

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Paul M. Burch, Circuit Court Judge

RECEIVED

Jan 04 2021

SC Court of Appeals

DOMINIQUE ALEXANDER CASH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001820

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2013-GS-21-207

STATE OF SOUTH CAROLINA,	)	

Plaintiff,	)	

-vs-	)	TRANSCRIPT OF RECORD

DOMINIQUE A. CASH,	)	

Defendant.	)	

April 9-10, 2013
Florence, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, Judge; and a jury

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

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Office of the Solicitor
Attorney for the Plaintiff

JAY JORDAN, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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1 APRIL 9, 2013

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 trial began at 11:10 a.m.)

5 THE COURT: All right. Is the State ready to proceed?

6 MR. WELLS: Yes, Your Honor. At this time, the State
7 calls Indictment 2013-207. There are multiple defendants on
8 the indictment, but the only defendant we're going forward at
9 trial with at this time is Dominique A. Cash on assaulting a
10 law enforcement officer.

11 THE COURT: Okay.

12 MR. WELLS: I've passed up the list of potential State
13 witnesses. None of the witnesses are in the courtroom at this
14 time since we're actually going to start testimony in the
15 morning.

16 THE COURT: All right. All right, ladies and gentlemen,
17 the State has called the case of the State of South Carolina
18 versus Dominique Alexander Cash. The indictment in this case
19 alleges that Dominique Alexander Cash did in Florence County
20 on or about October 20, 2012, knowingly and willfully assault,
21 beat or wound one Deputy Josh Phillips of the Florence County
22 Sheriff's Office, a law enforcement officer of this state,
23 while resisting the efforts of said officers to make a lawful
24 arrest of one or more of them in violation of Section 16-9-
25 320(b) of the South Carolina Code of Laws.

1 To this indictment and this charge of assault on a law
2 enforcement officer, Mr. Dominique Alexander Cash has pled not
3 guilty. He has pled not guilty, ladies and gentlemen.
4 Therefore, the State of South Carolina bears the burden of
5 proving him guilty beyond a reasonable doubt. This indictment
6 that I hold in my hand, ladies and gentlemen, is not evidence.
7 It is not evidence in any way, shape or form in this case; it
8 is simply the method and manner in which a case is brought
9 into this court. Again, the State of South Carolina bears the
10 burden of proving his guilt beyond a reasonable doubt.

11 Now before we go any further, there are some questions
12 that I need to ask of you before we select a jury. Please
13 listen very carefully.

14 Has anyone on the jury panel ever been related by blood,
15 connected by marriage, had a close personal, business or
16 social relationship with Mr. Dominique Alexander Cash? If so,
17 please stand.

18 (Whereupon, no one stands.)

19 THE COURT: All right. The following, ladies and
20 gentlemen, is a list of potential witnesses in this case.
21 They include Corporal Andrew Clendenin of the Florence County
22 Sheriff's Office; Deputy Tre Graham, former Florence County
23 Sheriff's deputy.

24 (Whereupon, a potential juror enters the courtroom late.)

25 THE COURT: Ma'am, what's your name and juror number,

1 please?

2 THE POTENTIAL JUROR: Audrey Burris, number 18.

3 THE COURT: (To clerk) Set her aside. I mean I'm not
4 starting over.

5 THE CLERK: Thank you.

6 THE COURT: Deputy Mike Jack of the Florence County
7 Sheriff's Office; Sergeant Jay McLaurin of the Florence County
8 Sheriff's Office; Deputy Josh Phillips of the Florence County
9 Sheriff's Office; Lieutenant Wilson Powell of the Florence
10 County Sheriff's Office; Investigator Keith Worsley, Florence
11 County Sheriff's Office; Stephanie El-Amin; and Charlene
12 Mickens. Is there anyone on the jury panel that's ever been
13 related by blood, connected by marriage, have a close
14 personal, business or social relationship with any of the
15 potential witnesses in this case? If so, please stand.

16 (Whereupon, no one stands.)

17 THE COURT: Mr. Wells, if you would, stand and introduce
18 yourself, followed by you, Mr. Jordan.

19 MR. WELLS: Thank you. May it please the Court. My name
20 is Robert Wells. I'm a deputy solicitor for the Florence
21 County Solicitor's Office and I will be trying this case on
22 behalf of the State of South Carolina.

23 MR. JORDAN: I'm Jay Jordan. I work part-time in the
24 Florence County Public Defender's Office and I also have a
25 practice on West Evans Street for all your legal needs. I

1 represent Mr. Dominique Cash and also you may see in the
2 courtroom Mr. Daniel Jordan, who also works with the Florence
3 County Public Defender's Office. Thank you.

4 THE COURT: All right. Has any member of the jury panel
5 ever been related by blood, connected by marriage, have a
6 close personal, business or social relationship with any of
7 the attorneys involved in this case? If so, please stand.

8 (Whereupon, no one stands.)

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

12 (Whereupon, no one stands.)

13 THE COURT: Is any member of the jury panel aware of any
14 bias or prejudice toward either the State or the defendant in
15 this case? If so, please stand.

16 (Whereupon, no one stands.)

17 THE COURT: All right. Is there any member of the jury
18 panel who is a member of or contributor of any group that has
19 as its primary concern the promotion of law enforcement such
20 as, but not limited to, MADD, SADD or CAVE, Citizens Against
21 Violent Crime? If so, please stand.

22 (Whereupon, no one stands.)

23 THE COURT: All right. Does any member of the jury panel
24 know of any reason -- any reason whatsoever why he or she
25 should not serve as a juror in this case with particular

1 emphasis being placed upon your ability to be fair and
2 impartial to both the State and the defendant? If so, please
3 stand.

4 (Whereupon, no one stands.)

5 THE COURT: Does the State have any additional voir dire?

6 MR. WELLS: Nothing from the State, Your Honor.

7 THE COURT: Defense counsel?

8 MR. JORDAN: No, sir.

9 THE COURT: All right. All right, five and five on the
10 strikes?

11 MR. WELLS: That's correct, Your Honor.

12 THE COURT: Madame Clerk, if you would, generate a list
13 for me. Is one alternate sufficient for the State?

14 MR. WELLS: Yes, Your Honor.

15 THE COURT: Defense counsel?

16 MR. JORDAN: Yes, sir.

17 THE COURT: All right, one alternate, five and five on
18 the strikes, please.

19 (Whereupon, there is a pause in the proceedings as the
20 jury list is generated at 11:21 a.m.)

21 THE CLERK: Are you ready, Judge?

22 THE COURT: Yes.

23 THE CLERK: Five, Fred Avent.

24 (Whereupon, a white male comes forward.)

25 THE CLERK: What say the State?

1 MR. WELLS: Present Mr. Avent.

2 THE CLERK: What say the defendant?

3 MR. JORDAN: Please excuse Mr. Avent for the purposes of
4 this trial.

5 THE CLERK: You've been excused for this trial only, sir.
6 Twenty-eight, Jacqueline Consiglio.

7 (Whereupon, a black female comes forward.)

8 THE CLERK: What say the State?

9 MR. WELLS: Please present Ms. Consiglio.

10 THE CLERK: What say the defendant?

11 MR. JORDAN: Please sit -- please seat Ms. Consiglio.

12 THE CLERK: Please have a seat in the jury box. One
13 hundred, Jamie Morning.

14 (Whereupon, a white male comes forward.)

15 THE CLERK: What say the State?

16 MR. WELLS: Please present Mr. Morning.

17 THE CLERK: What say the defendant?

18 MR. JORDAN: Please seat Mr. Morning.

19 THE CLERK: Please have a seat in the jury box, sir.
20 Fifty-one, Jessica Goodman.

21 (Whereupon, a white female comes forward.)

22 THE CLERK: What say the State?

23 MR. WELLS: Please present Ms. Goodman.

24 THE CLERK: What say the defendant?

25 MR. JORDAN: Please seat Ms. Goodman.

1 THE CLERK: Please have a seat in the jury box.

2 Nineteen, Angela Byrd.

3 (Whereupon, a white female comes forward.)

4 THE CLERK: What say the State?

5 MR. WELLS: Please present Ms. Byrd.

6 THE CLERK: What say the defendant?

7 MR. JORDAN: Please excuse Ms. Byrd for purposes of this
8 trial.

9 THE CLERK: You've been excused for this trial only. One
10 eleven, William Poston.

11 (Whereupon, a white male comes forward.)

12 THE CLERK: What say the State?

13 MR. WELLS: Please present Mr. Poston.

14 THE CLERK: What say the defendant?

15 MR. JORDAN: Please excuse Mr. Poston for this trial.

16 THE CLERK: You've been excused for this trial only.

17 Fifty-five, Katherine Hardee.

18 (Whereupon, a white female comes forward.)

19 THE CLERK: What say the State?

20 MR. WELLS: Please present Ms. Hardee.

21 THE CLERK: What say the defendant?

22 MR. JORDAN: Please seat Ms. Hardee.

23 THE CLERK: Please have a seat in the jury box. One
24 twenty-one, Andrew Sexton.

25 (Whereupon, a white male comes forward.)

1 THE CLERK: What say the State?

2 MR. WELLS: Please present Mr. Sexton.

3 THE CLERK: What say the defendant?

4 MR. JORDAN: Please seat Mr. Sexton.

5 THE CLERK: Please have a seat in the jury box. Seventy-
6 six, Gregg Leavitt.

7 (Whereupon, a white male comes forward.)

8 THE CLERK: What say the State?

9 MR. WELLS: Please excuse Mr. Leavitt for this trial.

10 THE CLERK: You've been excused for this trial only.

11 Fifteen, Christina Bullard.

12 (Whereupon, a white female comes forward.)

13 THE CLERK: What say the State?

14 MR. WELLS: Please present Ms. Bullard.

15 THE CLERK: What say the defendant?

16 MR. JORDAN: Please seat Ms. Bullard.

17 THE CLERK: Please have a seat in the jury box. Twenty-
18 four, Sheila Cockfield.

19 (Whereupon, a black female comes forward.)

20 THE CLERK: What say the State?

21 MR. WELLS: Please excuse Ms. Cockfield for this trial
22 only.

23 THE CLERK: You've been excused for this trial only,
24 ma'am. You may return to your seat. One thirty-seven, Marsha
25 Watford.

1 (Whereupon, a white female comes forward.)

2 THE CLERK: What say the State?

3 MR. WELLS: Please present Ms. Watford.

4 THE CLERK: What say the defendant?

5 MR. JORDAN: Please excuse Ms. Watford for the purposes
6 of this trial.

7 THE CLERK: You've been excused from this trial only.
8 Seventy-seven, Ray Lewis.

9 (Whereupon, a white male comes forward.)

10 THE CLERK: What say the State?

11 MR. WELLS: Please present Mr. Lewis.

12 THE CLERK: What say the defendant?

13 MR. JORDAN: Please seat Mr. Lewis.

14 THE CLERK: Please have a seat in the jury box. Thirty-
15 two, Lance Crouch.

16 (Whereupon, a white male comes forward.)

17 THE CLERK: What say the State?

18 MR. WELLS: Please present Mr. Crouch.

19 THE CLERK: What say the defendant?

20 MR. JORDAN: Please seat Mr. Crouch.

21 THE CLERK: Please have a seat in the jury box. Six,
22 Rachel Bailey.

23 (Whereupon, a white female comes forward.)

24 THE CLERK: What say the State?

25 MR. WELLS: Please present Ms. Bailey.

1 THE CLERK: What say the defendant?

2 MR. JORDAN: Please seat Ms. Bailey.

3 THE CLERK: Please have a seat in the jury box. Ten,
4 Donna Benenhaley.

5 (Whereupon, a white female comes forward.)

6 THE CLERK: What say the State?

7 MR. WELLS: Please present Ms. Benenhaley.

8 THE CLERK: What say the defendant?

9 MR. JORDAN: Please seat Ms. Benenhaley.

10 THE CLERK: Please have a seat in the jury box. Twelve,
11 Louis Bossinger.

12 (Whereupon, a white male comes forward.)

13 THE CLERK: What say the State?

14 MR. WELLS: Please present Mr. Bossinger.

15 THE CLERK: What say the defendant?

16 MR. JORDAN: Please seat Mr. Bossinger.

17 THE CLERK: Please have a seat in the jury box. Sixty-
18 six, Wesley Johnson.

19 (Whereupon, a white male comes forward.)

20 THE CLERK: What say the State?

21 MR. WELLS: Please present Mr. Johnson.

22 THE CLERK: What say the defendant?

23 MR. JORDAN: Please seat Mr. Johnson.

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

25 THE COURT: One alternate, one and two on the strikes.

1 THE CLERK: One oh five, Stephen Page.

2 (Whereupon, a white male comes forward.)

3 THE CLERK: What say the State?

4 MR. WELLS: Please present Mr. Page.

5 THE CLERK: What say the defendant?

6 MR. JORDAN: Please seat Mr. Page.

7 THE CLERK: Please have a seat in the jury box.

8 THE COURT: All right. Are there any matters of law that
9 we need to take up with regards to jury selection from the
10 State?

