16 Q. And would you -- is there any way you would be
17 encouraged to change what happened?

18 A. No.

19 Q. Or to change what your testimony is?

20 A. No.

21 Q. Why the that Ms. Wright?

22 A. Because I feel like I'm doing the right thing.

23 Q. Okay. And is that telling the truth?

24 A. Yes.

25 Q. Okay.

1 MR. REDMOND: Beg the Court's indulgence just one
2 moment. And I shown this, and we've listened to the tape
3 and including the 911 call. I have State's Exhibit Number
4 One that -- beg the Court's indulgence.

5 MR. SWILLEY: No objection, Your Honor.

6 MR. REDMOND: We would move to admit State's One at
7 this time if the Court would indulge me. Thankfully, Mr.
8 Farr has returned cause I have no clue.

9 (WHEREUPON, State's Exhibit No. 1 was admitted into
10 evidence.)

11 MR. REDMOND: If we can set this up real quickly,
12 Your Honor, and play the 911 tape. It's pretty brief.
13 And once the 911 tape plays, Your Honor, that will be all
14 the questions I have for the witness.

15 (WHEREUPON, State's Exhibit Number One was played in
16 open Court.)

17 MR. REDMOND: Again, that would be all the questions
18 I have.

19 THE COURT: Your witness, counsel.

20 CROSS-EXAMINATION

21 BY MR. SWILLEY:

22 Q. Shiquan, you said that you recall when Julius and
23 your mother was arguing. You interjected yourself into
24 that confrontation?

25 A. Yes.

1 Q. And later on you said you picked up a bottle, the
2 Hypnotic bottle, and Julius and -- when you did that he
3 took a knife out, right?

4 A. Yes.

5 Q. Okay. And then later on you said you go to call the
6 police and the police get there. When you saw the police
7 get there you watched Jimmy Coombs go into the room,
8 right? You watched your mother come out, right?

9 A. Yes.

10 Q. You saw Jimmy Coombs taze Julius the first thing
11 before he even walked in the door, right?

12 A. Yes. You said before he walked in the door?

13 Q. Right when you walk in the door, right?

14 A. Yeah.

15 Q. You saw Julius go down face first, right?

16 A. Yes.

17 Q. You saw the prongs sticking inside of Julius, didn't
18 you?

19 A. Yes.

20 Q. And you saw Jimmy Coombs shock him a couple more
21 times?

22 A. Yes.

23 Q. All right. You say you saw Jimmy Coombs pull his
24 trigger on his tazer and you saw Julius' body react to
25 those shocks?

1 A. Yes.

2 Q. Right. And you saw Jimmy Coombs walk over to him,
3 right?

4 A. Yes.

5 Q. And then you saw him struggle with Jimmy Coombs?

6 A. Yes.

7 Q. Never not one time did Julius attempt to stab Jimmy
8 Coombs based upon your observations; isn't that right?

9 A. Yes, right.

10 Q. That is correct? Mr. Coombs didn't get stabbed, did
11 he?

12 A. No, he didn't get stabbed.

13 Q. Okay. And based upon what you saw -- you saw the
14 whole thing, right?

15 A. Right.

16 Q. You never saw Mr -- you never saw Julius try to stab
17 anybody, right?

18 A. No. I just saw them struggle over a knife.

19 Q. Okay. And you couldn't tell if the knife -- you
20 couldn't tell whether or not the knife was out of Julius'
21 hand, and it wasn't, right?

22 A. Yeah, as far as I can tell.

23 Q. Okay. Nobody ever got stabbed? Nobody ever
24 attempted to be -- attempted to stab anybody, right?

25 A. I can't really say that.

1 Q. Okay. Well, you just told me that you -- that Julius
2 didn't try to stab anybody based on your observations?

3 A. I mean they struggled over the knife so ---

4 Q. Just yes or no? Yes or no question.

5 MR. REDMOND: Your Honor.

6 THE COURT: No, no, no. Let her answer.

7 THE WITNESS: To me they were struggling over the
8 knife, I guess, so that if something -- I guess he was
9 trying to stab him if they were struggling.

10 BY MR. SWILLEY:

11 Q. You didn't see Julius try to stab anybody, did you?

12 A. No. I just saw them struggling.

13 Q. Okay. You just saw a struggle, right?

14 A. Um hum.

15 Q. And you saw Deputy Wallace arrive?

16 A. Yes.

17 Q. Deputy Wallace went straight for Julius and started
18 tazing him with the tazer gun, right?

19 A. Yeah.

20 Q. Not with the prongs of the gun, right?

21 A. Yeah.

22 Q. You saw Dana Wallace shocking Julius, right?

23 A. Yeah.

24 Q. Right? Over and over again, right?

25 A. Right.

1 Q. And you saw Dana Wallace start beating on Julius,
2 too, right?

3 A. Yeah. He was trying to get him settled down.

4 Q. Right. After Julius sat down he kept beating on him?

5 A. No.

6 Q. Okay. But you saw Dana Wallace start beating on
7 Julius with his fist, right?

8 A. Yes.

9 Q. All right. And they got Julius in the handcuffs,
10 right?

11 A. Right.

12 Q. And the prongs were still stuck in Julius' neck and
13 Julius' stomach, right?

14 A. Yes.

15 Q. The prongs from Mr. Coombs' tazer, right?

16 A. Right.

17 Q. Okay. And this whole thing took about 45 seconds,
18 right?

19 A. What took place?

20 Q. From -- well, isn't it true that this whole incident
21 took about from the point of Mr. Coombs shocked Julius
22 with the tazer to the point where they got him in
23 handcuffs about a minute, 15 seconds?

24 A. No, it took more than a minute, 15 seconds.

25 Q. A little bit over?

1 A. Um hum.

2 Q. Not very long?

3 A. Not very long.

4 Q. Okay. And subsequent to that you stayed at the house
5 that night, right?

6 A. Yes.

7 Q. And Julius never -- and just to make sure. Julius
8 never tried to stab you with the knife, right?

9 A. No.

10 Q. And you didn't need any medical attention after this
11 whole incident, did you?

12 A. No.

13 Q. You were fine, right?

14 A. Right.

15 Q. You didn't need to go to the doctor afterwards, did
16 you?

17 A. No.

18 Q. Didn't have any bruises that you can tell after, did
19 you?

20 A. Oh, yeah.

21 Q. Okay. But you didn't need any kind of bandages or
22 anything like that, did you?

23 A. No.

24 Q. You weren't bleeding, were you?

25 A. No.

1 Q. Okay. Thank you, Shiquan.

2 MR. REDMOND: Real briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. REDMOND:

5 Q. Just to be clear, and you had started to answer, but
6 you were interrupted. I think you finished it, but I want
7 to make sure it's clear. The struggle that you saw, and I
8 asked you, did that struggle appear to be a dangerous
9 situation for Staff Sergeant Coombs?

10 A. Yes.

11 Q. And did it appear to you that the defendant did not
12 want to let go of that knife and as a result Sergeant
13 Coombs was struggling with him regarding the knife?

14 A. Yes.

15 Q. And just from your observation, just talking about
16 your feelings, how you felt ---

17 MR. SWILLEY: Objection, Your Honor. I don't think
18 the way she felt about it is relevant.

19 THE COURT: It's according to what ---

20 MR. REDMOND: Let me ask the question first.

21 BY MR. REDMOND:

22 Q. Based on how you felt did it appear -- well, let me
23 just ask you like this. Did it appear that Sergeant
24 Coombs was trying to keep him -- did it appear that
25 Sergeant Coombs was trying to avoid letting his hand go

1 with the knife?

2 A. Yes.

3 Q. And you had mentioned something earlier about I think
4 you said common knowledge regarding the struggle with the
5 knife?

6 A. Right.

7 Q. Were you concerned about what would happen if his
8 hand was let go, the defendant's hand was let go while he
9 was holding the knife?

10 MR. SWILLEY: Objection, Your Honor. What she's
11 concerned with is not relevant to the facts.

12 THE COURT: I disagree. Overruled.

13 BY MR. REDMOND:

14 Q. Were you concerned? In other words, he's holding the
15 knife. Sergeant Coombs is struggling with the knife.
16 Were you concerned about what would happen if he let it
17 go?

18 A. Yes.

19 Q. Were you concerned for Sergeant Coombs' safety?

20 A. Yes.

21 MR. REDMOND: That's all the questions I have.

22 THE COURT: Your witness.

23 MR. SWILLEY: Nothing further.

24 THE COURT: You may step down. Watch your step.

25 Anything further? Solicitor, we've been going at it since

1 9:30. Even though the jury hasn't been out here since
2 9:30, but my Court staff needs a brief recess.

3 MR. REDMOND: Yes, sir. And I was going to say that
4 my next witness is going to be Staff Sergeant Coombs, so I
5 was going to ask if we could take a break because we
6 actually have to set up some things for his testimony.

7 THE COURT: All right. Let's take about ten minutes.
8 My Court staff has not had a break this morning. Y'all
9 step back.

10 (WHEREUPON, the jury panel was excused from the
11 courtroom at 11:50 a.m.)

12 (WHEREUPON, Court was in recess at 11:50 a.m. and
13 reconvened at 12:10 p.m.)

14 THE COURT: Are we ready?

15 MR. REDMOND: State is ready, Your Honor.

16 MR. SWILLEY: Ready, Your Honor.

17 (WHEREUPON, the jury panel enters the courtroom at
18 12:11 p.m.)

19 THE COURT: All right. Solicitor.

20 MR. REDMOND: Thank you, Your Honor. May it please
21 the Court. The State next calls Staff Sergeant Jimmy
22 Coombs.

23 THE COURT: Come up and be sworn, please.

24 JIMMY COOMBS, after being duly sworn, testified
25 as follows:

DIRECT EXAMINATION

BY MR. REDMOND:

Q. Staff Sergeant Coombs, I guess I've given away some of it. What is your rank with the Sheriff's Department?

A. Staff Sergeant.

Q. And how long have you worked with the Sheriff's Department?

A. Around 13 years.

Q. Okay. And here in Chesterfield County?

A. Only in Chesterfield County.

Q. All right. And let me ask you. Well, I guess let me just get directly into it with you. Did you respond to an incident on [REDACTED] on the outskirts of Cheraw on the 30th of August 2013?

A. I did.

Q. Okay. And could you tell the ladies and gentlemen of the jury what took place? How you ended up being dispatched to the scene, and what your observations were once you got to the scene?

A. Okay. On August the 30th about 1049 I was radio call dispatched to [REDACTED] in reference to a domestic dispute and an assault involving a knife. I arrived on the scene and went up and I exited my car and went and knocked on the door to try to make contact with anybody inside. I could hear voices coming from inside.

1 I couldn't make out what was being said. It went on for
2 several seconds, half a minute.

3 I heard a female voice somewhere from my rear saying,
4 "here I am," and I found her in my flashlight. It was
5 Shiquan Wright. So I walked over to her and asked her
6 what was going on and she told me that Julius ---

7 MR. SWILLEY: Objection, Your Honor. Hearsay.

8 BY MR. REDMOND:

9 Q. All right. Without saying what she said. She's
10 already testified. Did you have a discussion about the
11 situation with Shiquan Wright?

12 A. I did.

13 Q. And based upon your discussions with her what actions
14 did you take?

15 A. I went back to the front door and again at this point
16 I tried to open the door, and from my past experiences I
17 knew something was pressed up against the door to prevent
18 my entry. I attempted several times to, you know, push
19 the door open.

20 I stepped back. I radioed for Sergeant Wallace cause
21 I knew he would be the only one available to come to me.
22 I called and asked for him to meet me at the location. I
23 went around to the back door. I can't remember exactly,
24 but I immediately noticed that I couldn't get into the
25 door. I remember it was wired shut or something like

1 that.

2 So I went around to the front and at that time I
3 tried to again more forcefully to push the door open, and
4 the door came open at that point. I stepped inside. I
5 pulled my tazer out and I looked to my right and didn't
6 notice anything. So I went through the kitchen and into
7 the little hallway left of the bedroom door.

8 Q. Let me ask you this. Why did you hae the tazer out?
9 Before I ask you this question. You had an opportunity to
10 talk with Shiquan Wright, right?

11 A. Yes.

12 Q. Before you went into the house?

13 A. Yes.

14 Q. Were you advised of what the situation was leading up
15 to your getting there?

16 A. I was.

17 Q. And were you advised of any possible weapons that
18 might be available?

19 A. I was.

20 Q. That may have been ---

21 A. A knife.

22 Q. Okay. And based on that is that why you had your
23 tazer?

24 A. I chose the tazer because I knew there was another
25 lady, another innocent, inside the house. So I chose my

1 tazer over my pistol more for safety of the other lady.

2 Q. Okay. And understandable. In other words,
3 non-lethal force?

4 A. Yes.

5 Q. Now, when you had, and I interrupted you. And I
6 apologize about that. I have that habit, unfortunately.
7 But we were at the point where I think you were at the
8 door to the bedroom. Start there and take us forward.

9 A. I hammer fisted the door cause I never make that
10 mistake outside. I announced several more times,
11 "Sheriff's Office," and I could hear still voices inside.
12 I could hear a female voice, and I could hear a male
13 voice. I couldn't make out exactly what they were saying.

14 And I was beating on the door again telling them that
15 I'm going to kick the door in. And I grabbed the door
16 knob and turned it, and opened it about 4 inches, four or
17 five inches, and it stopped and I could see a face. It
18 turned out to be the defendant, Mr. Curry. He was looking
19 at me and holding the door shut. And I was telling him,
20 you know, "Look, man, come on out and talk to me; and you
21 know, let's get this over with."

22 And I kept trying to reason with him. I said, "You
23 know you're in trouble, but at this point it's not so
24 bad." And I said, "But if I have to come into the room
25 it's going -- you're going to be in a lot more trouble."

1 And he told me, "If you come through this door it will be
2 the last thing you ever do. Do will never do anything
3 again."

4 And I stepped back and again called for Sergeant
5 Wallace. And after I called for help again I could hear
6 acknowledgement. He heard me. I took a step back and
7 booted the door and kicked the door open.

8 Q. Okay. Now, once you kicked the door open did you
9 enter the bedroom?

10 A. No, sir.

11 Q. Okay. Tell us what you did?

12 A. The time -- the moment my foot planted back on the
13 ground the door flew open, stayed open. Mr. Curry was
14 standing in -- directly in front of me approximately
15 7 feet. He was -- I seen a fighting stance, a blade
16 position, semi bladed position. And he wasn't squared off
17 with me. He was kind of turned, and he had his -- I
18 remember his fist was clenched, and he had a knife in his
19 left hand about waist level.

20 In my training it's -- in my training it's a deadly
21 force encounter with a person with an edged weapon within
22 30 feet. That means if somebody is closer than 30 feet,
23 inside that 30-foot distance, I am well within my right to
24 use deadly force. He was about 7 feet from me, but it was
25 also fast there was no way I could transition from my

1 tazer to my duty weapon before he would be on top of me.

2 The door came open. He was standing there. And when
3 his -- I say when his shoulders flinched in my direction I
4 discharged my tazer. One prong caught him somewhere
5 around the Adam's apple. The next one about 4 inches
6 above his belly button. Immediately the tazer took
7 effect.

8 He folded up like the mummy position and fell onto
9 the floor. I let my tazer cycle the 5 seconds as it
10 should and it shuts off after 5 seconds or you can
11 manually turn it off. I let it cycle the full 5 seconds,
12 and during the 5 seconds I was giving commands, "When the
13 tazer stops show me your hands. Let me see the knife."

14 The tazer cycled. He's still lying in the mummy
15 position. He would not pull his hands out, and the floor,
16 it was clean, you know. I could see if the knife would
17 have fell, but I knew he had it because I watched him fall
18 with it. So he was in like the mummy position and he
19 wouldn't pop his hands, so I delivered another you know 2
20 second burst of it, and I would manually turn it off.

21 All I want to do was get his attention. Let him, you
22 know, to show me your hands. And he would say stuff like,
23 "Man, I can't move. I'm paralyzed. I don't have
24 anything." And this -- and in my report I couldn't
25 remember how many times, whether it was two or three times

1 of, you know, about 2 second bursts. Finally, he popped
2 both of his hands out in kind of a push up position. The
3 knife was under his right hand.

4 And I was telling him still, you know, "Toss the
5 knife. Throw the knife. Get rid of the knife." And he
6 was, "I can't move. I can't move." So I hit my radio
7 again, and again called for assistance. And I walked
8 over. I put my right foot on his wrist and reached back
9 pulled my handcuffs out. Laid the tazer on the floor.

10 And when I bent down to go ahead and cuff him it
11 was -- when I knelt down it was like all in one fluid
12 motion he brought his left hand under his body across,
13 grabbed the knife, rolled, and thrust it. And at that
14 time we were belly to belly but I caught his wrist with
15 the knife in it.

16 And we were belly to belly at that point, and
17 whenever he was trying to push it into my rib cage, and I
18 was trying to press it to the floor. And his came up with
19 his other hand trying to hit me in the head but it glanced
20 up off my shoulder. And so I grabbed that one and at that
21 point my hands was full. So I couldn't call for any more
22 help. I couldn't get to my firearm. And I just kept
23 trying to push his hands to the floor, and he kept pushing
24 the knife saying, "I'm going to kill you. You're going to
25 die tonight." And that was, you know, repeatedly.

1 And I was telling him to drop the knife, man. Drop
2 the knife and just saying stuff you can say to somebody
3 trying to stab you. But I was -- I couldn't -- I could
4 not do anything. I couldn't let go of the hand, and I
5 couldn't let go of his empty hand, so I started head
6 butting him. I head butted him, you know, a couple of
7 times and he finally he turned his head but he was -- he
8 would take the knife and he was rolling it in his hand
9 trying, I assume, to cut me.

10 And all I could do at that point was, you know, head
11 butt him. And later, after reviewing the 911 recordings,
12 that, from the time I kicked the door in until Sergeant
13 Wallace got there, was around two, two and a half minutes.

14 Q. Did it seem like longer than that?

15 A. I was out of gas. Dana -- I would have gave myself
16 another 30 seconds or a minute and I don't know. I was
17 running out. And I couldn't see why he wasn't running out
18 of gas, but later I found out.

19 Q. Let me ask you about that real quick not to
20 interrupt, but in your experience with law enforcement
21 have you had the opportunity to encounter people who, and
22 it's in the record, people who are under the influence of
23 some drug, alcohol or both?

24 A. I have.

25 Q. And in the course, based on your experience, when you

1 say you found out later why he had the juice to keep going
2 is that what you deduced based on the fact that he was in
3 that state from the drug and alcohol?

4 A. Yes, sir. My past experience of dealing with people
5 that have been using cocaine they have a higher pain
6 threshold. They can, you know, go longer. It's just give
7 you, not super human strength, but more than the average
8 person. Even with adrenaline rush they still ...

9 Q. As a part of your training with the tazer is that
10 also something along the line you were talking about
11 regarding the affect of the tazer upon someone who is in a
12 heightened state of intoxication for lack of a better
13 term?

14 A. Sometimes it is, and it's documented that sometimes,
15 depending on the level of chemicals in their system, it
16 may or may not have any affect.

17 Q. So, and does that, based on what you said about now
18 looking back on it, do you understand why he was still
19 going? Is that along the lines that you made that
20 comment?

21 A. Normally after somebody had been suggested to that
22 many tazer applications they would comply.

23 Q. And did he comply?

24 A. No, sir.

25 Q. And in talking about the knife and being in that

1 situation, I guess, in your years in law enforcement, 13
2 years I believe, with all that experience what -- how
3 would you characterize the encounter? In other words what
4 was going through your mind? What were your concerns? As
5 you were going through that encounter based on your years
6 of experience and the thousands of people that you've
7 interacted with? At that moment what was going through
8 your mind?

9 A. Probably, well, I would say 15, 30 seconds into it I
10 thought he was going to get the best of me. I figured any
11 moment I was going to feel that knife go through my ribs.
12 I thought I was going to be murdered here on [REDACTED]

13 [REDACTED].

14 Q. And in fact I think you called me shortly after the
15 incident in regards to, in my role as a Deputy Solicitor,
16 because of the concerns that you had had regarding that
17 particular incident; is that not true?

18 A. You're correct.

19 Q. And so I'm sorry I interrupted you, but I wanted to
20 cover that. But moving forwards so you engaged. We
21 haven't yet gotten to the point where he stopped so take
22 us from that point. Y'all are still engaged. You're
23 trying to keep him from stabbing you. Take us from that
24 point?

25 A. We were struggling just like I say like an arm

1 wrestling match. The knife would go up then it would go
2 to the floor. Come up and go to the floor. And in my
3 mind I'm thinking this is it. My help is not going to get
4 here. And then when we were -- I heard a tazer cycle,
5 but -- and the first thing that went through my mind was
6 this guy had got ahold of my tazer and he was trying to
7 stick me with it.

8 But then I felt some force on the back, and I
9 realized that it was Sergeant Wallace. He had came in and
10 we can take what you call the cartridge off of the gun and
11 do like a -- it's called a dry stun where you just stick
12 it to them. And it's more of a condensed application
13 where you don't get the full affect as possible. But Dana
14 was delivering tazer strikes to him.

15 And I hollered to Dana, "He's got a knife," cause the
16 knife was on my right side kind of under my armpit. And
17 Dana had came from my left side so he didn't immediately
18 see the knife. He just saw, you know, his partner
19 fighting with somebody so he came in to help A. Dana
20 seized the knife and then he reaches and he also grabs the
21 hand that had the knife in it.

22 So at that point I got his wrist, Dana's got his
23 wrist, and he's still trying to slam the knife in me.
24 Continually saying, "I'm going to kill you. I'm going to
25 kill you. You're going to die." This went on, and I knew

1 I wasn't going to be able to hold on much longer. I
2 didn't want Dana to have to, if I slip he may cut me or
3 Dana. So I told Dana Wallace to hit him. I said, "Hit
4 him." And Dana come with his free hand and hammer fist
5 him in the head.

6 And, you know, he struck him several times and I let
7 go of his other hand cause Dana's weight was kind of
8 keeping that other hand from coming through. So I started
9 delivering strikes to him, and decided the only thing was
10 to get the side of his head, but he still was not dropping
11 the knife. And at one point he took his other hand and
12 came through and then transitioned the knife from one hand
13 to the other. So we just immediately just focused back on
14 the hand that had the knife.

15 And just continually hit him. Not like I went on I
16 think for another minute and a half, but he finally --
17 well, he said twice, "Man, look, I quit. I give up." And
18 we paused for a second and rested. And then he go right
19 back struggling. He did it three times on the third time
20 he just opened his hand and let the knife fall. And when
21 the knife fell I tossed it and he was taken into custody.

22 Q. Okay, now, with everything that you described as it
23 relates to the incident when -- and I'll just ask you.
24 And I think you already mentioned it, but would it -- how
25 would you describe -- in other words in your own words

1 what were you going through at that time? What were you
2 going through as it relates to your encounter with the
3 defendant?

4 MR. SWILLEY: Objection, Your Honor. I think that's
5 cumulative and also don't think his personal feelings are
6 relevant. It would be more prejudicial. Substantially
7 more prejudicial than probative.

8 THE COURT: Can you sort of narrow you question down
9 some?

10 MR. REDMOND: I'll narrow it down.

11 BY MR. REDMOND:

12 Q. What were you, and in the context of what you had
13 just gone through in your fight with the defendant, how
14 would you characterize that aspect of it? How would you
15 characterize it?

16 A. During or after?

17 Q. During. In other words, during. In other words, how
18 would you characterize what you had just gone through in
19 that fight?

20 A. Stressful. I mean I knew I was going to die. And in
21 the 13 years I've been doing it this is only the second
22 time, you know. I know this is definitely the second
23 time.

24 MR. SWILLEY: Objection. I think any kind of prior
25 instances as far as experience goes in particular are

1 irrelevant.

2 MR. REDMOND: Your Honor, I would just ask.

3 BY MR. REDMOND:

4 Q. When you say, 'second time' you're not referring to
5 the second time with the defendant?

6 A. No. No. No.

7 Q. You're saying in general with your experience.

8 A. Yes.

9 Q. Okay. Well, afterwards -- let's move on.

10 Afterwards, he was in custody. Tell us what happened once
11 everything had completed. What took place then?

12 A. I got up. I left the bedroom, walked into the living
13 room. Shiquan and Marshell were sitting on the couch. I
14 briefly spoke with them just to make sure they were okay.
15 Marshell was bleeding around her nose and lip area. I
16 picked a tissue up and walked outside. I walked around
17 the corner of the trailer and threw up.

18 Q. And you say that again. You walked around the
19 trailer and did what?

20 A. I threw up. It's a body's -- your body's natural
21 reaction to -- for the adrenaline dump, the serotonin in
22 your body wants to get rid of it. I mean it's not
23 uncommon for somebody who has gone through a stressful
24 event to get nauseated.

25 Q. Would it be fair to say that you were in fear?

1 A. Very much so.

2 Q. And when you talk about stress was that fear -- does
3 that fear add to the stress that led you to ultimately
4 vomiting?

5 A. I'm sure. I'm sure it did.

6 Q. All right. Now, so you checked on Marshall and
7 checked on the lady. You vomited, and then did Dana
8 Wallace have to go to the hospital?

9 A. Yes, he received injuries to his I think small bone
10 in the side of his hand from the strike.

11 Q. Okay. And did the defendant, was he taken to the
12 hospital?

13 A. Yes, he was complaining from breathing. Said he
14 couldn't breathe so we called for an ambulance to come and
15 check him out.

16 Q. Okay. And everything that you testified to as far as
17 the fact that y'all had to hit him, all of that stuff was
18 in the report. I mean you did a pretty detailed -- did
19 you do a pretty detailed report?

20 A. Yes. I want to think that I did. Yeah, I put it in
21 there about the command to hit him, the strikes, and I
22 mean the strikes, the hand strikes, was you know, I'd
23 rather have that than the alternative.

24 Q. And when you say you'd rather have the alternative
25 hand strikes than the alternative tell us what the

1 alternatives would have been under the circumstances that
2 you were faced with?

3 A. Under the circumstances Deputy Wallace had a free
4 hand. We had a suspect that had a knife trying to
5 actively engage us. I could have easily asked Dana to
6 shoot him instead of hit him. So I mean that would -- and
7 we would have been justified.

8 Q. Okay. But you didn't?

9 A. No.

10 Q. And you're still here, thankfully, to testify today.

11 MR. REDMOND: Let me, with the Court's permission,
12 approach first with what's been marked as State's Three,
13 Four and Five. Permission to approach the witness, Your
14 Honor?

15 BY MR. REDMOND:

16 Q. Could you tell the ladies and gentlemen of the jury
17 what Exhibits Three -- what Exhibit Three is first?

18 A. This would be the tazer cartridge. It's -- this one
19 has got 25 feet of wire so we can engage someone as far as
20 25 feet out. And you have two projectiles which you will
21 see later come out of this straight out. It sticks into
22 either clothing or the flesh and the voltage is
23 transferred through the gun through the wires into the
24 prongs. Ultimately into the suspect.

25 Q. And speaking of the prongs go ahead and show the

1 ladies and gentlemen of the jury what has been marked as
2 State's Exhibits Number -- well, what are State's Exhibits
3 Numbers Four and Five?

4 A. This would be the tazer. That's the metal tazer
5 prongs that would be housed in those two holes. And when
6 they come out the wire would be attached to the end of it.
7 And as long as these wires is attached they will still be
8 current flowing through there. This can be pulled out
9 during struggles or wire broken or anything.

10 But this would be the tazer prongs that come out of
11 the cartridge.

12 MR. REDMOND: And, Your Honor, as it relates to
13 State's Three, Four and Five, the State would move to
14 introduce those into evidence at this time if there is no
15 objection.

16 MR. SWILLEY: No objection.

17 THE COURT: In without objection.

18 (WHEREUPON, State's Exhibit Nos. 3, 4 and 5 were
19 admitted into evidence.)

20 MR. REDMOND: And, again, with permission to approach
21 the witness.

22 BY MR. REDMOND:

23 Q. State's Exhibit Number Two. Do you recognize State's
24 Exhibit Number Two?

25 A. Yes, sir. This is the folding knife that Mr. Curry

1 had in his hand while he was trying to stab me with it.

2 Q. And, obviously, after it was over with did y'all
3 photograph the scene and collect certain items of evidence
4 like the knife and of course the prongs once they were
5 taken out?

6 A. We did.

7 MR. REDMOND: If the Court would indulge me at this
8 time, Your Honor. I think it's already been rigged, but I
9 need to get this. Make sure I got it.

10 BY MR. REDMOND:

11 Q. If I could ask Staff Sergeant Coombs to step down.
12 And what I'm going to do, Sergeant, is I'm going to stand
13 on this side and if you could stand kind of facing the
14 jury but talk as loudly as you can so that Madam Court
15 Reporter can still hear you. And we're just going to go
16 through and discuss what each of these items are.

17 First of all, were these photographs that were taken
18 at the scene?

19 A. Yes, sir.

20 Q. Okay. Now, I think it's obvious but just tell us
21 what the represents?

22 A. That would be the same knife that we entered into
23 evidence.

24 Q. Okay. Is the located in the bedroom?

25 A. Yes, sir, bedroom.

1 Q. Tell us about the next picture.

2 MR. REDMOND: Just for the record, Your Honor, I
3 failed to mention this is all on State's Exhibit Number
4 One that has been introduced into evidence. The C.D. that
5 has been introduced in evidence.

6 BY MR. REDMOND:

7 Q. All right. Okay. Please tell us about this picture?

8 A. This is a picture of the knife (inaudible) previous
9 photo.

10 THE COURT: The jury can't see. Ladies and gentlemen
11 of the jury, y'all step back in your room just a minute,
12 please.

13 (WHEREUPON, the jury panel was excused from the
14 courtroom at 12:41 p.m.)

15 THE COURT: Mr. Curry.

16 MR. CURRY: Yes, sir.

17 THE COURT: If I see you do what you just did about
18 three minutes ago I'm going to have you shackled. Do you
19 understand me? You don't signal anybody in this courtroom
20 on where to go. You understand?

21 MR. CURRY: Yes, sir. I thought it would be okay for
22 her to sit on this side so that she could see. That's
23 all.

24 THE COURT: I don't know who you were signalling or
25 what you were attempting to do, but don't you do that

1 again.

2 MR. CURRY: Yes, sir. I'm sorry.

3 THE COURT: All right. The other problem is the jury
4 down here cannot see.

5 MR. REDMOND: And I'm wondering that if I back it up
6 some may be it might not be as clear to them.

7 THE COURT: All right. Bring them back.

8 (WHEREUPON, the jury panel enters the courtroom at
9 12:44 p.m.)

10 THE COURT: All right.

11 MR. REDMOND: I apologize. I hope that everybody can
12 hear. Please the Court, Your Honor. I mean everybody can
13 see the pictures.

14 BY MR. REDMOND:

15 Q. All right. And I think we were at the point where
16 you were describing this particular picture. Could you
17 tell us what that picture shows?

18 A. Yes. This is Mr. Curry after he was placed in the
19 handcuffs, and this is the location where the knife -- I
20 tossed the knife and it ended up. The altercation took
21 place in this area right here up against the wall and the
22 floor.

23 THE COURT: All right. Hold up. All the jurors on
24 the back row, if y'all will stand and come down one seat.
25 That's going to help immensely. Okay. Go ahead.

1 BY MR. REDMOND:

2 Q. All right. Okay. Just tell us about what this
3 shows?

4 A. This would have been my view as I was standing in
5 this around about the same area I was standing when I
6 deployed the tazer. And Mr. Curry would have been about
7 center ways of the foot of the bed. A foot or so from the
8 bed. That depicts about the position where I was standing
9 when the tazer was the deployed.

10 Q. Okay. And let me ask you this. Who was actually in
11 the photo?

12 A. That would be Deputy Robinson. He's on our Canine
13 Tracking Team. He also responded. Men were coming from
14 everywhere when I start hollering for help.

15 Q. Okay. All right. What's the next picture?

16 A. Just another photo. Just inside the doorway. He's
17 in the same position. And the knife is sitting right
18 here. It's in the same position. Just a different
19 position where I was.

20 Q. Okay. Next picture?

21 A. Mr. Curry had rolled over, but again, just moving
22 further into the room taking the pictures as I went.

23 Q. And do you recall what this item right here is? I
24 think we have a closer picture of that. But what is that
25 a picture of?

1 A. That's a cell phone, and I don't know if it's which
2 victim or whether it was Mr. Curry's, but they said they
3 had knew that he took their cell phone.

4 Q. Okay.

5 A. I don't know who it belonged to, but it was a cell
6 phone.

7 Q. Was it in it's -- was it intact or was it broken?

8 A. I think it was intact. It was like a smart phone.

9 Q. Okay. Let's see. Tell us about this next picture?

10 A. That was -- actually, I believe the Sheriff is the
11 one that actually took that picture. I was standing in
12 the position from where Mr. Curry was demonstrating to
13 him. And he had took a photo. The altercation, again,
14 took place in this area.

15 Q. Okay. And just to be clear. About where were you
16 when you entered -- which area or which part of that
17 picture or that area did you actually enter into? If you
18 could just illustrate that to the jury. In other words,
19 when you first got to the scene which way were you?

20 A. This is the -- it's an in between bedroom door. That
21 would be the doorknob. This being the clasp on the wall.
22 The door would have opened hinged on the right side and
23 where the person was that took the picture was where I was
24 standing. So that was my view of the inside of the room
25 when the door came open.

1 Q. Okay. And next picture I think?

2 A. Cell phones and Mr. Curry's tennis shoes.

3 Q. And?

4 A. Again, cell phone and the other one -- the other
5 thing in that picture was the tazer cartridge.

6 Q. Okay. And how about that picture?

7 A. It's a cell phone.

8 Q. Okay. And does it appear, and I don't know if we've
9 got one closer, but does it appear that the back is
10 removed from that cell phone? The back of the phone is
11 gone?

12 A. I can't tell. I couldn't remember if the back was
13 removed or if it was covered.

14 Q. And tell us about that picture in particular, the
15 item I guess up front?

16 A. At the bottom, bottom center of your scene would be
17 the tazer cartridge. The green item there would be what
18 we call the blast doors. It's the doors open up, and I
19 don't know where the other one is. That being the knife;
20 same position. It hadn't been moved. And I can't make
21 out what that white item is, but tazer cartridge blast
22 door and knife.

23 Q. And is this the -- from the different view?
24 Different direction?

25 A. Yes, that would be taken from the area where the

1 struggle took place looking down into the hallway. Ms.
2 Wright when I fired the tazer from outside the doorway
3 proceeded inside over Mr. Curry or near Mr. Curry. She
4 ran between the bed and the wall and took a right turn and
5 headed into the living room.

6 Q. Okay. And I guess that's it?

7 A. A close up of the knife.

8 Q. And I think that concludes the pictures. Let me ask
9 you to have a seat. Thank you, sir.

10 MR. REDMOND: Beg the Court's indulgence. That will
11 be all the questions that I have at this time.

12 BY MR. REDMOND:

13 Q. Please answer any questions that Mr. Swilley may
14 have.

15 MR. SWILLEY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. SWILLEY:

18 Q. How are you, Mr. Coombs?

19 A. Fine.

20 Q. Mr. Coombs, when you got to [REDACTED]
21 you got inside, right? You go to the left towards the
22 bedroom, right?

23 A. Yes.

24 Q. And it made you angry that you couldn't get in that
25 bedroom, right?

1 A. No.

2 Q. And the fact that you wouldn't -- that Julius
3 wouldn't let you in the room irritated you, correct?

4 A. No. I was concerned for the safety of the lady he
5 had in, but, no, not angry or upset.

6 Q. Okay. You were going to get in that room one way or
7 another, right?

8 A. Yeah.

9 Q. Okay.

10 A. Sir?

11 Q. And you were not going to let Mr. Curry tell you you
12 couldn't come in, right?

13 A. No, sir.

14 Q. And you didn't appreciate Julius not complying with
15 your orders, right?

16 A. No, I didn't appreciate it.

17 Q. Right. And after that you kicked the bedroom door
18 open, right?

19 A. Yes, sir. I forced the door open.

20 Q. Okay. And you saw that knife in Julius' hand at that
21 point, right?

22 A. Yes, sir.

23 Q. And at that point you deployed your tazer, right?

24 A. Not immediately. Not until he flinched and made a
25 muscle movement, and I deployed the tazer.

1 Q. Right. He moved and then you deployed the tazer,
2 right?

3 A. Yes, sir.

4 Q. And you connected?

5 A. Yes, I did.

6 Q. And you ran a 5 second cycle, right?

7 A. Five seconds.

8 Q. And that's 5 seconds of about 5,000 volts of
9 electricity into the subject's body from the tazer, right?

10 A. It's actually 50,000 volts, but it's the middle amps
11 that's the dangerous part.

12 Q. Excuse me. 50,000 volts. And at that point Julius
13 fell on the floor, right?

14 A. He did.

15 Q. He fell face first?

16 A. He did.

17 Q. He fell down off his feet, right?

18 A. He did.

19 Q. And at that point he ran and you say you recall you
20 ran two or three more cycles of electricity through him,
21 right?

22 A. Yes, sir. Two 2 second bursts. I had to turn the
23 gun off instead of letting it run 5 seconds. I would turn
24 the switch off and cut it off so I wouldn't -- so he
25 wouldn't get the whole 5 seconds. He was only getting two

1 or three seconds.

2 Q. At no point did your prongs ever come out of Mr.
3 Curry, right?

4 A. No, sir.

5 Q. Okay.

6 A. Not that I'm aware of.

7 Q. Right. And later you approached Mr. Curry and you
8 stepped on his right arm?

9 A. Yes, sir, I put my boot on his right wrist to secure
10 the weapon hand.

11 Q. And from there the struggle ensued, right?

12 A. Yes, sir.

13 Q. Okay. So at no point could you have not shocked
14 him -- excuse me. At any point therefore you could have
15 employed the tazer to shock Mr. Curry, right?

16 A. Yes, sir, but he was not complying and I didn't -- I
17 couldn't be a 100 percent sure that the tazer prong hadn't
18 dislodged from his body. He wasn't feeling it at all.

19 Q. At that point you knew when you saw that knife you
20 thought you could get hurt, right?

21 A. Yes, sir.

22 Q. And that's the first thing that popped in your head
23 you thought you were going to be in danger, right?

24 A. Yes, sir.

25 Q. Okay.

1 MR. SWILLEY: Beg the Court's indulgence.

2 BY MR. SWILLEY:

3 Q. At no point did Mr. Curry ever get to his feet after
4 he fell down from the initial tazer shock, right?

5 A. No, sir.

6 Q. Right. And you said that you began to struggle with
7 Mr. Curry, and then Deputy Wallace arrived, right?

8 A. Yes, sir.

9 Q. All right. And then Deputy Wallace employed his
10 tazer in a dry stung fashion, right?

11 A. Yes, sir, in the abdomen area.

12 Q. And, thereafter -- I'm sorry. Before that you were
13 head butting Mr. Curry, right? You employed the head
14 butts?

15 A. I did.

16 Q. And Mr. Wallace -- Deputy Wallace. Excuse me.
17 Struck Mr. Curry several times, right?

18 A. Not immediately. Not until after he directed to.

19 Q. Subsequent to him using the tazer, right?

20 A. Yes. Yes, sir.

21 Q. Okay. And then you commenced to strike Mr. Curry
22 with your fist, right?

23 A. I did.

24 Q. And subsequent to that -- I mean after you were able
25 to put Mr. Curry in handcuffs, right?

1 A. Yes, sir. We were -- after he let go of the knife we
2 were. Yes, sir.

3 Q. And at not point were you grazed by the knife?

4 A. No, sir.

5 Q. At no point was Mr. Wallace grazed by the knife,
6 correct?

7 A. No, sir. Other than it touched my -- I had an outer
8 vest carrier on that night. It pressed into my vest, but
9 never entered the skin.

10 Q. Right. And no one was cut, correct? You and Deputy
11 Wallace, neither one was cut?

12 A. No, sir, nobody was cut.

13 Q. Okay. And Deputy Coombs, you stay in pretty good
14 shape, don't you?

15 A. I try to.

16 Q. Right. And you're over six feet tall; is that
17 correct?

18 A. Yes.

19 Q. Okay. And you're trained in the use of the tazer,
20 right?

21 A. Yes, sir.

22 Q. And your tazer is a Model 25?

23 A. X26.

24 Q. X26. And based on your knowledge Deputy Wallace was
25 trained on the use of the tazer, right?

- 1 A. Yes, sir.
- 2 Q. The same model?
- 3 A. Same make and model?
- 4 Q. You're trained in the use of physical as opposed to
- 5 your firearm, correct?
- 6 A. Yes, sir.
- 7 Q. As Deputy Wallace, correct?
- 8 A. Yes, sir.
- 9 Q. You've taken and you've completed the courses at the
- 10 Academy on Broad River Road, correct?
- 11 A. Yes, I have.
- 12 Q. As has Deputy Wallace?
- 13 A. Yes, sir.
- 14 Q. Okay. And, Deputy Coombs, you, you're a road deputy,
- 15 correct?
- 16 A. I'm a sergeant other Patrol Division. Yes.
- 17 Q. You're a supervisor, correct?
- 18 A. Yes, sir.
- 19 Q. And you have a deputy issued squad car, correct?
- 20 A. Yes, sir.
- 21 Q. All right. And in your deputy squad car you have a
- 22 dash cam, correct?
- 23 A. Yes, sir.
- 24 Q. All right. And your dash camera is also employed
- 25 with audio and video, correct?

1 A. Yes, sir.

2 Q. All right. And on August the 30th 2013 you were
3 driving this car, correct?

4 A. I was.

5 Q. And your dash cam was functioning, correct?

6 A. It was.

7 Q. All right. And the microphone that connects to the
8 dash cam was functioning, correct?

9 A. It was.

10 Q. All right. And it could have picked up anything that
11 was said that night at [REDACTED], correct?

12 A. It would if I had turned it on.

13 Q. You didn't turn on the dash cam, correct?

14 A. Our cameras are activated manually on the inside with
15 hitting the record button or come on automatically when
16 your light have been turned on. Or we can push a button
17 on our body mike and it will come on.

18 Q. Your body mike was working that night, right?

19 A. Yes, sir.

20 Q. And had it been activated it would have captured
21 anything that was said as far as what you said and as far
22 as what someone close in proximity would say, correct?

23 A. It would get more of what I say than it would
24 somebody a few feet away. It's just a camera system.

25 Q. And no recordings of anything said that night be it

1 in your body mike, correct?

2 A. No, sir.

3 Q. Okay. And, Deputy Coombs, you've discussed this
4 incident several times leading up to the date, correct?

5 A. Yes, sir.

6 MR. SWILLEY: Thank you, Your Honor. Nothing
7 further.

8 MR. REDMOND: Brief redirect, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. REDMOND:

11 Q. Just to be clear do you, when he was talking about
12 the button on the dash cam, when we talk about dash cam
13 does that pick up what's going on outside of the vehicle?
14 In other words, the camera will show what's going on
15 outside the vehicle?

16 A. It's going to show whatever is in the field of view
17 of the front of the car.

18 Q. And this incident occurred inside or outside?

19 A. Inside the car.

20 Q. Now, as it relates to the button that he was pushing
21 I guess to activate or whatever is that something that you
22 always push whenever you go inside on the scene like that?

23 A. No, sir. We are required to videotape our traffic
24 stops, but anything above that is a -- if I think to turn
25 the body mike on it would help more than hurt, but it's

1 just I was more focused on getting inside the trailer than
2 I was trying to gather evidence for a case later on.

3 Q. I could not have said it better myself.

4 MR. REDMOND: With that, Your Honor, I have nothing
5 further.

6 THE COURT: Anything else?

7 SPEAKER 2: No recross, Your Honor.

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

9 MR. REDMOND: Your Honor, obviously the lunch hour us
10 upon us, and I got two more witnesses after lunch.

11 THE COURT: All right, ladies and gentlemen, we will
12 break for lunch. There are several restaurants and eating
13 establishments in Chesterfield. Some in the downtown
14 area. Some on the Bypass. Need you back here about 2:20.
15 Everybody else remain seated while this jury departs for
16 lunch.

17 (WHEREUPON, the jury panel was excused from the
18 courtroom at 1:01 p.m.)

19 THE COURT: Court in recess until 2:20.

20 (WHEREUPON, Court was in recess at 1:02 p.m. and
21 reconvened at 2:33 p.m.)

22 THE COURT: State ready?

23 MR. REDMOND: We are, Your Honor.

24 THE COURT: All right. We need to bring the
25 Defendant back in.

1 (WHEREUPON, the jury panel enters the courtroom at
2 2:34 p.m.)

3 THE COURT: All right. Solicitor.

4 MR. REDMOND: May it please the Court, Your Honor.
5 The State would next call Dana Wallace, Sergeant Dana
6 Wallace.

7 DANA WALLACE, after being duly sworn, testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. REDMOND:

11 Q. Sergeant Wallace, by whom are you employed?

12 A. Chesterfield County Sheriff's Office.

13 Q. And how long have you been employed with the
14 Sheriff's Office?

15 A. Approximately ten years.

16 Q. Okay, and how long have you been in law enforcement?

17 A. Twenty-five years.

18 Q. Okay. And let me ask you this. Were you working
19 with the Sheriff's Office on the 30th of August 2013?

20 A. Yes, I was.

21 Q. Okay were you on patrol?

22 A. Yes, sir.

23 Q. And could you tell the ladies and gentlemen of the
24 jury -- well, let me just ask you. Were you dispatched to
25 [REDACTED] here in Chesterfield County?

1 A. Yes.

2 Q. And could you tell us about the dispatch and further
3 tell us about what happened when you arrived on the scene?

4 A. I responded. Sergeant Coombs called for assistance.
5 He was out on a domestic. When I arrived on the scene I
6 got out the car. There was a female standing in the
7 doorway of the mobile home, and she immediately said there
8 was ---

9 MR. SWILLEY: Objection. Hearsay.

10 MR. REDMOND: Your Honor, I argue excited utterance
11 given the nature of what took place.

12 THE COURT: True. Go ahead.

13 MR. REDMOND: Thank you.

14 THE WITNESS: She said, "They inside" as I was going
15 in. She also said, "He's got a knife. He's trying to
16 kill him." So I immediately run in the house. When in
17 run in the mobile home to the back bedroom I noticed Jimmy
18 Coombs, Sergeant Coombs, had the subject on the floor and
19 they were fighting. So when I went in and I saw them on
20 the floor I immediately pulled my tazer.

21 I pulled the end off the tazer, the prong end, and I
22 fell down on the floor and I tazed the suspect that was on
23 the floor. Well, it didn't seem to have any affect. At
24 that time I looked over and I saw a knife in his hand, and
25 about the time I looked Sergeant Coombs shouted, "He's got

1 a knife." So I tazed him again which didn't have any
2 affect. At that time I just dropped the tazer. Sergeant
3 Coombs was holding his knife end down, and I immediately
4 grabbed his hand.

5 And we kept telling him, "Drop the knife. Drop the
6 knife." And he looked at Sergeant Coombs and said, "I'm
7 going to kill you." So I let go and I started striking
8 him with my fist. It still didn't have any affect. So I
9 grabbed his hand again with my left hand, took my right
10 hand off and started hitting him again. You know, the
11 whole time we were telling him, "Drop the knife. Drop the
12 knife," and he never did.

13 So after several more strikes he finally said, "I'll
14 drop," which he did. He kept struggling, so I struck him
15 several more times and he finally let go of the knife and
16 we finally got him cuffed.

17 Q. Now, let's go back because you -- were you present
18 when Sergeant Coombs first got there?

19 A. No.

20 Q. Okay. You didn't see what had transpired prior to
21 what you saw when you came into the house?

22 A. No, I did not.

23 Q. Okay. Now, when you saw -- let's go back to when you
24 first observed Sergeant Coombs struck. What, base on what
25 you observed what was going through -- what did you think

1 was taking place?

2 A. When I walked in and saw Sergeant Coombs on top of
3 him, you know, I said, "Well, my partner is in trouble."
4 That's the first thing. My partner is in trouble. I've
5 got to help him. That's why, you know, I didn't say a
6 word when I walked in. I pulled the end off the tazer and
7 immediately started tazing.

8 Q. And then -- and with the knife, and I think you
9 testified, when he made the comment, "I'm going to kill
10 you," when he looked at Sergeant Coombs and said that did
11 he still have the knife?

12 A. He had the knife in his hand, and he was trying to
13 move his hand towards Sergeant Coombs with the knife.

14 Q. Based on your 25 years of experience in law
15 enforcement, 10 here with the Sheriff's Department --
16 well, let me just ask you. In that time have you
17 encountered a lot of heated situations involving people
18 you were trying to apprehend?

19 A. Yes, I have.

20 Q. And based on your experience and your observation did
21 you feel that Sergeant Coombs' life was in danger?

22 A. Yes, I did.

23 Q. Is that why you took the action that you took to try
24 to defuse the situation?

25 A. That is correct.

1 Q. All right. And I guess at some point, if I
2 understand correctly, were both of y'all basically trying
3 to get his knife hand or hold his knife hand at some point
4 during that altercation?

5 MR. SWILLEY: Objection, Your Honor. He's leading
6 the witness.

7 MR. REDMOND: I'll rephrase it.

8 BY MR. REDMOND:

9 Q. Well, I guess there is only one way to ask that.
10 Were both of y'all holding his hand, his knife hand, at
11 some point? Who was holding his knife hand?

12 A. Both of us had both hands -- both of our hands on the
13 knife end and trying to hold the knife still. Trying to
14 get it out of his hands.

15 Q. And despite that did he try to surrender or give up
16 or drop the knife at that point?

17 A. Not at that point.

18 Q. Okay. After everything was over with what condition
19 would you describe your partner, Sergeant Coombs? What
20 condition was he in either emotionally? Physically? Just
21 tell us what you observed?

22 A. When it was over with Sergeant Coombs, and I'm going
23 to use this, he was spent. I mean he was exhausted. I
24 mean he had nothing left. He was just give out. I mean
25 he was at the end. I feel like if I hadn't of come in

1 when I did he was in trouble. He would have been in
2 trouble. But he, you know, emotions, he was just all to
3 pieces.

4 Q. Now, after everything was over with -- well, let's go
5 back a little bit. But you did have to strike him, and I
6 think you were -- were you able to actually do the report
7 yourself or did someone -- did you give the information to
8 someone as far as your report?

9 A. No, I had to -- I had another deputy type my report
10 because after it was over with I had to go to the
11 hospital because I had fractured my hand during this time
12 because as I was striking him I fractured my hand.

13 Q. And -- but, this information, did you, I guess, did
14 you give I guess to Sergeant Valerie the information while
15 you were at the hospital or shortly thereafter?

16 A. Shortly after. Shortly after we left the hospital I
17 came back to our patrol office, and that is where the
18 report was done.

19 Q. Okay. And what were the nature of your injuries
20 again?

21 A. When they x-rayed it Dr. Parker at the E.R. said,
22 "You have a fractured hand."

23 Q. Is that hand still giving you problems?

24 A. Every day.

25 Q. Okay.

1 MR. REDMOND: Beg the Court's indulgence just a
2 moment.

3 BY MR. REDMOND:

4 Q. At any time do you recall hearing Sergeant Coombs or
5 were you -- I'll just ask it like this. Base on what you
6 saw who was the aggressor in this incident?

7 A. The aggressor?

8 Q. The aggressor or who was the aggressor?

9 A. Mr. Curry was.

10 MR. REDMOND: Beg the Court's indulgence just one
11 more time.

12 BY MR. REDMOND:

13 Q. Please answer any questions that Mr. Swilley may
14 have.

15 CROSS-EXAMINATION

16 BY MR. SWILLEY:

17 Q. How are you, Mr. Wallace?

18 A. Good.

19 Q. I think you testified that you arrived when Deputy
20 Coombs and Mr. Curry were on the floor together, right?

21 A. I'm sorry. I didn't hear you.

22 Q. When you arrived on the scene and entered the bedroom
23 at [REDACTED] you -- Mr. Deputy Coombs rather, were
24 on the floor, correct?

25 A. That is correct.

1 Q. And during this time Mr. Curry had never got to his
2 feet, correct?

3 A. That is correct.

4 Q. Okay. And when you said -- when you saw what was
5 going on you immediately went to assist Deputy Coombs,
6 right?

7 A. That's right.

8 Q. And he was in physical conflict and you wanted to
9 help him, right?

10 A. Right.

11 Q. Okay. And Coombs is your friend, right?

12 A. He's my partner.

13 Q. But he's your friend, too?

14 A. Yes, he is.

15 Q. Right. Y'all are a pretty close group, right?

16 A. That is correct.

17 Q. Right. Okay, and you know y'all look out for one
18 another, right?

19 A. Yes.

20 Q. Yes. And you back each other up, right?

21 A. That is correct.

22 Q. And that's in all facets of your employment, right?

23 A. That's with any deputy. We would back each other up.

24 Q. Right. And so I mean you would never leave him
25 hanging out there?

1 A. Not if I could help it.

2 Q. Right. And when you approached Mr. Curry you took
3 the cartridge out of your tazer, right?

4 A. That is correct.

5 Q. So at that point when you did that the end of the
6 tazer is the part with the electricity, right?

7 A. That is right.

8 Q. So once the end of the tazer comes in contact with an
9 individual current is run through that individual's body,
10 right?

11 A. Right.

12 Q. And you did this several times to Mr. Curry, right?

13 A. Twice.

14 Q. Twice, okay. And after that you struck Mr. Curry
15 several times with your fists, right?

16 A. Yes. Yes.

17 Q. Right. Okay. And eventually on -- subsequent to
18 that or after that you and Deputy Coombs struck Mr. Curry
19 with the fists simultaneously, right? At the same time,
20 right?

21 A. Well, it wasn't at the same time. We both hit him,
22 yes.

23 Q. And you hit him to the point where your hand was
24 injured, right?

25 A. Yes.

1 Q. Right. And Mr. Curry had the tazer prongs still
2 stuck inside of his neck and chest or stomach at that
3 point, correct?

4 A. At that point I did not know.

5 Q. Okay?

6 A. I mean I did see the tazer wire, but I did not know
7 where the prongs were at after Sergeant Coombs had tazed
8 him?

9 Q. Okay. And at that point you were able to get Mr.
10 Curry in handcuffs, correct? You and Deputy Coombs?

11 A. Yes, after we struck him several times. Yes?

12 Q. Right. After you struck him several times.

13 A. Yes.

14 Q. And, Deputy, you stand at about 6 feet tall? You
15 about 6 feet tall?

16 A. I'm about 5'10".

17 Q. About 5'10, okay. Stay in pretty good shape?

18 A. I try to.

19 Q. Right. You lift weights?

20 A. I did. I haven't in a few years.

21 Q. Okay. And you went to Chesterfield General Hospital
22 that evening, correct?

23 A. Yes, sir I did.

24 Q. Okay. And at the hospital you said you were treated
25 by --

1 MR. SWILLEY: Beg the Court's indulgence.

2 BY MR. SWILLEY:

3 Q. You were treated by Dr. Parker, correct?

4 A. Correct.

5 Q. Okay. And you were released that night, correct?

6 A. That's correct.

7 Q. Right. And the finding that you did not have an
8 acute fracture of dislocation in your hand, right?

9 A. Yes. That's after I went for an M.R.I.

10 Q. All right. So there was no fracture in your hand?

11 A. Right.

12 Q. Okay.

13 MR. SWILLEY: Beg the Court's indulgence. I have
14 nothing further, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. REDMOND:

17 Q. Just to clarify a couple of things, and actually, I
18 forgot to ask you this, but you were asked about, I guess
19 in essence, your size, I assuming, versus the Defendant's
20 size. In your years in law enforcement, and you said the
21 tazer had no affect when I asked you on direct, but have
22 you encountered people when you may taze them and it
23 doesn't have any affect on them?

24 A. I have before. Yes, I have.

25 Q. And in situations, and it's in the record as it

1 relates to drug and alcohol use, have those situations, by
2 your experience, caused an individual not to be affected
3 by the tazer?

4 A. That is correct.

5 Q. Okay. And in looking at the defendant's size and, I
6 guess, the way he was fighting and what not, based on your
7 experience in law enforcement was that consistent with
8 someone who had been under the influence of drugs and
9 alcohol in the way that he was fighting and not relenting
10 despite being tazed? Despite being hit?

11 A. Yes.

12 MR. REDMOND: That would be all the questions I have.

13 MR. SWILLEY: That's all I have.

14 THE COURT: Thank you, sir. You may step down.

15 COLLOQUY

16 MR. REDMOND: And our next witness is Lieutenant
17 Wayne Jordan. And while he's coming in, Your Honor, we
18 need to move the t.v. back in position. And while Zack is
19 doing that, Your Honor, I had shown these pictures that
20 are actually State's Exhibit 6 through 26. State's
21 Exhibit Nine has already been admitted, but I was going to
22 go ahead and see if I can admit State's Exhibits 6 through
23 8 and then 10 through 26.

24 And those pictures are also reflected on State's One
25 which have been shown to the jury, but I just want the

1 smaller one so that they can take back to the jury room
2 during deliberations.

3 MR. SWILLEY: No objection.

4 THE COURT: In without objection.

5 MR. REDMOND: Thank you, Your Honor.

6 (WHEREUPON, State's Exhibit Nos. 6 through 8 and 10
7 through 26 were admitted into evidence.)

8 WAYNE JORDAN, after being duly sworn, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. REDMOND:

12 Q. And, again, state your name for the record?

13 A. Anthony Wayne Jordan.

14 Q. And are you a lieutenant with the Chesterfield County
15 Sheriff's Office?

16 A. I am lieutenant with the Chesterfield County
17 Sheriff's Office.

18 Q. And do you work in investigations?

19 A. I'm chief of investigations for the Sheriff's Office.

20 Q. Okay. And how long have you worked with the
21 Sheriff's Office?

22 A. I've been with the Sheriff's Office since 2003.

23 Q. And, I guess, did you have an opportunity to become
24 involved in an incident that occurred on the 30th of
25 August 2013 out at [REDACTED]?

1 A. Yes, sir. I was called. It was at nighttime, and I
2 was asked to respond to the hospital in reference to an
3 assault that had taken place and speak with a suspect they
4 had in custody at the E.R.

5 Q. And did you -- and who was that suspect?

6 A. I arrived at the E.R. and found Julius Curry in
7 custody at Chesterfield County Hospital.

8 Q. The defendant?

9 A. The defendant, yes, sir.

10 Q. Now, did you while at the hospital take any pictures
11 of any injuries?

12 A. Yes, I did.

13 Q. And did you also do an audio interview of the
14 defendant?

15 A. Yes, I did.

16 Q. And did -- and then, finally, did you have an
17 opportunity to review, and I guess, to review and download
18 recordings from calls taken from the jail?

19 A. Yes, I did.

20 Q. Okay. And we'll get to all of those in short order,
21 but first, let me ask you this. If I could?

22 MR. REDMOND: And, again, Your Honor, we are going to
23 be referring at this point to State's Exhibit Number One
24 as it relates to the pictures and interview. Those are
25 already -- those are on State's One that is already in

1 evidence.

2 BY MR. REDMOND:

3 Q. Could I ask Lieutenant Jordan, if I could, to step
4 down?

5 A. Yes.

6 Q. And if could ask you to stand on this side of the
7 television screen so that the jurors can see. Let's go
8 through some pictures first. Okay. Now, starting with
9 this picture. Is this picture reflective of what you
10 found as it relates to the defendant at the hospital?

11 A. Yes, it is. This would be Bed Number Two at
12 Chesterfield General Hospital.

13 Q. And we will move in closer and elaborate on some of
14 these pictures. Is this a, and I didn't rotate it, but is
15 this another picture closer up?

16 A. Yes. That's just a close up picture.

17 Q. And yet even closer?

18 A. Yes.

19 Q. Okay. We have actually heard testimony regarding
20 this, but is that picture consistent in your experience
21 with a bite mark to the defendant's back?

22 A. Yes.

23 Q. And could you tell us what this picture represents?

24 A. That's the back of his head.

25 Q. Okay. And are there any, I guess, there any knots or

1 what not on the defendant's head that you noticed?

2 A. There was a little -- right in this area of the head
3 which has been, the way I look at it, facing him to the
4 left side of his face up front.

5 Q. Okay. Now, in looking at those knots did you see
6 any -- was there any blood?

7 A. No.

8 Q. Or open wounds or anything to the back of the
9 defendant's head?

10 A. No, there wasn't.

11 Q. Okay. And tell us what this picture represents?

12 A. This is a close up of his face. Again, I saw the dry
13 blood to his right nostril. A little bit of blood on the
14 right side of his cheek.

15 Q. And this picture?

16 A. Some type of cutting laceration to the right side of
17 the clavicle area.

18 Q. And just based on your experience and having seen
19 crime scenes is that consistent with some type of scratch.

20 A. That could a fingernail scratch. Some type of
21 scratch. would have been a watch of some type. Some type
22 of scratch.

23 Q. And based on your, I guess, involvement in the case
24 are you aware of a fight alleged to have occurred prior to
25 the engagement with Sergeant Coombs that the defendant was

1 involved in?

2 A. Yes.

3 Q. And what is this picture? Could you tell us what
4 this represents?

5 A. I represents just -- I want to say where the tazer
6 may have hit him. I'm not sure. He was already bandaged
7 up. I do not recall what he said that was from.

8 Q. And that's a close up?

9 A. That's a close up shot.

10 Q. Okay. Tell us about this picture?

11 A. That's a right -- that's a side view where he's got
12 some abrasions and some bruising to the, again, would be
13 my right side of his face. His left side of his face.

14 Q. Okay. And this picture?

15 A. That would be consistent with maybe some type of
16 bruising on that left shoulder.

17 Q. And is that a closer picture?

18 A. That's a closer picture.

19 Q. All right. Now, you can take a seat, Lieutenant.
20 Now, based on your experience, and I talked about crime
21 scene and asked you about crime scenes, in your time as an
22 investigator have you seen a lot of crime scenes?

23 A. Oh, yeah.

24 Q. Have you seen a lot of crime scenes where blood or
25 death?

1 A. Most definitely. Unfortunately, and I'm going on 23
2 years in October, I've seen a ton of it.

3 Q. Based on the pictures that you viewed here, and you
4 know we've heard testimony regarding what took place when
5 he was finally taken into custody or before he was finally
6 taken into custody heard testimony about that, but based
7 on your experience would you call the wounds and what you
8 observed from the Defendant to be severe?

9 MR. SWILLEY: Objection, Your Honor. I just don't
10 see the relevance of that, and I think it calls the
11 witness to speculate as well.

12 MR. REDMOND: Your Honor, if I may. Based on the --
13 what the implications have been by the Defense as it
14 relates to him being beat up and certain characterizations
15 I've laid a foundation based on this officer's experience
16 as it relates to that. So I'm actually replying something
17 that the Defense himself put up.

18 THE COURT: The problem is you putting -- you're
19 suggesting -- technically, that might not be a leading
20 questions, but you sure suggested an answer.

21 MR. REDMOND: I can rephrase the question.

22 THE COURT: I'll have to sustain his objection based
23 on that, but if you ask him what the general appearance
24 was, and I'm not trying to run your job. You clean your
25 question up.

1 MR. REDMOND: I can rephrase the question. That's no
2 problem.

3 BY MR. REDMOND:

4 Q. Again, based on your experience as we eluded to
5 earlier how would you characterize the defendant's
6 injuries? That's probably the best way?

7 A. I would consider them minor. Mild to moderate.
8 Really wasn't severe.

9 Q. Now. Thank you. As it relates to the -- let's move
10 on to the interview. You talked about it being an audio
11 taped interview. Did you, and I turned the t.v. off. Let
12 me turn it back on. Did you read the defendant his
13 Miranda warnings?

14 A. I did a verbal Miranda warning with him prior to the
15 interview.

16 Q. Did he willingly consent to give a statement?

17 A. He told me he understood his rights.

18 Q. And did he subsequently give a statement?

19 A. He gave a statement.

20 Q. And was that statement, again, recorded?

21 A. It was recorded.

22 MR. REDMOND: Court would indulge me. And, Your
23 Honor, at this time if I might publish -- it's already in
24 evidence as State's One, but if I may publish the contents
25 of that interview.

1 THE COURT: Okay.

2 (WHEREUPON, State's Exhibit One played in open Court
3 for the jury.)

4 BY MR. REDMOND:

5 Q. It that the end of the subsequent portion?

6 A. Yes.

7 Q. Okay. And, again, was this interview done at the
8 hospital?

9 A. It was done at the hospital, yes.

10 Q. Now, we also talked about some calls from the jail,
11 and let me just ask you some foundational questions about
12 how that process works. Now, a phone calls being made out
13 of the jail by inmates, can they be recorded?

14 A. They are recorded.

15 Q. They are recorded?

16 A. Yes. Yes.

17 Q. And how does that process work?

18 A. What they do is that buy phone cards from the County
19 Jail and they type in a code that's on the back of the
20 phone card and they make the phone call.

21 Q. Excuse me. And if, with those calls being recorded,
22 were you able to access any calls recorded by the
23 defendant?

24 A. Yes, we accessed several calls from him.

25 Q. And I think at the beginning of each of those calls

1 is there a warning about the call being monitored or
2 recorded?

3 A. That is correct.

4 Q. Okay. Now, again, did you listen to any phone calls
5 regarding the defendant?

6 A. Yes, I did.

7 Q. Okay. And there are, I think, four particular areas
8 that we're going to want to get into regarding those
9 times. But before I have you step down and discuss those
10 matters we -- you are using your laptop to hear these; is
11 that correct?

12 A. That is correct. That's my Department issued laptop.

13 Q. Okay. And I don't actually have a disk drive or a
14 C.D. that I can actually put into the computer or what
15 not; is that correct?

16 A. That is correct.

17 Q. And I think in talking with you you were not able to
18 do it in that form based upon the software. But, again,
19 is this on your computer accurate as to what was produced
20 by the jail?

21 A. Yes, is that correct. I have a website that I go to
22 that is secured. That's what we use. I have my own
23 issued user name and my own password that I can only get
24 into that. Anybody in my unit, all my detectives can get
25 into it. They are issued user names and passwords.

1 Q. All right.

2 MR. REDMOND: If I could at this point, Your Honor,
3 with the Court's permission I would ask that Lieutenant
4 Jordan step down and publish this for the jury at this
5 time?

6 MR. SWILLEY: Your Honor, I'm going to object under
7 my previous objections of Rule 403 as well as the Rule of
8 Hearsay in regards to the other parties speaking on these
9 recording. Please note my objection.

10 MR. REDMOND: And, Your Honor, we would simply say
11 that it is relevant because the portions that we are going
12 to be talking about address calls made to Ms. Marshall
13 Wright whose still here in the courtroom in reference to
14 this case and her testimony or non-testimony regarding
15 this case. So we would assert that they are very relevant
16 in this particular matter.

17 THE COURT: All right. Objection is overruled. Go
18 ahead.

19 MR. REDMOND: Thank you, Your Honor. This first
20 call, Your Honor, was made on the 13th of September of
21 2013. And, Your Honor, if you will indulge us. Because
22 of the nature of this system we have to physically work it
23 up to that spot. We ask the Court and the jury's
24 patience.

25 MR. SWILLEY: And, Your Honor, to preserve the record

1 I would also object to the fact nothing is in evidence at
2 this point of the actual recording as well. I've made
3 that objection as well.

4 THE COURT: All right. Noted. I overrule it. Since
5 there is no proffer here if I find a problem pops up I
6 will have to step in. There could be ramifications.

7 MR. REDMOND: We are trying to guard against that so
8 we sort of set the parameters as it relates to admissible
9 evidence, Your Honor. Your Honor, what we are going to
10 do, just for the record, is play the first part where it
11 talks about the admonition about the phone call being
12 recorded.

13 (WHEREUPON, an audio recording was played for the
14 jury in open Court.)

15 MR. REDMOND: That concludes that call. The next
16 call is a little bit further and we're going to move a
17 little further on, Your Honor. While he's doing that,
18 Your Honor, if I can just inquire to make sure that the
19 jurors can actually hear what's going on. Judge, may we
20 approach, please?

21 (WHEREUPON, a bench conference was held off the
22 record in the presence of the jury, but out of the
23 hearing of the jury.)

24 MR. REDMOND: The next call, Your Honor, I think is
25 on the 17th. It is on the 17th of September.

1 (WHEREUPON, an audio recording was played for the
2 jury in open Court.)

3 MR. REDMOND: And the last call, Your Honor, is on
4 the 21st of September.

5 (WHEREUPON, an audio recording was played for the
6 jury in open Court.)

7 MR. REDMOND: And, Your Honor, that would conclude
8 all of these jail recordings. And at this point, Your
9 Honor, I don't have anything further for Lieutenant
10 Jordan.