11 MR. WELLS: None from the State, Your Honor.

12 THE COURT: Defense counsel?

13 MR. JORDAN: No, sir.

14 THE COURT: For scheduling purposes, can y'all approach a
15 minute, please?

16 (Whereupon, a bench conference is held off the record.)

17 THE COURT: All right, ladies and gentlemen, some of you
18 were on a previous jury up here with me yesterday and part of
19 this morning and you have heard what I'm getting ready to say,
20 but I'm going to give you these instructions again. Okay?
21 We're going to start the trial of this case tomorrow morning
22 at nine thirty -- at nine thirty. There are some matters that
23 we need to take up outside of your presence so rather than
24 keep you up here, I'm going to excuse you for the balance of
25 today and ask that you be back up here on the eleventh floor

1 at nine thirty in the morning and we will start the trial of
2 this case at that time.

3 Do not -- do not discuss the case with anyone. You know
4 very little about this case other than what I've told you thus
5 far, but do not discuss this case with anyone. Do not do any
6 independent investigation on your own. You are to decide this
7 case based solely -- solely upon the evidence and testimony
8 that's presented in this courtroom and nowhere else -- nowhere
9 else.

10 Anything from the State before I release this jury?

11 MR. WELLS: Nothing further from the State, Your Honor.

12 THE COURT: Defense counsel?

13 MR. JORDAN: No, sir.

14 THE COURT: All right. You all are free to go at this
15 time. Be back at nine thirty in the morning, please.

16 (Whereupon, the jury leaves the courtroom at 11:38 a.m.)

17 THE COURT: Let me know when they're clear. They're on
18 the elevator?

19 THE DEPUTY: Mr. Propps got them on there.

20 THE COURT: Okay. All right, ladies and gentlemen, those
21 of you who are seated in the audience, you all were not
22 selected on this particular case. However, that does not mean
23 that you won't get selected possibly this week. What I'm
24 going to do is I am going to excuse you all at this time for
25 the balance of today as well and ask that you call that number

1 that was given to you I believe yesterday. Call that number
2 tonight after six o'clock -- after six o'clock and there will
3 be instructions on that recording as to what your
4 responsibilities are for tomorrow. Anything else from the
5 State before I release this panel?

6 MR. WELLS: That's all, Your Honor.

7 THE COURT: Defense counsel?

8 MR. JORDAN: No, sir.

9 THE COURT: Thank you, ladies and gentlemen. Please call
10 that number back tonight after six.

11 THE BAILIFF: Judge, the ones that sat on your case
12 yesterday does not have the number. So we'll need to give
13 them a number.

14 THE COURT: Those of -- hold on a second, please. Those
15 of you who sat on this case with me yesterday and this
16 morning, I've been advised that you do not have that piece of
17 paper with a number on it. Make sure you have that number
18 before you leave here. Okay?

19 (Whereupon, the jury panel leaves the courtroom at 11:39
20 a.m. One juror remains behind with a bailiff and
21 approaches the bench.)

22 THE COURT: Come up. Put this on the record. Mr. Wells
23 and Mr. Jordan, can y'all approach just a second, please?
24 Make sure we have somebody here from both sides. Tell me your
25 name again, sir?

1 THE POTENTIAL JUROR: Richard Clark.

2 THE COURT: Let me see. Juror Number 23. Yes, sir, Mr.
3 Clark?

4 MR. CLARK: I have a doctor appointment Thursday.

5 THE COURT: Okay.

6 MR. CLARK: I got a -- I had my knee operated on.

7 THE COURT: Yes, sir.

8 MR. CLARK: I've got a -- I can bring a slip or whatever.

9 THE COURT: I'll give you protection for Thursday and
10 make sure that you're protected. Doris?

11 THE CLERK: Yes, sir.

12 THE COURT: Juror Number 23, Mr. Richard Clark, has a
13 doctor's appointment Thursday. Make sure we give him
14 protection for that so he can go to his doctor's appointment,
15 please, ma'am.

16 THE CLERK: I will. Richard Clark?

17 THE POTENTIAL JUROR: Yes, ma'am.

18 THE CLERK: It's done.

19 THE POTENTIAL JUROR: Thank you. I appreciate it, sir.

20 THE COURT: You can go ahead, Mr. Clark.

21 THE POTENTIAL JUROR: All right. Thank you.

22 THE COURT: Yes, ma'am, your name and number?

23 THE POTENTIAL JUROR: 102. My name is Tracy Norwood and
24 my sugar dropped and I have diabetes.

25 THE COURT: Okay. What you -- is it ---

1 THE POTENTIAL JUROR: I'm not feeling good.

2 THE COURT: Okay. Well, you're excused for the balance
3 of today. Were you in here?

4 THE POTENTIAL JUROR: Yeah.

5 THE COURT: Okay. Call that number back tonight after
6 six.

7 THE POTENTIAL JUROR: Okay.

8 THE COURT: Okay?

9 THE POTENTIAL JUROR: Okay.

10 THE COURT: Thank you, ma'am.

11 THE POTENTIAL JUROR: Thank you.

12 THE COURT: All right, anything else?

13 MR. WELLS: No.

14 MR. JORDAN: I don't have anything.

15 THE COURT: Will y'all be ready to go at nine thirty in
16 the morning?

17 MR. JORDAN: We will be.

18 THE COURT: All right. Then we'll start this trial at
19 nine thirty in the morning.

20 (Whereupon, there is a break in the proceedings from
21 11:42 a.m. until the next day.)

22 APRIL 10, 2013

23 (Whereupon, the proceedings resume at 9:35 a.m.)

24 THE COURT: All right. It's my understanding that we're
25 waiting on one more juror. Is Ms. Olivia back there?

1 THE BAILIFF: One more.

2 THE COURT: Tell them to hold that final juror if they
3 come in. All right. Is there anything from the State before
4 we start this trial this morning, Mr. Wells?

5 MR. WELLS: No, Your Honor.

6 THE COURT: Anything from defense counsel?

7 MR. JORDAN: No, sir.

8 THE COURT: Okay. You can bring them through then. I
9 just wanted to make sure before we start. Can the lawyers
10 approach just a minute, please?

11 (Whereupon, a bench conference is held.)

12 THE COURT: Who is this guy that you're going to ---

13 MR. WELLS: Dominique Cash.

14 THE COURT: No, the defense witness.

15 MR. JORDAN: If we put him up, his name is Adrian Boney.
16 He is the co-defendant to Mr. Cash, one of the co-defendants.

17 THE COURT: Right.

18 MR. JORDAN: He pled guilty two weeks ago.

19 MR. WELL: Something like that.

20 THE COURT: Something like that. How much time did he
21 get?

22 MR. JORDAN: Two years.

23 MR. WELLS: Two years.

24 THE COURT: Two years? All right. What about his
25 criminal record for impeachment purposes?

1 THE JORDAN: This defendant?

2 THE COURT: No, Boney.

3 MR. JORDAN: Oh, Boney.

4 MR. WELLS: I don't think Boney had a record.

5 MR. JORDAN: Yeah, he -- he didn't have anything on
6 record.

7 THE COURT: Okay, because I didn't ask this jury if
8 anybody on there knew him.

9 MR. JORDAN: Yeah. That was my fault, Your Honor.

10 MR. WELLS: I mean I don't have any problem with it.

11 MR. JORDAN: I seriously doubt they do.

12 THE COURT: Huh?

13 MR. JORDAN: I seriously doubt they do.

14 THE COURT: You never know.

15 MR. WELLS: Yeah, I mean he's from North Carolina, so.
16 Of course, you could ask the question.

17 THE COURT: Yeah. Well, when the jury comes out, I'm
18 going to ask the question and we'll address it accordingly. I
19 don't know what juror is missing, but we had a juror call in
20 this morning. A Mr. Sexton said he had something come up at
21 work and they were having to do a shutdown and he was the only
22 person who could do it and he wanted to get out and I said too
23 bad, you've got to be here. So I'm sorry.

24 MR. WELLS: Is he the one that's not here?

25 THE COURT: I don't know that. Andrew Sexton is his

1 name.

2 MR. JORDAN: Is he the alternate?

3 MR. WELLS: No, he's not the alternate.

4 MR. JORDAN: We did discuss in the event that my client
5 takes the stand what can be used. I think Bob's right there's
6 a larceny, probably petit larceny I think.

7 MR. WELLS: I think it's called misdemeanor larceny.

8 MR. JORDAN: Misdemeanor larceny. It's North Carolina.
9 The other thing ---

10 MR. WELLS: Well, here's what I said. We -- we can argue
11 this further. He's got several assaults on officers in North
12 Carolina that I'm not going to use because it's clearly too
13 close. In fact, I think the last thing was almost like
14 habitual misdemeanor assault. Anyway, the one thing that I
15 might want to argue, again, it might depend on what he says on
16 the stand, but this would not be under impeachment for the
17 truth or veracity, but as far as motive, the fact that he was
18 wanted from North Carolina when this occurred because he had
19 absconded from parole.

20 THE COURT: He'd absconded from what?

21 MR. WELLS: But I mean if they checked his
22 identification, that's going to turn up in NCIC. As I say, we
23 can worry about that later.

24 MR. JORDAN: Yeah.

25 (Whereupon, the bench conference ends.)

1 THE DEPUTY: The juror is here.

2 THE COURT: Is he here? Is the juror here?

3 THE DEPUTY: The last one is.

4 THE COURT: Okay.

5 (Whereupon, the remaining juror is brought from the
6 hallway through the courtroom into the jury room.)

7 THE COURT: All right. Is the State ready to proceed?

8 MR. WELLS: We are, Your Honor.

9 THE COURT: Is defense counsel ready to proceed?

10 MR. JORDAN: Yes, Your Honor.

11 THE COURT: All right. Anything before I bring the jury
12 in from the State?

13 MR. WELLS: Nothing, Your Honor.

14 THE COURT: Defense counsel?

15 MR. JORDAN: No, sir.

16 THE COURT: All right. Bring me a jury, please, ma'am.

17 (Whereupon, the jury enters the courtroom at 9:35 a.m.)

18 THE COURT: All right. Mr. Wesley Johnson?

19 THE JUROR: Yes, sir?

20 THE COURT: I'm going to ask that you and this young lady
21 that's seated closest to me on the front, if you all would,
22 change seats, please, sir. I'm appointing you, Mr. Johnson,
23 as foreman of this jury. Okay?

24 THE FOREMAN: Okay.

25 THE COURT: That will be your seat throughout the trial

1 of this case. Okay?

2 THE JUROR: All right.

3 THE COURT: Mr. Page, Mr. Stephen Page, that is your
4 assigned seat throughout the trial of this case. Okay,
5 everybody else on this jury, as you come in and out of the
6 courtroom, you may sit wherever you so desire, but those two
7 individuals have assigned seating throughout the trial of this
8 case. Okay? Madame Clerk, would you swear the jury, please?

9 THE CLERK: Members of the jury, if you will, stand and
10 raise your right hand to be sworn.

11 (Whereupon, the members of the jury comply.)

12 THE CLERK: You shall well and truly try and a true
13 deliverance make between the State of South Carolina and the
14 defendant at the bar and you shall have in your charge and a
15 true verdict render according to the law and evidence, so help
16 you God. You may be seated.

17 THE COURT: All right, ladies and gentlemen, before we
18 selected a jury for this case yesterday, there were several
19 questions that I asked of you to determine whether or not you
20 could serve on this jury. It's been brought to my attention
21 that there is one additional potential witness in this case
22 that I did not ask you all about. So at this time I'm going
23 to ask you a couple questions about this particular witness
24 and if you have an affirmative response to my question, please
25 raise your right hand and we will address it accordingly at

1 that time.

2 Is there any member of the jury panel ever been related
3 by blood, connected by marriage, have a close personal, social
4 or business relationship with an individual by the name of
5 Adrian Lamont Boney? B-O-N-E-Y.

6 All right. Let the record reflect that none of the
7 jurors raised their hand affirming that they had any
8 connection whatsoever with this potential witness. Anything
9 from the State on that issue?

10 MR. WELLS: No, Your Honor.

11 THE COURT: Defense counsel?

12 MR. JORDAN: No, sir.

13 THE COURT: All right. Now, ladies and gentlemen, we are
14 about to begin the trial of the case of the State of South
15 Carolina versus Mr. Dominique Alexander Cash, but before we
16 begin this trial, I want to explain to you that this trial is
17 probably going to be different from what you might expect.
18 Many people do not -- do not have the opportunity to attend
19 actual court sessions as you're doing now and may think from
20 watching television or movies or reading books that trials are
21 always full of intense action, riveting circumstances, and
22 high drama.