11 BY MR. REDMOND:

12 Q. Please answer any questions Mr. Swilley may have for
13 you.

14 MR. SWILLEY: No cross-examination, Your Honor.

15 THE COURT: You may step down.

16 MR. REDMOND: Beg the Court's indulgence just one
17 moment. Your Honor, with that the State would
18 respectfully rest its case.

19 COLLOQUY

20 THE COURT: Ladies and gentlemen of the jury, if
21 y'all will step back to your jury room, please I have to
22 take up some matters of law.

23 (WHEREUPON, the jury panel was excused from the
24 courtroom at 3:25 p.m.)

25 THE COURT: Anything for the record.

1 MR. SWILLEY: Yes, Your Honor. I make a motion for a
2 directed verdict on all four indictments. Specifically as
3 to the charge of assault and battery in the second degree.
4 Your Honor, Statute Section or Code Section 16-3-600
5 covers assault and battery. And, Your Honor, I believe
6 that a crime of assault and battery in the second degree
7 states that if a person unlawfully injures another person
8 or offers or attempts to injure another person with the
9 present ability to do so, and moderate bodily injury to
10 another person results or moderate bodily injury to
11 another could have resulted which is the allegation in
12 this case.

13 I don't think there is any non-consensual touching of
14 the private parts. So that's Sub-section D(1)A. Moderate
15 bodily injury is defined as physical injury requiring
16 treatment of the organ system of the body other than the
17 skin, muscles and connective tissues of the body except
18 when there is penetration of the skin, muscles and
19 connective tissue that requires surgical repair of a
20 complex nature or when treatment of the injuries requires
21 the use of regional and general anesthesia.

22 I think there is testimony in the record that his
23 knife for assault and battery in the second degree with
24 regards to Shiquan Wright. Your Honor, I don't think
25 there is any testimony. I think, actually, there is

1 testimony in the record that she did not receive any kind
2 of severe injury other than minor bruising. I think she
3 admitted that on my cross-examination. There may be
4 evidence of assault and battery in the third degree which
5 is a lessor included, but I don't think there is any
6 competent evidence in the record, at least by Rule 19,
7 that there was any moderate bodily injury.

8 Your Honor, as to indictment of the criminal domestic
9 violence of a high and aggravated nature, that is Code
10 Section 16-25-65, and it says that, "A person who violates
11 this section is guilty of the offense of C.D.V. H.A.N.
12 when one occurs. And assault and battery, which involves
13 the use of a deadly weapon or results in severe bodily
14 injury or an assault with or without the accompanying
15 battery which would reasonably cause a person to fear
16 imminent serious bodily injury or death."

17 Your Honor, those are the two subsections; that's
18 Subsection A(1)2, and the victim or the State's alleged
19 victim in this matter, Miss Marshall Wright, testified
20 that although there was striking on the part of Mr. Curry
21 he never used the knife in an attempt to harm her. He
22 never caused any kind of serious bodily injury to the
23 victim. And there was no assault which would reasonably
24 cause a person to fear imminent serious bodily injury.

25 There may be evidence in the record of a C.D.V., an

1 ordinary C.D.V., but I don't think the high and
2 aggravated -- any evidence of the high and aggravated
3 nature is within the record. So I would make a make to
4 directed verdict in regards to that indictment.

5 Also, Your Honor, as to the two remaining indictments
6 I make a motion for a directed verdict regarding those
7 indictments as well.

8 THE COURT: Solicitor.

9 MR. REDMOND: May it please the Court, Your Honor.
10 First, to address the last two, the murder and resisting
11 arrest, obviously, there is evidence in the record that
12 clearly gives us enough to go forward and let the jury
13 decide those two charges.

14 As it relates to the C.D.V. -- well, let me go in
15 order that Mr. Swilley did. As it relates to assault and
16 battery second, the part where -- well, he read it in the
17 statute, but when you talk about altering and to look at
18 the totality of the circumstances, and that's why I kept
19 harping on the fact that the knife was visible.

20 And in fact we've got testimony from Ms. Shiquan
21 Wright that the knife was offered, obviously, during the
22 course of this confrontation. So even though her injuries
23 may have been minor it is what could have occurred based
24 on the circumstances. So with that I think that the State
25 has met its burden at this point and being able to ask the

1 Court to deny the motion for directed verdict on that.

2 As it relates to the criminal domestic violence high
3 and aggravated, same concept. Based on the totality of
4 what was going on, based on the testimony, and in fact I
5 forgot to mention that Shiquan Wright viewed it as an
6 emergency situation at the time that she called 911. And,
7 of course, we've got this weapon involved. We've got her
8 being locked in a bedroom involved. Not being allowed to
9 leave.

10 I think based on the totality of what's in the record
11 the State is also met its burden up to this point in order
12 to -- in the light most favorable to the State should be
13 able to proceed on all four indictments to the jury.

14 THE COURT: Well, the evidence has the brandishing of
15 a knife involved in those first two, and of course, the
16 attempted murder, too, as well as the resisting arrest.
17 I'll have to deny the motion.

18 MR. REDMOND: Thank you, Your Honor.

19 MR. SWILLEY: Your Honor, as in regards to whether or
20 not Mr. Curry can be impeached with a prior conviction,
21 based upon my understanding the only conviction on his
22 record that they -- which on its face could come in
23 evidence under Rule 609 would be a previous conviction for
24 assault with intent to kill.

25 Proceeding under the Omnibus Crime Bill, that I think

1 you're aware of, that conviction happened in 2008. Your
2 Honor, I would move that that conviction -- that evidence
3 of that conviction could not come into the record. Your
4 Honor, in the case of State v. Colf, C-O-L-F, the Supreme
5 Court has said that that the Court must do a balancing act
6 by specific factors and weighing those factors in
7 determining whether or not a conviction should be
8 admitted. And I'll hand up a copy to the Court.

9 And those factors are the impeachment value of the
10 prior crime at the point and time of the conviction and
11 the witness' subsequent history, similarity between the
12 past crime and charged crime, the importance of the
13 defendant's testimony and the centrality of the
14 credibility issues.

15 Your Honor, I also have another case which is the
16 State v. Stacy Howard. That was out of Georgetown County,
17 Judge, where the Court ruled that even though it is a
18 remote conviction it is within the past ten years. The
19 Court -- the trial court had not weighed the factors
20 appropriately and ruled that the Court -- I believe ruled
21 that the conviction should not come in against the
22 defendant. It is a situation somewhat similar to this
23 situation.

24 Your Honor, the impeach value of the prior crime, I
25 would argue to the Court, is not very strong being that

1 it's a previous conviction for assault with intent to kill
2 rather than a crime that lends any kind of -- that would
3 be indicative of the defendant's veracity on the stand.
4 This happened back in 2007. I think he was convicted in
5 2008, and I don't think he has any kind of substantial
6 history subsequent to that.

7 The similarity to the -- the third factor is the
8 similarity of the previous conviction of A.W.I.K. and this
9 case is extremely similar. Essentially, it's the same
10 charge. There was no attempted murder back then. It
11 was -- originally it was assault and battery with intent
12 to kill. He pled guilty to assault with intent to kill,
13 and he was convicted of that. Received eight years.

14 Judge, this case is -- the important -- Number Four,
15 the importance of the defendant's testimony is extremely
16 important. He is going to be -- well, he would be the
17 only witness the Defense is going to put up to testify to
18 any factual matters. Well, he's going to be the only
19 witness, period. The importance of his testimony is
20 great.

21 And, essentially, Number Five is the centrality of
22 the credibility issue. I mean this is pretty much -- I
23 don't want to call it a swearing match, but the jury has
24 to weigh testimony of one witness versus the testimony of
25 another witness and decide whether or not the State has

1 met its burden of proof. So the credibility issue of this
2 is essential.

3 Your Honor, I think weighing all those factors the
4 Court should not find that the previous conviction should
5 not be admitted in against Mr. Curry if he chooses to
6 testify. There is another case that just came out that
7 covers this issue. I'm sorry. Never mind. That was
8 Howard. I think I handed that up.

9 THE COURT: Well, the Solicitor knows where I'm
10 headed with this.

11 MR. REDMOND: Mr. Farr and I were just having that
12 discussion. In my age I have learned when to shut up and
13 really just concede. This would be one of those
14 situations. Obviously, Your Honor, I don't know that that
15 jury is going to do, but assuming there is a conviction
16 this issue could result in this case being reversed. And
17 it's not worth that risk, and as I understand the law I
18 don't contest what Mr. Swilley is saying. So we are not
19 going to force that issue.

20 THE COURT: All right, now, you know Mr. Swilley is
21 right on point with this, but you do know, and I'll leave
22 that up to you, that I have been affirmed on allowing the
23 State, if he takes the stand and you go to impeach him,
24 you can limit it to felony or misdemeanor. But, clearly,
25 this one as far as the assault, whatever the assault

1 was -- is, would fly right in the face of the decision Mr.
2 Swilley handed up. So that's out of the question.

3 You know that, and whether you want to.

4 MR. REDMOND: I actually am interested when you say
5 that as opposed to saying an assault, and obviously I
6 wasn't going to mention any jail time, but that was
7 something that the State was considering possibly asking
8 have you been convicted of a General Sessions charge in
9 the past or something along those line is really what the
10 direction that I was leaning towards without getting any
11 further than that.

12 THE COURT: That will be up to you, and of course,
13 Mr. Swilley can object at that time. I'm just telling you
14 that I've already been affirmed on limiting that issue to
15 asking if they have been convicted of a felony or a
16 misdemeanor but not getting into the specific charge.

17 MR. REDMOND: Yes, sir.

18 THE COURT: Okay?

19 MR. REDMOND: Yes, sir.

20 MR. SWILLEY: Yes, sir. And can I inquire. I don't
21 have a copy of his N.C.I.C. or anything.

22 MR. REDMOND: Oh, here it is. And that's the only
23 conviction. I think only one conviction out of Maryland.
24 It's back in the 90's so I can't even remember what the
25 conviction was. It was in the early to mid 90's. So

1 about 20 years ago. So that's actually the only thing in
2 that time that would be impeachable.

3 THE COURT: Okay. I guess I might better talk to Mr.
4 Curry about his Fifth Amendment rights. Have you covered
5 those with him, Mr. Swilley.

6 MR. SWILLEY: We discussed it, yes, Your Honor.

7 THE COURT: All right. Mr. Curry, have you got any
8 questions about your Fifth Amendment rights?

9 MR. CURRY: Just to be clear what are they exactly.

10 THE COURT: All right. Let me go over them for you.
11 Under the United States Constitution Fifty Amendment and a
12 similar counterpart of the State Constitution of South
13 Carolina you certainly have a right to invoke your Fifth
14 Amendment rights. In other words, you have the right to
15 remain silent. If you elect not to testify that cannot be
16 used against you in any way. It cannot mitigate against
17 you in any way. In fact I would instruct the jury that
18 they can't even discuss your election not to testify back
19 in the jury room. That's totally off limits.

20 You have a constitutional right to remain silent.
21 Now, you have a right to testify, but you have that
22 constitutional right not to testify. Any decision that
23 you make in this regard needs to be yours, yours alone
24 after you have been advised by counsel which he says he's
25 discussed it with you and after I have discussed this with

1 you.

2 Your decision has to be freely and voluntarily and
3 intelligently made. Now, if you do elect to testify you
4 do understand, I hope you understand, that you can be
5 impeached just like any other witness except, now, when it
6 comes to this prior conviction. We've already hashed that
7 out. You open yourself up to be cross-examined just like
8 any other witness. Do you understand everything that Mr.
9 Swilley has gone over with you?

10 MR. CURRY: Yes, sir.

11 THE COURT: You understand what I just went over with
12 you?

13 MR. CURRY: Yes, sir.

14 THE COURT: Do you have any questions?

15 MR. CURRY: No, sir.

16 THE COURT: All right, then. Do you wish to testify
17 or not?

18 MR. CURRY: Yes, sir.

19 THE COURT: You do?

20 MR. CURRY: Yes, sir.

21 THE COURT: Okay. And that's your decision? Yours
22 alone after discussing this with counsel and my colloquy
23 with you?

24 MR. CURRY: Yes, sir.

25 THE COURT: All right.

1 MR. REDMOND: Your Honor.

2 THE COURT: Just a second.

3 MR. REDMOND: I was going to ask to take a quick
4 break. I know they have been back there and what not, but
5 I assume we're going to go right into the Defense's case.
6 I was wondering if I can have like five minutes.

7 THE COURT: You've got it.

8 MR. REDMOND: Thank you.

9 THE COURT: Matter of fact, I'm going to step down a
10 minute.

11 MR. REDMOND: Thank you, Judge.

12 (WHEREUPON, Court was in recess at 3:40 p.m. and
13 reconvened at 3:46 p.m.)

14 THE COURT: All right.

15 (WHEREUPON, the jury panel enters the courtroom at
16 3:46 p.m.)

17 THE COURT: Mr. Swilley.

18 MR. SWILLEY: Thank you, Your Honor. Defense calls
19 Julius Curry.

20 JULIUS CURRY, after being duly sworn, testified
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. SWILLEY:

24 Q. How are you doing, Julius?

25 A. I'm doing all right.

1 Q. Lean up a little bit towards that microphone if you
2 don't mind. Julius, where are you from?

3 A. Baltimore, Maryland.

4 Q. Okay. And tell me what your address is?

5 A. [REDACTED]?

6 Q. Julius, do you remember August the 30th of 2013?

7 A. Yes, I do.

8 Q. Okay. Do you recall what happened around ten o'clock
9 that night?

10 A. Yes.

11 Q. All right. Tell me what happens based upon your
12 recollection of that night?

13 A. Me and my girlfriend, Marshell, we had been drinking
14 pretty heavy that day. Also doing cocaine. So we was
15 walking down to the trailer park. Once we got to the
16 trailer park we got some more cocaine, and we proceeded
17 back to the house. On the way back to the house we was
18 stopped by some guys in a car. It was two of them, and
19 they asked if me I wanted to get in to get a ride.

20 I didn't want to ride cause I don't generally deal
21 with those guys in the area. So we proceeded to walk.
22 Well, I proceeded to walk. My girlfriend jumped in the
23 car. It upset me cause I been drinking. And I'm not very
24 easy going to stuff like that because I'm not from down
25 here. So I'm not familiar with the people the way they do

1 things down here.

2 So my first impression is you get in that car and
3 anything could happen to you whether you say you know them
4 or not know them by face. So when she gets in it upsets
5 me. So I proceeded. So I'm walking down the street by
6 myself, and I'm just thinking about that. So by the time
7 I get home I'm pretty upset. I goes into the house and
8 I'm asking her, "Well, why did you get in the car? Why
9 did you do that? Why did you leave me."

10 And I could see the driver when you got in the car.
11 We wasn't that far. She proceeded to say ---

12 MR. REDMOND: Julius, don't tell me what anybody
13 said?

14 A. Okay. I'm sorry. Well, she -- when we were back and
15 we were in like pretty much an argument or heated
16 conversation, and one thing lead to another and I slapped
17 her. Maybe I shouldn't have slapped her, but I did it.
18 It got a little more heated than I intended because things
19 got more physical because her daughter got into it.

20 And before I knew it it was her, her mother and me
21 and we was all going at it. So the competition got a
22 little bit thick, and I was talking to her and I was like
23 I couldn't believe she jumped on me. I was pretty
24 intoxicated so I wasn't really thinking rationally. So at
25 the time it was like I had asked myself I already knew I

1 wasn't -- but, her daughter, Marshall's daughter, Shiquan,
2 ended up leaving to call the police, and we were still
3 arguing a little bit.

4 Marshall and myself was in the living room where she
5 was trying to calm me down. She was doing pretty good,
6 but I was still aggravated. And I was trying to talk to
7 her, but she didn't want to listen. She wanted to try to
8 calm me down.

9 So I started to get aggravated. So when I went and
10 talked to her we ended up going into the bedroom. She was
11 like, "Let's go into the bedroom. You know, get away from
12 in here." So I pushed the chair to the door. We were
13 sitting there and we were still talking. We ended up in
14 the bedroom.

15 Q. Julius, tell me why you pushed the chair in front of
16 the door?

17 A. Because the door was broken. The door was broken
18 because of the incident before. And I left back out the
19 house one of the locks to the door, and I forced the door
20 open. So the lock on the door was broken. So when
21 Shiquan left to call the police the door was broken.
22 Anybody could have just pushed it open and came in.

23 And then she had left, and when she did she said,
24 "I've got something for you or you're going to get yours."
25 I didn't know what she was going to do. Well, call

1 somebody or call one of her friends up. So I pushed it
2 trying to keep the door shut. Once we got in the bedroom
3 me and Marshall was talking, and she was trying to calm me
4 down. And she was telling me that I was acting kind of
5 irrational. I went overboard and it wasn't necessary. So
6 I was kind of agreeing with her. I was calming down, and
7 that's when I heard someone outside the door calling my
8 name.

9 I believe it was like something like -- first I heard
10 my first name. Somebody saying, "Julius." Then I heard
11 somebody -- they call me J. Then I heard, "J, come out
12 here." So I'm still talking to Marshall. I was kind of
13 like ignoring them. The door comes open and I turn to
14 look. And Mr -- Officer coombs has his tazer pulled out.
15 And the time I didn't know it was a tazer.

16 Q. Okay. When -- at this point come on off the stand
17 and show me what Officer Coombs appeared like to you.
18 Stand right there. Stand right there. Tell me what
19 all -- again, what did Officer Coombs do? Speak up
20 because the jury has got to hear you.

21 A. Well, at the time Officer Coombs came in. He had
22 pushed the door open.

23 Q. Okay.

24 A. And I was standing maybe a little bit further than
25 what you are.

1 Q. Okay. What's that in your hand?

2 A. I had my knife in my hand.

3 Q. What hand in your knife in?

4 THE COURT: You're going to have to speak up.

5 THE WITNESS: It's in my right hand.

6 BY MR. SWILLEY:

7 Q. Okay?

8 A. But my right hand was on the bed. On the side of the
9 bed.

10 Q. Okay.

11 A. And I was still talking to Marshell.

12 Q. You've got to speak up. Not yell, but you've got to
13 speak out kind of loud so the court reporter can get it
14 and the jury can hear you, okay?

15 A. So when he comes in he already had his tazer pointed
16 at me. I turned, and I see him. So I go to move my hand
17 to get rid of the knife, but before I got a chance to move
18 any further than just an foot he had shot me with the
19 tazer.

20 Q. Where did the prongs hit you?

21 A. One hit me in my throat.

22 Q. Right here?

23 A. Yes.

24 Q. Okay.

25 A. On my abdomen.

- 1 Q. Where did the other one hit you?
- 2 A. My stomach.
- 3 Q. Your stomach?
- 4 A. Um hum.
- 5 Q. Okay.
- 6 A. And that's when he started shocking me.
- 7 Q. Okay. What happened when he shocked you?
- 8 A. I ended up on the floor.
- 9 Q. Okay. You fell face first on the floor?
- 10 A. Yes.
- 11 Q. Like this? Face up?
- 12 A. Yes. With my arms.
- 13 Q. Where were your arms?
- 14 A. Underneath me.
- 15 Q. Okay. Your arms were underneath you, right?
- 16 A. Yes.
- 17 Q. Okay. Tell me what happened next?
- 18 A. So then he steady shocked me, and he steady talking
- 19 to me but I can't understand what he's saying because the
- 20 inside of my head is gurgling. I don't know if it was the
- 21 electricity, from the shock.
- 22 Q. Okay?
- 23 A. So he's steady shocking me. The first shock, it
- 24 stopped.
- 25 Q. Okay.

1 A. Then he said -- he said something to me, and he
2 shocked me again?

3 Q. Okay.

4 A. Then about the time I was like coming out of the
5 second shock he started talked like, "Drop the knife.
6 Drop the knife." So I was talking to him. I can't
7 remember the point what I was saying, but he shocks me
8 again. At the end of that shock I see him, like out of my
9 eye got movement.

10 Q. Okay.

11 A. So he's like coming towards me.

12 Q. Okay. And walk towards me like he was walking
13 towards you. Okay?

14 A. He shocked me again. He stood there still saying
15 something. I guess he was saying drop the knife. So
16 first thing I did was I lifted my hand up. I don't know.
17 I think he got where I was, but I recall him coming down
18 with his foot on me.

19 Q. Okay. His foot was on what now?

20 A. My hand.

21 Q. His foot was on your hand?

22 A. His foot was on my hand.

23 Q. Which hand?

24 A. At that time he was behind me?

25 Q. Okay.

1 A. So he came up and he put his foot on my hand. And I
2 don't know exactly how I was sitting, but I was on my
3 back.

4 Q. All right. You're on your back?

5 A. Yeah.

6 Q. Now ---

7 A. He was down on the side of me.

8 Q. Okay.

9 A. And at that point I kind of lift my head up.

10 Q. Okay.

11 A. And he -- I remember him head butting me. I'm trying
12 to get him off of me. I'm trying to push him off of me.
13 So before I knew it Wayne -- I think his name is Wayne.

14 Q. Are you referring to Officer Wallace?

15 A. Wallace.

16 Q. Okay.

17 A. Came in and tazed me in my stomach.

18 Q. Okay.

19 A. And it was hurting pretty good, but I heard Coombs
20 tell him to hit me, and he was like proceeded to hit me in
21 my face. And I was still yelling for my girlfriend. So
22 Wallace was punching me, and I was calling for Marshell.

23 Q. Speak up.

24 A. And he was kneeling me in my side telling me to shut
25 up, shut up, shut up. So he was holding me down while

1 Coombs started hitting me in my face. And that's when he
2 put the handcuffs on me.

3 Q. Okay.

4 A. But I never had that knife.

5 Q. Okay. Please sit back on the stand, Julius. Okay.

6 All right. And after the handcuffs were on you what do
7 you recall happening after that?

8 A. I was sitting cause I couldn't breathe because I was
9 like in an asthma attack. So they was joking about it
10 like it was funny to them. I heard one officer say to
11 just go into the light, and I'm telling them, "Look, I
12 need my asthma -- I can't breathe. I can't breathe. It's
13 not a joke. So I'm screaming for Marshall so she can get
14 my asthma pump.

15 Q. Okay.

16 A. They -- I don't know exactly how long it took, but
17 they never did. The ambulance got there before they got
18 it for me, and I went to the hospital.

19 Q. Okay. Julius, do you have a problem with one of your
20 hands? One of your wrists?

21 A. Yes.

22 Q. All right. Which wrist is this?

23 A. My left hand.

24 Q. Are you left handed or right handed?

25 A. I'm right handed.

1 Q. Right handed; okay. Now, your left hand, show me
2 your left hand. All right. Tell me what is wrong with
3 your left wrist?

4 A. I had broke it from a compound fracture.

5 Q. Okay.

6 A. Where it's one here on my wrist and one right back at
7 the back of my wrist.

8 Q. And how did these rods in you wrist limit your range
9 of motion?

10 A. Well, from going forward this is about as far as I
11 can go.

12 Q. Okay.

13 A. Forward motion, and I can't go back at all.

14 Q. Okay. All right. And do you recall getting to the
15 hospital after you were taken there by the ambulance?

16 A. Yes, I remember going to the hospital. Yes.

17 Q. All right. And tell me about how you were feeling at
18 that time you were in the hospital?

19 A. Pretty disoriented, in pain, unset.

20 Q. Okay. Do you remember talking to Investigator
21 Jordan?

22 A. Yes.

23 Q. Okay. How good is your recollection of that
24 particular interview?

25 A. Pretty good.

1 Q. Pretty good, okay. About how long after you had been
2 tazed repeatedly did you give that interview? If you
3 don't know it's okay.

4 A. I don't know. I couldn't tell you that.

5 Q. Okay. Julius, did you ever try to stab anybody that
6 night?

7 A. No, I didn't.

8 Q. Okay. Did you -- and subsequent -- well, okay, and
9 later on after you -- that wasn't the last time that you
10 had any contact with Marshell, obviously, was it?

11 A. No.

12 Q. Okay. Tell me how frequently you spoke with Marshell
13 after that. About how often did you talk to Marshell
14 after that?

15 A. Pretty often. In the beginning she came to see me
16 every weekend except two or three weekends on visits. She
17 came on my visits.

18 Q. Okay.

19 A. But as far as phone calls, almost every day for a
20 couple of months then it started to taper off a little
21 bit.

22 Q. And based upon what you observed, right, and I know
23 this is just what you observed, did you observe or did you
24 perceive her wanting to perpetuate -- did you perceive her
25 wanting to go forward with the prosecution? Her choice?

1 A. Say that again.

2 Q. From what you perceived, now. What you perceived of
3 her.

4 A. Okay.

5 Q. Did you perceive her wanting you to be prosecuted or
6 not wanting to be prosecuted?

7 A. Not.

8 Q. Okay. And tell me the different kinds of contact
9 y'all have had since this incident, you and Marshell?

10 A. What do you mean different kinds?

11 Q. I mean did she visit you.

12 A. In the beginning she visited me pretty much every
13 visit that she could until I believe it was the Sheriff's
14 Department or the Detention Center said she couldn't.

15 Q. Okay. Did she write you?

16 A. Yes.

17 Q. Okay. Based upon what you -- based upon your
18 understanding and your observations dis she want to
19 continue a relationship with you or discontinue the
20 relationship?

21 A. Continue. Like we were engaged, and we were on our
22 way to getting married. And she even made statements that
23 she was ---

24 MR. REDMOND: Your Honor, I would object to any
25 hearsay

1 THE WITNESS: Okay. Well. Okay ---

2 Q. Stop. Okay, Julius, do you still love Marshall?

3 A. Very much.

4 Q. Okay. All right.

5 MR. SWILLEY: Beg the Court's indulgence.

6 BY MR. SWILLEY:

7 Q. Okay, Julius, tell me real quick how tall are you?

8 A. 5'8".

9 Q. 5-foot eight?

10 A. Yes.

11 Q. And how much you weigh?

12 A. Now, about 150, 152.

13 Q. All right. About how much did you weigh at that time
14 on August the 30th of 2013?

15 A. 140.

16 Q. 140, okay. And how old are you?

17 A. Forty-five.

18 Q. Forty-five now. Okay.

19 MR. SWILLEY: Beg the Court's indulgence.

20 THE COURT: Sure.

21 BY MR. SWILLEY:

22 Q. All right. Julius, answer any questions that Mr.
23 Redmond has for you.

24 A. Okay.

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

CROSS-EXAMINATION

1
2 BY MR. REDMOND:

3 Q. Obviously, you are hoping that the jury believes what
4 you testified to. Would that be a fair statement?

5 A. Yes.

6 Q. Well, in talking about your what we call veracity or
7 truthfulness, I think it's important for me to ask you.
8 In 2008 isn't it true that you pled guilty to a General
9 Sessions charge here in Chesterfield County?

10 MR. SWILLEY: Objection, Your Honor.

11 THE COURT: Noted, but overruled on that question so
12 far.

13 THE WITNESS: Yes.

14 BY MR. REDMOND:

15 Q. Okay. Now, moving on into the incident, and I guess
16 let me just start off with some of the things that you
17 have testified to. You went into, and I believe Mr.
18 Swilley was on the floor and what not, went into some
19 detail as it relates to what happened after you were tazed
20 and all that good stuff, right?

21 A. Yes.

22 Q. But you never addressed the fact in your direct
23 examination that on the tape that we heard that you gave
24 immediately after the incident you, and I'm loosely
25 quoting here, you didn't remember being tazed. Yet today

1 you went into a full production with your attorney of how
2 you got tazed, what happened and what not. But isn't it
3 true that at that time you claimed you didn't remember
4 being tazed?

5 A. Yeah, I guess ---

6 Q. I mean that was you on the tape, right?

7 A. Yeah, that was me.

8 Q. And that was you talking to Lieutenant Jordan?

9 A. Yeah.

10 Q. And that was you that said you did not remember being
11 tazed?

12 A. Probably didn't at the time. I was pretty
13 intoxicated at the time..

14 Q. Well, and to that end you were pretty intoxicated yet
15 you remembered what you claim they did to you. Remember
16 you talked about the fact that Marshell and Shiquan had
17 jumped you, and you went through what was going on up to
18 that point. But then when Lieutenant Jordan asked you
19 about the law enforcement involvement you really didn't
20 have much to say because you say you didn't remember
21 anything, right?

22 A. Yeah. I didn't have too much to say because they
23 didn't ask me much.

24 Q. Well, when somebody asks you something and you say
25 you don't remembering being tazed. I think us said that

1 the only thing that you remember is you said you didn't
2 threaten to kill anybody. You said you didn't remember
3 anybody, I guess, coming in announcing themselves as law
4 enforcement. So at that point what else is there to ask
5 you if you claim you don't remember? That a fair
6 question?

7 A. Some say.

8 Q. Now, moving on to, I guess, some of the things that
9 you have told us for the first time today that you talked
10 about being upset. So -- and it's interesting that you
11 said that. When you went to the house you were upset. I
12 think you also admitted that you kicked in the door, isn't
13 that true?

14 A. Eventually, yes.

15 Q. Okay. So you were mad about her getting in the car.
16 You kicked in the door, and you even admitted to slapping
17 Marshall. You initiated the physical contact that took
18 place in this incident. Isn't that true?

19 A. Yes.

20 Q. Okay. And she's a woman. You're a man, and but you
21 decided that you needed to slap her because you were not
22 happy. You were upset with her for getting in the car and
23 driving just down the street, right?

24 A. I wouldn't say that I was right about that.

25 Q. But?

1 A. But after that I was pretty normal.

2 Q. But you did admit to that. In fairness you did admit
3 that you were wrong about that. But then you also talk
4 about the fact, and these are your words not mine, that
5 you were not thinking rationally. So when you say that
6 could you and I agree about the fact that when you say
7 you're not thinking rationally you realize that there were
8 a lot of things that took place in that incident that you
9 were wrong about because you were not thinking rationally.
10 Is that a fair statement? Can we agree on that?

11 A. Being irrational about something and take place in
12 something that just didn't happen are two different
13 things.

14 Q. Well, I couldn't understand what you just said. What
15 did you say?

16 A. Not thinking rationally and taking place in something
17 that didn't happen are two different things.

18 Q. Well, you said that it didn't happen, but according
19 to you, remember, you don't remember it happening. And
20 now today, like I said, after your testimony was built
21 about something you claim you don't remember. Isn't that
22 true?

23 A. No. That's not true.

24 Q. Okay. So ---

25 A. At that time I don't remember being tazed. And in

1 the statement I said I don't remember being tazed. I
2 didn't say that I don't ---

3 Q. But you just -- okay. I'll let you finish. Go
4 ahead. Are you done?

5 A. Yes.

6 Q. But you just finished saying, yeah, you got tazed
7 here. You got tazed here. You go through that whole
8 episode. Again, your lawyer got on the ground and
9 demonstrated how you were positioned after you got tazed.
10 So, again, can we agree that today you have changed what
11 you said initially? In other words it's different. You
12 changed your story from the time you talked to Lieutenant
13 Jordan until today you've changed your story. It's pretty
14 simple. Yes or no?

15 A. No. It's not simple.

16 Q. Yes or no, did you change your story?

17 A. Yeah.

18 Q. Okay. Thank you. Thank you. Now, another thing
19 that I'm somewhat curious about is that when you talk
20 about the knife, at what point the knife became involved,
21 when did you -- and I'm unclear. You might have said it
22 and I may have just missed it, but when did you get the
23 knife? When did the knife come out?

24 A. You mean ---

25 Q. In other words when did you knife ---

1 MR. REDMOND: Beg the Court's indulgence.

2 BY MR. REDMOND:

3 Q. When did your knife first become involved in this
4 incident? When did you pull it out?

5 A. We were in the living room, I believe, when the whole
6 altercation took place. Marshall was still talking, but
7 Shiquan had pulled a bottle, a pretty fair sized bottle,
8 out on me. And I guess the first thing that went through
9 my mind -- I can't remember exactly what I was thinking at
10 the time, was she had a weapon against me. So I pulled my
11 knife out.

12 Q. Okay. But Shiquan had left?

13 A. No.

14 Q. No, I mean after that she left?

15 A. Yeah.

16 Q. But the knife was still out?

17 A. Because she said that she got something for me and
18 you're going to get yours. So I didn't know what was
19 going to take place. So, yeah, we were still talking and
20 I still had the knife.

21 Q. Okay. And then when you went back into the bedroom
22 the knife was still out. Shiquan was gone. You had
23 barricaded the door, and the knife was still out.

24 A. The door wasn't barricaded.

25 Q. Well, you said you locked the door because you were

1 afraid what she might come back and do to you?

2 A. I never said I locked the door. I said that we were
3 in the bedroom.

4 Q. So you never locked the door? You never locked any
5 door? You locked the front door? You barricaded the
6 front door earlier, right?

7 A. Put the chair in front of the front door, yes.

8 Q. Because you were afraid of her coming back and doing
9 whatever, Shiquan?

10 A. I wasn't afraid of Shiquan doing anything to me. I
11 didn't know who she was going to bring with her.

12 Q. Fine. But, any way, the knife is out? Your knife is
13 out? Your knife stayed out even after she left, right?

14 A. Yeah.

15 Q. While you were in there with Marshall, right?

16 A. Yes.

17 Q. Even after you claim that you were calming down the
18 knife was still out, right?

19 A. Yes.

20 Q. Because you say, I think, that when the officer came
21 in you had actually dropped the knife at the time you were
22 tazed. Oh, by the way, you don't remember being tazed
23 initially, but according to what you're saying today ---

24 MR. SWILLEY: Objection, Your Honor. I don't think
25 that's really ---

1 MR. REDMOND: I'll rephrase. I'll rephrase.

2 THE COURT: All right.

3 BY MR. REDMOND:

4 Q. What point -- you still had the knife out when Jimmy
5 Coombs came into the bedroom, right?

6 A. Yes.

7 Q. Okay. And you claim that you dropped the knife after
8 you got tazed?

9 A. Yeah.

10 Q. But in your statement you don't remember being tazed.
11 Isn't that's what you said in your statement?

12 A. Yes.

13 Q. Okay. So that would be a part of the story that
14 changed?

15 A. What? About me remembering being tazed?

16 Q. Yeah. Yes, sir.

17 A. Yeah.

18 Q. Okay. That changed. That's it. Now, if things had
19 calmed down and you had been asked to come outside or what
20 not why didn't you just comply and go out?

21 A. Excuse me?

22 Q. Why did they have to kick the door in?

23 A. Could you repeat that?

24 Q. Why did they have to kick that door in? You said
25 that you were calming down. If you were calming down why

1 didn't you just go outside when you were asked to go out?