23 But while -- while all of this may be true at times,
24 please understand, ladies and gentlemen, that this trial is
25 not for entertainment. It is not for entertainment. It is a

1 fundamental part of our democracy, a search for the truth in
2 an effort to make sure that justice is done between the
3 parties before the Court. Searching for the truth and making
4 sure that justice is done is often slow, deliberate, and
5 repetitive, the opposite of what you may have seen in movies,
6 television or read in books.

7 This courtroom is a place of honor dedicated to the
8 protection and preservation of citizens' rights through what
9 many have called the greatest justice system ever created.
10 The attorneys appearing before you, ladies and gentlemen, are
11 advocates for the parties that they represent, but first and
12 foremost, they are officers of the court sworn to uphold the
13 integrity and fairness of our judicial system and to help you
14 in the search for the truth. You should expect them to be
15 professional, competent, and ethical in the representation of
16 their clients' interest.

17 Remember that you have taken an oath to try this case and
18 reach a fair and just verdict and you are also expected,
19 ladies and gentlemen, to be professional, competent,
20 reasonable, and ethical. Thank you for accepting this
21 important responsibility of jury service and for your
22 contribution to our justice system.

23 Now, what I will now say to you is intended to serve as
24 an introduction to the trial of this case. These remarks are
25 not a charge on the law in this case. I will instruct you on

1 the applicable law at the end of the trial before you retire
2 to the jury room to begin your deliberations. This is merely
3 an explanation of the procedure that we will follow in the
4 trial of this case so that you may better understand what may
5 be happening.

6 The defendant in this case, ladies and gentlemen, is
7 charged by an indictment filed in this court with the crime of
8 assault on law enforcement officer, the elements of which will
9 be explained to you later. The indictment is simply the
10 charge by which the case is brought into this court and it is
11 not in any sense evidence of any of the allegations that it
12 contains.

13 The defendant has pled not guilty to this indictment.
14 The State, therefore, has the burden of proving each of the
15 elements of the indictment beyond a reasonable doubt and it
16 will be your duty, ladies and gentlemen, to decide whether the
17 State has met that burden.

18 Your purpose as jurors is to find and determine the
19 facts. You are the sole judge of the facts. If at any time I
20 make any comment regarding the facts, you must disregard it.
21 You are to determine the facts from the testimony that you
22 hear and the other evidence introduced in court. It is up to
23 you to determine the inferences which you feel may properly be
24 drawn from the evidence. It is especially important that you
25 perform your duty of determining the facts diligently and

1 conscientiously because ordinarily there is no way to correct
2 an erroneous determination of the facts by a jury.

3 On the other hand and with equal emphasis, the same law
4 that makes you the judge of the facts makes me the judge of
5 the law. The law as given by the Court is the only law that
6 you may consider. You must accept and follow it even though
7 you may disagree with it. I cannot tell you what the facts
8 are and you, ladies and gentlemen, cannot disagree with me
9 about what the law is or should be.

10 Your job is to take the law as I give it to you and apply
11 it to the facts as you find them from the testimony of the
12 witnesses and any other evidence that is introduced. After
13 doing that, you will render your verdict, a true and just
14 verdict, under the solemn oath that you just took as jurors.

15 Now, until I advise you to begin your deliberations, you
16 must not discuss this case with anyone, including your fellow
17 jurors, friends, family members, and anyone involved in this
18 case. This includes discussions face to face and those by
19 telephone, e-mail, text, blogs, or any other method of
20 communication. You may not use a computer, cell phone, or
21 other electronic device with communication capabilities at any
22 time while in the courtroom or during deliberations.

23 During your breaks for meals or overnight, if necessary,
24 you may use these devices. However, you may not -- you may
25 not at any time use these devices to get or send information

1 about the case. This includes information about a party, a
2 witness, an attorney, or a court officer, news accounts about
3 the case, research on any topics raised, any topics you may
4 think would be helpful in deciding the case, or any testimony
5 presented by any witness.

6 Now during the trial, I don't think you're going to see
7 anything, but you're instructed not to read, listen to, or
8 watch any news reports about this case. This includes
9 anything that may be in the newspapers or on the internet,
10 radio, or television. You must not, ladies and gentlemen,
11 consider anything that you may have read or heard about the
12 case outside this courtroom, whether before or during the
13 trial.

14 Now, after the case is submitted to you, you must discuss
15 it only in the jury room with your fellow jurors. The
16 attorneys and parties in this case have been advised that they
17 are not to talk to you at all. So if you see anyone involved
18 in this case -- and I've told you this before. If you see
19 anybody involved in this case and they don't speak to you,
20 they're not being unfriendly. They are following this Court's
21 instructions.

22 Now, it is important, ladies and gentlemen, that you keep
23 an open mind and not decide any issue in this case until all
24 of the evidence has been presented, the parties have made
25 their closing arguments, and I have instructed you on the

1 applicable law in this case. It is your solemn responsibility
2 to determine the guilt or innocence of the defendant and your
3 verdict must be based solely on the evidence as it is
4 presented to you in this trial and on the law as I instruct
5 you during and at the close of the trial.

6 Now, in just a moment, the solicitor will make what is
7 called an opening statement in which the solicitor will
8 explain to you the issues in this case or at least what the
9 solicitor thinks the issues are in this case. The attorney
10 for the defendant may also make an opening statement, although
11 he is not required to do so.

12 What the attorneys tell you during their opening
13 statements is not evidence in this case. It is only their
14 contention as to what the issues are. The evidence in this
15 case will be presented from this witness stand by sworn
16 testimony along with any exhibits, if admitted into evidence
17 during the course of this trial.

18 Now, from time to time during the trial, you may hear one
19 of the attorneys say something like, "Your Honor, I believe
20 that we have a question of law or a matter of law to discuss
21 with you," or "Your Honor, may we approach the bench?" or
22 sometimes I myself might find it necessary to excuse you from
23 the courtroom for a short while so the attorneys and I can
24 discuss a matter of law.

25 The reason for this is because you are the judge of the

1 facts in this case and sometimes when I am discussing matters
2 of law with the attorneys, it may be necessary for me to make
3 some comment as to the facts in connection with ruling whether
4 or not a particular law applies. I am not supposed to tell
5 you what I think the facts are, so I will excuse you from the
6 courtroom while these discussions take place so that in no way
7 will you be influenced by anything that I might say or do in
8 connection with the facts.

9 Now in determining what the true facts are in this case,
10 you must decide whether or not the testimony of the witnesses
11 is believable. It will be my responsibility to rule as a
12 matter of law as to whether certain testimony is admissible at
13 all or not, but once the testimony is admitted, whether or not
14 you believe it is solely for you to determine.

15 In deciding whether to believe a witness, you have the
16 right to consider the interest of any witness, the bias of any
17 witness, the prejudice of any witness, the opportunity for the
18 witness to have seen the matters and things about which the
19 witness may testify, and the way the witness acts on the
20 witness stand.

21 You have a right to consider anything that is in the
22 record that will help you evaluate the testimony of the
23 witnesses. That means that it is your duty, ladies and
24 gentlemen, to pay close attention to these witnesses, to
25 observe the witnesses, to listen to the witnesses, and to pay

1 close attention to the attorneys and to the Court. Please
2 don't let your thoughts wander, but give strict attention to
3 the testimony in this case so that at the end of all the
4 testimony, after the arguments of counsel, and the charge on
5 the law by the Court, you will then be in a position to
6 determine what the true facts are and to apply the law to
7 those facts and thus render a true and just verdict.

8 Now, it will be your added duty, Mister Foreman, to
9 preside in the jury room and be the jury's spokesperson here
10 in court. It will be all -- it will also be your duty to
11 write the verdict, but I will give you further instructions
12 about your responsibilities at the conclusion of this trial.

13 Now, in order to preserve everyone's rights, I will give
14 the parties an opportunity to object to anything that I have
15 said to the jury. Any exceptions or objections to anything
16 that I have said to the jury by the State?

17 MR. WELLS: No, Your Honor.

18 THE COURT: Defense counsel?

19 MR. JORDAN: No, sir.

20 THE COURT: All right, ladies and gentlemen, we are now
21 going to begin the trial of this case. Mr. Wells, you're
22 recognized for opening statements.

23 OPENING STATEMENTS

24 MR. WELLS: Thank you, Your Honor, may it please the
25 Court. Ladies and gentlemen of the jury, again, my name is

1 Robert Wells. I'm a deputy solicitor for Florence County and
2 I will be trying this case on behalf of the State of South
3 Carolina. The defendant in this case is Mr. Dominique Cash,
4 who is represented by his court-appointed attorney, Mr. Jay
5 Jordan of the Public Defender's Office.

6 There is only one charge in this case in which you will
7 be considering the defendant's guilt or innocence and that is
8 assault on a law enforcement officer. This is a serious case.
9 The victim in the case, the officer, is Mr. Josh Phillips, who
10 is seated by me in the middle at counsel table. In any case,
11 I'm going to just briefly outline the case as to what the
12 State intends to prove in this case.

13 This was an unfortunate incident that started at the
14 Motel 6 out on the Darlington Highway here not far from the
15 city limits. You may hear there were really -- the only one
16 being tried today is Mr. Dominique Cash, but there were four
17 people that were involved in this incident originally. There
18 were two females. There was another male named Adrian Boney,
19 who was -- may be described as having dreads and being in red
20 on that particular day and then there was the defendant,
21 Dominique Cash, who is being tried today who was wearing a
22 brown jacket on that particular occasion. Of course, he had
23 shorter hair than the other gentleman.

24 In any case, apparently what caused the problem on that
25 day is that the female -- at least the females and Mr. Boney

1 were demanding of the Motel 6 clerks that they give them back
2 stuff from a certain room. The problem was that the room had
3 not been rented by any of those individuals and the -- their
4 motel policy for understandable reasons requires that the
5 person who rented the room has to give permission to just
6 release things from a room. As a result of that, they started
7 raising Cain with the clerks there, making threats such that
8 they finally -- the store manager then or the motel manager
9 called 9-1-1 because of the trouble they were causing there in
10 the motel.

11 Deputy Phillips was the one that was dispatched to the
12 scene. When he got to the scene, he found the individuals
13 there. Mr. Boney was being very loud and argumentative to him
14 at that time. So he basically briefly placed him under arrest
15 by taking him into custody, putting handcuffs on him, and
16 telling the other -- the other people until he could check it
17 out to basically stay there at the motel and subsequently took
18 Mr. Boney back to his patrol car. He was going to put him in
19 the car and then investigate just fully what all was going on
20 and what needed to be done.

21 Well, the defendant -- while he was about to put Mr.
22 Boney in the car, the defendant Mr. Cash comes up behind Mr.
23 -- the officer and basically tugs on the officer's shoulder.
24 He turns around. The defendant is -- Mr. Cash is in his face
25 and basically it ends up -- the defendant ends up basically

1 jumping on Officer Phillips, pulling him down to the ground
2 where they get on the -- end up on the ground fighting.

3 As you will see from -- we plan to introduce with the
4 Court's permission a car video of the second officer who drove
5 up when it was going on and you will see from that car video
6 -- that was Officer Wilson Powell -- the defendant is on top
7 of the officer with the officer trying to kick to get him off
8 and the other -- I think the two of the females and Mr. Boney
9 standing beside him standing up at that time. Of course, when
10 the second officer drives up, the defendant then gets up and
11 raises his hands. Then, of course, they have to fight with
12 him to get him into custody at that point.

13 In any case, what we plan to do is we're going to first
14 put up the two witnesses, the two ladies from the Motel 6,
15 first the clerk that dealt with them originally and then the
16 store manager who got involved and called 9-1-1. In fact, she
17 called on two occasions, first when the original incident
18 happened and then second when she saw them fighting the
19 officer with the defendant on top of the officer.

20 We're going to then put up, of course, Officer Phillips
21 to testify what happened. Then you'll -- then you will hear
22 from Lieutenant Wilson Powell, who was the next officer to
23 arrive. Basically when they call back and they don't hear
24 from an officer where there are four other people around
25 involved, somebody else goes and checks on him. That's what

1 happened. Lieutenant Powell went on this particular occasion.
2 The same thing, Sergeant Jay McLaurin will be the next one.

3 Lieutenant Wilson Powell though, we'll show his car video
4 as to what you can see when he arrived. Then we'll
5 subsequently show Sergeant Jay McLaurin's, his video, which
6 basically his video just basically shows kind of the condition
7 of the officer after this was over and they had been taken
8 into custody. He's just basically lying on the ground or
9 sitting on the ground until they can get EMS there and they
10 take him off on a stretcher. So just to kind of show you all
11 that.

12 And then we'll call Corporal Andrew Clendenin, who is the
13 one who took pictures. He took pictures of the scene after
14 the fact where you can see where the dirt is kind of turned up
15 where they had been fighting there on the ground. And then
16 also he went to the hospital and took pictures of the victim,
17 Officer Phillips, where you'll see various abrasions over
18 different parts of his body, arms, legs, particularly the back
19 of his head, as a result of this particular incident.

20 Again, ladies and gentlemen, this is an important case
21 for the State and we just ask you to listen very carefully to
22 all of the evidence that comes from the witness stand such
23 that at the end of the case you can make a verdict that speaks
24 the truth. Thank you.

25 THE COURT: Mr. Jordan?

1 MR. JORDAN: Thank you, Your Honor, may it please the
2 Court.

3 THE COURT: Yes, sir.

4 MR. JORDAN: Things are not always exactly as they seem
5 when you first view them. Trials are a lot like that. You're
6 first going to hear from the State and their witnesses and,
7 just like everything else in life, there are usually two sides
8 to every story. What I'm going to ask you to do is listen to
9 the -- the total of the testimony, review all the evidence,
10 keep an open mind, don't rush to judgment or jump to any
11 conclusions, wait until the end. There's a reason why we wait
12 until the end and then make a decision based on everything.

13 I'll tell y'all a quick story about things not always
14 being what they seem, so bear with me for a minute. Sunday
15 morning we get up, get the kids ready. My six-year-old,
16 three-year-old who thinks she's thirty, my eighteen-month-old,
17 get them all dressed, heading to church. We get everybody
18 loaded up, buckled in. If you all have children, you know
19 that's not always an easy thing to do. I turn the key and
20 nothing happens. So you get everybody out, you load them in
21 the other car, and you go on to church.

22 Fast forward to the next day and I get my wife's car over
23 to the shop. I get it jumped off, get it over there. They
24 call me saying good news, it's the battery. It's not anything
25 terribly, terribly expensive. We can replace it and you can

1 pick it up this afternoon. Well, I get busy, don't get home
2 until late. Of course, you've got to go through the normal
3 routine at night, get everybody fed, get everybody's pajamas
4 on, and say prayers and sing songs and all that kind of good
5 stuff. And the next thing you know, it's nine thirty, ten
6 o'clock and, oops, I haven't gotten the car yet.

7 Well, I decided it's a grand idea, against my wife's
8 better judgment because she knew that was the case, that I'm
9 going to walk the distance -- the short distance, it's only
10 about a ten or twelve minute walk -- to the tire store where
11 the battery is being replaced in spite of the fact I had to
12 cross Second Loop and Palmetto Street and a big dog down there
13 somewhere between the two places.

14 I get there after about twelve minutes. I've got the
15 key. I hit the button, hit the unlock button. The lights
16 come on. The doors unlock. I jump in, close the door, turn
17 the key, nothing happens. So I've got to get back out and
18 walk all the way across.

19 What appeared to me as I walked up was that the car had
20 been repaired, that the battery had been fixed, that
21 everything was ready to go, that I could drive the car the
22 short distance back home instead of walking back home past the
23 big dog again in the dark. That was not the case despite the
24 appearances.

25 That's a little bit about like the case we have today.

CHARLENE MICKENS - DIRECT EXAMINATION BY MR. WELLS

1 So that's why I ask you to listen to all the evidence, all the
2 witnesses, and make a determination at the conclusion of the
3 trial as to what we have on our hands here. In case you're
4 curious, one of the kids had left the DVD player on and that's
5 why the battery kept dying.

6 I appreciate you being here and I agree with Mr. Wells
7 that this is an important case. It's an important case for
8 everybody. It's an important case for Mr. Cash. His freedom
9 is at stake. So thank you for being here. Thank you for your
10 service.

11 THE COURT: Call your first witness.

12 MR. WELLS: I'd call Ms. Charlene Mickens to the stand.

13 THE CLERK: If you will, ma'am, come to the witness
14 stand. Stop right there. Place your left hand on the Bible
15 and raise your right hand. Do you swear to tell the truth,
16 the whole truth, and nothing but the truth, so help you God?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Please be seated right there at the witness
19 chair and state your full name for the record.

20 THE WITNESS: Charlene Mickens.

21 CHARLENE MICKENS, being first duly
22 sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. WELLS:

25 Q: And, Ms. Mickens, with whom are you employed?

CHARLENE MICKENS - DIRECT EXAMINATION BY MR. WELLS

1 A: I'm employed at Motel 6 part-time.

2 Q: All right and when you work there, what are your main
3 duties?

4 A: I'm a front desk clerk.

5 Q: All right.

6 A: I check the guests in.

7 Q: All right and in that regard, back on October 20th of 2012
8 when this incident occurred, were you in -- were you working
9 as a day clerk -- excuse me, as a clerk on that particular day
10 I think around the middle part of the day?

11 A: Yes.

12 Q: All right. If you would, relate the circumstances that
13 occurred as far as the problems you had with I believe four
14 individuals on that particular day. If you would, just relate
15 to the jury what occurred?

16 A: Well, the two young ladies came in and wanted items.
17 They came in first and wanted items and I asked was the room
18 registered in their name and they said no. So another young
19 man came in that had dreads, you know, came in, you know, and
20 they told him that I couldn't give them the items because the
21 room wasn't registered in their name and I told them it was
22 company policy.

23 So therefore, they -- you know, they got real upset,
24 cursing and all that and I, you know, asked them not to use
25 that profanity, you know, because it was a motel. So I don't

CHARLENE MICKENS - DIRECT EXAMINATION BY MR. WELLS

1 -- the other man, which at -- at that time, he -- he wasn't --
2 they all was in there, but then he had left.

3 Q: And that was the defendant in the brown coat; correct?

4 A: Yes.

5 Q: All right.

6 A: He left. So he -- he wasn't there when all the
7 commotion, cursing and the threats was going on. So when the
8 officer arrived, you know, the ---

9 Q: And was that this officer, Deputy Phillips?

10 A: Yes, it was.

11 Q: All right.

12 A: When he -- he arrived, came in the lobby and was, you
13 know, speaking with them very nicely, you know, and the other
14 man with the dreads, he was, you know, saying some loud words
15 so, you know, he asked the other ladies to leave out, you
16 know, outside. So he just kept going on so at that time he
17 wanted to take him, you know, I guess to arrest him or
18 whatever.

19 Q: Now, had -- had somebody -- I believe your manager called
20 9-1-1 by that time?

21 A: Yeah, because they was so loud and they -- they
22 threatened us. My manager's office is directly behind, you
23 know, the desk. She has a little office and she heard the
24 commotion and she came out, which, you know, she always -- we
25 have to, you know, deal with customers. We have to be as

CHARLENE MICKENS - DIRECT EXAMINATION BY MR. WELLS

1 polite as we can and she asked them nicely not to, you know,
2 use the profanity and curse. So therefore, they threatened
3 both of us and so she called. You know, she called 9-1-1 and
4 I guess he got upset and snatched the pen and all that, so.

5 Q: So what happened with the pen?

6 A: He snatched it off of the -- it -- it's boarded down, you
7 know, like taped down for the guests when they sign in. So he
8 snatched it and he threw it at us, you know, so.

9 Q: So then after all that had occurred and they called --
10 your manager called 9-1-1, that was when Deputy Phillips
11 arrived?

12 A: Yes. When he came alone, you know, and like I said, he
13 was very, you know, professional and doing his job, which we
14 all was trying to be, and -- but they was just young and out
15 of control. So, you know, he was taking the young man out.

16 Q: That was the one in -- that had the dreads?

17 A: Mm-hmm.

18 Q: And he put him in handcuffs at that point?

19 A: He put him in handcuffs and he was taking him out. So,
20 you know, to -- to put him in the car and that's when the --
21 Mr. ---

22 Q: Cash.

23 A: --- Cash. You know, when we seen that he approached the
24 officer. The officer, he like caught him from behind because
25 the officer wasn't aware of him, you know, behind him and he

CHARLENE MICKENS - DIRECT EXAMINATION BY MR. WELLS

1 -- you know, I don't exactly know the words what was said, but
2 the next thing I know they was tussling, even the one with the
3 handcuffs on, and he jumped -- you know, he jumped on him and
4 he was tussling him and they -- they both and then all of the
5 sudden the females, they was kicking and really, you know, my
6 manager, you know, she got so upset and, you know, called --
7 called again saying that they -- you know, they, you know,
8 beating up the cop, that they needed to send someone, you
9 know, because it was just terrible. That's the first time
10 that I ever witnessed that and I -- I've been there almost
11 three years part-time.

12 Q: Okay.

13 A: And so it -- it was just terrible that day and we just
14 feared for his life because we thought he was going -- you
15 know, thought that he was going at his gun and that really --
16 you know, it really scared us real bad.

17 Q: All right. So the officer was on the ground?

18 A: Yes.

19 Q: And the defendant on top of him and the others standing
20 around?

21 A: They was -- they was all, you know, kicking him and --
22 and everything. It -- it was just terrible.

23 Q: All right and it appeared to you the one who tried to get
24 the gun was the defendant?

25 A: Mm-hmm.

CHARLENE MICKENS - DIRECT EXAMINATION BY MR. WELLS

1 THE COURT: Is that a yes or a no?

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 Q: All right and did it basically end when a second officer
5 drove up?

6 A: Well, when the second officer, at -- at that point,
7 really it was still going on and he got out and for what that
8 I could see, it had to take him to, you know, exactly say, you
9 know, halt, you know, to really make the defendants, you know,
10 make them all, you know, stop.

11 Q: All right, but that was when it ended when the second
12 officer arrived; is that right?

13 A: Mm-hmm.

14 Q: Okay.

15 A: Yes, sir. I'm sorry.

16 Q: All right, Ms. Mickens, thank you very much. Answer any
17 questions that defense counsel has.

18 THE COURT: Cross examination.

19 CROSS EXAMINATION

20 BY MR. JORDAN:

21 Q: Good morning, Ms. Mickens.

22 A: Good morning.

23 Q: How are you today?

24 A: Fine.

25 Q: I apologize in advance if I ask you some of the same

CHARLENE MICKENS - CROSS EXAMINATION BY MR. JORDAN

1 questions that Mr. Wells had previously asked you. You were,
2 of course, working at Motel 6 on that day in October that this
3 all took place; is that right?

4 A: Yes, sir.

5 Q: And I believe immediately after this incident took place
6 you had the opportunity to speak with law enforcement; is that
7 right?

8 A: Yes, sir.

9 Q: All right. They sat down with you and you -- much like
10 you've done today, you told them what you -- what you saw,
11 your version of what happened; is that correct?

12 A: Yes, sir.

13 Q: And I think, in fact, you -- you actually ended up giving
14 a statement ---

15 A: Yes, sir.

16 Q: --- that day?

17 A: Yes, sir.

18 Q: Now, that -- that statement was -- do you remember that
19 pretty clearly?

20 A: On that -- on that day as far as I can, you know,
21 whatever questions I can answer to the best of my knowledge.

22 Q: Now, you did -- you had the opportunity actually to write
23 out your statement; right?

24 A: Yes, sir.

25 Q: Does it appear to be something like this?

CHARLENE MICKENS - CROSS EXAMINATION BY MR. JORDAN

1 A: Yes, sir.

2 Q: And you basically give your name, your personal
3 information. You go on to tell -- basically you write out
4 what happened that day?

5 A: Yes, sir.

6 Q: And then you sign at the bottom after you've had a chance
7 to review the statement; is that correct?

8 A: Yes, sir.

9 Q: And I'm sure you were completely truthful in that
10 statement?

11 A: Yes, sir.

12 Q: And accurate?

13 A: To the best of my -- yes, sir.

14 Q: And you would agree with me that things are more fresh
15 when they occur than months later; is that -- would you agree
16 with that?

17 A: Yes, sir.

18 Q: Okay. So let's -- let's kind of go back over a little
19 bit of what happened that day. You're working the -- the
20 desk?

21 A: Front desk, mm-hmm.

22 Q: And I think you said two ladies come in, two females, and
23 want to retrieve some items from another room; is that right?

24 A: Yes, sir.

25 Q: And per the policy, because it wasn't their room they

CHARLENE MICKENS - CROSS EXAMINATION BY MR. JORDAN

1 weren't allowed to do that?

2 A: Yes, sir.

3 Q: All right and they became agitated with you personally
4 that day?

5 A: Yes, sir.

6 Q: All right and then I think Mr. Boney also comes in after
7 that and he becomes agitated as well; is that -- that fair to
8 say?

9 A: Yes, sir.

10 Q: I'd say it's a little more than agitated. That's
11 probably my -- my fault there, but they were pretty upset I
12 guess?

13 A: Yes, sir.

14 Q: They -- they used some -- some very choice language you'd
15 say?

16 A: Yes, sir.

17 THE COURT: Speak up, okay, Ms. Mickens.

18 THE WITNESS: Okay.

19 THE COURT: I need you to speak up.

20 Q: I know it's probably the last thing you want to do is go
21 back through that, but they threatened you?

22 A: Yes.

23 Q: They were loud to you?

24 A: Very loud.

25 Q: Now, at this point in time, Mr. Cash is not present?

CHARLENE MICKENS - CROSS EXAMINATION BY MR. JORDAN

1 A: Correct.

2 Q: I think you said earlier he was -- he was briefly there
3 and left?

4 A: Briefly there.

5 Q: Once they started becoming agitated towards you?

6 A: He -- he was briefly there. He -- he wasn't there when,
7 you know, when all the -- you know, when the commotion
8 started. So he was there briefly and left.