2 A. Like I said when I was speaking with my attorneys I
3 was still talking with Marshall, and I heard someone call
4 my name. I didn't know who it was out there. I didn't
5 hear them say it was anybody. I just heard somebody call
6 my name. Once he said my name again I proceeded to talk
7 to Marshall again ignoring anyone calling my name. Yeah,
8 I heard someone call my name, but I was just ignoring who
9 it was.

10 Q. Okay. So somebody was calling your name, but nobody
11 identified themselves as the Sheriff's Office, told you
12 that you needed to come out so there wouldn't be no more
13 trouble? You just heard somebody calling your name, and
14 Jimmy Coombs busted in on you? That's your testimony
15 today?

16 A. My testimony is that I heard someone call my name.
17 I'm not paying any attention. I'm trying still to talk to
18 Marshall. Now, once he kick the door in and I recognized
19 him as being a sheriff is when I tried to get rid of the
20 knife and got tazed.

21 Q. Okay. Now, let me ask you this because you really
22 don't talk about it in your direct examination. Let's
23 talk about these jail calls. Getting into the changing
24 story part, that's what I'm leading up to to be honest.
25 Don't really address -- you heard yourself on tape today,

1 didn't you?

2 A. Yes.

3 Q. You heard things you hadn't said, didn't you?

4 A. Yes.

5 Q. Heard what you were trying to tell Marshall, didn't
6 you? Heard the things that y'all were discussing about
7 her testimony and not coming to Court and things of that
8 such? You made those calls, didn't you?

9 A. Yes.

10 Q. That's you on those recordings, isn't it?

11 A. That's me.

12 Q. Like I said talk about changing stories.

13 MR. REDMOND: Your Honor, with that -- oh, beg the
14 Court's indulgence. Your Honor, that will be all the
15 questions I have at this time for this witness or this
16 defendant.

17 THE COURT: Anything further?

18 MR. SWILLEY: There is not, Your Honor.

19 THE COURT: Yes may step down. Thank you.

20 MR. SWILLEY: Your Honor, the Defense would rest at
21 this juncture.

22 THE COURT: Anything in rebuttal?

23 MR. REDMOND: Your Honor, if I may have just a
24 moment. I need to confer with my witness to make sure
25 that I don't.

1 THE COURT: Sure.

2 MR. REDMOND: Briefly, Your Honor, I'm calling
3 Marshall Wright.

4 THE COURT: You're still under oath, Ms. Wright.

5 MARSHALL WRIGHT, after previously being duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. REDMOND:

9 Q. The Defendant said that, you know, when he was giving
10 his address that he said that he still lived at that

11 [REDACTED] Does he still have any of his stuff
12 there at the house?

13 A. Yeah, most of his stuff is still there at the house.

14 Q. Okay. However, is it your understanding that he is
15 going to continue living there? Whose house is that?

16 A. It's mine.

17 Q. Okay?

18 A. On range.

19 Q. And in your name?

20 A. Yes.

21 Q. And I'll just ask you directly. Is he welcomed to
22 come back to that house?

23 A. No because he told me ---

24 MR. SWILLEY: Objection, Your Honor.

25 MR. REDMOND: She's say what the defendant said.

1 THE WITNESS: He told me to give his aunt his stuff.

2 MR. SWILLEY: There was no ruling. I was objecting
3 on the basis of relevance.

4 MR. REDMOND: Your Honor, it was based on what he had
5 said because he went through a whole thing about being
6 engaged and things like that. I just want to make sure it
7 was clear where they stood especially with him giving that
8 address.

9 THE COURT: Go ahead. I'll overrule.

10 MR. REDMOND: Okay.

11 BY MR. REDMOND:

12 Q. Go ahead. Repeat what you just said?

13 A. He told me to call his aunt and for her to come pick
14 his stuff up.

15 Q. Okay. So based on your discussions with him it's his
16 understanding that it's over between you?

17 A. Yeah.

18 MR. REDMOND: I have nothing further, Your Honor.

19 MR. SWILLEY: No cross, Your Honor.

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

21 MR. REDMOND: And that would be all the State has.

22 COLLOQUY

23 THE COURT: All right. It is 15 minutes after 4:00.

24 We will not go any further today. Got a doctor's

25 appointment that we've got to meet. Let's fire back up at

1 9:30 in the morning. We will have closing arguments and
2 then the charge. We will put you to deliberating. Madam
3 Clerk, if you will put on the phone a message. If you
4 will tell Jury Number Two to report at eleven o'clock,
5 please.

6 CLERK OF COURT: I sure can.

7 THE COURT: Anything before we break for the night?

8 MR. REDMOND: Nothing from the State, Your Honor.

9 MR. SWILLEY: Nothing from the Defense, Your Honor.

10 THE COURT: Okay. Everybody else remain seated.
11 Remember, jurors, don't let anybody approach y'all about
12 this case. We will see you in the morning.

13 (WHEREUPON, the jury panel was excused from the
14 courtroom at 4:19 p.m.)

15 THE COURT: All right. We're in recess until 9:30 in
16 the morning.

17 END OF TRANSCRIPT OF RECORD
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the 4th 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Chesterfield County, South Carolina, on the 4th day of March, 2014.

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

May 13, 2014



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF CHESTERFIELD</u>	)	2013-GS-13-0697
		2013-GS-13-0698
		2013-GS-13-0699
		2013-GS-13-0700

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
JULIUS CURRY	)	
DEFENDANT	)	

March 3-5, 2014
 Chesterfield, South Carolina
 Volume Number 03 of 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

KERNARD REDMOND, DEPUTY SOLICITOR
 Attorney for the State

MATTHEW SWILLEY, PUBLIC DEFENDER
 Attorney for the Defendant

1 COLLOQUY

2 THE COURT: Now, we're ready.

3 MR. SWILLEY: Before we bring the jury in, Your
4 Honor, I just want to renew my motion for a directed
5 verdict for the record.

6 THE COURT: So noted. I don't know of any reason to
7 reverse my previous ruling so I will once again deny the
8 motions. Y'all ready to argue?

9 MR. REDMOND: The State is ready, Your Honor. As an
10 administrative matter, I think that since the Defense has
11 put up a case it's my understanding that they will argue
12 first and I'll get last argument unless he wants me to
13 argue first on the law.

14 MR. SWILLEY: That's fine.

15 THE COURT: All right. Defense waives requiring you
16 opening on the law.

17 (WHEREUPON, the jury panel enters the courtroom at
18 9:39 a.m.)

19 THE COURT: Good morning, Mr. Foreman, ladies and
20 gentlemen. We are ready to proceed. Closing arguments
21 are next. Counsel.

22 CLOSING STATEMENT BY MR. SWILLEY

23 MR. SWILLEY: Thank you, Your Honor. If it please
24 the Court, Mr. Redmond. Good morning, ladies and
25 gentlemen. I would say thank you for being here, but I

1 know you don't really have much of a choice in the matter.
2 Initially, at the beginning of the trial yesterday
3 morning, I told you that it's not like you see on T.V. and
4 I hope that you understand a little bit more about how the
5 criminal justice process works now. Not just in South
6 Carolina but in general.

7 And like I told you before Julius, well, he's the
8 defendant in the case. Obviously, you know by now that
9 you are not going to hear anymore testimony in the matter.
10 You are just going to hear me talk for a little bit and
11 you're going to hear Mr. Redmond talk for little bit and
12 then you will hear Judge Burch will give you what the law
13 is. And I ask you to listen very attentively when he does
14 because that's very important.

15 You're going to remember from -- at the beginning I
16 told you that like on t.v -- not like on t.v. in real life
17 things aren't just cut and dry. All right. And I tried
18 to be very up front and let you know because this is so
19 important that you need to know and you need to know.
20 First things from me is that Julius is not, you know, I am
21 not going to sit here and tell you that he is the best
22 person in the world. And I am not going to sit here and
23 tell you that he didn't show his rear end so to speak that
24 night.

25 But you have a very daunting task before you to

1 determine whether or not the State has proven him guilty
2 or not proven him guilty beyond all reasonable doubt of
3 the offenses the State claims that he had -- claims that
4 he did.

5 You know, every time I do one of these things I
6 always try to tell some kind of a story being from my own
7 personal experience and it's one that I know of that can
8 put things in perspective. And every time it gets harsher
9 and harder. Part of that is probably because I have lived
10 a really boring life and I am only 30 and I don't have
11 that many stories that can really tie in.

12 And the other part of that is because, you know, in
13 everyday kind of experiences and this kind of situations,
14 you probably didn't you -- it probably didn't take you a
15 long time to figure out that Julius and Marshall and
16 Shiquan, they are not, you know, they are not living in a
17 mansion here. Okay.

18 They're not the -- I mean they are not upper crust of
19 society. Julius is not going to win a Nobel Prize. He is
20 not going to graduate sum cum laude or anything. But be
21 that as it may, in America and in our justice system
22 regardless of who you are or what you do or what you don't
23 do you get the same standard as every single other human
24 being.

25 The State, the government, the State government in

1 this case, don't forget that, has to -- before you can be
2 convicted of any crime has to prove you guilty beyond a
3 reasonable doubt by law before a jury of your peers.
4 Y'all aren't part of the government. You will get a small
5 check from the government for being here, but you are not
6 part of the government, and that's why this is so
7 important.

8 You see everybody from the beginning of this up until
9 we started the trial this has been perpetuated and pushed
10 forward by people in the government. They have a say so.
11 Now, that ends and since the beginning of this trial
12 Julius has some participation mainly through me. And he's
13 gotten to testify, and we will talk about that a little
14 bit more. But as far as what you heard in the trial you
15 heard from every single, solitary person who was present
16 there that night.

17 You heard from Shiquan Wright. You heard from
18 Marshall Wright. You heard from Officer -- Deputy Coombs.
19 You heard from Deputy Wallace, and you heard from Julius
20 himself. Those are all -- all five of those people were
21 the people there that night subsequent to the issue in
22 contention and people running in and out.

23 As far as what you can get from what happened is in
24 contention. You have heard from all five of these people.
25 Okay. And when you look back and y'all go in that jury

1 room and talk about the testimony, and you have to decide
2 whether or not the State has proven beyond a reasonable
3 doubt or not whether Julius committed these crimes and he
4 did not a commit attempted murder. Okay. He did not
5 commit the offense of criminal domestic violence of a high
6 and aggravated nature. He did not commit resisting arrest
7 with a deadly weapon. He didn't commit assault and
8 battery in the second degree.

9 All right. Now, I am going to be up front with you
10 like I was in the beginning. He laid hands on Marshall,
11 okay. No excuse for that and should not be tolerated.
12 And it's not, okay. But he didn't commit criminal
13 domestic violence of a high and aggravated nature.
14 Criminal domestic violence of a high and aggravated nature
15 requires some kind of conduct that either causes a great
16 bodily injury or could have caused a great bodily injury.

17 The fact that he's guilty of just regular C.D.V. does
18 not mean he is not guilty of criminal domestic violence of
19 a high and aggravated nature, okay. Shiquan [sic], and
20 the Judge is going to charge you on what the law is, is
21 not guilty of assault and battery in the second degree.

22 Now, whether or not he is guilty of assault and
23 battery in the third degree, which is just a simple
24 assault and the Judge is going to charge you on the law of
25 that, is to be determined from the evidence here that you

1 heard in the trial. But there is no evidence that he's
2 guilty of assault and battery in the second degree. Okay.

3 Resisting arrest with a deadly weapon, keep in mind
4 that you heard from every single fact witness in this case
5 including Julius himself. When Julius himself took the
6 stand up there, testified, got down and showed you what
7 happened and withstood questioning from someone with more
8 education and much more sophistication than him and
9 answered the questions.

10 Okay. All right. Briefly, I just want to kind of go
11 through what happened during the trial and try to
12 emphasize why you should vote not guilty for these
13 indictments. Okay. First, you heard from Marshall.
14 Okay. She testified as to what happened. She told you
15 that Julius -- they had been doing drugs and using
16 alcohol. Okay.

17 It's not okay but that needs to be known. That's
18 what happened. It's too important to try to hide things
19 that make them look bad on their part -- makes them look
20 bad on my part. Okay. Marshall testified that they got
21 into an argument and they got physical and Julius slapped
22 her. Shiquan got involved and all heck broke loose so to
23 speak.

24 Shiquan called the police. Julius got there or
25 excuse me. The police got there, and she testified that

1 she could not recall and she did not witness, but based
2 upon her observations I believe she said she did not see
3 Julius try to stab anybody, okay, and she was right there.

4 Same as Shiquan. Even though Shiquan who testified
5 next, and bear in mind and you could probably figure this
6 out, if there was anybody in a position to not like Julius
7 it's probably Shiquan. It's tough to like somebody that
8 kind of a surrogate step-father or step-parent in general.
9 We know that in your everyday affairs that people are just
10 predisposed not to like step-parents and people that date
11 your mom and dad.

12 There is a reason there and then after this incident
13 she has all the reason in the world to want to bury
14 Julius. She sat there and said she couldn't give an
15 answer. She saw the whole thing but couldn't give an
16 answer whether or not Julius -- she couldn't see him try
17 to stab anybody. Okay. You know, this is real important.

18 There are some things -- you heard the testimony.
19 You guys have lived however many years you have lived, and
20 when you get in there you are free and encouraged to use
21 what I refer to as your collective common sense. Okay.
22 This happened -- and we know this happened, and we heard
23 testimony from this, and we want to believe this or we
24 don't want to believe this. Here are some things I want
25 you to think about when you are back there, okay?

1 When Officer Coombs got there, all right, he knew
2 that there was some kind of extreme situation when he
3 comes in with his tazer. Okay. He walks in. Says he
4 sees Julius standing there. This is from him, and when he
5 flinches he shoots him with the tazer. The tazer runs all
6 that electricity through him so he can't even stand up and
7 he hits the ground. Okay.

8 At that point he runs some more electricity -- more
9 cycles through him. I think he testified it was 50,000
10 volts or something in that thing. Frank. Frank. And
11 then he says he walks over to him, and at some point there
12 was a struggle. And he testified that Julius tried to
13 stab him. But what I want you to know, and he made,
14 Deputy Combs, made it very clear that and tried to make it
15 abundantly clear that he would have been just in using
16 deadly force in this matter.

17 As with -- if Deputy Wallace came in he would have
18 been just in using deadly force as well. And I want you
19 to think about his life -- if it was apparent that Julius
20 was trying to stab him with a knife would he have not left
21 that house in a body bag? Julius, that is. Would he have
22 not been dead? Shot dead if he had tried to stab an
23 officer.

24 If Deputy Combs for some reason couldn't have got to
25 his gun at that time when Deputy Wallace walked in and

1 saw -- and apparently saw the struggle would he have not
2 shot him dead right there? You heard him testify. That
3 is his partner, and not only his partner, but his friend.
4 His job would have backed him up if his life was in
5 danger. If he really felt that his life was in danger he
6 would have shot him. If that had been the case he would
7 have been justified in shooting him.

8 Bear in mind that Julius went to the hospital that
9 night, and for a lack of a better term he got the tar beat
10 out of him. All right. When somebody gets the tar beat
11 out of them and goes to the hospital by the police they
12 have a good reason for doing it. All right. I'm going to
13 leave you with that as far as that goes. All right.

14 And some of the other stuff we heard, and Mr. Redmond
15 made an issue out of when Julius testified is that he
16 told -- remember after all this went down, after all that
17 electricity went through him, after all those fists
18 collided in his face and body, after he got bitten by I
19 think it was Marshell that said she bit him, after he just
20 got put through the ringer, taken to the hospital, and had
21 all that stuff stuck to him, Investigator Jordan doing his
22 follow up investigation came and talked to him. Okay.

23 And at some point the investigator during that
24 interview where he is on the hospital bed, on a gurney I
25 think it is, the officer was talking to him. Deputy or

1 Investigator Jordan was talking to him. He says, "Do you
2 remember being tazed? No. Do you remember what happened?
3 I got jumped. With your collective common sense it might
4 be kind of fair to ascertain that at that point he might
5 be a little bit shaken up. This might not be the best
6 time in the world that someone would want to interview him
7 about what happened after all that. Perhaps that next day
8 would have been more appropriate.

9 At that point it's kind of an amazement. I'm in
10 amazement that he could say anything or recount anything
11 that happened. And probably the last person he is willing
12 to talk to is someone from the police after he got into
13 this incident such as this. You know, I think what you
14 have here -- let me try to give you an analogy, okay.

15 All right. Okay. I have lived all over. I am only
16 30, but I have lived in almost every area of this State.
17 I grew up in Greenville. Went to school in Columbia,
18 school in Charleston. I have lived in Florence for a
19 while and lived in Greenwood for a while. And in another
20 state. I lived in Myrtle Beach for a while before I moved
21 here to Cheraw.

22 And, surprisingly, when I lived in Myrtle Beach
23 people will come visit you when you don't live in places
24 like Florence and Greenwood, and I wonder why. But when I
25 lived there my parents came down, and we drove to down to

1 Murrell's Inlet and went to eat at one of those really
2 nice seafood restaurants. Right. It was my mom and dad
3 and sister and her husband and me. And when we were there
4 I remember I ordered this a bowl of the lobster bisque
5 because it sounded really good. And I got it finally
6 because they were really busy that night, and I started
7 eating it. And something is wrong. Something is wrong
8 with this because it tasted terrible. It is not supposed
9 to taste like this. It's awful.

10 I take another spoonful and it's terrible, awful.
11 This is not right. It was really rotten. Something -- I
12 don't know what happened with it, but something is wrong.
13 So at that point you are forced with two options. You
14 can -- I can keep eating it and say well, you know, this
15 is a nice restaurant. Maybe it's supposed to taste like
16 this or maybe it's an acquired taste.

17 I don't know or I can use my brain and try to
18 decide -- or I can use my brain to call the waitress over
19 and say, "Ma'am, there is something wrong. There is
20 something wrong with this lobster bisque. I'm sorry, but
21 it tastes terrible. I know lobster is not supposed to
22 taste like that. I have experienced lobster before and
23 this ain't it. Something is wrong. So I get the waitress
24 and call her over. She takes it away and later on she
25 comes back and tells me, "Oh, sir, I am so sorry, but

1 there is some ingredients that went in that are not
2 supposed to go in it. I will get you a new bowl of
3 lobster bisque."

4 I got the next bowl of lobster bisque. And it was
5 great. It was fine. It was good. Well, I haven't had
6 any more since then, but it was good. Here is the
7 dilemma. This is how this relates to where y'all are
8 right now. You are sitting in the government's restaurant
9 right now, okay. The government is trying to serve you up
10 something that is based on the reasons you experienced
11 here during the trial and it doesn't taste right.
12 Something is not there. There is reasonable doubt in your
13 bowl. Okay.

14 Right now you are presented with two options. You
15 can sign off on what the government wants and keep eating
16 it. Okay. You can vote guilty and just keep eating it
17 and ignore that reasonable doubt that's in the bowl or you
18 can mark not guilty and send that bowl back to the
19 waitress and say it isn't good. I am not going to accept
20 this. Keep eating that bisque and you're just going to
21 keep on eating and other people are going keep on eating
22 it.

23 You know, there is a lot of things -- and I want you
24 guys to recognize what is evidence in this trial and what
25 evidence the State put forward and what they are trying to

1 prove. Okay. Think about it. When you go through
2 everything that was said think about why it's being said,
3 why the question was asked and what they are trying to
4 prove. What are they trying to prove? Are they trying to
5 prove something in the indictment or trying to make
6 something appear a certain way?

7 The thing that comes to mind is known as jail calls.
8 If we go back and talk about those jail calls, and you
9 will have -- if you want to listen to them again the court
10 reporter has got them. That testimony is in evidence. If
11 you want to listen to those jail calls who was talking the
12 most on those jail calls? Whose voice did you hear mostly
13 on those jail calls? It's Marshell. He is talking to
14 Marshell who at the time was his girlfriend, who
15 apparently doesn't want him to be prosecuted.

16 He was trying to tell her, "Look, just do what you
17 got to do. Get me out of here. I don't like it." The
18 reason that that was put before you is to make Julius look
19 bad. Not to make him look guilty, but to make him look
20 bad. Okay. There are some things that are just going to
21 make you look bad like the fact that you were using drugs
22 and drinking that day. That makes him look bad, but that
23 doesn't mean -- that doesn't have any bearing on whether
24 or not he is guilty of anything. It just makes him look
25 bad. That's some of the things I want you to consider

1 when you go back into the jury room.

2 Another thing I want to talk to you about is what
3 reasonable doubt is and reasonable doubt, and if you like
4 math, if you have some kind of engineering job -- I'm
5 sorry cause you can't equate any kind of percentage for a
6 number of reasons you can't. I'm sorry. But if you are
7 some kind of science guy or woman, I apologize for that.
8 It's not that definite conceptionalized.

9 But in order to understand reasonable doubt is you
10 have got to understand there are other standards of doubt
11 in American law, right. Not just beyond a reasonable
12 doubt or not beyond a reasonable doubt. Imagine for a
13 second that the floor is no semblance of proof whatsoever.
14 All right. Imagine a 5'9", 170 or 180 pounds is
15 absolutely positive, okay.

16 First standard of proof that exists is what's called
17 a reasonable suspicion. A reasonable suspicion is a
18 standard of proof that an officer has to meet in order to
19 frisk you down. There has to be some reasonable
20 articulable suspicion that you were to have a weapon, and
21 that officer has to be able to meet that burden after
22 frisking you down. They can't just frisk you down just
23 because they want to punish you, okay. Now, that's a very
24 low burden. That's the lowest burden. That would come up
25 to about my ankles. Okay.

1 The next burden is what is called probable cause and
2 remember that's, when I opened, is what you have to have
3 to get a warrant. There has to be evidence of some crime
4 and some evidence that this individual committed such a
5 crime. And that's it. That's it. That's all it takes to
6 arrest somebody. That's all it takes to get a warrant on
7 somebody. That's all it takes. Nothing further. That's
8 probable cause. That comes up to about my ankles. Okay.

9 The next standard of proof is called by the
10 preponderance of the evidence, and that's the burden you
11 use in civil court to determine whether or not someone
12 owes someone else money. That's plain and simple. The
13 preponderance of the evidence just means more likely than
14 not. Any, any amount would mean more likely than not.
15 That would be slightly just above my waist. Slightly
16 above halfway. Any, any amount is more likely than not.
17 That's the preponderance of the evidence.

18 The fourth one is what's called by clear and
19 convincing evidence. Now, in Family Court that's the
20 standard that the government has to prove to take little
21 kids from you, okay. That's high. That's clear and
22 convincing evidence. Way more than the preponderance of
23 the evidence. Clear and convincing, where the evidence is
24 clearly -- it is clear and convincing. And that would
25 come up to about here, my chest. Okay.

1 The then the next burden is beyond a reasonable
2 doubt. Beyond a doubt for which you can assign a reason.
3 A doubt -- beyond a doubt that would cause you to hesitate
4 to act. And that's a high burden. And I'm sure Mr.
5 Redmond is going to sit up here -- come up here and tell
6 you that's not any doubt. That's a reasonable doubt.
7 That's a substantial doubt. I mean that's not absolute,
8 positive, beyond all reasonable doubt. And comes up to
9 about right here between my eyes. That's a high burden.

10 And the fact of the matter is the State has not met
11 that burden as it relates to the indictment on attempted
12 murder, assault -- criminal domestic violence of a high
13 and aggravated nature, assault in the second degree and
14 resisting arrest with a deadly weapon. They haven't
15 gotten there. The reason why they haven't gotten there to
16 that point is those crimes is because Julius isn't guilty
17 of those crimes.

18 We heard from every single person who witnessed what
19 happened. And they haven't gotten it. I don't think any
20 of you have ever served on jury duty before on a criminal
21 case, but if you have I'm sorry. You know, but you the
22 jury, you're in the position of -- well, I will try and
23 put it into perspective. There is an old wives tale about
24 a foolish young boy and he had a very wise grandfather.
25 Very wise. And the foolish young boy tried to get the

1 best of his grandfather.

2 So he goes in a bush and catches a sparrow. He
3 catches it in his hand and was going to go to his
4 grandfather and say, "Old man, is the bird alive or dead?"
5 And if the old man said the bird was alive he was going to
6 crush the bird and kill it. If the old man said the bird
7 was dead he was going to let the bird go. So either way
8 the old man was going to be wrong according to the boy.

9 So when the boy goes to his grandfather after
10 catching the bird he says, "Old man, is the bird alive or
11 dead?" The grandfather smiled at him and says, "The bird
12 is in your hand my son. The bird is in your hand."

13 Ladies and gentlemen, the bird is in your hand. I am
14 asking you to find Julius not guilty of attempted murder,
15 not guilty of criminal domestic violence of a high and
16 aggravated nature, not guilty of assault and battery in
17 the second degree and not guilty of resisting arrest with
18 a deadly weapon. Thank you.

19 CLOSING STATEMENT BY MR. REDMOND

20 MR. REDMOND: May it please the Court, Your Honor,
21 Mr. Swilley, ladies and gentlemen. As you are, I guess,
22 listening and in your deliberations there is one thing
23 that I want you to keep in mind. And for any of y'all I
24 may have caused a near heart attack or stroke yesterday by
25 leaving the knife up there inadvertently that was my

1 mistake, and I did not intend on leaving it there in front
2 of this defendant. But in a way that might have been
3 interesting as it relates to this case because, obviously,
4 there is concern because when you look at this knife, and
5 pardon my grammar, this ain't a butter knife.

6 I think we can all agree that this knife would
7 constitute a deadly weapon. And this knife is at the
8 center of every single indictment to which the defendant
9 has been charged. One of the things that Mr. Swilley
10 didn't mention was the fact that when you look at the
11 charges themselves, each one, the fact that there was a
12 knife involved in them is something that you, I would
13 submit, must consider and what raises each of these
14 charges to the levels that they have been indicted.

15 I told you this was a short case, and of course, we
16 are at the conclusion of case, but it is no less -- it is
17 not an unimportant case, and I will get into that shortly.
18 But let me just start by thanking you for your attention
19 that you have shown during the course of this trial. We
20 obviously observed you as we were presenting the case, and
21 it is clear that you have been most in tune with the case
22 and we really do appreciate it.

23 Mr. Swilley talked about the burden of proof, and His
24 Honor will instruct you, the jury, on that. Now, anything
25 that he may say or anything that I may say, he being Mr.

1 Swilley, or anything that I may say that contradicts what
2 His Honor says you follow the law as His Honor instructs
3 you. But let me talk about reasonable doubt, and let me
4 just say this. We contend that we have shown beyond a
5 reasonable doubt that this defendant is guilty of every
6 single indictment charged.

7 You will hear things like it makes you hesitate to
8 act as it relates to reasonable doubt; that doubt that
9 makes a reasonable person hesitate to act. But it does
10 not mean all doubt. We all doubt. We were not there. We
11 have to rely on what the witnesses have told you. So you
12 have to judge their credibility, and I'll get into that in
13 a second because I believe that is at the center of this
14 case.

15 But it also, in order for the State to prove to you
16 beyond a reasonable doubt, you will hear that after
17 hearing everything, after reviewing everything, that you
18 are firmly convinced of the defendant's guilt the State
19 has met its burden. If you are firmly convinced of the
20 defendant's guilt, if you are firmly convinced of what
21 took place that night, then the defendant is guilty as
22 charged.

23 Now, we heard a lot of talk about drug use and
24 alcohol use and let me be real clear on this. You will
25 also be instructed on what we call voluntary intoxication.

1 If I endeavor to drink to the point that I am intoxicated,
2 if I endeavor to put illegal drugs into my body I am
3 responsible as if I was sober. So the fact that he was
4 high and drunk is not an excuse for anything that
5 happened. He is held to the same standard as you and I
6 being perfectly sober. So I want to make that clear so
7 that there is no confusion. The fact that he may have
8 been drunk and high is no excuse whatsoever for his
9 actions. He is held to the same standard as if he was
10 sober.

11 Another thing that I want to get into, and I touched
12 on this before in my opening and that is that when you
13 look at the officers here, when we talk about the
14 deputies, about the police officers, we've got law
15 enforcement officers, and I told you that this is one way
16 that we can protect those who protect us. And after
17 you've heard the case, keep in mind that sometimes we take
18 certain things for granted. We take for granted that if,
19 okay, we are in trouble we call the police and they
20 arrive.

21 But, I mean, just think about it for a minute. I
22 served in the United States Navy, and when I wear my Navy
23 gear and I go into a mall people are always walking up to
24 me and thanking me for serving -- having served.
25 Obviously, I'm not still in the Navy, but I was in the

1 Navy 20 years ago. But when you think about it as a law
2 enforcement officer whenever you leave home every day you
3 put your life on the line as a part of your employment.
4 Twelve hours a day during that shift you put your life on
5 the line. You are responding to calls like a domestic
6 call which we all know are highly emotional situations.
7 Highly emotional situations.

8 And when you think about what these officers have to
9 go through it is up to us as citizens and you as a jury
10 when a situation like what this defendant did arises that
11 we send a very loud and clear message that we have asked
12 these gentlemen, Sergeant Combs, Sergeant Wallace and
13 others, to protect us. To come and answer the call when
14 we are in trouble.

15 I was watching a movie, Ladder 49. I don't know if
16 any of you ever saw it, but they were talking about one of
17 the fireman. It was about firefighters, and one of the
18 firemen had died in a fire trying to rescue a guy. And at
19 the funeral, John Travolta made the comment that, you
20 know, people often wonder. Everybody else is trying to
21 get away from a fire but firefighters actually go in to
22 try and save lives and to try and save property.

23 It's the exact same thing that can be said for law
24 enforcement officers. When they are encountered with
25 dangerous situations -- when we are as citizens what do we

1 try to do? We try to get out, and we try to get away from
2 it. They put their lives on the line. They are trying to
3 go in and trying to defuse the situation to save lives.

4 And so when I say that I want to make sure that we
5 keep that in the proper context as it relates to what we
6 ask these gentlemen and ladies to do when we are
7 considering actions such as what the defendant took that
8 night and why those actions are so reprehensible.

9 Let's move on into the actual facts of the case
10 itself. And one thing I want you to keep in mind is one
11 thing I meant as a reoccurring theme here is that, again,
12 talk about the fact that this knife is central to every
13 single charge. But also keep in mind the defendant was,
14 as he indicated, was high. He was angry. Remember he was
15 angry from the time he kicked in the door when he got back
16 to the house. He was angry. And he was possessing this
17 knife during most of this incident.

18 But let's start by going through each of the charges.
19 Assault and battery second-degree, I'll start with that.
20 That is the charge where Ms. Shiquan Wright is the victim.
21 What did you hear regarding that? The defendant started
22 beating on her mother. So as any child, I would think,
23 especially an adult child would do they would try to come
24 to the aid of their mother at that point which is what she
25 tried to do.

1 And what did the defendant do in his already angry,
2 intoxicated way? He then turned on her. He turned on her
3 to the extent that they ended up rolling on the ground.
4 He swung at her, and they ended up tussling on the ground.
5 But here is the thing. When you want to talk about
6 severity, and I'm not even getting to the knife yet. I
7 haven't even gotten to that. It was such a severe
8 situation that as Ms. Marshall Wright indicated to you and
9 the pictures bear out, the pictures of the defendant, she
10 had to even try to bite him to get him off of her
11 daughter.

12 Now, assault and battery, and let me restate another
13 thing, too. The fact that they may not have been severely
14 injured or injured at all is not the standard of guilt --
15 to determine guilt here. The issue is whether or not an
16 offer had been made that could have resulted in serious
17 bodily injury. So don't put too much emphasis on the fact
18 that they weren't really hurt or Sergeant Combs wasn't
19 stabbed and that he wasn't hurt.

20 Marshall, I think there was testimony that she did
21 have a bloody nose, and I think Shiquan mentioned that she
22 had bruises. But the fact that there weren't any serious
23 injuries, that's not the standard. Based on everything
24 that was occurring at that time could there have been
25 serious injuries. There, again, is where we get to this,

1 the knife.

2 Because moving on with the assault and battery second
3 degree regarding Shiquan. After the tussle, the first
4 tussle, they tried to call 911 but he took the phone. So
5 at that point she went -- she grabbed a bottle. I think
6 it was a Hennesey bottle if I remember. A Hypnotic
7 bottle. Well, think about it. He had just swung on --
8 beat -- hit -- beat her mom, swung on her, and had her
9 rolling around on the floor. I think it's reasonable for
10 her, at least at that point, to at least get a bottle just
11 in case as she said he was in a rage. She didn't know
12 what he might do. So, yes, she grabbed a bottle.

13 He pulled out a knife and pulled out a knife and
14 presented it to her. Now, think about it. This was a man
15 that had already taken aggressive action and now he has
16 just kicked it up to the next level by introducing the
17 knife. All she wanted to be able to do was get out of the
18 house so she could call for some help. And during that
19 time that's when this knife was presented.

20 Ladies and gentlemen, when you -- and you will hear
21 the Judge's instructions. Not my words, but you will hear
22 the Judge's instructions where he talks about or there was
23 an offer made. When you look at the total circumstances
24 and you introduce a knife into an already volatile
25 situation I think that would give most reasonable people

1 apprehension that something may get elevated to a very
2 dangerous point.

3 Along the lines of C.D.V. high and aggravated, that's
4 where Ms. Marshall Wright is the victim. And, again, not
5 to restate everything we know that she was hit by the
6 defendant. He initiated. She admitted to you that, yes,
7 she had been doing drugs as well that day. But then he
8 took aggressive action against her that also led to her
9 daughter. She actually tried to intervene as she told you
10 by biting him.

11 And then once they got outside he presents a knife.
12 She's trying to get him away from the situation to try to
13 protect her daughter. She told you that. Perfectly
14 reasonable. But then once he gets inside the house he
15 tells you, "Oh, I was calming down," but during the course
16 of this calming down he barricades the door he claims
17 because he's afraid of Shiquan.

18 I submit it was because he knew law enforcement was
19 coming because he knew they were going to call law
20 enforcement because he had taken the phone to keep them
21 from calling law enforcement in the house to begin with.
22 But be that as it may, barricades himself in the house.

23 Then when Sergeant Combs came to the house, announces
24 himself, they then move into the bedroom and he blocks the
25 door to the bedroom. Again, barricading himself. That is

1 why I am asking that you look at the totality of the
2 circumstances. You have already had a volatile situation.
3 You've already had the fight. She had to bite him to try
4 to get him off of her daughter, and now next thing you
5 know there is a knife that has been presented.

6 This knife is still present during this whole
7 transaction now. She gets barricaded inside the house and
8 then she gets blocked into the door. And she told you,
9 no, he did not -- he would not let her leave while he's
10 holding the knife.