9 Q: Okay. He had ---

10 A: Left out.

11 Q: He at no point in time yelled at you?

12 A: No, sir.

13 Q: He never threatened you?

14 A: No, sir.

15 Q: He never cursed at you?

16 A: No, sir.

17 Q: And even to the point -- and I know we covered it, but he
18 left the lobby when those things were taking place?

19 A: Yes, sir. He wasn't there.

20 Q: Okay. Now, so they yell at you and I think they said --
21 I think one of them, Mr. Boney, throws a pen. Is that -- is
22 that at that point or is that later?

23 A: When?

24 Q: When Mr. Boney throws the -- the pen across the desk.

25 A: It was during all the commotion.

CHARLENE MICKENS - CROSS EXAMINATION BY MR. JORDAN

1 Q: Okay. Now, at that juncture do they -- they leave the
2 lobby; is that right?

3 A: No. They actually didn't leave the lobby until the
4 officer got -- got there. The officer got there and he came
5 in, you know, because he brought -- they was standing out --
6 well, they left out and was standing outside the front, but
7 the officer brought -- you know, everybody was back in.

8 Q: Okay. So we have the confrontation where they're yelling
9 at you and cursing at you, threatening you, all except Mr.
10 Cash, and they -- they walk outside. They leave the lobby?

11 A: The officer asked them to.

12 Q: Okay. So the officer asked them to go outside?

13 A: Yes.

14 Q: All right and then he brings them back in?

15 A: No. The officer asked the young -- the young ladies. He
16 was -- and had them back because the other man was the one
17 with most of all the conflict. He was the worst one.

18 Q: You're talking about Mr. Boney now?

19 A: Yes.

20 Q: The gentleman with the dreadlocks?

21 A: Yes.

22 Q: Okay. So we have the confrontation. Through whatever
23 circumstance, they go outside. They come back inside with
24 Deputy Phillips at that time. Is that correct?

25 A: Who come back inside this time?

CHARLENE MICKENS - CROSS EXAMINATION BY MR. JORDAN

1 Q: Everybody. Everybody comes back in at that point in time
2 with -- with Deputy Phillips; is that correct?

3 A: The young ladies -- the young ladies, they was, you know,
4 standing out -- standing outside.

5 Q: Okay. So they stayed outside?

6 A: Mm-hmm.

7 Q: Deputy Phillips brings in ---

8 A: Yeah. He was in, you know, because he wanted to know
9 exactly, you know, what was going on.

10 Q: Okay.

11 A: Mm-hmm.

12 Q: Now, is Mr. Cash in the room at this time or is he still
13 outside?

14 A: Mr. Cash?

15 Q: Yes.

16 A: Oh, no, Mr. Cash, no, sir.

17 Q: The defendant?

18 A: No, sir.

19 Q: He's still outside?

20 A: He -- he -- he had left completely.

21 Q: Okay.

22 A: When he came back up as the officer was taking the -- him
23 to his patrol car.

24 Q: Okay. So Deputy Phillips leaves with Mr. Boney and you
25 stay inside at the desk; is that correct?

CHARLENE MICKENS – CROSS EXAMINATION BY MR. JORDAN

1 A: I'm -- I'm in there. I could see. We have a glass
2 window.

3 Q: All right, but you stay inside?

4 A: Yes.

5 Q: Okay and I think you testified this earlier, but you
6 don't -- you don't see any discussion or hear any discussion
7 between Mr. Cash and Deputy Phillips at this time; do you?

8 A: I -- I could not hear, but I could see, you know, his --
9 what -- I don't know what he was saying to the officer, but I
10 also seen when the commotion started when he jumped on his
11 back. He caught him off guard.

12 Q: Okay. So you're ---

13 A: He was ---

14 Q: You're inside and you see them talking?

15 A: Mm-hmm.

16 Q: But you can't testify -- you didn't hear Mr. Cash yell at
17 Deputy Phillips or curse at Deputy Phillips or anything like
18 that; did you?

19 A: Did I hear him cursing?

20 Q: You didn't hear Mr. Cash yell at Deputy Phillips; did
21 you?

22 A: I could not -- I could not say that I heard ---

23 Q: Okay.

24 A: I -- what I seen is what I said before is that I saw when
25 he jumped on him unknown, you know, him not knowing.

CHARLENE MICKENS - CROSS EXAMINATION BY MR. JORDAN

1 Q: Okay. So Deputy Phillips is putting -- your testimony is
2 Deputy Phillips was putting Mr. Boney ---

3 A: Was trying to put him in.

4 Q: --- in the car ---

5 A: He was trying.

6 Q: --- and Mr. Cash ---

7 THE COURT: Hold on a minute now. Both of you can't talk
8 at the same time. Okay?

9 THE WITNESS: Okay.

10 THE COURT: Please let him finish his ---

11 THE WITNESS: Okay.

12 THE COURT: --- questions. Mr. Jordan, if she's talking,
13 let her finish her answer and then you can proceed.

14 MR. JORDAN: Yes, sir.

15 THE COURT: Thank you.

16 Q: So I'll break it up a little. So Deputy Phillips is
17 putting Mr. Boney or trying to put Mr. Boney in the car?

18 A: Yes, sir.

19 Q: And at that point in time, your testimony is Mr. Cash
20 comes up and jumps on him?

21 A: Yes, sir, what I seen.

22 Q: Okay.

23 MR. JORDAN: I believe that's all I have, Your Honor.

24 THE COURT: All right, any redirect, Mr. Wells?

25 MR. WELLS: No, Your Honor.

STEPHANIE EL-AMIN - DIRECT EXAMINATION BY MR. WELLS

1 THE COURT: All right, ma'am, you may step down. Thank
2 you.

3 THE WITNESS: Thank you.

4 (Whereupon, the witness leaves the stand at 10:12 a.m.)

5 MR. WELLS: And any objection if Ms. Mickens is excused
6 if she wishes to be?

7 THE COURT: Any objection from defense counsel?

8 MR. JORDAN: No, Your Honor.

9 THE COURT: All right. Ms. Mickens, you're excused, have
10 no further responsibilities with regard to your subpoena.
11 Thank you ---

12 THE WITNESS: Thank you.

13 THE COURT: --- for being here today. Call your next
14 witness, Mr. Wells.

15 MR. WELLS: We'd call Stephanie El-Amin.

16 THE CLERK: If you will, ma'am, go to the witness stand
17 and place your left hand on the Bible and raise your right
18 hand. Do you swear to tell the truth, the whole truth, and
19 nothing but the truth, so help you God?

20 THE WITNESS: Yes, ma'am.

21 THE CLERK: Please be seated and state your full name for
22 the record.

23 THE WITNESS: My name is Stephanie El-Amin.

24 STEPHANIE EL-AMIN, being first
25 duly sworn, testifies as follows:

2 BY MR. WELLS:

4 | A: Motel 6.

6 A: General Manager.

9 A: Yes, sir.

13 A: I was sitting in my office doing paperwork and I looked
14 up because I heard some people yelling in the office. I
15 looked up at the monitor and I saw two young ladies standing
16 there arguing back and forth with Ms. Char. I mean Ms.
17 Charlene.

18 Q: All right, the lady that just testified?

19 | A: Yes, sir.

20 Q: All right. All right, go ahead. And what did you hear
21 or what did you do then?

22 A: As they continued yelling and cursing at her, I got up
23 and went out to find out what was going on and the lady with
24 the black shirt on, she started yelling and cursing at me,
25 telling me she wasn't going to leave and I asked her -- I

STEPHANIE EL-AMIN - DIRECT EXAMINATION BY MR. WELLS

1 said, well, what's really going on here? Can I help you? And
2 as she was trying to explain to me, the gentleman with the
3 dreads on with the red shirt, he started yelling and cursing
4 at me as well and I asked them again would they please leave
5 and they told me they wasn't going anywhere, in better terms
6 of words, and that I needed to do whatever I needed to do.

7 So I asked again and then I called 9-1-1 and asked for an
8 officer for assistance. At the time while I was on the phone
9 with 9-1-1, the gentleman with the dreads threw a pen towards
10 my head and it's all on -- it should be all on the recording
11 from 9-1-1 because they kept yelling and screaming. They
12 stayed on the phone with me, 9-1-1 did, until the officer came
13 in.

14 Q: And that was this officer, Officer Phillips?

15 A: Yes, sir.

16 Q: All right.

17 A: And right as before he came in, the guy with the dreads
18 kicked the counter and told me he was going to blow us up and
19 so when he -- when the officer walked through the door, he saw
20 as he was coming up the guy with the dreads, you know, yelling
21 and cursing and kicked the counter and he asked them all --
22 asked us what was going on. The young ladies stepped out. I
23 never heard him tell them to. They just went outside and then
24 he told them to, you know, try to find out what was going on.
25 He put the gentleman with the dreads in handcuffs. The guy

STEPHANIE EL-AMIN -- DIRECT EXAMINATION BY MR. WELLS

1 with the brown coat, he had came in, but walked back out.

2 Q: That would be the one who is the defendant that was in
3 the brown coat?

4 A: Yeah.

5 Q: All right.

6 A: And the officer asked him again what was going on. He
7 kept yelling. He put him in handcuffs and as he was walking
8 out the door going to his car, the squad car, the young man in
9 the brown coat come up behind him, grabbed him. They went on
10 the ground. The young lady with the orange shorts on and the
11 girl -- the young lady with the black shirt, they started
12 kicking him. The guy with the dreads with the red shirt
13 started kicking him in the head. They just kept on and I went
14 back in, called 9-1-1, yelled for help, asked them to please
15 send someone to help him because they were beating on him.

16 Q: All right. Were you concerned about the officer's safety
17 or if he was being hurt?

18 A: Yes, sir, because the guy in the brown coat looked like
19 he was trying to grab his gun that was on the side of him in
20 the little pouch thing he had on and it scared me because I
21 thought that they were going to shoot him. I thought they
22 were going to hurt him and we couldn't do anything to help him
23 and they were just adamant. They just kept beating him, kept
24 beating him, kept beating him, and it scared me so bad because
25 I thought they were going to kill him. I really thought they

STEPHANIE EL-AMIN - DIRECT EXAMINATION BY MR. WELLS

1 were going to kill him.

2 Q: And did it finally then end when the other officer --
3 another officer drove up?

4 A: Yes, sir. I think it was like a black car. It came up
5 and the guy got out and he was yelling at them and they
6 stopped and the girl in the orange shorts, she ran off and
7 while they were -- all the commotion was going on, she ran off
8 and I saw her at Hardee's and I told the -- one of the
9 officers. I said that little girl in the orange shorts is in
10 it, too, because she was kicking on him. She was stomping on
11 his head.

12 Q: Okay, all right. Had you ever had anything happen like
13 this before?

14 A: I've been there almost sixteen years and I have never,
15 ever seen anything like that before in my life. I couldn't
16 believe it.

17 Q: All right. Answer any questions defense counsel may
18 have.

19 THE COURT: Cross examination.

20 CROSS EXAMINATION

21 BY MR. JORDAN:

22 Q: Good morning, Ms. El-Amin.

23 A: Good morning.

24 Q: Again, I apologize if we go over some of the same ground
25 again. It may seem very similar to what you saw Ms. Mickens

STEPHANIE EL-AMIN - CROSS EXAMINATION BY MR. JORDAN

1 testify to, but you were, of course, working at the motel that
2 day in October that this all took place?

3 A: Yes, sir.

4 Q: And you had been an employee there for quite some time?

5 A: Yes, sir.

6 Q: All right and you, like Ms. Mickens, spoke with law
7 enforcement immediately after the incident; is that correct?

8 A: Yes, sir.

9 Q: And you had the opportunity to give a statement also?

10 A: Yes, sir.

11 Q: And you, like Ms. Mickens, gave a handwritten statement
12 documenting what -- what you saw that day?

13 A: Yes, sir.

14 Q: All right and I'm sure -- I don't mean to be offensive.
15 Don't take it this way, but you were truthful in that
16 statement?

17 A: Yes, sir.

18 Q: And you were accurate and thorough in that statement?

19 A: Yes, sir.

20 Q: And you -- you -- you said what you saw?

21 A: Yes, sr.

22 Q: And you signed your name at the bottom?

23 A: Yes, sir, I did.

24 Q: Okay. All right and you had an opportunity to review
25 that statement prior to signing it; is that right?

STEPHANIE EL-AMIN - CROSS EXAMINATION BY MR. JORDAN

1 A: Yes, sir.

2 Q: Okay. Now, let's -- let's go back to that event and I'll
3 walk -- let's walk back through it one more time. The two
4 ladies, females, they come in -- come in the -- the office and
5 they -- originally they deal with Ms. Mickens; is that
6 correct?

7 A: Yes, sir.

8 Q: But you're -- you're right there nearby?

9 A: Yes, sir, right behind there.

10 Q: Okay. So you had the -- you could see everything that
11 took place?

12 A: Yes, sir.

13 Q: And they -- all right. They get agitated; is that fair
14 to say?

15 A: Yes, sir, it is.

16 Q: And they -- all right. They used some bad language?

17 A: Yes, sir.

18 Q: And made some threats?

19 A: Yes, sir.

20 Q: All right and Mr. Boney comes in, the gentleman with
21 dreadlocks?

22 A: Yes, sir.

23 Q: Okay and he also is very -- is hostile towards you. He
24 used some very poor language?

25 A: Yes, sir.

STEPHANIE EL-AMIN - CROSS EXAMINATION BY MR. JORDAN

- 1 Q: All right and he makes some threats?
- 2 A: Yes, sir.
- 3 Q: All right. In fact, he throws a pen at one point in time
- 4 I think you testified?
- 5 A: Yes, sir.
- 6 Q: Now, at none of -- no point in time during this
- 7 confrontation between you and these three individuals, the two
- 8 ladies and Mr. Boney, is Mr. Cash present?
- 9 A: No, sir. He had already left. He left out.
- 10 Q: Okay. So he's in there and they start raising sand and
- 11 he -- he walks out?
- 12 A: Before they even started yelling and cursing, he had came
- 13 in and Mr. ---
- 14 Q: Mr. Cash.
- 15 A: --- Cash in the brown coat had already -- he went back
- 16 out the door.
- 17 Q: He walks outside?
- 18 A: Yes, sir.
- 19 Q: He never yelled at you?
- 20 A: He never said one word to me, sir.
- 21 Q: So he never threatened you?
- 22 A: No, sir.
- 23 Q: He never cursed at you?
- 24 A: No, sir.
- 25 Q: He never threw anything at you?

STEPHANIE EL-AMIN - CROSS EXAMINATION BY MR. JORDAN

- 1 A: No, sir.
- 2 Q: Nothing like that?
- 3 A: No.
- 4 Q: Nothing aggressive, no aggressive actions towards you or
- 5 Ms. Mickens or anybody else in that room in that lobby that
- 6 day?
- 7 A: No, sir.
- 8 Q: Okay. Now, law enforcement -- I think Deputy Phillips
- 9 arrives on the scene and at that point in time I believe Mr.
- 10 Boney and the two ladies, the two females, have walked
- 11 outside; is that correct?
- 12 A: Yes, sir.
- 13 Q: And Deputy Phillips engages in conversation with them on
- 14 the outside; is that right?
- 15 A: And asked them to come inside.
- 16 Q: Okay.
- 17 A: And ---
- 18 Q: I'm going to get there.
- 19 A: Oh.
- 20 Q: They're talking on the outside?
- 21 A: Yes, sir.
- 22 Q: And you're -- you and Ms. Mickens are on the inside?
- 23 A: Yes, sir.
- 24 Q: And then he -- then Deputy Phillips brings them back in;
- 25 is that correct?

STEPHANIE EL-AMIN - CROSS EXAMINATION BY MR. JORDAN

- 1 A: Yes, sir.
- 2 Q: Okay and at this point Mr. Boney is in handcuffs?
- 3 A: After they spoke to us, yes.
- 4 Q: Right, in the lobby ---
- 5 A: Yes, sir.
- 6 Q: --- in the motel. Mr. Cash still is not present?
- 7 A: No.
- 8 Q: Okay. So they walk outside. They're leaving the motel
- 9 now, Deputy Phillips and the other individuals, Mr. Cash not
- 10 being present I'm -- I'm guessing?
- 11 A: He came up.
- 12 Q: He came up in a little bit?
- 13 A: Yes, sir.
- 14 Q: But he's still not there yet as they're walking outside.
- 15 He had been there sometime before, but he's left now and he
- 16 hasn't come back just yet?
- 17 A: Right.
- 18 Q: So he -- Deputy Boney is -- or excuse me. Deputy
- 19 Phillips is taking Mr. Boney to the patrol car; is that
- 20 correct?
- 21 A: Yes, sir.
- 22 Q: And you're -- you're still inside, but you can't -- but
- 23 you can see what's going on?
- 24 A: I -- I come from behind the counter and started towards
- 25 the door -- the door.

STEPHANIE EL-AMIN - CROSS EXAMINATION BY MR. JORDAN

1 Q: Okay. So you can see what's going on?

2 A: Mm-hmm.

3 Q: You can't hear what's going on necessarily?

4 A: No, sir.

5 Q: Because they're outside and you're inside, but you can --
6 you can see what's going on?

7 (Whereupon, the witness nods her head.)

8 THE COURT: Is that a yes or a no?

9 THE WITNESS: Yes, sir.

10 THE COURT: Thank you.

11 THE WITNESS: I'm sorry.

12 Q: At this time, Mr. Cash shows up?

13 A: Yes, sir.

14 Q: And did you see any discussion between the two or did Mr.
15 Cash just jump on Deputy Phillips?

16 A: He just jumped on him.

17 Q: Just jumped on him?

18 A: On the gentleman, yes, sir.

19 Q: And you described I think in your previous testimony a
20 pretty gruesome beating; is that right?

21 A: Yes, sir.

22 Q: Lots of blood?

23 A: I didn't see any blood, sir.

24 Q: Okay, all right. Did you see any broken bones or
25 anything like that?

STEPHANIE EL-AMIN - CROSS EXAMINATION BY MR. JORDAN

1 A: No, sir.

2 Q: Could you tell by -- you stayed around and watched this
3 whole thing take place; correct?

4 A: Yes, sir. I was inside my office standing at the door on
5 the phone with 9-1-1.

6 Q: Okay. Did Deputy Phillips have to be carried away or
7 could he walk away or how would you ---

8 A: No, sir. They beat him fiercely and when he hit the --
9 when they finished and the officers came, he could barely get
10 up. He fell to the ground and he just was there until the
11 ambulance came. They put him on the ambulance.

12 Q: So he was carried to the ambulance?

13 A: In the stretcher.

14 Q: In a -- okay and I think you described in your statement
15 -- tell me if I'm wrong here -- that Deputy Phillips wrestles
16 Mr. Cash to the ground; is that fair to say?

17 A: No. Deputy -- the deputy didn't wrestle him. The guy in
18 the brown coat was wrestling the officer and the officer was
19 trying to get ---

20 Q: All right.

21 A: --- him off of him. I may have worded it wrong, but he
22 was -- the officer was trying to get the guy in the brown coat
23 off of him when the girls were kicking on him and the guy with
24 the dreads.

25 Q: Okay. So in your statement if you say the officer

STEPHANIE EL-AMIN - CROSS EXAMINATION BY MR. JORDAN

1 wrestled with -- the brown jacket guy wrestled him to the
2 ground in front of the lobby, is that a correct statement?

3 A: Yes, sir.

4 Q: Okay.

5 A: After ---

6 MR. JORDAN: Your Honor, that's all I have.

7 THE COURT: Any redirect?

8 MR. WELLS: No, Your Honor, that's all.

9 THE COURT: Thank you, ma'am.

10 MR. WELLS: Any objection if Ms. El-Amin is excused now?

11 THE COURT: Any objection, Mr. Jordan?

12 MR. JORDAN: No, sir.

13 THE COURT: All right. Without objection, ma'am, you are
14 free to leave. You have no further responsibilities regarding
15 your subpoena. Thank you for being here.

16 THE WITNESS: Thank you, sir.

17 (Whereupon, the witness leaves the stand at 10:25 a.m.)

18 THE COURT: Call your next witness.

19 MR. WELLS: I'd call Deputy Josh Phillips to the stand.

20 THE CLERK: Please, sir, raise your right hand. Do you
21 swear to tell the truth, the whole truth, and nothing but the
22 truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please be seated and state your full name for
25 the record.

DEPUTY JOSH PHILLIPS – DIRECT EXAMINATION BY MR. WELLS

1 THE WITNESS: Joshua Phillips.

2 DEPUTY JOSH PHILLIPS, being first
3 duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. WELLS:

6 Q: And, Deputy Phillips, with whom are you employed?

7 A: The Florence County Sheriff's Office.

8 Q: And how long have you been employed in law enforcement?

9 A: In law enforcement, three to three and a half years.

10 Q: All right and in that regard, were you on duty back on
11 October 20th, 2012, in the early afternoon?

12 A: Yes, sir.

13 Q: If you would, relate the circumstances under which you
14 came to go to the Motel 6 on that particular occasion? And is
15 that -- is that in Florence County in your jurisdiction?

16 A: Yes, sir, it's within Florence County. Dispatch
17 requested me to respond to the Motel 6 West Lucas Street in
18 reference to four disorderly subjects inside the Motel 6.
19 While en route there, dispatch advises that motel clerk said
20 that they were vandalizing inside of the lobby.

21 Whenever I arrived on scene, I pulled up right in the
22 parking lot just in front of the front door of the lobby. As
23 I was getting out of my patrol vehicle walking towards the
24 lobby door, that's when Boney and the two -- the subject with
25 the dreads and the two females come walking out the front

DEPUTY JOSH PHILLIPS - DIRECT EXAMINATION BY MR. WELLS

1 lobby door, met me at the front lobby door. You know, I
2 started speaking with them to find out what was going on.
3 Boney became very confrontational with me. The defendant Mr.
4 Cash wasn't anywhere to be seen at this time.

5 Q: All right. As a result of Mr. Boney's actions and -- and
6 what had been described over the 9-1-1 call and how he was
7 acting in front of you, did you at least temporarily place him
8 under arrest by putting handcuffs on him and taking him into
9 custody?

10 A: Yeah. Boney, due to him being very argumentative and
11 cursing at me, I placed him -- I actually put cuffs on him and
12 detained him, you know, just due to him acting just how he was
13 acting.

14 Q: All right and after you put the handcuffs on him, where
15 was that? Was that right in front of the lobby?

16 A: That was right in front of the lobby.

17 Q: All right. What did you do then or do or say?

18 A: I asked Boney and the two females if we could walk back
19 inside the lobby just to find out what's going on. We walked
20 back inside of the lobby, you know, spoke with the clerk,
21 which was the first witness that you saw that was up here, you
22 know, trying to find out what was going on. She was in the
23 middle of telling me that they came in. They were wanting to
24 go to the room to get some items out and she wouldn't allow
25 them to get the items out due to the room wasn't in their

DEPUTY JOSH PHILLIPS - DIRECT EXAMINATION BY MR. WELLS

1 name. While I was in the middle of speaking with the clerk
2 about that, the females came in and started arguing and
3 cussing saying, you know, that's not how it happened. Boney
4 started yelling and cussing. I said, you know, just trying to
5 keep them calmed down.

6 Q: All right. So what did you then do then to try to calm
7 the situation?

8 A: I just kept requesting for them to calm down, calm down.
9 That's when the clerk had told me that Boney ripped a pen off
10 the -- I guess the counter off of a chain or however it was on
11 the counter and threw it at her. While I was speaking with
12 that, they started -- the females started arguing again.
13 Boney started arguing again, the subject that I had in cuffs.

14 That's when the defendant Mr. Cash came into the lobby
15 door, came into the front lobby, and said, you know, why do
16 you have my brother in handcuffs? You know, just yelling at
17 me, you know. You know, why are you doing this? At that
18 time, I asked all four of the subjects, all right, let's walk
19 outside. I didn't like being in that lobby. I've got four
20 people; I'm by myself right now.

21 We walked outside. I told the defendant Mr. Cash and the
22 two females to stand at the lobby door. I was going to carry
23 Boney to my -- walk Boney to my patrol vehicle, which was
24 right in front of the lobby door, and just place him in my
25 vehicle until -- just so I can investigate a little bit

DEPUTY JOSH PHILLIPS - DIRECT EXAMINATION BY MR. WELLS

1 further and find out what's going on until I got somebody else
2 closer to me.

3 As I walked Boney to my patrol vehicle, we were standing
4 at the back side of my patrol vehicle at the back corner
5 panel. I looked back. The defendant and the two females were
6 still standing at the front of the lobby door. I did a pat-
7 down of Mr. Boney to make sure he didn't have any weapons or
8 anything like that on him. It's a procedure that we normally
9 do before we put anyone in our vehicle.

10 As I did that, as I was getting ready to open up my rear
11 door to place Mr. Boney inside my patrol vehicle, I felt a tug
12 on my right shoulder, which I don't know whether it was my arm
13 or my shirt sleeve or something.