11 Ladies and gentlemen, again, and I agree with Mr.
12 Swilley, when you use your common sense and you think
13 about not just what did happen but you also when you think
14 about these charges you have to ask yourself what could
15 have happened in the totality of the circumstances and the
16 totality of what was going on. And because there was a
17 knife introduced into this situation that kicked it up to
18 another level.

19 I'm going to talk about resisting arrest real briefly
20 with a deadly weapon because it really ties into the
21 attempted murder. Obviously, the defendant was resisting
22 arrest. Obviously. Obviously, he was armed with this
23 knife while he was resisting arrest. For the purposes of
24 resisting arrest and based on the fact that, obviously,
25 Sergeant Coombs had a very legal and valid reason to be at

1 the house and to take the actions that he did the
2 defendant is clearly guilty of having resisted the efforts
3 of Sergeant Coombs to arrest him. And not just resisting
4 but resisting it with a deadly weapon.

5 And, now, that kind of segways into the attempted
6 murder. Now, some of you may be thinking, well, he didn't
7 get hurt. Thankfully. Well, you know, if I take a shot
8 at you, Mr. Foreman, and I miss and you don't get hurt
9 that is still attempted murder because I took the shot. I
10 tried to kill you, and again, that's the standard.

11 Don't get tied up on whether or not there was any
12 injury. What was the intent at that time? When you think
13 about intent, again, you are dealing with a defendant who
14 was drunk, high and angry. And this was before, as I
15 think the Defense counsel talked about, him being tazed.
16 Keep in mind he was already acting the fool before he got
17 tazed. That's why he got tazed because he was acting the
18 fool. And guess what? After he got tazed he kept acting
19 the fool. It had no affect on him as the officers
20 testified because of the fact he was already juiced up.

21 He was already at a level of aggression. He was
22 already at the level of anger, and it was really to the
23 point of no return. Thankfully Sergeant Wallace appeared
24 on the scene when he did or we may be here in a totally
25 different context. Totally different context. Do not

1 make light of that fact, and do not lose sight of that
2 fact, ladies and gentlemen.

3 But to get into the testimony surrounding the
4 attempted murder, and here is something that I definitely
5 want you to remember. Marshall Wright testified on the
6 stand that before Sergeant Coombs even got into the room
7 he made the comment that he was going to die tonight and
8 he was going to take the police with him. I think I am
9 paraphrasing close to the exact quote. That is pretty
10 much what he said. The reason that is important is that
11 it goes directly to intent.

12 In order for me to prove attempted murder we have to
13 prove that the defendant with malice aforethought,
14 aforethought, did intend to kill a law enforcement
15 officer. And in this case he is sitting right here, was
16 Sergeant Coombs. That goes directly to the heart of that
17 issue with malice aforethought.

18 And again, Marshall told you before he even entered
19 he made the comment, and he didn't even say Sergeant
20 Coombs. He just said he was doing to take the police with
21 him. Had it been another officer, had it been Sergeant
22 Wallace that appeared or another officer he or she would
23 have been faced with that same aggression and intent that
24 the defendant already expressed to Marshall Wright.

25 But unfortunately or maybe fortunately cause,

1 obviously, Sergeant Coombs is still here. He was able to
2 at least fight it off until Sergeant Wallace got there.
3 But fortunately or unfortunately, like I said, he was the
4 officer that arrived. He was the officer that that intent
5 was exercised and acted upon by the defendant. Malice
6 aforethought that has been clearly expressed and clearly
7 expressed by the defendant. So we are already there as it
8 relates to the attempted murder.

9 But then you also look at the actions, and I think
10 Mr. Swilley talked about, well, Marshall saying that she
11 really didn't see anything. But she testified after the
12 taze she ran out. And let me back up for a minute. When
13 you talk about C.D.V. high and aggravated I did forget to
14 mention this point. She ran out as soon as the tazing
15 happened.

16 That would tend to be indicative that she was under
17 severe apprehension because as soon as the opportunity
18 presented itself for her to get away she got out of there
19 as any person in that situation who was frightened would.
20 Her actions clearly exhibit fright. Clearly exhibit fear.

21 But moving on. He gets in -- he gets tazed and at
22 that point that's when Sergeant Coombs gets into the, I
23 guess, the fight for his life. That's the best way I can
24 put it. Now, again, there was talk about Shiquan not
25 seeing anything, and I did forget to mention. I skipped

1 this. Marshall ran out and she didn't really -- she told
2 you that she really didn't have a view of the whole -- of
3 what was going on the whole time.

4 Marshall -- excuse me. Shiquan had a better view,
5 and she told you that it was a dangerous situation. And
6 remember I used Mr. Farr as an example that, basically,
7 holding his hand he was holding his hand to keep this
8 defendant from hitting him in a fatal area. And, again,
9 this is not a butter knife. I think we can all agree that
10 if this knife penetrated it would penetrate enough to do
11 some serious damage and possibly death.

12 But even during the course of this fight the whole
13 time there are times that the defendant is saying that he
14 is going to kill. He is telling Sergeant Coombs that you
15 are going to die tonight. Sergeant Coombs clearly
16 expressed his apprehension and fear where he was literally
17 fighting for his life. He told you he couldn't get to his
18 gun, and this is common sense, ladies and gentlemen. He
19 is reaching for his gun, and if he lets that hand go or he
20 eases up what's going happen? Before he can get to his
21 gun how long do you think it takes to do that or that or
22 that? I don't think he would have been able to get to his
23 gun to prevent that from happening.

24 Again, when you look at the totality of the
25 circumstances and you look at the fact that the defendant

1 was angry and he was armed with a knife the State would
2 contend that it's clear that the defendant committed all
3 of these crimes and attempted to take the life of Sergeant
4 Coombs that night. But then you look at everything else.
5 Let's look at some other things in this whole situation.
6 Let's look at the fact that the defendant admitted that he
7 changed his story.

8 Now, Mr. Swilley was saying, oh, well, he was out of
9 it and what not. Well, if you listen to the tape he went
10 into some detail about what had transpired before. Now,
11 all be it, it was not the truth, the whole truth about
12 what had transpired, but he went into some detail about
13 what had transpired before with Marshall and Shiquan. But
14 when it was asked about being tazed or anything he didn't
15 remember anything.

16 Well, now, all of a sudden he clearly remembers and
17 remembers to the point that he can demonstrate all this
18 stuff. But then when I asked him, and I think I asked him
19 two or three more times, he finally admitted that he
20 changed his story. Not added into, not remembered certain
21 things. He changed his story. That is a significant
22 difference. And, again, he changed his story here at
23 trial. Why? Well, he is on trial. He is changing his
24 story to try to hopefully convince you that he is telling
25 the truth.

1 Well, let's look at that for a minute. When you talk
2 about credibility issues, we get to the jail calls. And
3 Mr. Swilley tried to explain some saying, "Well, who is
4 doing most of the talking," but who is pulling the
5 strings? Who is issuing the directions? Who is the one
6 making the direct request? Who does what? In order
7 words, remember, he talks about, well, don't show up. If
8 you don't show up if there is no victim there is no crime.
9 That's the defendant talking.

10 Well, the defendant is saying, "Get in touch with
11 Wayne Jordan, Lieutenant Jordan, so that we can get this
12 thing straight and we can talk to him and we can be
13 together. And remember he wanted it so they could be
14 together to verify their stories. That's the defendant
15 talking. So I would say that Mr. Swilley, in that regard,
16 it doesn't matter what the quantity of what is being said.
17 It's the quality. And the quality that shows you that
18 this defendant was trying to orchestrate and lie his way
19 out of that; that prize goes to the defendant.

20 But I submit that I am confident enough to see that
21 you are smart enough not to let that fly because I think
22 it's obvious that the defendant was trying to manipulate
23 Ms. Wright, to manipulate her daughter to lie so that he
24 could get off on these charges. That's clear. And,
25 again, as Mr. Swilley indicated, the tape is in evidence.

1 Excuse me. The recording is in evidence and can be
2 replayed or read back.

3 And then you look at when you talk about credibility
4 issues with the defendant, and you talk about the fact
5 that he gets up here and he tries to make it seem like,
6 oh, I dropped the knife at the time. I dropped the knife
7 when he went, and they just beat me up. And speaking of
8 the injuries, and I think Lieutenant Jordan testified to
9 the fact, and you got the pictures. There is no denying
10 it, and the officers in their report they testified, yeah,
11 we hit him. Well he's got a knife, he is struggling.

12 And let's be honest. They could have killed him, but
13 you know, when I talked about law enforcement officers and
14 what not we always want to second guess and judge, but
15 they always have a split second to make a decision. But
16 despite everything that that man did that night to Ms.
17 Wright, both Ms. Wrights, to Sergeant Coombs and to Dana
18 Wallace, despite everything, they preserved his life.
19 They didn't take his life.

20 And you know what, there should be some credit given
21 to that because as Sergeant Coombs said under the
22 circumstances, based on his training, based on what they
23 are taught he had every reason to engage in deadly force
24 but he didn't. He didn't. And you know what, that counts
25 for something.

1 And another thing as it relates to Sergeant Coombs is
2 that I picked up on is telling you the type officer that I
3 know him to be. Both Ms. Wrights, during the course of
4 their testimony, if you remember, they didn't say Officer
5 or Sergeant. They said Jimmy. Jimmy. That tends to show
6 you that this officer has earned the respect of them and
7 others in the course of duties.

8 And I say that because I think that that is an
9 important consideration, and I just thought about that
10 last night that I think each of them had to be corrected
11 because they said, "Jimmy." And I said, "Jimmy? You
12 talking about Sergeant Coombs?" But they didn't seem to
13 be fearful of him or that he somehow manipulated them to
14 say certain things.

15 And you know why that is? Because they are grateful
16 for what he did that night when he came to that house and
17 prevented what might have been a tragedy. They are
18 grateful for the job he did, and they told you the way he
19 went about trying to talk him down. They testified to
20 that. So I think that is indicative to that when they
21 talked about, oh, well, he was mad. They were made, and
22 that's why they were beating him. Everything that is in
23 evidence totally contradicts that opening statement.
24 That's just the Defense trying to throw out a smoke
25 screen.

1 But, again, you've got the evidence, and as I have
2 indicated this knife is the center of every one of these
3 charges. Every one of these charges. The defendant tried
4 to lie his way out of this. He tried to manipulate his
5 way out of this. And this isn't what I think. This is
6 what we know because we heard it. We heard it.

7 Don't let him do that, ladies and gentlemen, because
8 as I have indicated it may have been at short case, but
9 it's a very important case to everyone involved but
10 especially to that gentleman right there because, again,
11 we ask him to put his life on the line every day. And as
12 I indicated this is our opportunity to protect him as
13 well.

14 I would just ask you this. When you go back, in
15 conclusion, especially as it relates to the attempted
16 murder charge think about this and ask yourself this
17 question when it comes to common sense. If during the
18 course of that struggle, using your common sense, you've
19 got a high, angry, armed defendant. If he had let go of
20 his arm what would have happened? What would have
21 happened. I submit we all know the answer to that
22 question.

23 Had he let his arm go this defendant would have
24 easily stabbed him. The only question is where and would
25 he have been able to survive. And that, ladies and

1 gentlemen, is why we are here presenting this case. And
2 it is why it is such an important case because I think as
3 I have indicated this is not a butter knife. This is a
4 killing knife. And he very well could have killed
5 Sergeant Coombs that night.

6 But if it was not for the lack of effort by the
7 defendant to save his life. He managed to fight him off
8 until Sergeant Wallace got there and was able save his
9 life. But if it were up to the defendant Sergeant Coombs
10 would not have been here to talk to you today. He told
11 Marshall that. His actions indicate that.

12 And I ask you through your verdict to find this
13 defendant accountable for the actions that he took that
14 night that endangered, in essence, endangered four people.
15 Each of these four people right here that were involved in
16 that incident. Hold him accountable, ladies and
17 gentlemen. Hold him accountable. I thank you, and God
18 speed in your deliberations.

19 CHARGE OF THE COURT

20 THE COURT: Thank you, gentlemen. That concludes the
21 closing arguments and the next phase of the trial is the
22 Judge's charge of the law. It is going take at least 30
23 minutes. Is everybody okay or does anybody need a break?
24 Nobody. All right. Well, everybody settle in for at
25 least 30 minutes. Would the Sheriff's staff please secure

1 the doors. And let's don't have anybody coming in or out.
2 I poured me a little water because my cold is moving into
3 my throat. So, hopefully, I can keep my voice up for you.

4 All right, Mr. Foreman and ladies and gentlemen, I
5 want to first of all thank you for your patience and thank
6 you for listening to this case, to the presentation of the
7 evidence and to the able arguments by counsel. And it now
8 becomes my duty as the trial judge under the Constitution
9 of the State of South Carolina to charge and instruct you
10 law applicable to the case.

11 And it is your duty as jurors to accept and apply the
12 law as the Court states it to you. As jurors it is your
13 exclusive duty to decide all issues of fact in the case,
14 and for that purpose to determine the affect, the value,
15 the weight and the truth of the evidence. Both the State
16 and the Defendant have a right to expect that you will
17 consciously consider and evaluate the evidence and apply
18 the law of the case thereto to the end that both the State
19 of South Carolina and the Defendant will receive and
20 obtain a fair and impartial trial in this case.

21 Now, when I use the word 'defendant', I am referring
22 to Mr. Julius Curry. You have already been told that the
23 charges in the Bill of Indictment. I will not repeat
24 those at this time because I will be going into specific
25 charges on those offenses and that will be completed in a

1 few minutes.

2 This first part of this charge I give you is what we
3 call the general charge where I explain to you the burdens
4 of proof and also other aspects of a criminal trial. Now,
5 as you are aware to the indictments which are the formal
6 documents by which the case is processed into the Court, I
7 point out to you they are not evidence. They are just
8 documents.

9 To the indictments the defendant has entered pleas of
10 not guilty. A plea of not guilty by a defendant places
11 the burden of proof on the State of South Carolina to
12 prove by evidence the guilt of the defendant beyond a
13 reasonable doubt. Therefore, the State must prove guilt
14 by a reasonable doubt before you could find the defendant
15 guilty.

16 A defendant is presumed in law innocent of the
17 charges contained in an indictment. It is a cardinal
18 fundamental rule of the law of evidence that a defendant,
19 irrespective of the enormity of the charge against him,
20 will always be presumed innocent of the crime for which he
21 is indicted unless and until the guilt of the defendant
22 has been proved by evidence that satisfies you the jury of
23 his guilt beyond a reasonable doubt.

24 The presumption of innocence is not a mere legal
25 theory and it is not a legal phrase. It's a substantial

1 right to which every accused is entitled. The Supreme
2 Court has declared that the presumption of innocence is
3 like a robe of righteousness placed about the shoulders of
4 the defendant and remains with him and assigns him to that
5 class, the innocent, until the presumptive robe of
6 righteousness has been stripped from his person by
7 evidence satisfying you the jury of the guilt of the
8 defendant beyond a reasonable doubt.

9 Presumption of innocence accompanies a defendant from
10 the time of his arraignment and appearance in the Court
11 and continues with the defendant throughout every stage of
12 the trial and continues with the defendant after you
13 retire to the jury room to begin your deliberations.

14 The presumption of innocence continues in existence
15 to the benefit of the defendant until you the jury reach
16 the conclusion that the State has proved the guilt of the
17 defendant beyond a reasonable doubt. I charge you that
18 the State is not required to prove the guilt of the
19 defendant beyond all doubt or beyond every doubt but
20 beyond a reasonable doubt.

21 Some of you may have served as jurors in civil cases
22 where you were told that it is only necessary to prove a
23 fact more likely true than not true. In criminal cases
24 the government's proof must be more powerful than that.
25 It must be beyond a reasonable doubt. Proof beyond a

1 reasonable doubt is proof that leaves you firmly convinced
2 of the defendant's guilt.

3 There are very few things in this world that we know
4 with absolute certainty, and in criminal cases the law
5 does require proof that overcomes every possible doubt.
6 If based on your consideration of the evidence you are
7 firmly convinced that the defendant is guilty of the crime
8 charged you must find him guilty. If on the other hand
9 you think there is a real possibility that he is not
10 guilty you must give him the benefit of the doubt and find
11 him not guilty.

12 If upon the issue of fact essential to conviction and
13 a verdict of guilty you have a reasonable doubt as to how
14 that issue should be resolved it would be your duty to
15 resolve that reasonable doubt in favor of the defendant.

16 A defendant is not required to prove his innocence,
17 but the State is required in law to prove every essential
18 element of the offense charged against the defendant by
19 evidence that satisfies you the jury of the guilt of the
20 defendant beyond a reasonable doubt before you could
21 convict the defendant and find him guilty.

22 If then upon the whole case, and when I say the whole
23 case, you've got to take each indictment separately and
24 consider them. If you have a reasonable doubt as to the
25 guilt or innocence of the defendant he is entitled to that

1 reasonable doubt and would be entitled to an acquittal and
2 a verdict of not guilty. But on the other hand if upon
3 the whole case you find that the State has proven by
4 evidence which satisfies you the jury of the guilt of the
5 defendant beyond a reasonable doubt then in such
6 circumstance it would equally be your duty to convict the
7 defendant and find him guilty.

8 Now, in some cases, in some offenses there may be
9 lesser included offenses included within that particular
10 charge. If you find the defendant guilty, but you have a
11 reasonable doubt as to whether the defendant be guilty of
12 the greater crime charged or the lesser crime charged then
13 you would resolve that reasonable doubt in favor of the
14 defendant and write a verdict of guilty only as to the
15 lesser charge.

16 But, of course, you could not write a verdict of
17 guilty to any charge unless as to that charge you find all
18 elements of the charges have been proven by the State
19 beyond a reasonable doubt.

20 Once again, I have already explained the indictment
21 to you. It is not evidence. You will have that later on
22 in the jury room. It is the formal document by which the
23 case was brought into Court, and it is not evidence.

24 Now, during the trial each of us, you and I, have
25 certain duties to perform, and as the trial judge it's my

1 responsibility to preside over the trial of the case. And
2 I have the duty to rule upon or pass upon the
3 admissibility of the evidence offered during the progress
4 of the trial. You are to consider only the competent
5 evidence before you, and you are to disregard and disabuse
6 from your mind any testimony ordered stricken from the
7 record of the case during the progress of the trial if
8 there be any. And you are to consider only the testimony
9 which has been presented from the witness stand together
10 with any exhibits admitted into the record of this case
11 and any stipulations of counsel made into the record if
12 there be any.

13 Now, I have the additional duty to charge you the
14 applicable law of the case and as the presiding judge I am
15 the sole judge of the law in this case, and it is your
16 duty to accept and apply the law as I state it to you. If
17 you have a preconceived idea as to what the law is or what
18 the law ought to be in this case and it should not agree
19 with you or should not agree with what I tell you the law
20 is you are obligated under your oath to abandon this
21 preconception on your part because you are sworn to accept
22 the law precisely as I state it to you.

23 In every case tried in this Court before a jury the
24 jury becomes the sole and exclusive judge of the facts in
25 the case. You the jury are the judges of the facts in

1 this case. The Court is the judge of the law in this
2 case. The Constitution of this State has declared that
3 the trial judge shall not intimate, state, comment upon or
4 make any statement to a trial jury about the facts in the
5 case. Since you are the sole judge of the facts you are
6 not to infer from anything that I have said during the
7 progress of this trial in ruling upon the admissibility of
8 evidence or otherwise or anything that I may say during
9 the course of this charge to you that I have an opinion
10 about the facts in the case. The law does not permit me
11 to have an opinion. That is a matter solely for you the
12 jury to determine.

13 As jurors then it is your duty to determine as I have
14 stated to you the affect, the value, the weight and the
15 truth of the evidence presented during the course of this
16 trial. Necessarily then you must assess the credibility
17 of the witnesses who have testified in the case.
18 Credibility is simply a legalistic term which means
19 believability. It becomes your duty then to analyze and
20 evaluate the evidence and determine that evidence which
21 convinces you of its truth.

22 I charge you that in determining the question of
23 credibility or believability of witnesses you may believe
24 one witness as against several witnesses or several
25 witnesses as against one witness. You may believe a part

1 of the testimony of a witness and reject the remaining
2 part of the testimony of that same witness. You may
3 believe the testimony of a witness in its entirety or
4 reject the testimony of a witness in its entirety. You
5 may consider whether any witness has exhibited any
6 interest, any biased and any prejudice in the case. And
7 you may consider the demeanor of a witness and the
8 appearance of a witness from the witness stand. You may
9 consider the opportunity for knowledge concerning those
10 things about which a witness testified.

11 In doing so and exercising your mental processes in
12 determining what you consider to be true the law simply
13 requires that you exercise your good judgment, your common
14 sense, your sense of logic and reason and your experiences
15 in life. You then apply these attributes of ability to
16 the evidence in determine what you consider the truthful
17 evidence and to the true state of the facts as determined
18 by you the jury you take and apply the law as I state it
19 to you and thus arrive at a true verdict in the case.

20 I always tell my jurors you do not leave your common
21 sense at the court house steps. You will determine this
22 case based on the evidence that's properly before you.
23 This case has nothing do with anything that has occurred
24 in outside circumstances. It has nothing to do with any
25 movies, television shows, any dramas or anything you have

1 seen on the internet. You are to decide this case based
2 on what has been presented here.

3 There are many things that you have see on television
4 especially in the trial of criminal cases in the criminal
5 justice field. Some procedures and some actions have
6 nothing to do with the State of South Carolina, and as a
7 matter of fact some procedures don't even exist. They're
8 imaginary.

9 So outside sources you are not to consider, and I
10 didn't mention this to you before but you are not to do
11 any independent research about the law or any facts in
12 this case. So if you have any telephone that has access
13 to the internet or if you have a laptop do not attempt to
14 confer or to reference to any such device. This matter is
15 to be decided by the 12 of you that deliberate based on
16 these Court proceedings.

17 Now, I will get into each of the indictments. Some
18 of these charges as I have already mentioned to you there
19 are lesser included offenses that I will talk with you
20 about. I'll take them as I come to them as I have them
21 stacked. The first one I have is Indictment 2013-699.
22 It's entitled, 'Resisting Arrest with a Deadly Weapon'.
23 I'm going to charge you Section 16-3-625 of the Code of
24 Laws, 1976, as amended. That's the South Carolina Code of
25 Laws.

1 "It is lawful for a person to resist the lawful
2 efforts of a law enforcement officer to arrest him or
3 another person with the use or threat of use of a deadly
4 weapon against the officer and the person is in possession
5 or claims to be in possession of a deadly weapon." As
6 used in this section deadly weapon means any instrument
7 which can be used to inflict deadly force. The.

8 Next Indictment I come to is 2013-697, criminal
9 domestic violence of a high and aggravated nature. I
10 charge you from Sections 16-25-20 and 16-25-65 of the Code
11 of Laws of the State of South Carolina, 1976, as amended.
12 "It is unlawful to cause physical harm or injury to a
13 person's own household member or offer or attempt to cause
14 physical harm or injury to a person's own household member
15 with apparent present ability under circumstances
16 reasonably creating fear of imminent peril.

17 A person who violates that Section, 16-25-28, is
18 guilty of the offense of criminal domestic violence of a
19 high and aggravated nature when one of the following
20 occurs: The person commits an assault and battery which
21 involves the use of a deadly weapon or results in serious
22 bodily injury to the victim or an assault with or without
23 an accompanying battery which would reasonably cause a
24 person to fear imminent serious bodily injury or death."

25 Now, as to that particular indictment the allegations

1 in the indictment, of course, was that this offense
2 occurred in Chesterfield County on August 30, 2013. The
3 household member was Marshall B. Wright, and it alleges
4 that it involved the use of a deadly weapon or resulting
5 in serious bodily injury to the victim in that the
6 defendant used a knife in the commission of the assault
7 and caused reasonable fear of serious bodily injury. The
8 act being aggravated in that the defendant repeatedly
9 struck the victim while brandishing a knife and held her
10 captive inside a bedroom at their home.

11 Now, as to Indictment 2013-698; that's the assault
12 and battery second-degree, and I'll go ahead and reference
13 to the allegations in that particular indictment. That's
14 that the defendant in Chesterfield County on August the
15 30th 2013 did unlawfully injure Shiquan Wright and the act
16 caused moderate bodily injury to the victim resulted or
17 could have resulted, to wit, that the defendant struck
18 with his fist several times Shiquan Wright, daughter of
19 the live in girlfriend, while in their home.

20 I charge you from Section 16-3-600(D) (1) of the Code
21 of Laws of the State of South Carolina, 1976, as amended.
22 "A person commits the offense of assault and battery in
23 the second degree if the person unlawfully injures
24 another person or offers or attempts to injure another
25 person with the present ability to do so and moderate

1 bodily injury to another person results or moderate bodily
2 injury to another person could have resulted."

3 Now, within that offense of assault and battery
4 second degree there is a lesser included offense that I
5 will charge you. That is of assault and battery in the
6 third degree. That is 16-3-600(E)(1). "A person commits
7 the offense of assault and battery in the third degree if
8 the person unlawfully injures another person or offers or
9 attempts to injure another person with the present ability
10 to do so."

11 The next indictment is for that of attempted murder,
12 and that's on 2013-700. The allegations in that
13 indictment that Julius Curry in Chesterfield County on or
14 about August the 30th 2013 with specific intent to kill
15 Sergeant Jimmy Coombs with malice aforethought, either
16 expressed or implied, to wit, the defendant expressed the
17 desire to take the life of said victim resulting in a
18 struggle with law enforcement officer as he attempted to
19 stab him all in violation of Section 16-3-29 of the South
20 Carolina Code of Laws of 1976 as amended.

21 I charge you Section 16-3-29, entitled, 'Attempted
22 Murder'. "A person who with intent to kill attempts to
23 kill another person with malice aforethought, either
24 expressed or implied, commits the offense of attempted
25 murder." Malice indicates a formed purpose and design to

1 do a wrongful act under circumstances that exclude any
2 legal right to do it. Malice is a term of art that
3 imparts wickedness and excludes a just cause or excuse.
4 It is something that springs from wickedness, from
5 depravity, from a depraved spirit, from a spirit bent on
6 mischief at that time, and from not then having a regard
7 for the social obligations or the obligations which rest
8 upon mankind.

9 The words, 'expressed and implied' do not mean two
10 different kinds of malice, but rather the terms signify
11 the way in which malice may be proved. Expressed malice
12 is where a person either by word of mouth or by expressed
13 hatred or ill will for another or where the State proves
14 beyond a reasonable doubt that the defendant was making
15 preparation before the event to accomplish the event.

16 The jury may also conclude by deductive reasoning
17 that under certain circumstances malice may arise even
18 though there is no express or direct evidence of an intent
19 to kill. Malice may be implied or inferred if it is
20 proved beyond a reasonable doubt that there was a willful,
21 deliberate and intentional doing of an unlawful act
22 without just cause or excuse.

23 The proof of this act, however, is merely a piece of
24 evidence from which the inference or implication of malice
25 may arise. In others words, the inference would be simply

1 an evidentiary fact to be taken into consideration by you
2 the jury along with the other evidence in the case, and
3 you may give it such weight as you should determine it
4 should receive.

5 Now, within the charge of attempted murder is the
6 lesser included charge of the offense that would be of
7 assault and battery in the first degree. That is Section
8 16-3-600(C)(1). "A person commits the offense of assault
9 and battery in the first degree if the person unlawfully
10 injures another person and the act offers or attempts to
11 injure another person with the present ability to do so,
12 and the act is accomplished by means likely to produce
13 death or great bodily injury.

14 Another specific charge I want to give you at this
15 time before I close this out concerns voluntary
16 intoxication. I charge you at this time that voluntary
17 intoxication is never an excuse for or a defense to crime
18 regardless of whether if the crime is general or specific
19 intent. A person who voluntarily renders himself
20 intoxicated is no less responsible for his acts while in
21 such condition.

22 If one voluntarily drinks intoxicating liquors, wine,
23 beer or is under the influence of drugs or a combination
24 of all those and becomes intoxicated of whatever degree,
25 and if while in that condition commits an act which would

1 be a crime had it been committed by a sober person the
2 fact that drunkenness or intoxication would not relieve
3 the intoxicate person from responsibility.

4 Ladies and gentlemen of the jury, you are not
5 partisans or advocates for the State of South Carolina or
6 the defendant. You do not serve as jurors to reward
7 friends or punish enemies. Obviously, such a perverted
8 system of justice would be intolerable. You have been
9 selected by both the State and the defendant as fair and
10 impartial jurors. It's your duty then by your joint
11 deliberations to determine the truth in this case giving
12 to the defendant the benefit of every reasonable doubt on
13 each and every issue.

14 Then to the facts which you determine to be true you
15 then take and apply the law which has been given to you by
16 this Court and thus arrive at a verdict which does speak
17 the truth of this case for the word, 'verdict' which has a
18 Latin derivative means a true saying. When you have
19 accomplished these responsibilities you will have
20 satisfied your oath as jurors, and you will have
21 discharged your duty to the Court.

22 I will now speak to you about the forms of the
23 verdict in this case. If the State has failed to prove
24 the guilt of the defendant beyond a reasonable doubt your
25 verdict would be two words, 'not guilty'. If the State

1 has proved the guilt of the defendant beyond a reasonable
2 doubt you verdict would be one word, 'guilty'. Whatever
3 the verdicts are in this case it must be a unanimous
4 verdict on each of the indictments. All 12 jurors must
5 agree on the verdict which you authorize the foreman to
6 write for the jury.

7 On two of these indictments I have charged you lesser
8 included offenses. So there could be an additional
9 possible verdict on these particular indictments. And as
10 I have already charged you concerning lesser included
11 offenses you have to keep that in mind. So to make sure
12 I'm clear on that on the indictments for attempted murder,
13 there could be three possible verdicts. Guilty of
14 attempted murder, guilty of assault and battery in the
15 first degree or not guilty, Mr. Foreman. I will put that
16 indictment on top, okay.

17 The second one concerns the indictment for assault
18 and battery in the second degree. The lesser included
19 offense of assault and battery in the third degree there.
20 So you could have one of three possible verdicts there:
21 Guilty of assault and battery second degree, guilty of
22 assault and battery third degree or not guilty.

23 And then on Indictment 697, criminal domestic
24 violence of a high and aggravated nature, two possible
25 verdicts there: Guilty or not guilty. And the same for

1 699, the resisting arrest with a deadly weapon.

2 Whatever the verdicts are on each of these, Mr.
3 Foreman, it will be your duty to write in the appropriate
4 verdict right here on the backside where it says,
5 'verdict'. Whatever the jury reaches, please, write that
6 in, sign your name and date it each one of these
7 indictments.

8 I think I have covered everything I want to cover at
9 this time. Now, before I put you to work I've got to
10 check in with counsel one last time. And we have also got
11 to check off with Madam Court Reporter the exhibits. The
12 12 of you, I need to step back in just a minute. The two
13 alternates, I want to remain for a few minutes in a
14 separate room.

15 Do not begin your deliberations until I send the
16 indictments and exhibits back. Now, I have two alternates
17 in place. Now, I'm going to close this charge out by
18 inquiring of the jury if you feel that you cannot
19 deliberate this case -- in other words, you feel that you
20 cannot continue to be a fair and impartial juror in this
21 case and you cannot go back there and properly deliberate
22 this case you need to let us know now so we can replace
23 you with an alternate.

24 In regards to that, Mr. Foreman, if you get back
25 there and somebody absolutely refuses to take part in the

1 deliberations you will need to let me know so I can take
2 appropriate action, okay. All right. If the 12 regular
3 jurors will step back. The two alternate jurors, Sheriff,
4 if you will find a place for them temporarily. If y'all
5 will follow the Lieutenant, the bailiff's staff.

6 (WHEREUPON, the jury panel was excused from the
7 courtroom at 11:03 a.m.)

8 COLLOQUY

9 MR. SWILLEY: Your Honor, I would take exception.
10 Your Honor, I would request that the Court charge the
11 lesser included charge of resisting arrest as well as
12 ordinary C.D.V. and allow that to be a lesser included in
13 the two indictments also.

14 THE COURT: Okay, that was not agreed upon in our
15 meeting in chambers, and under the evidence in this case I
16 would tend to say that you are not entitled to it. Your
17 client never denied he had a knife. He said he dropped
18 the knife, but there was evidence there that there was a
19 knife. However, I would defer to the State in regard to
20 that ---

21 MR. REDMOND: Your Honor, I would like ---

22 THE COURT: --- to be heard.

23 MR. REDMOND: I think the evidence, and you said
24 exactly what I was going to say regarding the fact that at
25 some point during the resisting arrest he was tazed and

1 was armed with a knife. He says he dropped the knife, so
2 even by his own comments I don't think they are entitled
3 to those instructions.

4 THE COURT: And I am going to go on and make an even
5 stronger statement. Even though y'all agreed to the two
6 that I did do it on. As I understood, y'all correct me if
7 I'm wrong. Even though there was an agreement if there
8 hadn't been an agreement I would not have charged the
9 lesser included offenses if it had been left totally to
10 me. But I always try to do what counsel can agree to if I
11 know that it's proper under existing case law.

12 MR. REDMOND: Yes, sir.

13 MR. SWILLEY: Thank you, Your Honor.

14 THE COURT: Okay. Y'all check off the exhibits,
15 please.

16 (WHEREUPON, the jury panel begins deliberations at
17 11:09 a.m.)

18 (WHEREUPON, other Court-related business was
19 conducted on the record but not related to the trial
20 of this case and not included in this transcript of
21 record from 11:09 a.m. and reconvened at 11:40 a.m.)

22 (WHEREUPON, the jury panel enters the courtroom at
23 11:42 a.m.)

24 QUESTION FROM THE JURY

25 THE COURT: Okay. Back on the record. I have an

1 inquiry from the jury panel, and I will publish it at this
2 time: "We need the explanation of the charge of attempted
3 murder. What is the difference between attempted murder
4 and the lesser charge? What exactly is the lesser
5 charge?" All right. We have the indictment for attempted
6 murder with the jury present. And in response to your
7 inquiry, Mr. Foreman, I will recharge you on your request.

8 Section 16-3-29 of the Code of Laws of the State
9 South Carolina, 1976, as amended is entitled, 'Attempted
10 Murder'. "A person who with intent to kill attempts to
11 kill another person with malice aforethought, either
12 expressed or implied, commits the offense of attempted
13 murder.

14 Some criminal offenses in South Carolina you have
15 lesser included offenses. Assault and battery in the
16 first degree is one of the lesser included offenses of
17 attempted murder as prescribed by our State Legislature
18 and Governor and the statutes. I will now define assault
19 and battery in the first degree for you. That comes from
20 16-3-600(C)(1).

21 "A person commits the offense of assault and battery
22 first degree if the person unlawfully offers or attempts
23 to injure another person with the present ability to do so
24 and the act is accomplished by means likely to produce
25 death or great bodily injury." For clarification purposes

1 the attempted murder statute requires malice aforethought
2 as I defined for you earlier. The lesser included offense
3 of assault and battery first degree does not have that
4 element.

5 Okay. As far as the jury is concerned you have to
6 apply the evidence as you find to be the truth state and
7 the true facts and analyze these two statutes to see what
8 applies. Now, I in no way get into that. That is your
9 sole duty to do that. Once again, you've got three
10 possible verdicts on that attempted murder indictment.
11 That's of guilty of attempted murder or guilty of assault
12 and battery first degree or not guilty.

13 Once again, if you find the defendant guilty but you
14 have a reasonable doubt as to whether the defendant be
15 guilty of the greater crime charged or the lesser crime
16 charged then you would resolve that reasonable doubt in
17 favor of the defendant and write a verdict of guilty only
18 as to the lesser charge.

19 But, of course, you could not write a verdict of
20 guilty to any charge unless it's to that charge you find
21 all elements of the charge have been proven by the State
22 beyond a reasonable doubt.

23 All right, Mr. Foreman, do I need to repeat that one
24 more time?

25 JURY FOREPERSON: I don't think so.

1 THE COURT: Okay. All right. If you have -- oh,
2 there was one thing I need to mention to you. If someone
3 needs to take a smoke break or restroom break or whatever.
4 And you don't have all 12 present, stop your deliberations
5 until you get all 12 back. Thank you. Y'all may return
6 to complete your deliberations.

7 (WHEREUPON, the jury panel was excused from the
8 courtroom to continue deliberations at 11:47 a.m.)

9 (WHEREUPON, Court's Exhibit No. 1 was marked for
10 identification and received into evidence.)

11 COLLOQUY

12 THE COURT: Anything for the record concerning that
13 inquiry?

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

15 MR. SWILLEY: Well, I don't have anything, Your
16 Honor. I was asked some questions whether the difference
17 between assault and battery first degree and attempted
18 murder was malice and aforethought. I was under the
19 impression perhaps the difference was with intent to kill.

20 I don't think such a new statute -- there has not
21 been enough case law annunciating for the difference. A
22 new case came out to the lesser included to attempted
23 murder, which is State v Middleton, does not go into
24 detail about the differences other than A & B. I think
25 the charge was sufficient.

1 THE COURT: Okay. Y'all stay close by.

2 MR. REDMOND: Yes, sir.

3 THE COURT: They may have further questions.

4 (WHEREUPON, other Court-related business was
5 conducted on the record but not related to the trial
6 of this case and not included in this transcript of
7 record.)

8 MR. SWILLEY: Your Honor, before you bring the jury
9 in I have been giving it some thought, and I think that I
10 need -- I am obligated to formally object -- to make a
11 formal objection as to the jury charge. The difference in
12 A and B first and attempted murder. I just want to make a
13 formal objection. I think that the difference in A & B
14 first and attempted murder is the actual intent to kill,
15 and I just ask that you note my objection for the record.

16 THE COURT: I charged the actual statute that includes
17 that.

18 MR. SWILLEY: Yes, sir. Just as an abundance of
19 caution.

20 THE COURT: Noted.

21 VERDICT OF THE JURY

22 THE COURT: The jury is coming in. Everybody rise
23 up.

24 (WHEREUPON, the jury panel enters the courtroom at
25 12:40 p.m.)

1 THE COURT: You may be seated. Madam Clerk.

2 CLERK OF COURT: Mr. Foreman, have you reached your
3 verdict?

4 JURY FOREPERSON: Yes, we have.

5 THE COURT: Please pass it to the bailiff. All four
6 indictments are signed and dated. Madam Clerk, you may
7 publish the indictments.

8 CLERK OF COURT: State of South Carolina v. Julius
9 Curry, 2013-GS-13-697. We the jury find the defendant not
10 guilty.

11 State v. Julius Curry, 2013-GS-13-700. We the jury
12 find the defendant guilty of assault and battery first
13 degree.

14 State of South Carolina v. Julius Curry,
15 2013-GS-13-698. We the jury find the defendant guilty.

16 State of South Carolina v. Julius Curry,
17 2013-GS-13-699. We the jury find the defendant, Julius
18 Curry, guilty. Dated March the 15th 2014. The foreman is
19 Matthew [sic] Garrell. Mr. Garrell, is this still your
20 verdict?

21 JURY FOREPERSON: Yes, ma'am.

22 CLERK OF COURT: And is it still the verdict of all
23 12?

24 THE COURT: Anything further of the jury?

25 MR. SWILLEY: Your Honor, I request polling of the

1 jury.

2 POLLING OF THE JURY

3 CLERK OF COURT: Okay. I'm going to call your name.
4 Just raise your hand, and what I what to know is if this
5 is your verdict and still your verdict. Michael E.
6 Garrell.

7 JURY FOREPERSON: Yes.

8 CLERK OF COURT: Robert Cash.

9 JUROR: Yes.

10 CLERK OF COURT: Andrew W. Baricska.

11 JUROR: Yes.

12 CLERK OF COURT: William H. Watkins.

13 JUROR: Yes.

14 CLERK OF COURT: Wesley C. Johnson.

15 JUROR: Yes, ma'am.

16 CLERK OF COURT: Anita G. Powell.

17 JUROR: Yes.

18 CLERK OF COURT: Darlene M. Jones.

19 JUROR: Yes.

20 CLERK OF COURT: Dennis M. Porter.

21 JUROR: Yes.

22 CLERK OF COURT: William F. Gordon, Sr.

23 JUROR: Yes, ma'am.

24 CLERK OF COURT: Caleb A. O'Neil.

25 JUROR: Yes, ma'am.

1 CLERK OF COURT: Heidi R. Johnson.

2 JUROR: Yes.

3 CLERK OF COURT: Maxie D. Brown.

4 JUROR: Yes.

5 THE COURT: Anything further?

6 MR. REDMOND: There is nothing, Your Honor. Not from
7 the Defense.

8 THE COURT: Ladies and gentlemen of the jury, I want
9 to thank you for trying this case. Thank you for your
10 hard work, and thank you for your patience with the Court.
11 I will tell you that we were arranging lunch for you, but
12 it takes a while because most of the restaurants can't
13 handle more than 10 or 15 at one time. We have to call
14 them ahead. We were working on that.

15 The order has already been called in. So with that
16 said if you will report to the Carolina, if you so desire.
17 Lunch will be provided by the County for your hard work.
18 And I appreciate Madam Clerk for doing that for you. If
19 you don't know where the Carolina is it's towards
20 Pageland.

21 Go out Number Nine towards Pageland, and it is right
22 outside the city limits past the new school up there on
23 the right. You will see the sign that says Carolina
24 Restaurant. When you go in let the lady or gentlemen know
25 behind the counter that you are on the jury. Okay. And

1 it's a buffet, and they should have a table back there if
2 you want to sit together. That is arranged for you.

3 The next thing we will do is what we call mitigation
4 and sentencing whereby we complete that and we hear any
5 criminal record of the defendant, if he has one, and also
6 complete the sentencing.

7 I would invite you to stay with us and listen to that
8 if you so desire, but if you would rather go ahead and
9 leave that will be fine, too. Because this will complete
10 you service for the week. I've got to move on to Marlboro
11 and Dillon tomorrow and then Darlington County on Friday
12 for roster meetings. Okay.

13 But if you would like to stay you may step down and
14 have a seat in the gallery. Or if you would like to go
15 ahead and leave that will be fine. But whenever you do
16 leave if you want to stop up at the Carolina and have
17 lunch, please do so. Any questions? Okay. Got notes
18 here and your checks, Madam Clerk?

19 CLERK OF COURT: Got their notes, not their checks.

20 THE COURT: All right. Madam Clerk, she will mail
21 you your checks. If you don't get them within next week
22 please call and let her know. And before I let you go,
23 please do not be upset with Madam Clerk or me about the
24 amount of your jury pay. We can't control that. That is
25 set by County Council, so if you don't like how much you

1 got paid fill their ears up because we are just as upset
2 as you are. It's ridiculous compared to what you may get
3 in the federal court or in other states compared to us.
4 So let them know your feelings about that if you feel
5 strongly about that. Okay. All right. Anything before I
6 release the jury?

7 MR. FOARD: Your Honor, if I may, I would just like
8 to convey on behalf of Mr. Redmond. As the Court knows
9 Mr. Redmond has a sick child at home and he's had to go
10 home and tend to that, but he wanted to convey his
11 apologizes for having to leave early to the jury as well
12 as to the Court.

13 THE COURT: Thank you, Solicitor.

14 MR. SWILLEY: Nothing from the Defense, Your Honor.

15 THE COURT: All right.

16 SENTENCE OF THE COURT

17 THE COURT: All right. Sheriff, if you will secure
18 the defendant. We are ready to move into mitigation and
19 sentencing.

20 MR. SWILLEY: Your Honor, I believe I preserved the
21 record on my right to renew my motion for a directed
22 verdict as well.

23 THE COURT: So noted.

24 MR. SWILLEY: Thank you.

25 THE COURT: We are here on the record on Indictment

1 697 for criminal domestic violence high and aggravated
2 nature the jury found the defendant not guilty. On the
3 resisting arrest with a deadly weapon the verdict was
4 guilty. And on the attempted murder the lesser included
5 offense of assault and battery first degree is guilty.
6 And on the assault and battery second-degree indictment,
7 which was 698, is guilty. State have anything in
8 mitigation?

9 MR. FOARD: If I may hand up the sentencing sheets,
10 Your Honor. After sentencing we will have the proper
11 statutes and proper C.D.R. codes, if Your Honor pleases.
12 With regard to these convictions, Your Honor, as you know,
13 Your Honor, this is Mr. Redmond's case and Mr. Farr sat in
14 with him, Your Honor.

15 But just to communicate Mr. Curry's prior history,
16 Your Honor, of the most concern to the State is obviously
17 of course his conviction in 2008. In 2008 he was
18 convicted of assault with intent to kill, Your Honor,
19 receiving an 8 year prison sentence.

20 But, Your Honor, it does go back further than that,
21 and is actually what the State would contend is a pretty
22 extensive history of this type of behavior. In 1993, Your
23 Honor, in Baltimore, Maryland he was convicted of battery
24 receiving a six month sentence for that.

25 Subsequent to that six month sentence for battery he

1 did serve some sort of probationary sentence according to
2 NCIC and was ultimately violated from that probation, Your
3 Honor.

4 Then going further than that in 1999 he was convicted
5 in Neptune Township, New Jersey with criminal mischief
6 with damage, Judge. And that was a guilty finding at that
7 time.

8 And also in 1999 in the same area of New Jersey he
9 was convicted of theft. Beg the Court's indulgence. And,
10 Your Honor, I'm just informed by law enforcement that, and
11 I actually did not know this, but the assault and
12 battery -- the assault with intent to kill in 2008, Your
13 Honor, that he received an 8 year sentence, the victim on
14 that case was actually law enforcement. He shot at a
15 deputy sheriff, Your Honor, and I believe they can expound
16 on who the victim was, Judge.

17 With that in mind I believe that the indictment, 699,
18 resisting arrest with a deadly weapon first offense, if
19 our information is correct he is facing a minimum sentence
20 of two years and a maximum sentence of 10 years.

21 On the assault and battery second carries zero to
22 three, and the assault and battery first which arises out
23 of an attempted murder carries zero to 10, Your Honor. We
24 respectfully ask that he receive 10 years on Indictment
25 699, three years on Indictment 698, and 10 years on

1 Indictment 700 to be served consecutively, Your Honor.

2 We believe that this is warranted in this case
3 because he has demonstrated a clear pattern of behavior.
4 As I have just been told he's done this before regarding
5 law enforcement. He is not only a danger to the community
6 he is also a danger to law enforcement. He is a danger to
7 the citizens of Chesterfield County.

8 THE COURT: All right. Chief.

9 MS. DAVIS: Just to make you aware, Judge, that the
10 case in 2008 involved Deputy Byron Chapman at the time and
11 it was a domestic. And he came out the front door, fired
12 a shot at him and ran which lead to his arrest later and
13 an eight year sentence which I think he served four.

14 THE COURT: Thank you, Chief.

15 MR. SWILLEY: Your Honor -- oh, I'm sorry.

16 THE COURT: Go ahead.

17 MR. SWILLEY: I took this case over from Mr. Letteer
18 when I came back here in January. I have not gotten to
19 know Mr. Curry personally as well as I would have liked,
20 but of course, he was born in Baltimore and had a rather
21 poor upbringing. And some time proceeding his arrival
22 here he had a child. An infant child that was killed by
23 the boyfriend of the child's mother. It was end up
24 getting convicted of homicide by child abuse. He has some
25 other children and grandchildren that reside in Baltimore,

1 Your Honor.

2 As to his prior record, I think the only thing that
3 near past that incident back in 2008 that Mr. Foard read
4 off some things he had in other states, but they appear to
5 be from the late 80s and early 90s.

6 Your Honor, you know, I don't know what Julius
7 allocuted in front of you, but I would respectfully
8 request that the Court not punish him for exercising his
9 right to a trial. I don't think that he -- well, let me
10 say that in my dealings with him he has never shown the
11 kind of demeanor that was portrayed by the witnesses
12 during the trial. He has always been polite and
13 respectful to myself.

14 I think he is very regretful that this incident took
15 place. I don't think that had he not been using illicit
16 substances that night this would not have gone down the
17 way it went down. Nevertheless, it did, but I don't think
18 that, in sobriety, is in any way he was or how he was
19 described to be on August 30th of 2013.

20 And I would just respectfully ask the Court not to
21 impose consecutive sentences. I would respectfully
22 request the Court give him a sentence that is within one
23 of the statutes.

24 THE COURT: All right. Mr. Curry, is there anything
25 you would like to say at this time?

1 MR. CURRY: Yes, sir. I want to apologize. I made
2 some mistakes in my life, Your Honor and I'm not going to
3 try to make excuses for any of them. I got family. I got
4 kids and grandkids, and I would like to see them. The
5 only thing I can do is throw myself at the mercy of the
6 Court.

7 THE COURT: All right. Mr. Curry, the jury has
8 reached their verdict, and it's now my duty to complete
9 sentencing. At this time on the record I need to advise
10 you that you have a right to appeal. Any appeal has to be
11 perfected by filing a Notice of Appeal within ten days of
12 sentencing. Even though there are other attorneys there
13 in Columbia especially that handle appeals in most cases,
14 counsel, it would be incumbent upon you to assist him if
15 he so desires to appeal.

16 MR. SWILLEY: Yes, sir.

17 THE COURT: At least to help him initiate that.

18 MR. SWILLEY: Yes, sir.

19 THE COURT: Mr. Curry, I'm not going to sit up here
20 and preach a sermon to you, but you are one lucky
21 individual by the mere fact that you are standing here
22 today. Because if those officers had unloaded on you and
23 put you 6 feet under them, from my opinion from what I
24 have heard, they would have been fully justified.

25 This is the second time around with law enforcement.

1 At least the second time. I heard the Chief Deputy just a
2 few minutes ago state that you had shot at a law
3 enforcement officer and received an eight year sentence
4 for which you served four years. Apparently, that did not
5 deter you from getting into this dilemma.

6 All right. Sentence of the Court on the assault and
7 battery first degree will be 10 years in the State
8 Department of Corrections.

9 On the resisting arrest with a deadly weapon sentence
10 of the Court is 10 years in the State Department of
11 Corrections. That is a consecutive sentence.

12 Assault and battery second degree, the sentence of
13 the Court is one and a half years, consecutive.

14 You will receive credit for your jail time, and I
15 need a report on that before Mr. Curry is transported so I
16 can complete that on the sentencing sheet.

17 MR. SWILLEY: Your Honor, it's 188 days.

18 THE COURT: 188?

19 MR. SWILLEY: 188. That's correct, Your Honor.

20 THE COURT: 188. Thank you very much. That
21 completes this case.

22 MR. FOARD: Thank you, Your Honor.

23 MR. SWILLEY: Thank you, Your Honor.

24 END OF TRANSCRIPT OF RECORD

25

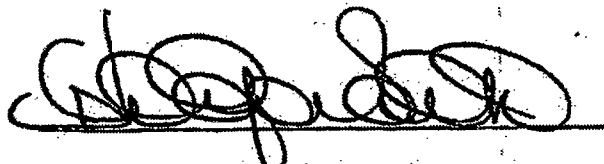
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the 4th 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Chesterfield County, South Carolina, on the 5th day of March, 2014.

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

May 14, 2014



HATTIE O. GORDON, Court Reporter

The South Carolina Court of Appeals

The State, Respondent,

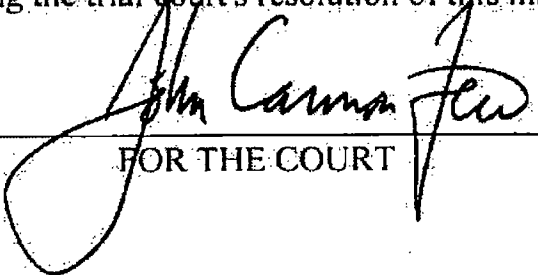
v.

Julius Curry, Appellant.

Appellate Case No. 2014-000569

ORDER

Respondent filed a motion to hold this appeal in abeyance pending the receipt of transcripts of audio recordings of phone calls Appellant made while in jail, which were published to the jury but excluded from the trial transcript. Before this court ruled on that motion, Respondent filed a motion to remand for a reconstruction of the record, arguing reconstruction was necessary because the court reporter did not record the phone calls' publication to the jury and the original recordings of the calls are no longer available from the jail's recording system. The motions are granted and this case is remanded to the Chesterfield County Court of General Sessions. Counsel for Respondent is ordered to contact counsel for Appellant and the circuit court judge, the Honorable Paul M. Burch, within ten days of this order to schedule such hearings as the circuit court judge deems appropriate. Counsel for Respondent shall provide an update to the clerk of this court no later than fifteen days from the date of this order, with a copy to counsel for Appellant. This appeal will be held in abeyance pending the trial court's resolution of this matter.


FOR THE COURT

Columbia, South Carolina

FILED
3/10/15

cc: Alan McCrory Wilson, Esquire
Kathrine Haggard Hudgins, Esquire
Deborah R.J. Shupe, Esquire
The Honorable Faye L. Sellers
The Honorable Paul M. Burch

State of South Carolina) In the Court of General Sessions
County of Chesterfield) First Judicial Circuit
2013-GS-38-01308
2015-GS-38-00035

State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Julius Curry,)
Defendant.)

Darlington, South Carolina
April 8, 2015

B E F O R E:

The Honorable Paul M. Burch

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

Kenard Redmond, ESQUIRE
Attorney for Plaintiff

Matthew Swilley, Esquire
Attorney for Defendant

LISA S. CARTER
CIRCUIT COURT REPORTER

I N D E X

WITNESSESPAGE

Christopher Page:

DIRECT EXAMINATION BY MR. REDMOND

6

CROSS EXAMINATION BY MR. SWILLEY

13

CROSS EXAMINATION BY THE COURT

15

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
C-1	Summary of calls	7

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1 THE COURT: Solicitor?

2 MR. REDMOND: May it please the court Your Honor? We
3 are before you on order of the Court of Appeals. The
4 appellate case number is 2014-000569. An order signed by
5 Chief Judge Few on the 30th of March, 2015, to reconstruct
6 the record of particular jail calls.

7 The case before you is actually The State v. Julius
8 Curry. He was indicted on several charges, 2013 -GS-700, for
9 attempted murder. He was actually convicted of assault and
10 battery, first-degree, at trial in March 2015; 2013-GS-13-698
11 is for assault and battery of a second-degree, he was found
12 guilty of that charge; 2013-GS-13-699, that was for resisting
13 arrest with a deadly weapon, he was found guilty on that; and
14 2013-GS-13-697, that was CDV, high and aggravated, he was
15 found not guilty on that particular charge. He was sentenced
16 to 10 years on the A&B first; 10 years old resisting arrest
17 consecutive; and then, also consecutive was a year and a half
18 on the assault and battery, second-degree.

19 With that said, Your Honor, -- and, of course, just for
20 the record we were all under the mistaken impression that the
21 -- that the jail calls were being -- when they were played
22 and published for the jury we were under the mistaken
23 impression that it was being recorded. Of course, I have
24 found out that it is normal procedure for it not to be
25 recorded when something is played out in open court. Did not

1 know that at the time. With that said, Your Honor, we were
2 not able to get a disk so that's why we literally had to play
3 it from the database on Sergeant Wayne Jordan's laptop at the
4 trial. We have since come to find out that the recording has
5 now been deleted from the database of the company that
6 actually administers that particular recording system. So
7 with that said, Your Honor, we have got Chris Page here
8 today, fortunately, he actually had provided notes on the
9 contents of these calls. He is here today to testify on the
10 content of the calls since he actually personally did hear
11 the calls. He did not testify at trial but given the issue
12 that's come up with reconstructing the record and since we do
13 not have an actual recording, his notes from those calls is
14 the easiest and best way to reconstruct the record. And so,
15 with that said, Your Honor, we would -- the State is
16 prepared to proceed at the appropriate time. I do think
17 there is a matter to be heard by the -- from the defense.

18 THE COURT: Mr. Swilley?

19 MR. SWILLEY: Your Honor, thank you. I've spoken with
20 appellant counsel and, Your Honor, I just put on the record
21 that I would object to the reconstructing of the record on
22 the grounds that it's not truly a reconstructed hearing due
23 to the fact that or rather not enough time for motion to
24 reopen the record due to the fact that new evidence, why it
25 should be entered into the record, I believe through Chris

CHRISTOPHER PAGE- DIRECT EXAMINATION BY MR. REDMOND:

6

1 Page who is not a -- was a witness at the time of the trial,
2 Your Honor. So I just wanted to make that clear and clarify
3 for the record later on for the appeal. Thank you.

4 THE COURT: That's fine. Well, we'll do the best we can
5 and, of course, we will try our best to meet the order of the
6 Court of Appeals and let's get it on the record and if
7 anybody is in a disagreement, remembers that something was
8 different from the way it pans out today, let's get that on
9 the record where the Court of Appeals can see it because
10 we're under a strict deadline on this.

11 MR. REDMOND: Yes, sir.

12 THE COURT: All right. Solicitor?

13 MR. REDMOND: Your Honor, if it please the court the
14 State would call, Chris Page.

15 (Witness was sworn)

16 MR. PAGE: Yes, sir.

17 BAILIFF: Give your full name for the record please.

18 MR. PAGE: Christopher John Page.

19 CHRISTOPHER PAGE, first
20 being duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. REDMOND:

22 Q. And -- are you currently employed with the sheriff's
23 office in Chesterfield County?

24 A. No, sir, I'm retired.

25 Q. Okay. And were you employed with the Chesterfield

1 County Sheriff's Office at the time, I guess, at the time in
2 question being between September 12, 2013 and September 25,
3 2013?

4 A. Yes, sir.

5 Q. Okay. And in what capacity were you employed?

6 A. I was a lieutenant over the narcotics section.

7 Q. Okay. Now, did you -- as a part of your employment with
8 the sheriff's office, did you occasionally listen to recorded
9 jail calls?

10 A. Yes, sir.

11 Q. Okay. Did you listen to any jail calls between 12th of
12 September, 2013 and 25th of September 2013, calls involving
13 the defendant Julius Curry?

14 A. Yes, sir.

15 Q. Now, before we get into that if I may and I have shown
16 it to the defense if I could have this marked as a Court's
17 Exhibit I should've done this at the beginning I apologize --

18 -

19 MR. SWILLEY: And, Your Honor, I would just like to
20 object under my previous reason at that. Thank you.

21 THE COURT: So noted. I guess I need to overrule the
22 objection.

23 (SUMMARY OF CALLS HAS BEEN MARKED AND ENTERED INTO
24 EVIDENCE AS COURT'S EXHIBIT NUMBER 1)

25 Q. I'll hand you up what's been marked -- I'm going to hand

CHRISTOPHER PAGE- DIRECT EXAMINATION BY MR. REDMOND:

8

1 you what's been marked as Court's Exhibit Number One and
2 regarding those calls in reference to Mr. Curry, did you take
3 notes and are those notes reflected in what you've typed up
4 being a summary of what you heard on those calls?

5 A. That's correct.

6 Q. Now -- and is that prepared by you? Was that prepared
7 by you?

8 A. Yes, sir. This is something that I turned in.

9 Q. Now, in these particular calls and I'm just going to go
10 through each call and -- for the record, to make sure the
11 record is clear, first I'm going to go through the calls that
12 from my recollection were actually the portions were played
13 and then I'll get into it a section -- see they were some
14 statements that we didn't get into that we had agreed that
15 needed to be excluded but for right now I'm going to actually
16 ask Lieutenant Page what was actually played for the jury ---

17 THE COURT: Yeah, definitely we don't want to get that
18 mixed up.

19 MR. REDMOND: Exactly. So that's why I want to make the
20 record clear that what I'm asking him now is what the State
21 contends was played in court at the time of trial, the
22 summary of what was played in court and then after that I'll
23 get into what we had agreed was not played in court.

24 THE COURT: Okay.

25 Q. But with that said, I'm gonna ask you about -- and

1 starting on 13th of September, did you listen to a call about
2 seven o'clock that was made between Mr. Curry and someone by
3 the name of Shell?

4 A. All right, I need to explain something, that seven ---

5 Q. Yes

6 A. --- is the time frame of the call. That would've been
7 the time frame in that call that is not the correct time of
8 that call.

9 Q. Okay. I gotcha.

10 A. If it was fifteen minutes that would've been seven
11 minutes within that time frame.

12 Q. I gotcha. Well, that first call -- it's the second call,
13 it says seven minutes could you tell from the best of your
14 recollection what that call -- what was discussed during that
15 call between the defendant and Shell?

16 A. The conversation basically entailed, Curry and Shell are
17 talking about paying Quan a \$1,000.00 to \$1,500.00 to not
18 appear in court. Curry tells Shell to make sure Quan does
19 not make it to court.

20 Q. Now, below that is mentioned is 9:45, a nine
21 minute/forty-five second call, could you explain what the
22 contents of that -- the summary of the contents of that call?

23 A. This call is, Shell describing to Curry what he did to
24 her and Quan.

25 Q. Okay. And to be clear, do you have any recollection of

CHRISTOPHER PAGE- DIRECT EXAMINATION BY MR. REDMOND: 10

1 all of the details that were mentioned in those calls or is
2 this the summary of the key portions of the call?

3 A. No, sir. There were other calls that were not recorded
4 that had no content to this. There were also some calls that
5 they had asked me to listen for, for another case that had
6 also would have probably -- probably they were a few calls
7 that was used on his card from another defendant in another
8 case.

9 Q. I understand.

10 A. That aren't reflected on this sheet.

11 Q. Okay. Now, then we get to eleven minute/ twenty second
12 call, could you tell us what the summary of the contents of
13 that call were?

14 A. Curry is talking to Shell and trying to get her to tell
15 law-enforcement officers that she is dropping her charges.

16 Q. Okay. And then a twelve minute/fifty second call?

17 A. Shell tells Curry that she is worried he would kill her
18 if he gets out of jail.

19 Q. Now, there's a fourth call indicated in there but for
20 the record the fourth call was not played in court. Now,
21 let's move to 14th of September, 2013, a four minute call,
22 what were the contents of that call?

23 A. Shell told Curry that he did it and can't fix it.

24 Q. And then a nine minute/fifteen second call?

25 A. Shell told Curry he did this to himself.

1 Q. Okay. And a eleven minute/two second call?

2 A. Shell told Curry she told law-enforcement officers she
3 wasn't drug into the room but she was.

4 Q. Now, the third call, five minute and two seconds?

5 A. Shell told Curry that she was afraid he would kill her
6 the next time.

7 Q. Now, let's move on to 15th of September, 2013. That
8 first call at eight minute/ten second call?

9 A. Shell admits to a recent arrest for shoplifting at
10 Walmart.

11 Q. Okay. And the next one is ten minutes/thirteen seconds?

12 A. Shell told Curry that the night of the incident he said
13 he was going to kill the police.

14 Q. Okay. Now let me get you to repeat that one. The ten
15 minutes/thirteen second, what did he say?

16 A. Shell told Curry that the night of the incident he said
17 he was going to kill the police.

18 Q. Now, 16th of September, 2013, the third call is an
19 eleven minute call?

20 A. Curry tells Shell the charges will be dropped due to
21 Wallace not writing an incident report.

22 Q. Then we skipped to 17th of September, 2013, that first
23 call which was the first call, six minutes and thirty
24 seconds?

25 A. Curry told Shell not to go to the court hearings. Curry

CHRISTOPHER PAGE- DIRECT EXAMINATION BY MR. REDMOND: 12

1 said there is no crime if there is no victim in court.

2 Q. Okay. And ten minutes and forty seconds of that first
3 call?

4 A. Shell and Curry are arguing. Curry told Shell to quit
5 saying he deserves time in prison.

6 Q. Now, let's move to the 21st of September, 2013, the
7 second call, an eight minute call and I'm gonna ask you to
8 first do the first sentence of that call?

9 A. Of the eight minute call?

10 Q. Yes, the eight minute call.

11 A. Both Shell and Curry said the deputy was telling him,
12 Curry, to stop.

13 Q. Okay.

14 MR. REDMOND: Now, for the record, Your Honor, in
15 Court's Exhibit One, the next sentence, Curry said, "he would
16 plead to probation," that was excluded at trial by agreement
17 of the parties. We didn't even try to present that
18 particular portion where there's a discussion within that
19 call where he says that he would plead to probation. So that
20 was never played for the jury.

21 Q. Now, that third sentence after the probation sentence,
22 what was said?

23 A. Curry told Shell that her and Quan had to drop their
24 charges.

25 Q. Okay. And were these the end of the calls?

1 A. All the -- any content that I notated for the case.

2 Q. Yes. Okay.

3 A. Yes, sir.

4 Q. All right. Now, let me go back for just a minute to the
5 17th of September, the second call it fourteen minutes --
6 and, Your Honor, this is the section -- that concludes what
7 we had actually introduced for the jury. Now, I'm going to
8 get in for the record what we excluded from the jury so the
9 jury did not hear what I'm about to get into with Lieutenant
10 Page. All right. That second call, fourteen minutes?

11 A. Shell tells Curry he has threatened to punch her in the
12 past.

13 Q. Okay. And then again just for the record the second
14 call of 21st of September, the eight minute call, that second
15 sentence?

16 A. Curry said he would plead to probation.

17 Q. And again does that conclude the calls that you took
18 notes on from the defendant and Shell?

19 A. Yes, sir.

20 MR. REDMOND: I beg the Court's indulgence. Be all the
21 questions I would have at this time.

22 THE COURT: Thank you, Solicitor.

23 MR. SWILLEY: Just very briefly, Your Honor.

24 CROSS EXAMINATION BY MR. SWILLEY:

25 Q. Mr. Page, you -- I think you stated that you -- you

CHRISTOPHER PAGE- CROSS EXAMINATION BY MR. SWILLEY: 14

1 didn't listen to these calls live, did you, you announced
2 before you were on a secure software?

3 A. Yes, sir. That's correct.

4 Q. Okay. And about approximately how long after you listen
5 to these calls did you actually make these notes?

6 A. This is a guess because of something else I had going on
7 but, I believe it was in the middle -- to the middle of
8 October to the middle of November.

9 Q. Okay. And that's approximately about a month after you
10 listen to them?

11 A. Well, if you look at the last one I'm going to say two
12 to three weeks. The last one that I had documented which was
13 21st of September.

14 Q. Okay. So just -- just to be clear, you didn't make
15 these notes contemporaneously with you're listening to the
16 calls, right?

17 A. Sir?

18 Q. You didn't make these notes at the same time you were
19 listening to these calls, correct?

20 A. I took notes from the call.

21 Q. Okay. So you're telling -- so you're listening -- okay,
22 so you're listening to these calls and you're taking notes
23 while you're listening to them, is that what you're saying?

24 A. Yes, sir.

25 Q. Okay. All right. And you don't contend that your notes

CHRISTOPHER PAGE- CROSS EXAMINATION BY THE COURT:

15

1 are verbatim, exactly what was said on the calls, right? Just
2 summations, correct?

3 A. Yes, sir. That was all I was asked to do was to ---

4 Q. Okay. Okay. And these calls -- your notes -- do you
5 have -- do you have exact time ranges from when how long
6 these calls ran?

7 A. No, sir. They would have been on the secure site.

8 Q. Okay. So each one of these notes you made we're not
9 really sure how long each call last, is that correct?

10 A. No, sir.

11 Q. Okay. All right.

12 A. Not without that record of documentation.

13 Q. All right. Thank you, Mr. Page. That's all I have.

14 CROSS EXAMINATION BY THE COURT:

15 Q. You were the lead investigator on this case?

16 A. No, sir. I was asked to assist with the phone calls
17 because I had done them before. And generally and basically
18 I was asked to do was if there was something of value they
19 could use to let them know which calls to get.

20 Q. So you would have been the most familiar with these
21 calls?

22 A. From the start, yes, sir.

23 Q. Yes. And you were present in court when these calls
24 were played to the jury?

25 A. No, sir, I wasn't. I wasn't involved with this trial at

1 all.

2 Q. But to the best of your memory, everything that you have
3 covered for the record this morning you know that your exerts
4 were directly taken from what you heard from the recordings?

5 A. Yes, sir. There's actually, should be a sheet in the
6 case file of the hand written notes that I took also.

7 Q. Is that different from what you have today?

8 A. No, sir. I mean, there may be a couple of extra things
9 written on the hand written notes. To be honest with you,
10 Your Honor, I didn't get this until Monday night.

11 A. Right. I understand. Okay.

12 Q. If you give me a minute or two I don't mind looking over
13 it.

14 MR. REDMOND: I'll leave that to the Court's discretion
15 in that regard.

16 THE COURT: Well, in the twenty-four years I've been on
17 the bench I know I remember one time we had to reconstruct
18 the record on a case and Chief Justice Finney issued an order
19 and I'm just sitting here thinking that probably to avoid
20 confusion we need to stick with exactly what has been said
21 today and not put in any other exhibits. I don't know that,
22 that would be proper and that could cause confusion.