14 Q: Now, were you -- were you dressed in regular uniform on
15 that day?

16 A: Yes, sir. I was dressed just as you see me now.

17 Q: Was that a marked patrol car you were putting Mr. Boney
18 into?

19 A: Yes. The only difference that -- of my uniform that
20 you'll see here is -- and it's caused me due to this incident
21 is my mike was actually placed right here. It actually ran
22 across right here and was connected right here and I'll
23 explain to you why I wear it like this now is because of this
24 incident. When the defendant -- when I felt that, I looked
25 over my right shoulder. The defendant was standing right on

DEPUTY JOSH PHILLIPS - DIRECT EXAMINATION BY MR. WELLS

1 top of me. I turned around and he said, you know, why the
2 fuck are you putting my brother in your car? Why are you
3 arresting him?

4 Q: And I assume he was using some other language as well?

5 A: Yes, sir.

6 Q: All right, go ahead.

7 A: And I said to the defendant -- I pushed him back. I said
8 -- I said back up, you know, get away from me. You know, back
9 up off of me. That's when he said don't you fucking touch me
10 and that's when he lunged at me with his -- I guess his hands
11 like this and kind of lunged at me.

12 That's when I said -- you know, I said back up and I
13 shoved him back again. When I did, he grabbed hold of my arm.
14 When he did that, I -- we -- and I pulled my arm back towards
15 me. He come up close to me and that's when I struck him on
16 the side right beside the face to get him off of me. He still
17 didn't let go. That's when I started backing up to the
18 subject I had up against my car and was getting ready to place
19 in my car, turned and I guess it kind of pushed me.

20 There were bushes behind us. We kind of tripped over the
21 bushes while I was trying to get the defendant on the ground
22 so I could get cuffs on him. We fell. He fell on top of me.
23 As I was trying to shove the defendant off of me, Boney, the
24 subject I already had cuffed, said, you know, let my mother
25 fucking brother go. Bitch, let my mother fucking brother go.

DEPUTY JOSH PHILLIPS - DIRECT EXAMINATION BY MR. WELLS

1 The two females had run up by that time and Mr. Boney had
2 come around. The way I was laying on my back, the defendant
3 was on top of me. My car was to my left. The motel was to my
4 right. The two females run up on me and the subject I already
5 had cuffed ran to my -- come around to my right side, which
6 the motel would have been to his back. The defendant I guess
7 had me somewhere around in here.

8 (Whereupon, the witness uses his hands to indicate his
9 midsection.)

10 Q: Was he like on his knees on top of you or was he like ---

11 A: I can't -- I can't remember.

12 Q: Okay.

13 A: The -- Boney, the one I had cuffed, the initial first
14 kick I remember I was laying on my back. I got kicked right
15 behind my right ear. It caused me to turn my head away so I
16 didn't get kicked actually in the face. I kind of -- and I
17 rolled over to my left side. I'm left-handed. I keep my duty
18 weapon that we carry and I rolled over on that side so they
19 couldn't try and get my gun off of me.

20 I started getting multiple kicks to the back of my head,
21 multiple kicks to my right side. As I tried shoving and
22 kicking the defendant off of me, I actually reached around the
23 defendant with him on top of me and attempted to keep my mike
24 up. I keep my mike up. Two or three times, my mike was
25 covered up. Every time I went to keep my mike up, the

DEPUTY JOSH PHILLIPS - DIRECT EXAMINATION BY MR. WELLS

1 defendant covered my mike up where I couldn't get out radio
2 contact to other officers responding for back-up.

3 At that time, my lieutenant, Wilson Powell, pulled up and
4 that's when the defendant began to back off of me and I'm sure
5 you can see in the video that they're going to show you that
6 you can see me kicking him to get him off of me. That's when
7 the defendant, you can see him throwing his hands back and
8 backing away from me.

9 Q: All right. At that point, you were finally able to pull
10 your gun safely?

11 A: Yeah. At that point, I was able to get to my knees. I
12 drew my duty weapon. Lieutenant Wilson Powell went straight
13 for the defendant Mr. Cash. I went straight for Boney, which
14 was the subject with dreads that I already had cuffed. I got
15 him to the ground. Once I got him to the ground, my
16 lieutenant was fighting with Boney on the ground trying to get
17 cuffs on him. Boney was actually like in the fetal position
18 on the ground.

19 Q: Are you talking about Mr. Boney or Mr. Cash?

20 A: I mean -- I'm sorry. Mr. Cash.

21 Q: The defendant in this case?

22 A: Yeah, the defendant in this case, Mr. Cash.

23 Q: So you -- let me just make sure we get it straight. So
24 you went over to the other man, Mr. Boney, who was in the
25 dreads, first and he just laid down with the handcuffs on him?

DEPUTY JOSH PHILLIPS - DIRECT EXAMINATION BY MR. WELLS

1 A: Yeah. I got -- I placed him -- I put him on the ground.

2 Q: And then Officer Powell had been involved with this
3 defendant, Mr. Cash?

4 A: Yes, sir.

5 Q: And then you went over to try to help him?

6 A: Yes, sir.

7 Q: All right, go ahead. Now, relate what happened as far as
8 Mr. Cash, the defendant ---

9 A: Okay.

10 Q: --- in this case?

11 A: Mr. Cash was actually on the ground I guess kind of
12 laying face first on the ground in a fetal position keeping
13 his hands up underneath him where we weren't able to get his
14 hands out to get handcuffs on him. We told him multiple
15 times, you know, put your hands behind your back, put your
16 hands behind your back. We fought with Mr. Boney [sic].

17 Q: So you -- he was being told he was being placed under
18 arrest?

19 A: Yeah. He was being told he was placed under arrest. We
20 probably fought with him I'd say at least a minute before we
21 were able to get cuffs on him.

22 Q: All right. What -- how did you feel? What -- what was
23 your condition then at that point when finally Mr. Powell got
24 the handcuffs on him?

25 A: Once we got cuffs on him, I pretty much backed off. I

DEPUTY JOSH PHILLIPS – DIRECT EXAMINATION BY MR. WELLS

1 was totally out of breath. I couldn't -- my -- my right side
2 -- I had a lot of pain in my right side, my right hip, across
3 my backside. I was hurting really bad. I couldn't stand up,
4 couldn't move, just in tremendous pain. I was unable to get
5 up. I had to sit there until EMS arrived.

6 Q: All right. So I believe that's for another video. You
7 were up -- were you under a tree then where you were just kind
8 of on your either sitting back down on the ground or lying
9 down, one or the other?

10 A: Yeah. I think so. I was kind of slouched down, kind of
11 laying down a little bit because my side was hurting me so
12 bad.

13 Q: And did basically EMS put you on a stretcher and take you
14 to the emergency room?

15 A: Yeah. They boarded me and everything and put me on a
16 stretcher and transported me.

17 Q: All right and did you have abrasions over various parts
18 of your body?

19 A: Yes, sir. I had several cuts across the back side of my
20 head I guess from being kicked where I was kicked. The whole
21 back side behind my ear was swollen. I had some bruising on
22 my side, down my right side of my leg where I was kicked. I
23 also had trouble with my back through several months after
24 from this incident also.

25 Q: Had you ever had any incident like this happen to you

DEPUTY JOSH PHILLIPS - DIRECT EXAMINATION BY MR. WELLS

1 before?

2 A: No, sir.

3 Q: And what I assume -- was it -- was it a frightening
4 incident?

5 A: It sure was.

6 Q: And one final thing, did -- did Officer Clendenin
7 subsequently come to the emergency room and take pictures of
8 some of your abrasions?

9 A: Yes, sir.

10 Q: All right. Answer any questions defense counsel may
11 have.

12 THE COURT: Cross examination.

13 MR. JORDAN: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. JORDAN:

16 Q: Good morning, Deputy Phillips.

17 A: Good morning.

18 Q: Now, I don't think you said earlier. Exactly how long
19 have you been with the Florence County Sheriff's Office?

20 A: With the Florence County Sheriff's Office, I've been
21 right around seven months with Florence County.

22 Q: So at the time of this incident in October, how long had
23 you been with the Florence County Sheriff's Office?

24 A: Approximately about two to three months I believe with
25 Florence County.

DEPUTY JOSH PHILLIPS - CROSS EXAMINATION BY MR. JORDAN

1 Q: Now, when you -- as a result of being law enforcement,
2 you have to go through some pretty significant training; is
3 that correct?

4 A: Yes, sir.

5 Q: You -- you -- I think you go -- you go to the academy; is
6 that right?

7 A: Yes, sir.

8 Q: And that's a multiple week long course?

9 A: Yes, sir.

10 Q: And they teach you lots of different things you need to
11 know in order to be -- do your job?

12 A: Yes, sir.

13 Q: They teach you some weapons training?

14 A: Yes, sir.

15 Q: They teach you investigative techniques?

16 A: Yes, sir.

17 Q: All right. You go through some physical training I
18 think?

19 A: Yes, sir.

20 Q: All right. They teach you how to write a report?

21 A: Yes, sir.

22 Q: All right and they teach you the importance of reports
23 I'm guessing?

24 A: Yes, sir.

25 Q: They talk to you about the need for you to be thorough on

DEPUTY JOSH PHILLIPS – CROSS EXAMINATION BY MR. JORDAN

1 those reports?

2 A: Yes, sir.

3 Q: Accurate?

4 A: Yes, sir.

5 Q: Truthful?

6 A: Yes, sir.

7 Q: And there are several different reasons for that. First,
8 if something were to happen to you and you couldn't be present
9 in court, that report would be how everyone would know your
10 version of what happened in an incident?

11 A: Yes, sir.

12 Q: All right. Also, time passes and you're obviously still
13 in law enforcement. You go on multiple calls and you might
14 need that report to help refresh your memory of an incident;
15 is that correct, too?

16 A: Yes, sir.

17 Q: Now, you prepared a report related to this incident that
18 day?

19 A: Yes, sir.

20 Q: Do you have that report with you?

21 A: I don't have it handy right here with me, no, sir.

22 Q: I understand you can't really probably read this, but
23 does this look familiar to you?

24 A: Yes, sir.

25 Q: It's about the better part of a page?

DEPUTY JOSH PHILLIPS - CROSS EXAMINATION BY MR. JORDAN

1 A: Yes, sir.

2 Q: All right. It's dated. It has your name on it, J.

3 Phillips narrative, and the case number and other information;
4 is that ---

5 A: Yes, sir.

6 Q: --- correct? Now, the day of the incident, you respond
7 to the Motel 6?

8 A: Yes, sir.

9 Q: It's the middle of the day. I think it's a pretty
10 October afternoon about two o'clock. The sun is shining. Is
11 that right?

12 A: Yes, sir.

13 Q: And I think you say in your statement you drive up and
14 you see individuals leaving the motel; is that right?

15 A: I'm not sure that they were actually leaving. They were
16 walking out the front door.

17 Q: Okay. So they were exiting the front lobby door. I
18 think those are the words you used.

19 A: Yes, sir.

20 Q: Is that accurate?

21 A: Yes, sir.

22 Q: Okay and at this point, you get out of your car and you
23 confront them I guess between your car and the hotel; is that
24 right?

25 A: Yes, sir.

DEPUTY JOSH PHILLIPS – CROSS EXAMINATION BY MR. JORDAN

- 1 Q: Okay and I think you testified earlier that Mr. Boney
2 became argumentative?
- 3 A: Yes, sir.
- 4 Q: To the point that you felt the need to put the cuffs on
5 him?
- 6 A: Yes, sir.
- 7 Q: All right. Now, you must not have been -- you must not
8 have been too scared of him because you -- you walked him back
9 into the lobby ---
- 10 A: Yes.
- 11 Q: --- with other private citizens and other individuals; is
12 that right? Is that fair to say?
- 13 A: It wasn't -- just the desk clerk and the manager.
- 14 Q: Okay, but we can agree there were private individuals ---
- 15 A: Yes, sir.
- 16 Q: --- private citizens in there. All right and at this
17 point in time, you didn't call for back-up; did you?
- 18 A: No, sir.
- 19 Q: You simply put him in cuffs and took him back inside?
- 20 A: Yes, sir.
- 21 Q: And I think at this time also present is two females?
- 22 A: Yes, sir.
- 23 Q: Okay. Now, at this point, Mr. Cash is nowhere present?
- 24 A: No, sir.
- 25 Q: And you had not seen him at all to this point?

DEPUTY JOSH PHILLIPS - CROSS EXAMINATION BY MR. JORDAN

1 A: No, sir.

2 Q: Okay. So you go back inside and you start I guess
3 putting -- having to put everything together ---

4 A: Yes, sir.

5 Q: --- as far as what took place. That's part of your job;
6 you have to put all the facts together?

7 A: Correct.

8 Q: You're -- you've got Mr. Boney in cuffs and you've got
9 the ladies here with you and you've got the clerks in there as
10 well?

11 A: Correct.

12 Q: Okay. All right and I guess to go back and summarize,
13 the ladies are aggravated because they can't get some stuff
14 they say belongs to them from a room at the hotel?