23 MR. REDMOND: And, Your Honor, I guess just to be on the
24 safe side I would -- the State had no intention of
25 introducing anything other than this. But to be clear for

1 the record, Court's Exhibit Number One and I didn't make this
2 clear, Lieutenant Page did allude to the fact that it was
3 part of the case file, that was actually provided to the
4 defense. The type written portion for sure was provided to
5 the defense because we were actually discussing that as we
6 were going through in determining what the best sections were
7 to play for the jury and what needed to be excluded. So I
8 just wanted the record to be clear that Court's Exhibit
9 Number One is something that was prepared as he's already
10 testified to on cross but it was actually available at the
11 time of trial. So I just wanted it to be clear that this is
12 something that was in existence at the time of trial.
13 Obviously, we didn't use it because we had the recording
14 itself.

15 THE COURT: All right. This is what I want to do now
16 to try to clarify this. I've tried so many cases I remember
17 some of this case and I remember -- I remember that we did
18 have a recording we presented to the jury but, you two
19 attorneys would be the most familiar with what was actually
20 played to the jury, let's get it straight now, does anybody
21 -- does either one of you disagree or maintain what has been
22 said this morning was not part of that record?

23 MR. REDMOND: The State does not contend that. I mean,
24 obviously, it was not verbatim but the contents, the
25 substance was what was played in front of the jury in

1 addition what was excluded we also discussed that as well.

2 THE COURT: Mr. Swilley, what's your memory?

3 MR. SWILLEY: Judge, I can remember several I guess
4 you'd call snippets from what was played. Specifically I re-
5 call one time, Marchel told Mr. Curry over the phones that
6 "Jay, you crazy," and I quote, and I do remember -- I do
7 recall there being some kind of, ah, -- I do remember a
8 conversation about Mr. Curry trying to persuade her to tell
9 the authorities to drop the charges and go up and ask the
10 charges to be dropped. Your Honor, in all candor I don't
11 remember much else more than that.

12 THE COURT: Okay. Anything said today by Mr. Quick or
13 anything said that we -- that so far that you maintain was
14 not in that recording or at least the substance of it?

15 MR. SWILLEY: Your Honor, in all candor and I can't --
16 I can't -- I couldn't answer that question in the affirmative
17 or negative. I really don't know. I can't I can't remember.

18 THE COURT: Okay. Solicitor, you're the most familiar
19 with the prosecution side ---

20 MR. REDMOND: Yes, sir.

21 THE COURT: Do you take exception that something was ---

22 MR. REDMOND: I do not. And, in fact, with what we had
23 decided would come in and wouldn't come in, Court's Exhibit
24 Number One was our guide. That's what we were using as our
25 guide to determine what needed to be played and what would be

1 excluded. So to my recollection -- and we pretty much stuck
2 to that, I do remember that much. Again is not verbatim but
3 as it relates to those snippets that are in Court's Exhibit
4 Number One, the state does not have any -- contends that
5 there was nothing that was not accurate that was testified to
6 by Mr. Page.

7 THE COURT: In your opinion, what has been presented
8 this morning that is the best available documentation we have
9 to reconstruct this ---

10 MR. REDMOND: And ---

11 THE COURT: --- record?

12 MR. REDMOND: And, if I could say thankfully Lieutenant
13 Page and it shows the type of officer he was when he was in
14 law enforcement, if we didn't have this and I will be honest
15 with you, we would be in a pickle but this we had prior to
16 the trial and this was what we used to guide us on what was
17 going to be played to the jury. So it is extremely important
18 and thankfully he did do that because if he hadn't like I
19 said we would be in a pickle.

20 THE COURT: All right. Take a few minutes, the three
21 of you -- you can step down -- and I said Mr. Quick I
22 apologize I was wrong. I don't know where that came from.
23 All right. What we're doing now we're having Deputy Chris
24 Page, Solicitor, Kinard Redmond, and the defense attorney,
25 Matt Swilley, are going to look at these other notes to see

1 if anything else needs to be put on the record at this time,
2 however; subject to previous objection by counsel that still
3 in play.

4 (Paused during hearing so all parties could look over
5 documents)

6 MR. SWILLEY: Your Honor, it would appear from looking
7 at former Deputy Page's notes that the verbiage is the same
8 from what the court entered into as courts exhibit, other
9 than the notes would have the actual numbers from which the
10 calls were received, but I believe the actual words and
11 verbiage are the same on the hand written notes from Deputy
12 Page as in the word process copy that was entered into
13 evidence.

14 MR. REDMOND: And I would agree, Your Honor.

15 THE COURT: So, nothing else to put in?

16 MR. REDMOND: No, sir, Your Honor. I mean, as defense
17 indicated Mr. Swilley, the notes he pretty much typed up what
18 he had written to be direct about it. He just wrote out the
19 notes and typed up pretty much verbatim what he had written
20 so we think Court's Exhibit Number One is a fair
21 representation of what Lieutenant Page heard and what he's
22 testified to today.

23 THE COURT: All right. Anything else?

24 MR. SWILLEY: Your Honor, just for the record I want to
25 object to the reconstruction of the record specifically --

1 one moment please. I beg the Court's indulgence.

2 MR. REDMOND: And, there is one quick matter once Mr.
3 Swilley finishes, just since we've had this reconstruction
4 just to be on -- just to air on the side of caution just a
5 quick matter I need to do this.

6 MR. SWILLEY: Your Honor, I just want to object to any
7 finding of the court that the record has been adequately
8 reconstructed for appellate review. Thank you.

9 THE COURT: I'll overrule the objection and all I can
10 say to that is that we've done the best that we can do and I
11 want to thank Investigator Page for being here and helping us
12 and going out of the way to try to accomplish what the a
13 Court of Appeals has ask us to do. Solicitor?

14 MR. REDMOND: Yes, sir, Judge, and the only other issue
15 that I would have is that, obviously, when we get into these
16 recordings, we did do a probative versus prejudicial
17 assessment and so I just want to make sure that, that was
18 clear for the record as well since we are -- especially since
19 we discussed items that were excluded and items that were
20 played for the jury. So I just wanted to make sure that was
21 part of the record as well.

22 THE COURT: All right. Thank you very much.

23 MR. REDMOND: Thank you, Judge.

24 THE COURT: All right. Now, I'll have to do a report
25 and we need an expedited transcript priority over everything

1 else.

2 COURT REPORTER: Yes, sir.

3 THE COURT: Thank y'all.

4 (Court adjourned at 10:28)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Darlington County, South Carolina, on the 8th day of April, 2015.

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

Lisa Carter

Lisa Carter

Circuit Court Reporter

APRIL 14, 2015

RECEIVED

APR 20 2015

**ATTORNEY GENERALS
OFFICE**

2013A1310200097, 98 & 99

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

State of South Carolina,

v.

Julius Curry,

Defendant.

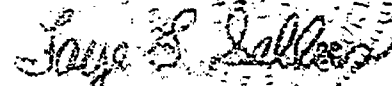
) IN THE COURT OF GENERAL SESSIONS
) OF THE FOURTH JUDICIAL CIRCUIT) Indictment Numbers: 2013-GS-13-697, 698,
) 699, 700

2015 APR 13 PM 3 02
 FAYE L. SELLERS
 CLERK
 ORDER
 CHESTERFIELD COUNTY, SC.

This matter came before this Court on April 8, 2015 pursuant to an Order to Reconstruct the Record, issued by the S.C. Court of Appeals on March 30, 2105. The State was represented at the hearing by Kernard E. Redmond, Deputy Solicitor for the Fourth Judicial Circuit, and the Defendant was represented by Matt Swilley, Esquire. The Defendant was also present at the hearing. The issue is the substance of recordings of jail calls made by the Defendant, which were played before the jury, but not recorded for the record. All parties were under the mistaken belief that the calls were being recorded for the record as they were published to the jury.

The State called Lt. Chris Page (Ret.), formerly of the Chesterfield County Sheriff's Office. Lt. Page testified that he had listened to the recordings of the Defendants calls from the jail and made notes summarizing portions of the calls. These notes were typed and presented to the State, who in turn supplied them to the Defense. At the hearing, the State and the Defense distinguished the portions of the calls that were played at trial from those portions that were excluded from the trial. A transcript of the hearing will reflect the substance of the recordings published to the jury, and sufficiently reconstruct the record as to the recordings.

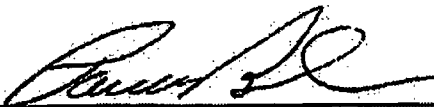
A True Copy, Attest



CLERK OF COURT C.M. & C.S.
 CHESTERFIELD COUNTY, SC

The Court is satisfied and finds that the portions played for the jury were relevant, and the probative value outweighed the prejudice to the Defendant.

AND IT IS SO ORDERED.



The Honorable Paul M. Burch
Judge, Fourth Judicial Circuit

Chesterfield, South Carolina
April 10, 2015

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Julius Curry, Appellant.

Appellate Case No. 2014-000569

Appeal From Chesterfield County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2016-UP-224
Submitted January 1, 2016 – Filed June 1, 2016

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia; and Solicitor William Benjamin
Rogers, Jr., of Bennettsville, for Respondent.

PER CURIAM: Julius Curry appeals his convictions for first degree assault and battery, second degree assault and battery, and resisting arrest with a deadly weapon. We affirm.¹

Initially, we note Curry argues this court erred in remanding this case for reconstruction of the jailhouse recordings. Rule 212(a), SCACR, gives this court the ability to "require copies of all or any part of the transcript of proceedings or other matter which was before the lower court." Here, the recordings were unavailable from the court reporter. Accordingly, this court acted within its discretion in remanding the case to the trial court for a reconstruction of the content of the recordings. Furthermore, we find the trial court did not err in finding the record was adequately reconstructed. *See State v. Ladson*, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007) ("The authority of the trial court in South Carolina to reconstruct the record for appellate purposes aligns our state with the majority of jurisdictions that hold 'the inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.'" (quoting *Smith v. State*, 433 A.2d 1143, 1148 (Md. 1981))); *id.* at 325, 644 S.E.2d at 273-74 (concluding a reconstructed record on appeal must allow for "meaningful appellate review," and a new trial is only appropriate if the appellant establishes "the incomplete nature of the transcript prevents the appellate court from conducting a 'meaningful appellate review.'" (quoting *In re D.W.*, 615 S.E.2d 90, 94 (2005))).

Second, we find the trial court did not err in allowing the jailhouse recordings to be published before the jury, even if they were not formally admitted into evidence. *See State v. Spears*, 403 S.C. 247, 252, 742 S.E.2d 878, 880 (Ct. App. 2013) ("In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless the findings are clearly erroneous."); Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); Rule 402, SCRE ("All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina."); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ."); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

be reversed absent an abuse of discretion."); *id.* ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.").

Finally, we find no error in the trial court's determination the jailhouse phone calls' probative value was not substantially outweighed by their prejudicial impact based on the reconstruction hearing. *See Spears*, 403 S.C. at 252, 742 S.E.2d at 880 ("In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless the findings are clearly erroneous."); Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); Rule 402, SCRE ("All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina."); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ."); *Pagan*, 369 S.C. at 208, 631 S.E.2d at 265 ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *id.* ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.").

AFFIRMED.

HUFF, A.C.J., and WILLIAMS and THOMAS, JJ., concur.

FORM 5

STATE OF SOUTH CAROLINA)

County of Chesterfield)

IN THE COURT OF COMMON PLEAS

Julius Calvin Curry SR #327943
Full name and prison number (if any) of Applicant)

AM 10 27

20 16 - CP-13/052

v.)

FAYE L.)
CLERK)

CRESTFIELD)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention EVANS Correctional Institution
610 Hwy. 9 West Bennettsville, SC 29512
2. Name and location of Court which imposed sentence Court of General Sessions
Chesterfield County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Assault & Battery 2nd degree - 16-03-0600 (D)(1)
 - (b) Resisting Arrest with a deadly weapon - 1st offense - 16-03-0625

James C. Ballance

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

(c) Assault & Battery 1st Degree - 16-003-600 (C) (1)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 03-05-14

(b) 03-05-14

(c) 03-05-14

6. Check whether a finding of guilty was made:

(a) ☐ after a plea of guilty

(b) ☒ after a plea of not guilty

(c) ☐ after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Division of Appellate Defense

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appealed

ii. _____

iii. _____

(c) the date of each such result:

i. 06-01-16

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results: UNKNOWN

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Effective Assistance of Counsel

(b) Jury was stacked

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Counsel did not provide adequate information or time to prepare for trial.

(b) Six (6) of the members of my jury was related to or acquainted with ^{two of the} Plaintiff.

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Appeal

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. The trial judge erred in allowing the state to publish over objections ^{Recorded} phone calls

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. Division of Appellate Defense, P.O. Box 11589 Columbia, SC 29211-1589

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. affirmed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 06-01-16
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: UNKNOWN

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Effective Assistance of Counsel: I'm just now in my P.C.R. process.
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Matthew S. Swilley (PD) 122 North Main Ave. P.O. Box 27, Dillon, SC 29536
 ii. Same as (i)
 iii. Katherine H. Hudgins (AD) 1330 Lady St., Suite 401, P.O. Box 11529, Columbia, SC 29201-3332
 (b) the proceedings at which each such attorney represented you:
 i. Trial
 ii. Sentencing
 iii. Appeal

19. State clearly the relief you seek in filing this application:

Re-trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Chesterfield)

VERIFICATION

I, Julius C. Curry, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 15
day of June, 2016.

J. Durlan (L.S.)
Notary Public

My Commission Expires: 2/17/21

2016 AUG 31 AM 10 27
FILED
CLERK
CHESTERFIELD COUNTY, SC

A True Copy, Attest
Tracy S. Salter
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Julius C. Curry, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

15 day of June, 2016


Notary Public

My Commission Expires: 2/17/24

2016 AUG 31 AM 10 28
FAXED TO CLERK
CLERK OF COURT
CHESTERFIELD COUNTY, SC

A True Copy, Attest



CLERK OF COURT C.R. & G.B.
CHESTERFIELD COUNTY, SC

Revised 3/2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	
Julius Calvin Curry Sr.,	)	Case No.: 2016-CP-13-00652
S.C.D.C. No. 327963,	)	
	)	
Applicant,	)	
	)	RETURN AND
v.	)	PARTIAL MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on August 31, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Chesterfield County. Applicant was indicted at the January 2014 term of the Grand Jury for Chesterfield County for criminal domestic violence of a high and aggravated nature (2013-GS-13-0697), assault and battery, second degree (2013-GS-13-0698), resisting arrest with a deadly weapon, first offense (2013-GS-13-0699), and attempted murder (2013-GS-13-0700). Matt Swilley, Esquire represented Applicant. Kernard Redmond and Adam Foard, of the Fourth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Paul M. Burch and a jury on March 3, 2014. The jury acquitted Applicant of indictment -0697, but found Applicant guilty as indicted on indictments -0698 and -0699, and of the lesser included offense of assault and battery in the first degree on indictment -0700. Judge Burch sentenced Applicant to imprisonment for *consecutive* terms of 1 ½ years, 10 years, and 10 years, respectively, for a total sentence of 21 ½ years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Katherine H. Hudgins, Esquire. By opinion decided June 1, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Curry, Op. No. 2016-UP-224 (S.C. Ct. App. filed June 1, 2016). The Remittitur was issued on July 21, 2016.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Counsel did not provide adequate information or time to prepare for trial."
2. "Jury was Stacked"
 - a. "Six of the members of my jury was related to or acquainted with two of the plaintiffs. "

Attached to and incorporated herein are the records of the Chesterfield County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant appears to allege that the jury in his trial was predisposed against him. This allegation should be summarily dismissed. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b);

Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's allegation with respect to the jury could have been raised at trial and thereafter on appeal. Therefore, Applicant's allegation that the "jury was stacked" should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act.

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VIII.

WHEREFORE, having made its Return, Respondent requests that Applicant's allegation that the "jury was stacked" be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act, and that a hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	
	)	
	)	2016-CP-13-0652
JULIUS C. CURRY, SR, #327963,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Lance Boozer, Esquire
 Boozer Law Firm, LLC
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201**

DATED this 8th day of June, 2017.


 Mallory Morris, Legal Assistant
 For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Fourth Judicial Circuit
County of Chesterfield	)	Case No. 2016-CP-13-00652
	)	
Julius Calvin Curry, Sr.,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
The State of South Carolina,	)	
	)	
Defendant.	)	
	)	

August 21, 2019
Chesterfield, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

L. Sherril Alford, Esquire
Attorney for the Applicant

Jacob A. Isenberg, Esquire
Attorney for the State

Krystal J. Smith
Circuit Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 AUGUST 21, 2019

2 MR. ISENBERG: We'd call Julius Calvin Curry.

3 THE COURT: Whenever you're ready.

4 MR. ISENBERG: Thank you, Your Honor. This is the case
5 of Julius Calvin Curry, Sr., versus the State of South
6 Carolina. It's going to be Case Number 2016-CP-13-00652.

7 Mr. Curry did file an application for post-conviction
8 relief on August 31st, 2016. He's present. He's presently
9 confined in the South Carolina Department of Corrections
10 pursuant to orders of commitment of the Clerk of Court for
11 Chesterfield County.

12 He was indicted at the January 2014 term of the Grand
13 Jury for Chesterfield County for criminal domestic violence
14 of a high and aggravated nature, assault and battery in the
15 second degree, resisting arrest with a deadly weapon, first
16 offense, and attempted murder. Matthew Swilley, Esquire,
17 represented him. Kernard Redmond and Adam Ford of the Fourth
18 Circuit Solicitor's Office prosecuted the case.

19 He did proceed to trial before the Hon. Paul Burch and a
20 jury on March 3rd, 2014. The jury acquitted applicant of
21 Indictment 0697, that's the criminal domestic violence
22 charge, but found him guilty as indicted on 0698, that's the
23 assault and battery charge, and 0699, which is the resisting
24 arrest with a deadly weapon charge, and of the lesser-
25 included offense of assault and battery in the first degree.

1 on Indictment 0700, which is the attempted murder charge.
2 Judge Burch sentenced applicant to imprisonment for
3 consecutive terms of one-and-a-half years, 10 years, and 10
4 years respectively for a total sentence of 21 1/2 years.

5 He did file a notice -- a timely notice of appeal and a
6 direct appeal was perfected by Kathrine Hudgins, Esquire. By
7 opinion decided June 1st, 2016, the South Carolina Court of
8 Appeals affirmed his convictions. The remittitur was issued
9 on July 21st, 2016.

10 In his current application, he does, in fact, allege the
11 failure to object to opening statements. And for purposes of
12 directing the Court, that would be page 51, line 19, through
13 page 52, line 8. His second allegation is failure to prepare
14 for trial, and his third allegation is, in fact, that jury
15 members were related to people on opposing counsel, I
16 believe.

17 And with that, unless Your Honor has any questions, we
18 will allow opposing counsel to proceed with their opening
19 statement.

20 THE COURT: I'll be glad to hear from you.

21 MS. ALFORD: May it please the Court. Again, Your
22 Honor, my name is Sherril Alford. I represent the applicant,
23 Mr. Julius Calvin Curry.

24 In his application, Mr. Curry alleges counsel did not
25 provide adequate information or time to prepare for trial.

JULIUS CALVIN CURRY, SR. - DIRECT BY MS. ALFORD

1 During his case, he was represented by the Public Defender's
2 Office and actually had a different attorney that was
3 representing him up until about three months before his
4 trial, which, in fact, was inadequate time for counsel to
5 prepare, and that will come out through the testimony.

6 And he also alleges that six members of the jury were
7 related -- he states to the plaintiffs, but what he meant
8 related in some way to the officers and the victims in the
9 case, which will also come out in testimony.

10 THE COURT: All right. You may call your first witness.

11 MS. ALFORD: Your Honor, I'd call Mr. Julius Calvin
12 Curry.

13 THE COURT: Good morning, Mr. Curry. Do you swear or
14 affirm that the evidence you're about to give in this case is
15 the truth?

16 THE APPLICANT: Yes, I do.

17 THE COURT: All right.

18 JULIUS CALVIN CURRY, SR.,
19 being first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS ALFORD:

22 Q: Mr. Curry, please state your full name for the record?

23 A: Julius Calvin Curry, Sr.

24 Q: And you're currently incarcerated where?

25 A: Manning Corrections.

JULIUS CALVIN CURRY, SR. - DIRECT BY MS. ALFORD

- 1 Q: And your convictions are for what?
- 2 A: Resisting arrest with a weapon, first-degree assault and
3 battery, and simple assault.
- 4 Q: And what's the length of your current sentence?
- 5 A: 21 1/2 years.
- 6 Q: Now, your conviction -- did it come by way of a trial or
7 a plea?
- 8 A: A trial.
- 9 Q: And who were you represented by during your trial and
10 for this charge -- these charges?
- 11 A: Matthew Swilley.
- 12 Q: Were you represented by Mr. Swilley the whole time?
- 13 A: No.
- 14 Q: So who was your attorney prior to Mr. Swilley?
- 15 A: He was a public defender. His name is Brian something.
16 I can't remember his last name.
- 17 Q: How long was Brian your attorney?
- 18 A: It was, like, a month or two probably.
- 19 Q: So only like a month or two? What about Mr. Swilley?
20 When did he step in prior to your trial?
- 21 A: Maybe -- I started talking to him maybe a couple weeks
22 or so before. So it was probably roughly a month before I
23 went to trial.
- 24 Q: So your first time speaking with Mr. Swilley was about a
25 month before you went to trial?

JULIUS CALVIN CURRY, SR. - DIRECT BY MS. ALFORD

1 A: Yeah.

2 Q: Okay. Let's go through your application. In your
3 application, you allege that Mr. Swilley did not provide
4 adequate information or have time to prepare for trial. You
5 stated that you began speaking with him about a month before
6 your trial; correct?

7 A: Correct.

8 Q: About how many times during that month did you meet with
9 him?

10 A: Maybe three or four, two or three, somewhere around
11 there because --

12 THE COURT REPORTER: Keep your voice up.

13 A: -- he was --

14 THE COURT REPORTER: Keep your voice up. I can't hear
15 you.

16 THE APPLICANT: Okay. Sorry.

17 BY MS. ALFORD:

18 A: He'd come and stay a little while. He wouldn't stay a
19 very long time, but a couple times we spoke. I recall one
20 time he had just came and informed me that we was coming up
21 on trial.

22 Q: And when you say he came, where did he come?

23 A: To the county jail.

24 Q: To visit with you?

25 A: Yes.

JULIUS CALVIN CURRY, SR. - DIRECT BY MS. ALFORD

1 Q: And during these two to four occasions over the course
2 of that month, approximately how long did these visits last?

3 A: I think the longest was around maybe about, like, 45
4 minutes.

5 Q: Okay. When he met with you, you stated that one of the
6 times was to tell you that you were coming up on trial?

7 A: Yes.

8 Q: Prior to this visit, the other meetings, what did you
9 all discuss?

10 A: The incident reports, the fact that Brian, the previous
11 attorney, had given him a little bit of information, and the
12 information that he had.

13 Q: Okay. So during -- during any of these meetings, did
14 you -- were you ever able to go over your discovery with Mr.
15 Swilley?

16 A: No. He told me the only thing that was in my discovery
17 was my incident report and my arrest warrants.

18 Q: You -- did he ever mention whether or not there were any
19 videos or photographs?

20 A: No.

21 Q: Okay. So now let's fast-forward to the day of trial.
22 In your application, you allege that six members of the jury
23 were related or acquainted with -- you stated the plaintiffs,
24 but can you clarify that for the Court?

25 A: Well, they -- there was a -- I believe it was a lady

JULIUS CALVIN CURRY, SR. - DIRECT BY MS. ALFORD

1 that was a clerk where one of the sheriffs shopped or his
2 wife shopped and they knew each other. People in the
3 congregation. My jury foreman was the cousin of, I believe,
4 Mr. Combs [ph]. So, yeah, they was, like, directly
5 acquainted with him.

6 Q: Did you discuss or did your attorney -- did you let your
7 attorney know that you wanted him to strike these potential
8 jurors?

9 A: Yeah. I had asked him why was they allowing people that
10 was related to him to be on there. He was telling me there
11 was, like, so many strikes or something like that, but he
12 didn't strike those individuals.

13 Q: Okay. Now, in the amendment to your PCR application
14 that was filed on October the 6th, 2017, by your prior PCR
15 attorney, Mr. Lance Boozer, he filed an amendment that stated
16 that counsel failed to object to State's prejudicial comments
17 during opening remarks, and he refers to page 51 on the
18 transcript. Line 19, I believe, is where it starts. Can you
19 read that for the Court?

20 A: Yes. It says:

21 Let me just say this. We rely on law enforcement to
22 protect and serve. There -- there is a problem. We feel --
23 we feel threatened, we call 9-1-1, and law enforcement
24 arrives. We rely on them, but we also -- we also owe them.
25 And by that, I mean in a situation like this when you have a

JULIUS CALVIN CURRY, SR. - DIRECT BY MS. ALFORD

1 defendant that endeavors to take the life of a law
2 enforcement officer, we should regard that as a slap against
3 all of us.

4 It goes on to say:

5 As a strike against all of us because we have asked them
6 to serve and protect us and then we find ourselves facing a
7 courtroom today because this defendant, rather than respect
8 the authority and submit to an arrest that was lawful,
9 decided to in essence take -- to take -- try to take the life
10 of Sgt. Combs.

11 Then it goes down and it say:

12 Because this is our chance to protect them and thank
13 them for protecting us.

14 Q: And that opening statement was made by whom?

15 A: Mr. Redmond.

16 Q: And Mr. Redmond was one of the prosecutors on the case;
17 correct?

18 A: Yes. He's the solicitor.

19 Q: Did Mr. Swilley object --

20 A: No.

21 Q: -- when the statement was made?

22 A: No, he didn't.

23 Q: And you feel this statement was, you know --

24 A: Prejudicial.

25 Q: -- prejudiced --

JULIUS CALVIN CURRY, SR. - DIRECT BY MS. ALFORD

1 A: Yes.

2 Q: Prejudicial to you; correct?

3 A: Yes.

4 Q: Okay. In what way?

5 A: One, they just tried to make me out to be, like, a total
6 bad guy. Then further down in the statement where he was
7 trying to direct them into a verdict before they even -- the
8 trial even started.

9 Q: Do you feel that these opening remarks shaped the minds
10 of the jurors?

11 A: Yes.

12 MS. ALFORD: I don't have any further questions at this
13 time, Your Honor.

14 Mr. Curry, please answer any questions that Mr.
15 Eisenhower [sic] may have.

16 THE APPLICANT: Yes, ma'am.

17 THE COURT: Mr. Isenberg.

18 MR. ISENBERG: Thank you, Your Honor. May it please the
19 Court. Let me locate -- I beg the Court's indulgence for
20 just one moment.

21 CROSS-EXAMINATION

22 BY MR. ISENBERG:

23 Q: Good morning, Mr. Curry. How are you doing?

24 A: I'm all right. How are you?

25 Q: Good. Good. You testified on direct that the jury

JULIUS CALVIN CURRY, SR. - CROSS BY MR. ISENBERG

- 1 members at your trial were related to an officer?
- 2 A: Yes.
- 3 Q: Okay. And you testified that the jury members went to
- 4 the same congregation as your officer; correct?
- 5 A: Congregation and some shops.
- 6 Q: Okay.
- 7 A: But they had interactions.
- 8 Q: Do you think that everyone who goes to a congregation is
- 9 related?
- 10 A: No.
- 11 Q: Okay. So just because they went to the congregation
- 12 together doesn't necessarily mean they were related; right?
- 13 A: No. I'm saying acquainted, not related.
- 14 Q: Okay. Well, in your allegation, it says that they were
- 15 related; correct?
- 16 A: Related or acquainted, sir.
- 17 Q: Okay. So you believe that people in this small town of
- 18 Chesterfield being acquainted is improper?
- 19 A: I wouldn't call it improper.
- 20 Q: Okay. But you said you let your attorney know; correct?
- 21 A: He already knew.
- 22 Q: Right. And you said that he advised you that he only
- 23 had so many strikes; correct?
- 24 A: Right.
- 25 Q: And at that point you didn't say anything else about it;

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1 correct?

2 A: Yes, I did.

3 Q: Okay.

4 A: I asked. I wanted to know why if you knew that they
5 were related and they stated that they were related that they
6 didn't get struck.

7 Q: But you just said they were acquainted, not related?

8 A: I said acquainted to or related.

9 Q: Okay. I'm trying. I'm trying to get a clear answer out
10 of you. What's your issue?

11 A: My issue is that six of the jurors acquainted to or
12 related to the sheriffs that my charges are against sat on my
13 jury.

14 Q: Okay. Where's your proof?

15 A: In the transcript.

16 Q: Okay. Where in the transcript?

17 A: I don't have the pages.

18 Q: Do you know where in the transcript right now where the
19 proof is?

20 A: Yes. If you go into the beginning of the transcript
21 where it says the picking of the jury.

22 Q: Okay.

23 A: It states all of that. It has all of that.

24 Q: Okay. And by all of that, you mean it's on the record
25 that the jury members were acquainted with the officer;

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1 correct?

2 A: Yes.

3 Q: And the Court decided to allow them to serve on the jury
4 anyway; correct?

5 A: Yeah.

6 Q: Okay. And counsel decided not to object to that;
7 correct?

8 A: Yeah.

9 Q: Okay. So it's -- the Court and counsel believe the
10 relationship wasn't so improper as to strike them from the
11 jury; correct?

12 A: That's why we're here today, isn't it?

13 Q: Right. And so it really is only you who thought the
14 relationship was improper; correct?

15 A: I wouldn't go as far as to say that.

16 Q: So there's someone else who thought the relationship was
17 improper?

18 A: I mean according to me being here, probably whoever made
19 the decision to let them be on there allowed it.

20 Q: Okay. Well, we'll move on from that. You said that
21 counsel did not prepare enough for trial; correct?

22 A: True.

23 Q: You all met for three or four times?

24 A: Yes.

25 Q: That's what you testified on direct?

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- 1 A: Yes.
- 2 Q: For as long as 45 minutes; right?
- 3 A: Correct.
- 4 Q: Okay. And you said y'all went over the incident reports
5 and the arrest warrants; correct?
- 6 A: Briefly.
- 7 Q: Okay. And you're saying that that's the only thing that
8 y'all went over?
- 9 A: As far as I can remember right now on some of the
10 meetings, yes.
- 11 Q: Okay. On some of the meetings?
- 12 A: Yes.
- 13 Q: Okay. So other meetings y'all may have went over other
14 stuff?
- 15 A: Yes.
- 16 Q: Okay. And what -- what stuff would that have been?
- 17 A: How I was talking with the previous lawyer, attorney
18 from the Public Defender's Office, and how he had left the
19 case to Mr. Swilley. So he was trying to get up to speed on
20 it.
- 21 Q: Okay. So you went over other documents besides just the
22 incident reports and the arrest warrants; correct?
- 23 A: My account of the incident that took place.
- 24 Q: Okay. So we can agree that your testimony on direct was
25 a little bit inaccurate?

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1 A: No, it was not inaccurate.

2 Q: Well, you just said that y'all went over other
3 documents. We'll move on. That's fine. Your other -- your
4 last and final allegation is that the failure to object
5 prejudiced you; correct?

6 A: It didn't prejudice me.

7 Q: The failure to object didn't prejudice you?

8 A: What do you mean did it prejudice me? It didn't
9 prejudice me. I was the one on trial.

10 MR. ISENBERG: I have no further questions for this
11 witness, Your Honor.

12 THE COURT: And redirect?

13 MS. ALFORD: Yes, sir.

14 REDIRECT EXAMINATION

15 BY MS ALFORD:

16 Q: Mr. Curry, just for clarification, the failure to object
17 that I believe the State was referring to was your attorney
18 did not object to the prejudicial statements in openings?
19 That's your allegation; correct?

20 A: Yes.

21 Q: Do you feel that based on his failure to object that
22 these prejudicial statements influenced the jury's decision?

23 A: True.

24 MS. ALFORD: No further questions, Your Honor.

25 THE COURT: All right, sir. You may step down.

MATTHEW SWILLEY - DIRECT BY MS. ALFORD

1 You may call your next witness.

2 MS. ALFORD: Your Honor, I'd call Mr. Swilley.

3 THE COURT: Raise your right hand. Do you swear or
4 affirm the evidence you're about to give is the truth?

5 THE WITNESS: I do.

6 THE COURT: Please be seated.

7 MATTHEW SWILLEY, being first
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS ALFORD:

11 Q: Good morning, Mr. Swilley. Can you state your name for
12 the record?

13 A: Matthew Swilley.

14 Q: And what is your -- what do you do for employment?

15 A: I'm an attorney.

16 Q: Where at?

17 A: 129 S. Coit Street in Florence, South Carolina.

18 Q: Thank you. You're familiar with Mr. Curry?

19 A: Yes, ma'am.

20 Q: You've represented him before?

21 A: I did.

22 Q: On what charge?

23 A: Actually, it was two charges of attempted murder, one
24 charge of criminal domestic violence of a high and aggravated
25 nature, one charge of resisting arrest with a deadly weapon,

MATTHEW SWILLEY - DIRECT BY MS. ALFORD

1 and one charge of assault and battery in the second degree.

2 Q: Okay. But you were not Mr. Curry's first attorney;
3 correct?

4 A: That's correct.

5 Q: At what point did you step in as the attorney on his
6 case?

7 A: Well, see, I was -- I guess I was rehired by the Public
8 Defender's Office. I had been in private practice down at
9 the beach. I came back in January of 2014. So it would have
10 been at that time.

11 Q: Okay. So January of 2014. And what posture -- where
12 was his case at? What stage was it at?

13 A: It was about to be called for trial.

14 Q: So when you stepped in as the attorney, it was already
15 scheduled to be a trial; is that correct?

16 A: My -- my understanding was that Mr. Redmond was planning
17 on trying Mr. Curry's case really as soon as possible. I
18 actually had to try a case in, I think, either January or
19 February of that year right when I got back and then, anyway,
20 after that term of court, I think Kernard told me that he was
21 planning on trying Mr. Curry.

22 Q: Okay. How many times were you able to meet with him in
23 that short span of time?

24 A: I don't remember exactly. It would have been between
25 three and five, I believe.

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1 Q: Okay. During these meetings, were you able to go over
2 his discovery with him?

3 A: I believe so, yes.

4 Q: Okay. And as far as preparing for the trial, were you
5 able to do any independent investigation, speak with
6 potential witnesses or victims?

7 A: I was.

8 Q: Okay. Did you ever speak with Marchelle [ph] or Shaquan
9 [ph]? It looks like that's how you pronounce it.

10 A: I specifically recall speaking with Marchelle at her
11 house, which was on [REDACTED]. She let -- she took
12 me into the trailer where the -- all the events happened.
13 She kind of showed me around.

14 She was actually a pretty favorable witness at first to
15 Julius and she seemed to be somewhat cooperative with us,
16 wanted to assist Julius, and she showed me where everything
17 happened, what she remembered. You know, she didn't -- I
18 don't remember specifically what kind of results she wanted,
19 but she seemed to be pretty favorable and she was friendly
20 and she was helpful enough.

21 So I did remember speaking with Marchelle. I do not
22 specifically remember speaking with Shaquan, the daughter,
23 but she may or may not have been there at that time. But I
24 don't recall.

25 Q: Okay. So you were able to speak with Marchelle on one

MATTHEW SWILLEY - DIRECT BY MS. ALFORD

1 occasion?

2 A: I think on more than one occasion actually, but I was
3 able to go to her house on one occasion, which was Mr.
4 Curry's home at that time of the incident as well, I believe.

5 Q: So would you say you had about a month to prepare for
6 this trial? Is that an accurate estimate?

7 A: Give or take, yes.

8 Q: How long on any other case -- let's just say you're on a
9 case from the very beginning. How long does it normally take
10 you to prepare for trial?

11 A: Well, it depends on what kind of time crunch I'm in.
12 Lately, I haven't taken a whole lot of time, but I always
13 like to have as much time as possible.

14 Q: Okay. And on to his next allegation as far as six
15 members of the jury being related or acquainted with the
16 officers. Why didn't you strike the members of the jury that
17 raised concern for Mr. Curry?

18 A: Well, you know, based on my recollection -- again, I
19 don't remember exactly. I always -- I'm pretty liberal. You
20 know, you get ten strikes, ten or five strikes. This was a
21 ten-strike case. I'm pretty liberal on the strikes that I
22 use. I don't want to -- you know, I want to use them, but I
23 don't want to burn them up in case I need them with somebody
24 else that I feel worse.

25 So I don't specifically recall any conversation between

MATTHEW SWILLEY - DIRECT BY MS. ALFORD

1 Mr. Curry and I. I mean I know that all these jurors said
2 that they could be fair and impartial and I always try to put
3 the most fair and impartial people on there, but I don't -- I
4 can't remember the reasons why, you know, I didn't strike
5 certain jurors in this case and the reasons why I did strike
6 certain jurors. I don't remember how many strikes I used,
7 but I think it was over five.

8 Q: That was going to be my next question if you recall
9 whether or not once the jury was picked if you had any
10 remaining strikes?

11 A: I don't recall, but I usually -- I mean I usually use
12 seven or eight in a given case ordinarily.

13 Q: Okay. The amendment to Mr. Curry's PCR application
14 solely focused on the failure to object during opening
15 statements, and I'm sure you heard what was read from the
16 transcript on page 51 starting at line 19. Was there a
17 reason why you didn't object to Mr. Redmond's opening?

18 A: Not that I recall. I can't -- I can't recall why I
19 didn't object to that.

20 Q: Now that you've heard, you know, the -- that excerpt
21 read from the transcript, wouldn't you agree that those
22 statements were prejudicial to Mr. Curry?

23 A: I -- you know, in all candor, I would have objected. If
24 I could do it all over again, I would've objected to them.
25 That's correct.

MATTHEW SWILLEY - DIRECT BY MS. ALFORD

1 Q: So you would agree that if you could do it again you
2 would object to those statements; correct?

3 A: Certainly. Yes.

4 Q: All right.

5 MS. ALFORD: No further questions, Your Honor.

6 THE COURT: All right. Cross-examination.

7 MR. ISENBERG: May it please the Court.

8 CROSS-EXAMINATION

9 BY MR. ISENBERG:

10 Q: Good morning, Mr. Swilley.

11 A: Good morning.

12 Q: How are you doing?

13 A: I can't complain. Nobody would listen.

14 Q: Did you make it back and forth from Cheraw all right?

15 A: I did.

16 Q: Just a couple of questions. You testified on direct
17 that you were appointed from -- appointed to the case about a
18 month before trial; correct?

19 A: Yeah. I think I got all of Brian Latier's [ph] old
20 cases. Brian left to go work. I can't remember where he
21 left, but he left and I basically took over his caseload.

22 Q: Okay. And so in that span of a month, you had time to
23 go visit the house where the incident took place?

24 A: Yes.

25 Q: Okay. And in that one-month period, you had time to go

MATTHEW SWILLEY - CROSS BY MR. ISENBERG

1 discuss the case with Marchelle; correct?

2 A: I did, yes.

3 Q: And you -- in your discussions, you believed she was a
4 favorable witness; correct?

5 A: At that time, I did.

6 Q: Right.

7 A: Now, at trial, she did -- you know, she changed what she
8 had said to me. Well, she basically changed her narrative.
9 I think she added in some not so nice things about Julius. I
10 don't know what happened between when she spoke with Kernard.
11 She apparently got -- Mr. Curry, based on my observations,
12 kind of fell out of favor with her and she did say some
13 things at the trial that she hadn't told me when I met with
14 her. If that answers your question.

15 Q: Right. Yeah. And my ultimate question to that is do
16 you believe those statements that she sort of shocked you
17 with at trial had an impact on the verdict?

18 A: In all candor, I don't know. I don't know what goes
19 through these people's minds --

20 Q: Right.

21 Q: -- when they go back there, but did it? I don't know.

22 Q: Right. And so with that being said, you don't know what
23 goes through these people's minds, you don't necessarily know
24 if the opening statements had any true impact on the jury's
25 verdict?

MATTHEW SWILLEY - CROSS BY MR. ISENBERG

1 A: Oh, I don't know. I didn't talk to any of them
2 afterwards, any of the jurors.

3 Q: Right.

4 A: I don't think I did. No, I didn't.

5 Q: Right. We'll -- and we'll get to that in just a moment.
6 Back to the investigation. So you went and met with the
7 applicant a couple of times while he was incarcerated;
8 correct?

9 A: Yes.

10 Q: Okay. And during that time period, did you go over
11 anything more than the incident reports and the arrest
12 warrants?

13 A: I recall going over -- I mean I think -- I think we went
14 over everything I had at the time in my file.

15 Q: And at that point, you had received all of the discovery
16 in the case?

17 A: No. What happened was when we got to trial, Mr. Redmond
18 had some jail phone calls that he just kind of turned over.
19 You know, I'm not blaming him or anybody else.

20 Q: Right.

21 A: But he turned -- the day of trial, he turned over some
22 jail phone calls that I had not been in possession of
23 precedent to trial.

24 Q: Right. And do you believe -- do you believe those jail
25 phone calls were impactful at trial?

MATTHEW SWILLEY - CROSS BY MR. ISENBERG

1 A: Again, I don't know. I can't --

2 Q: But they did come in; right?

3 A: Yes. I believe -- I believe they did. Yeah. I think
4 they were played in front of the jury, but I don't think they
5 ended up in the transcript and I think that was another issue
6 later on.

7 Q: Right.

8 A: I didn't -- I think that they tried to reform or re-
9 create the record at some point after the trial. It might
10 have been after I had left the PD's office.

11 Q: But going back to the jail phone calls, you received
12 those shortly before trial; correct?

13 Q: Yeah. Like, within -- I think within an hour maybe
14 actually.

15 Q: Right. So you didn't have time to necessarily prepare
16 with the client, like, with those jail calls -- jail phone
17 calls; correct?

18 A: Right. Yeah.

19 Q: Okay. So the jail phone call issue is not from a lack
20 of preparation? That's sort of what I'm getting to.

21 A: I don't -- I don't think so. I mean, you know, I can't
22 remember if I asked Kernard because, you know, usually
23 Kernard and I try cases together it seems like all the time
24 and usually what we'll do is I'll go and he'll basically say,
25 you know, I'll look in my file just to make sure we've got

MATTHEW SWILLEY - CROSS BY MR. ISENBERG

1 everything so we're all on the same page. I can't remember
2 if I did that with him or not.

3 Q: Well, speaking of the same page, do you believe that you
4 and your client were on the same page in terms of going into
5 trial in terms of strategy?

6 A: Yeah. I mean we were going to trial. There wasn't
7 going to -- I mean he wasn't going to take the plea offer.

8 Q: Right. But you -- you had communicated with your client
9 what the trial strategy would have been; correct?

10 A: Like our -- like our theory or I guess our -- yeah.
11 Yes, yes.

12 Q: Yeah. And so it is certainly your custom to communicate
13 your trial strategy with your client beforehand; correct?

14 A: Right.

15 Q: So he was -- based upon your experience and your
16 knowledge of this case, he wasn't surprised by your trial
17 strategy; correct?

18 A: I don't believe so.

19 Q: Okay. And so in terms of the opening statement, what
20 is your custom when it comes to objecting to opening
21 statements?

22 A: As far as customs, I can't ever recall objecting to an
23 attorney's opening statement. I'm not saying that I haven't,
24 but I've tried so many cases now. But I can't recall ever
25 objecting to an attorney's opening statement. I've objected

MATTHEW SWILLEY - CROSS BY MR. ISENBERG

1 to officer's opening statements in magistrates court, but I
2 don't -- I can't recall a specific instance where I have
3 objected to an opening statement in General Sessions.

4 Q: Right. So -- but -- and you believe there's a
5 difference to objecting to an officer in magistrate court and
6 objecting to a lawyer in -- at a trial for attempted murder;
7 correct?

8 A: The difference, I guess, depends on what they say.

9 Q: Right. Because there's no jury in magistrate court in
10 these cases?

11 A: Yes, there are.

12 Q: All right.

13 A: There's six jurors instead of twelve.

14 Q: All right. Strike that. I'm sorry. I didn't know
15 that.

16 A: That's fine.

17 Q: Okay. But anyway, the ultimate question I'm trying to
18 get to is that based upon your experience and what you've
19 testified to, you believe you would have objected to this had
20 you -- had it been so prejudicial in your mind that you
21 thought it would have impacted the jury; correct?

22 A: Yeah, yeah. I mean at the time if I felt like it was
23 improper, that I -- that it warranted an objection, I would
24 have objected. Yes.

25 Q: Okay. And I didn't mean to convolute the question.

MATTHEW SWILLEY - CROSS BY MR. ISENBERG

1 A: That's fine.

2 Q: So in hindsight, you wish you would've objected, but you
3 know at the time, using the strategy that we've discussed,
4 you would've objected if you felt like there was something
5 there?

6 A: Right.

7 Q: Okay. All right.

8 MR. ISENBERG: Your Honor, I have no further questions.
9 I believe I've confused the witness enough.

10 THE COURT: Redirect?

11 MS. ALFORD: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS ALFORD:

14 Q: Mr. Swilley, you got on the case you said about a month
15 prior to the case going to trial. Could you have asked for a
16 continuance?

17 A: I mean there was nothing preventing me from asking for a
18 continuance, I guess. I don't -- I don't believe I would've
19 gotten a continuance at the time.

20 Q: But you certainly could have requested it for more time
21 since you weren't the original attorney; is that correct?

22 A: Yes.

23 Q: Okay. You also testified that you received the
24 jailhouse recordings, I believe it was, which should have
25 been a part of the discovery, the day of trial?

MATTHEW SWILLEY - REDIRECT BY MS. ALFORD

1 A: Yes, I believe so.

2 Q: Did you make any objection to those being admitted into
3 evidence?

4 A: We took that issue up and I remember Judge Burch telling
5 Mr. Redmond -- he said, you know, you can either -- he said
6 you can either -- you can either continue this case and give
7 that to him or -- or something. He basically gave two
8 options on the table. He said, you know, this case can
9 either be continued or you can only use maybe -- I can't -- I
10 can't remember. I don't have the transcript in front of me,
11 but I remember Judge Burch was very, very adamant that, you
12 know, he -- he didn't -- he didn't like the fact that this
13 was being turned over, you know, at the last minute, I think.

14 Q: But a continuance, again, was an option?

15 A: I think so. Based on my recollection, I think so.

16 MS. ALFORD: No further questions, Your Honor.

17 THE COURT: Recross?

18 MR. ISENBERG: No recross.

19 THE COURT: You may step down.

20 You may call your next witness.

21 THE WITNESS: Your Honor, may I be released from my
22 subpoena?

23 THE COURT: Any objection?

24 MS. ALFORD: No objection.

25 MR. ISENBERG: No, Your Honor.

1 THE COURT: Yes, sir. You are released.

2 THE WITNESS: Thank you, Judge.

3 MS. ALFORD: No further witnesses, Your Honor.

4 THE COURT: The applicant rests. Anything from the
5 State?

6 MR. ISENBERG: Your Honor, the State has no witnesses to
7 present at this time, but we are prepared to go forward with
8 a brief closing statement.

9 THE COURT: All right. I'll be glad to hear argument.

10 MR. ISENBERG: Your Honor, to the best of my knowledge,
11 the applicant has raised three issues. One I would summarize
12 as to improper jury relations, two would be the failure to
13 prepare this case for trial, and three would be the failure
14 to object to opening statements.

15 For the first issue, improper jury relations, I would
16 like to stress to the Court the applicant has the burden of
17 proof to show deficiency and prejudice. I guess I would
18 consider it formulated as a failure to strike these jury
19 members.

20 The applicant did not present any evidence, any hard
21 evidence, or could not point to anywhere in the record
22 specifically when asked on the stand what -- what in the
23 record was specifically prejudicial in terms of relations
24 with the jury.

25 So I'd first like to start with the fact that there's

1 been no showing of prejudicial relations at this time and on
2 that alone he would fail to overcome his burden of proof.

3 But I'll hop back to deficiency just to say that counsel
4 testified that he did not remember there being any special
5 conversations with the applicant about issues with the jury
6 members.

7 The applicant did testify that they had a conversation
8 and that counsel relayed to him that there were more
9 important jury members to strike, which shows that counsel
10 relayed to him at the time a coherent strategy. I certainly
11 think, based upon deficiency and prejudice, the applicant has
12 not overcome the burden of proof either on this issue.

13 For the failure to prepare, the applicant testified that
14 they met four or five times for up -- for up to 45 minutes
15 and that there was nothing to prevent -- sorry. The
16 applicant testified that they met for three or four times for
17 45 minutes and that they only went over incident reports and
18 arrest warrants.

19 But counsel then came and testified that he -- when he
20 got on the case, he investigated the scene of the crime, he
21 talked to a witness who he believed was going to be favorable
22 at trial, and he presented this witness at trial. He
23 believed he was prepared for trial walking into the courtroom
24 that day. He had a trial strategy. He had discussed it with
25 his applicant.

1 He also was presented with some jailhouse phone calls at
2 the 11th hour, but he decided to move forward with his trial
3 at that time and he said based upon his knowledge he had a
4 coherent strategy, despite the fact that the jailhouse phone
5 calls came out.

6 As for prejudice, the applicant -- the applicant has not
7 failed to show that there was any failure to prepare him for
8 this case or prepare strategy for this case, what he would
9 have done with more time, what he would have, you know, sort
10 of spent his time doing if they had received a continuance.
11 Counsel certainly thought he was prepared and applicant
12 really hasn't shown that he was prepared to do something more
13 with the case.

14 He didn't even mention the jailhouse phone calls during
15 his testimony. So technically, they can't even be a part of
16 his plan.

17 As to the failure to object to the opening statements,
18 there was a lot of convoluted testimony, but in the end,
19 counsel ultimately testified that his custom is if something
20 is there to object to during opening statements, he's going
21 to object.

22 And that's great to say in hindsight that you would've
23 objected because something may have been hurtful to your
24 client, but it's all about where you are and what your
25 strategy is at the time of the trial. We can't go back

1 reviewing every transcript and second-guessing people. He
2 had a trial strategy. His custom was to object when
3 something was there. He said he didn't object.

4 As for prejudice, he said -- first of all, the applicant
5 said he wasn't prejudiced by the failure to object during his
6 testimony. So the State would argue that that's a concession
7 and he can't overcome the burden of proof.

8 But also, prejudicially on the merits, two things came
9 out during the testimony of the counsel, and that was the
10 fact that the jailhouse phone calls got played in front of
11 the jury and those may have been impactful in the trial, and
12 the fact that there was a favorable witness who switched her
13 testimony on the day of trial and that was sort of shocking
14 to counsel.

15 So there was nothing he could do to prevent that and I
16 would say that counsel did testify that those did have some
17 sort of impact on the trial, which would -- and those both
18 came after the opening statements. So I would say there's
19 been no showing of deficiency based upon strategy and no
20 showing of prejudice because there were certainly more
21 important things that happened at trial to convict him of a
22 verdict of guilty.

23 And I know that I said that I was going to be brief and
24 I wasn't. So if you have any questions, please let me know.
25 I'll turn it over to opposing counsel.

1 THE COURT: I don't have any questions.

2 MS. ALFORD: Your Honor, as to applicant's allegation
3 counsel did not provide adequate information at the time to
4 prepare for trial, the applicant testified that defense
5 counsel became his attorney approximately one month before
6 the trial began and met with him maybe four to five times,
7 the maximum being 45 minutes.

8 He also testified that the only thing they went over
9 were the incident report and warrants, which it later came
10 out through defense counsel's testimony that there were
11 actually jailhouse calls as well, which he was blindsided
12 with, but at no point did counsel ask for a continuance.

13 He did say that he did -- they took the issue up in
14 court and that Judge Burch was reluctant to proceed, but also
15 gave him an option again for the case to be continued and
16 defense counsel failed to do so to have more time to prepare,
17 especially in light of new discovery becoming available that
18 he did not have a chance to discuss with Mr. Curry.

19 As to the six members of the jury, we will concede to
20 that because we were not able to provide any proof of that.

21 As far as counsel failing to object to State's
22 prejudicial comments during opening remarks, counsel
23 testified that, you know, he heard what was read from the
24 record and in hindsight he would have objected. That's an
25 admission by counsel himself saying that he was, in fact,

1 inadequate in that aspect and we ask that at least those two
2 grounds stand.

3 THE COURT: Mr. Isenberg?

4 MR. ISENBERG: Your Honor, just a brief rebuttal.

5 THE COURT: Yes, sir.

6 MR. ISENBERG: The State would just like to point out
7 that at no point during the applicant's testimony did he
8 point out him feeling prejudiced by the jailhouse phone calls
9 and so, based upon that, we just don't feel like there should
10 be much weight given to the failure to prepare in terms of
11 these jailhouse phone calls, if that makes sense to the
12 Court. Like I said, if you have any questions.

13 RULING

14 THE COURT: All right. The Court agrees with the
15 position and the argument of the State in this case and, in
16 doing so, the Court addresses the failure to object to
17 opening statements. The -- while the defense counsel may
18 have objected and it may have been successful, I find though
19 that the statements were not sufficiently prejudicial to
20 grant a new trial. I find that the applicant has failed to
21 meet applicant's burden of proof and deny the application for
22 post-conviction relief.

23 And, Mr. Isenberg, if you'll prepare an order within 20
24 days, please, sir.

25 MR. ISENBERG: Thank you, Your Honor.

1 MS. ALFORD: Thank you, Your Honor.

2 (WHEREUPON, the proceedings ended.)

3

4 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTH JUDICIAL CIRCUIT
)

Julius Calvin Curry Sr.,
S.C.D.C. No. 327963,

) Case No.: 2016-CP-13-00652
)

Applicant,

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v.

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State of South Carolina,

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Respondent.

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ORDER OF DISMISSAL

2019 OCT 21 AM 11:18
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Julius Calvin Curry, Senior ("Applicant") on August 13, 2016. Respondent made its return on or about June 8, 2017. The Court convened an evidentiary hearing into the matter on August 21, 2019, at the Chesterfield County Courthouse in South Carolina. Applicant was present at the hearing and represented by Sherril Alford, Esquire. Jacob A. Isenberg, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Matthew Swilley, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Chesterfield County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and appropriate pleadings. Accordingly, after a thorough review of all evidence and testimony in the record, this Court finds the application shall be dismissed with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Chesterfield County. Applicant was indicted at the January 2014 term of the Grand Jury for Chesterfield County for criminal domestic violence of a high and aggravated nature (20 13-GS- 13-0697), assault and battery, second degree (20 13-GS- 13-0698), resisting arrest with a deadly weapon, first offense (20 13-GS- 13-0699), and attempted murder (2013-GS-13-0700). Matt Swilley, Esquire represented Applicant. Kernard Redmond and Adam Foard, of the Fourth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Paul M. Burch and a jury on March 3, 2014. The jury acquitted Applicant of indictment -0697, but found Applicant guilty as indicted on indictments -0698 and 0699, and of the lesser included offense of assault and battery in the first degree on indictment 0700. Judge Burch sentenced Applicant to imprisonment for consecutive terms totaling at twenty one and one-half years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Katherine H. Hudgins, Esquire. By opinion decided June 1, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Curry, Op. No. 2016-UP-224 (S.C. Ct. App. filed June 1, 2016). The Remittitur was issued on July 21, 2016.

II. PRESENT APPLICATION

In his amended post-conviction relief application, Applicant alleges he is guilty of the following offenses, but was unlawfully for the following reasons:

I. Ineffective Assistance of Counsel

- a. "Counsel did not provide adequate information or time to prepare for trial."

2019 OCT 21 AM 11:18
 Wanda C. Miles
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

- b. "Counsel failed to object to State's prejudicial comments during opening remarks."¹
- 2. Jury was stacked
 - a. "Six of the members of my jury was related to or acquainted with two of the plaintiffs."

Applicant requests relief as follows:

- "Retry"

At the evidentiary hearing, Applicant withdrew his claim of ineffective assistance of counsel based upon the failure to object to improper jury relations.

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 Wanda C. Miles
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

¹ Tr. 51, L. 19-25. Tr. 52, L. 1-8.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the

evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to Prepare for Trial

Applicant alleges Counsel deficiently failed to review discovery with him in preparation for trial. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013). Additionally, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011).

Here, Applicant testified Counsel began representing him a month before trial. Applicant further testified Counsel only met with him three or four times for about forty-five minutes each. Thereafter, Applicant testified Counsel only ever reviewed incidents reports and arrest warrants with him.

On the other hand, Counsel credibly testified he had enough time to prepare for this case. Counsel credibly testified they reviewed all available discovery when meeting in preparation for trial. Counsel credibly testified reviewing the discovery led to him to independently investigating the case. Specifically, Counsel credibly testified he independently interviewed Marshall Wright.

Wanda C. Miller
CLERK OF COURT
HESTERFIELD COUNTY, S.C.
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Additionally, Counsel credibly testified Wright gave him a tour of the house where everything took place. Thereafter, Counsel credibly testified he anticipated she was going to be an unfavorable witness at trial. However, Counsel credibly testified Wright provided unfavorable testimony at trial which was not disclosed during their interview.

Additionally, Counsel credibly testified jailhouse phone calls were not made available until shortly before trial. However, Counsel credibly testified he had sufficient time to review everything with Applicant.

Accordingly, this Court finds Counsel provided credible testimony on his preparation for this trial. The record reflects Counsel made an objection to jailhouse phone calls based upon a discovery violation. (Tr. 32-6). Thereafter, he consented to a continuance to ensure proper time was afforded to review them. (Tr. 38). After an appropriate recess, Counsel notified the trial court he reviewed the jailhouse recordings with Applicant as well as withdrew the objection based upon a discovery violation.² (Tr. 40). Applicant has failed to explain how this pretrial review was insufficient. Moreover, the record also reflects Counsel cross-examined Wright on previously undisclosed statements. (Tr. 78, 86). Therefore, this Court finds Counsel reasonably investigated this case in preparation for trial. Moreover, this Court finds Counsel reasonably reviewed evidence with Applicant in preparation for trial. As a result, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in preparing for trial.

Applicant contends Counsel's alleged failure to review discovery with him prejudiced their preparation for trial. To prove prejudice in an alleged failure to prepare the case, an applicant must show how additional preparation would have made a difference in the outcome. Skeen v. State,

² Counsel did object to their admissibility based upon 403. (Tr. 40).

325 S.C. 210; 481 S.E.2d 129 (1997) (finding no prejudice where applicant could not show how moving for a continuance would have been helpful to his case).

The issue is whether the jailhouse phone-call disclosure necessitated a continuance in preparation for trial. The phone-calls were apparently between Applicant and Wright (Tr. 75). During those conversations, Applicant apparently pressured Wright to not move forward with the case. (Tr. 75). Moreover, Applicant apparently requested Wright encourage the minor victim to not move forward with their case. (Tr. 75). Wright testified Applicant did this over the course of two or three phone calls. (Tr. 76). Subsequently, Counsel objected to allowing the jury to hear these recordings based upon the following: 1) Rule 403; and 2) Hearsay. (Tr. 163). The trial court overruled both objections. (Tr. 163). Thereafter, Applicant testified Wright did not want him to be prosecuted. (Tr. 188). He further testified she came to see him as much as possible until the Sheriff's Office intervened. (Tr. 188). Applicant also testified Wright wrote him letters while he was in jail. (Tr. 188). Finally, Applicant testified they still intended to get married after this incident. (Tr. 188). During closing arguments, Counsel highlighted Wright was still Applicant's girlfriend during these jailhouse conversations. (Tr. 217).

Accordingly, the record indicates Applicant reviewed the relevant phone-calls with Counsel before Counsel notified the trial court a continuance was not necessary. (Tr. 40). It also reflects the Court of Appeals held the trial court did not commit error in allowing the jury to hear them. Finally, the jury acquitted Applicant on the criminal domestic violence charge regarding Wright. (Tr. 264). Therefore, this Court finds Applicant has not provided any credible evidence to prove additional preparation would have impacted the outcome. As a result, Applicant has failed to overcome the burden to prove prejudice suffered from alleged deficiencies in trial preparation.

2. Failure to Object to Opening Statements

Applicant contends Counsel's failure to object to improper remarks opening statements about law enforcement prejudiced him.³ To establish ineffective assistance of counsel based upon objecting to opening statements, Applicant must show there is reasonable probability the result of proceedings would have been different; in such context, "reasonable probability" is one sufficient to undermine confidence in outcome. German v. State, 325 S.C. 25, 478 S.E.2d 687 (1996) (finding counsel was ineffective where he failed to object to improper opening remarks about applicant's character).

The statement, from the Assistant Solicitor, at issue is as follows:

Let me just say this: rely on law enforcement to protect and serve. There's a problem, we feel threatened, we call 911 and law enforcement arrives. We rely on them. But we also owe them, and that I mean in a situation like this when you have a defendant that endeavors to take the life of a law enforcement officer we all should regard that as a slap against us all. As a strike against all of us because we have asked them to serve and protect us. And then we find ourselves faced in courtroom today because this defendant, rather than respecting the authority and submitting to an arrest, that was lawful decided to in essence take — *try to take the life of Sergeant Combs*.

So this is our chance to protect them and thank them for protecting us.

(Tr. 51, L. 19-25)(Tr. 52, L. 1-8)(emphasis added).

Applicant was on trial for the following crimes where Sergeant Combs was the victim: 1) Resisting arrest with a deadly weapon; and 2) Attempted murder. During deliberations, the jury asked for clarification about the difference between attempted murder and the lesser-included

³ However, this Court notes Applicant credibly testified the statements did not actually prejudice him at trial.

offense of assault and battery in the first degree. (Tr. 260). The trial court then defined both statutes. (Tr. 260-1). Thereafter, the jury convicted Applicant of the lesser-included offense of first degree assault and battery.

Accordingly, the Assistant Solicitor claimed Applicant tried to take the life of Sergeant Combs. Later on, the trial court instructed them attempted murder requires the intent and attempt to kill. (Tr. 260-1). However, the jury acquitted Applicant on attempted murder. Therefore, this Court finds it is reasonable to infer the jury concluded Applicant did not try to take the life of Sergeant Combs. Moreover, this Court finds there is no reasonable probability the alleged inappropriate opening remarks undermined the outcome of this trial. As a result, Applicant has failed to overcome the burden to prove he suffered prejudice from these remarks.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

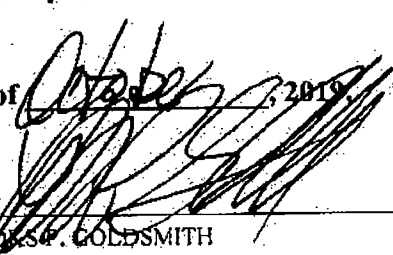
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this

9th

day of

2019



BROOKE S. GOLDSMITH
Presiding Judge
Fourth Judicial Circuit

2019 OCT 21 AM 11:19
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Chesterfield

STATE

VS.

Switz, Cusly

2011 APR 5 PM

INDICTMENT/CASE#: 2013-GS-13-0695AW#: 2013 A131020058Date of Offense: 7-13-09-21S.C. Code §: 16-03-625CDR Code #: 2352

AKA:

Race: BSex: MAge: 31

Address:

City, State, Zip:

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

SENTENCE SHEET

DL#

SID#

*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:

In violation of §

16-03-625

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

US52☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lowd Act)

The charge is:

☐ As Indicted.☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation.☐ Negotiated Sentence.☐ Recommendation by the State.

ATTEST:

Sol. Clerk

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:2013-GS-13-0698 and 0700☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 188 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-136.

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

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-208 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2985 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Random Drug/Alcohol Testing ☐

Fines may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$800 be paid to Clerk during probation.

 Clerk of Court/Deputy Clerk
 Court Reporter:

Faye L. Sellers
Shirley L. Anderson

Presiding Judge

Judge Code

Sentence Date

 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

INDICTMENT/CASE#: 2013-GS-13-0900

VS. 2014 MAR 5 PM 4

AKA: Julian Casly
Race: B Sex: M AGE: 41-45
Address: [REDACTED] CHESTERFIELD COUNTY, S.C.AWK: 2013 A13102 000 95
Date of Offense: 2013-09-01
S.C. Code #: 16-03-0025
CDR Code #: 3410

SENTENCE SHEET

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: Assault and Battery 1st Degree

In violation of § 16-03-600 of the S.C. Code of Laws, bearing CDR Code # 3412

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

ATTEST:

Solicitor SC Bar # [REDACTED] Defendant Attorney for Defendant SC Bar # [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____, plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 180 days☐ The Defendant is to be placed on 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 18-25-20 or 18-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:	\$	
§14-1-208 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§58-5-2885 (DUI Assessment)	\$12	\$
§58-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$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	\$
§58-5-2842(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.50
TOTAL	\$	\$ 138.50

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk
Court Reporter:by J. Collins
Hatter D. GorderPresiding Judge: [Signature]
Judge Code: [REDACTED]
Sentence Date: 11/15/2013

WITNESSES

Jimmy Coombes

Chesterfield County Sheriff

Law Enforcement Case #:

Richard Coombes

583

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2013A1310200097

ARRESTED ON: 2013-09-01

ACTION OF GRAND JURY

True Bill
Allen Smith

Grand Jury Foreperson

1-9-14

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-13-0698

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:
January 2014

THE STATE

vs.

Julius Curry

INDICTMENT FOR

Assault/Assault & Battery 2nd degree

§16-03-0600(D)(1)

CDR Code: 3413

William B. Rogers, Jr., Solicitor

Larry S. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF CHESTERFIELD)

Assault/Assault & Battery 2nd degree

§16-03-0600(D)(1)

At a Court of General Sessions, convened on January 6, 2014, the Grand Jurors of Chesterfield County present upon their oath:

ASSAULT AND BATTERY
SECOND DEGREE

CDR: 3413, 16-03-0600(D)(1)

That Julius Curry did in Chesterfield County on or about August 30, 2013 did unlawfully injure Schiquan Wright, and the act caused moderate bodily injury to the victim resulted or could have resulted, to wit; the defendant struck with his fist several times Schiquan Wright, daughter of live in girlfriend, while in their home, in violation of Section 16-3-600(D) of S.C. Code of Laws, 1976, as amended.

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

Wm. B. Rogers Jr.
 WILLIAM B. ROGERS, JR.
 SOLICITOR

CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

WITNESSES

Jimmy Coombes

Chesterfield County Sheriff

Law Enforcement Case #:

Richard C. Coombes

583

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2013A1310200098

ARRESTED ON: 2013-09-01

ACTION OF GRAND JURY*True Bill**Julius Curry*

Grand Jury Foreperson

1-9-14

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:

2013-GS-13-0699

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:

January 2014

THE STATE

vs.

Julius Curry**INDICTMENT FOR**

**Resisting / Resisting arrest with a deadly
weapon - 1st offense**

§16-03-0625

CDR Code: 2352

William B. Rogers, Jr., Solicitor*Large S. Sellers*

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF CHESTERFIELD)

Resisting / Resisting arrest with a deadly weapon -
1st offense

§16-03-0625

At a Court of General Sessions, convened on January 6, 2014, the Grand Jurors of Chesterfield County present upon their oath:

RESISTING ARREST WITH A DEADLY WEAPON

CDR: 2352 16-03-0625

That Julius Curry did in Chesterfield County on or about August 30, 2013, knowingly and willfully resist the lawful efforts of a Law Enforcement Officer to arrest him/her or another person with the use or threat of use of a deadly weapon against the Officer, to wit: the defendant did resist arrest of officer Sgt. Jimmy Coombes using a knife while inside his home, in violation of Section 16-03-0625, S. C. Code of Laws, 1976, as amended.

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

Wm. B. Rogers, Jr.
WILLIAM B. ROGERS, JR.

A True Copy, Attest

John L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

WITNESSES

Jimmy Coombes

Chesterfield County Sheriff

Law Enforcement Case #:

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2013A1310200099

ARRESTED ON: 2013-09-01

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-13-0700

The State of South Carolina**County of Chesterfield****COURT OF GENERAL SESSIONS**

Term:
January 2014

THE STATE

vs.

Julius Curry**INDICTMENT FOR**

**Murder/Attempted murder Penalty statutes 16-
03-0029; Felony**

§16-03-0029

CDR Code: 3410

William B. Rogers, Jr., Solicitor

James S. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

INDICTMENT FOR

Murder/Attempted murder Penalty statutes 16-03-0029; Felony

§16-03-0029

At a Court of General Sessions, convened on January 6, 2014, the Grand Jurors of Chesterfield County present upon their oath:

ATTEMPTED MURDER

CDR: 3410, 16-03-0029

That Julius Curry did in Chesterfield, on or about 2013-08-30, with specific intent to kill, attempt to kill Sgt. Jimmy Coombes with malice aforethought, either expressed or implied, to wit; the defendant expressed the desire to take the life of said victim resulting in a struggle with law enforcement officer as he attempted to stab him, in violation of Section 16-3-29 of S.C. Code of Laws, 1976, as amended.

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

W. B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
A T SOLICITOR, Attest

Louise S. Sellers
CLERK OF COURT C.P. & O.S.
CHESTERFIELD COUNTY, SC