15 A: Correct.

16 Q: And the clerks are taking the position that it's not
17 their room so they can't get in the room to get the stuff?

18 A: Correct.

19 Q: And it's your understanding and it may be ongoing that
20 Mr. Boney and the females are being very difficult?

21 A: Correct.

22 Q: Cursing, threatening, that kind of behavior?

23 A: Correct.

24 Q: Mr. Cash still not present?

25 A: Correct.

DEPUTY JOSH PHILLIPS – CROSS EXAMINATION BY MR. JORDAN

1 Q: He's not in there cursing; he's not in there fighting;
2 he's not in there threatening anybody?

3 A: Correct.

4 Q: Okay. Now, at some point in time, Mr. Cash arrives?

5 A: Yeah.

6 Q: He comes in the lobby and I think you testified that he
7 comes in the lobby and I think you testified he starts cursing
8 at you at that point?

9 A: Yes, sir.

10 Q: Now, if you'd like to review your report, I certainly can
11 take it to you, but you don't say any point in time in your
12 report about him coming in the lobby and cursing at you and
13 anything like that; is that fair to say?

14 A: I don't have it right here in front of me.

15 Q: Would you like to review it?

16 A: Yes, sir.

17 MR. JORDAN: May I approach the witness, Your Honor?

18 THE COURT: Yes, sir.

19 (Whereupon, the witness reviews the document presented to
20 him by counsel for the defendant.)

21 A: Yes, it does. It says right here the male that was
22 detained and the two females were arguing with the lobby
23 clerk. The clerk stated the subject I had detained ripped the
24 pen off the chain that was attached to the desk and then threw
25 it at her. The subject stated -- stated he did do that, which

DEPUTY JOSH PHILLIPS – CROSS EXAMINATION BY MR. JORDAN

1 was Boney. At that time, another black male wearing a brown
2 jacket entered the lobby door, which was the subject I had
3 detained's brother. He became very argumentative also.

4 Q: Okay. So he does talk to you right then in the lobby?

5 A: Yes, sir.

6 Q: Okay and then at that point in time, you decide, okay,
7 it's time to take Mr. Boney out?

8 A: Yes, sir.

9 Q: And he's in cuffs?

10 A: Yes, sir.

11 Q: And you still -- you don't feel the need at this point in
12 time to call for back-up?

13 A: What I was doing, I was in the process of getting all
14 four subjects outside the lobby due to such the confined space
15 that we were in in the lobby with me having so many people
16 arguing with me at one time, there being four. That's when I
17 asked them let's walk outside the lobby.

18 Q: Okay, but you agree with me at this juncture you have the
19 ability to call for back-up; correct?

20 A: Yes, sir.

21 Q: Through your communication system?

22 A: Yes, sir.

23 Q: And you didn't feel it necessary at that -- at that
24 point?

25 A: No, sir, not at exactly that point.

DEPUTY JOSH PHILLIPS - CROSS EXAMINATION BY MR. JORDAN

1 Q: And you didn't feel it necessary despite the discussion
2 at that point in time, the brief discussion with Mr. Cash, to
3 place him in detention in cuffs at that point; did you?

4 A: I did, but due to the fact that I had two other females
5 being argumentative, I already had one in cuffs, I just
6 requested them to stay at the lobby door. I was going to go
7 back to my car, place Mr. Boney in my car, come back, place
8 cuffs on the other three.

9 Q: Okay. So you have him there. You didn't put cuffs on
10 anybody else. You're trying to get outside?

11 A: I didn't have another set of cuffs on me.

12 Q: Okay. So you would have had to get those from your car?

13 A: Yes, sir.

14 Q: Okay. Now, at this juncture you go outside, you're
15 putting Boney in the car, and I think your statement describes
16 Mr. Cash coming up from behind you. Is that -- is that right?

17 A: Yes, sir.

18 Q: And I believe you say here I felt someone touch or tug my
19 right shoulder?

20 A: Yes, sir.

21 Q: Okay. Is that ---

22 A: Yes, sir.

23 Q: --- accurate? So at this point, he doesn't strike you?

24 A: No, sir.

25 Q: He doesn't hit you? He doesn't throw anything at you?

DEPUTY JOSH PHILLIPS - CROSS EXAMINATION BY MR. JORDAN

- 1 A: No, sir.
- 2 Q: He doesn't -- he doesn't jump you from behind?
- 3 A: No, sir, not at this time.
- 4 Q: Not at this time. He -- he touches or tugs on your
- 5 shoulder and tries to talk to you?
- 6 A: No, sir. He wasn't trying to talk to me. He said --
- 7 asked me what the fuck are you doing putting my mother fucking
- 8 brother in your car.
- 9 Q: Okay. So he uses some bad language, but ---
- 10 A: Yes, sir.
- 11 Q: --- we can agree that is talking at least?
- 12 A: No. He was actually yelling it at me.
- 13 Q: Okay. So he's yelling at you as he touches or tugs your
- 14 shoulder and you turn around and he curses at you?
- 15 A: Yes, sir.
- 16 Q: Okay. Now -- and you tell him to back up?
- 17 A: Yes, sir.
- 18 Q: And I think your statement says you -- you push him back?
- 19 A: Actually I shoved him back a little, yes, sir.
- 20 Q: You shoved him back?
- 21 A: Because he's standing right on top of me.
- 22 Q: Okay. At this point, he hasn't -- he hasn't struck you.
- 23 He hasn't ---
- 24 A: No, sir.
- 25 Q: He hasn't pushed you?

DEPUTY JOSH PHILLIPS – CROSS EXAMINATION BY MR. JORDAN

1 A: No, sir.

2 Q: You push him back?

3 A: Yes, sir.

4 Q: And at that point, the tussle ensues?

5 A: Um ---

6 Q: The fight ensues?

7 A: No, sir. Actually, I shoved him. I asked -- I told him
8 to back up. When he -- when I did that, he said don't you
9 fucking touch me and kind of balled his fist up like this
10 right here and just kind of lunged at me a little bit like
11 that. He was getting real angry and he kind of -- he stepped
12 towards me and when he did, I shoved him back again and that's
13 when he grabbed hold of my right arm.

14 Q: Okay. So you push him back and he -- y'all are kind of
15 pushing each other and there's a scuffle I guess?

16 A: Yes, sir.

17 Q: And at that point in time, I think you say in your report
18 you -- you tripped over bushes, falling to the ground?

19 A: Yes, sir.

20 Q: Okay. Now, you had to be treated as a result of this.
21 Any broken bones?

22 A: No, sir.

23 Q: Concussion?

24 A: I believe I had a little bit of a concussion, yes, sir.

25 Q: Did you have -- you just believe that or ---

DEPUTY JOSH PHILLIPS – CROSS EXAMINATION BY MR. JORDAN

1 A: Well, that's what the doctor told me.

2 Q: Okay and any bad bruising or things like that?

3 A: I had to go through -- for the next couple of months, I
4 had to go through issues with my back due to falling on --
5 when I fell on the ground and being kicked.

6 Q: Okay.

7 A: Yes, sir.

8 Q: So when we look at the pictures, we're going to see black
9 and blue and bloody and everything else like that?

10 A: No, sir, probably not.

11 Q: Okay, all right.

12 MR. JORDAN: Your Honor, can I have just a moment?

13 THE COURT: Yes, sir.

14 MR. JORDAN: Nothing further, Your Honor.

15 THE COURT: Mr. Wells, any redirect?

16 MR. WELLS: No, Your Honor.

17 THE COURT: Sir, you may step down. Thank you.

18 (Whereupon, the witness leaves the stand at 10:49 a.m.)

19 MR. WELLS: Your Honor, before I call my next witness,
20 this might be a good time for about a five minute break. I'm
21 going to need to set up some audio equipment ---

22 THE COURT: Okay.

23 MR. WELLS: --- in this and I think it would probably be
24 helpful if we just go ahead and take a break.

25 THE COURT: All right, ladies and gentlemen, what we're going

1 to do at this time is take a short break. I'm going to ask
2 that you step to the jury room. Do not discuss the case. Do
3 not discuss the case at all. I'll get you back out here as
4 quickly as possible. Everybody else remain seated while the
5 jury exits the courtroom.

6 (Whereupon, the jury exits the courtroom at 10:50 a.m.)

7 THE COURT: All right. We'll stand down for a few
8 minutes.

9 (Whereupon, there is a break in the proceedings from
10 10:50 a.m. until 11:06 a.m.)

11 THE COURT: All right. Is the State ready to proceed at
12 this time?

13 MR. WELLS: Yes, Your Honor.

14 THE COURT: Defense counsel?

15 MR. JORDAN: Ready to go, Your Honor.

16 THE COURT: Any matters we need to take up before I bring
17 the jury back in?

18 MR. WELLS: No, Your Honor.

19 THE COURT: Mr. Jordan?

20 MR. JORDAN: No, sir.

21 THE COURT: All right. If you will, bring me the jury,
22 please.

23 (Whereupon, the jury enters the courtroom at 11:06 a.m.)

24 THE COURT: Mr. Wells and Mr. Jordan, as the jury is
25 coming back in, can y'all approach for just a minute, please?

LT. WILSON POWELL - DIRECT EXAMINATION BY MR. WELLS

1 (Whereupon, a bench conference is held off the record.)

2 THE COURT: All right, Mr. Foreman, ladies and gentlemen
3 of the jury, I hope you all are now ready to continue with the
4 trial of this case. I'm going to recognize Mr. Wells. Call
5 your next witness, please.

6 MR. WELLS: Lieutenant Wilson Powell.

7 THE CLERK: If you will, sir, place your left hand on the
8 Bible and raise your right hand. Do you swear to tell the
9 truth, the whole truth, and nothing but the truth, so help you
10 God?

11 THE WITNESS: I do.

12 THE CLERK: Please be seated and state your full name for
13 the record.

14 THE WITNESS: Wilson Powell.

15 LIEUTENANT WILSON POWELL, being first
16 duly sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. WELLS:

19 Q: Lieutenant Powell, with whom are you employed?

20 A: The Florence County Sheriff's Office.

21 Q: And how long have you been with them?

22 A: Twenty-three years.

23 Q: All right. Let me call your attention back to the date
24 of October 20th, 2012, in the early afternoon and I'm going to
25 ask the circumstances under which you came to go to the Motel

LT. WILSON POWELL - DIRECT EXAMINATION BY MR. WELLS

1 6 on that particular day?

2 A: Yes, sir. Earlier, Deputy Phillips had received a call
3 to go to the Motel 6 as you've heard about some disorderly
4 people and one of my habits is to proceed to a call without
5 notice just to see if they might need help. He was called
6 several times without response and at that time I put on my
7 emergency equipment and got there as soon as possible.

8 Q: All right. When you arrived at the Motel 6, what do you
9 remember being the first thing you observed?

10 A: When I got to eyesight of the front of the motel, I saw
11 what ended up being Deputy -- Deputy Phillips on the ground.
12 From my position in the car, all I could see was one of his
13 legs and one of his arms up in the air and the defendant on
14 top of him. When I got out my car, by the time I got out and
15 started running toward him, the defendant stood up or either
16 got pushed off of him.

17 Q: All right and y'all pulled -- pulled guns on them at that
18 point?

19 A: Yes, sir. The female that was still there, she
20 approached me in an aggressive manner and also Deputy Phillips
21 had his weapon drawn on the defendant. Deputy Phillips went
22 to secure Mr. Boney again and I took Mr. Cash away from the
23 area to secure him, which I had to put him on the ground and I
24 had to wrestle with him because he would not put his hands
25 behind his back. Deputy ---

LT. WILSON POWELL - DIRECT EXAMINATION BY MR. WELLS

1 Q: Had he been told he was placed -- being placed under
2 arrest?

3 A: Yes, sir. Deputy Phillips came over and assisted me for
4 a couple minutes and he still would not do it, but eventually
5 we got the cuffs on him and Deputy Phillips pretty much
6 crawled to an area away from us and pretty much collapsed.

7 Q: All right and did he stay there until an ambulance
8 arrived?

9 A: Yes, sir.

10 Q: All right. Now in that regard on that particular day
11 when you arrived at the scene, did you have a car video camera
12 on that day?

13 A: Yes, sir, I did.

14 Q: All right and in that regard, have you taken a look at
15 this particular car video from that date on a disk?

16 A: Yes, sir, I have.

17 Q: And does it appear to be accurate as to what would have
18 been in the view of the car camera on that day?

19 A: Yes, sir.

20 Q: All right.

21 MR. WELLS: I'd move to introduce this into evidence.

22 THE COURT: Any objection?

23 MR. JORDAN: No objection.

24 THE COURT: Without objection, State's Exhibit what?

25 MR. WELLS: This would be ---

LT. WILSON POWELL - DIRECT EXAMINATION BY MR. WELLS

1 THE COURT: Number 1.

2 MR. WELLS: --- Number 1.

3 THE COURT: Without objection, State Exhibit Number 1
4 admitted into evidence.

5 Q: Now, you were involved with Mr. Cash. At some point, is
6 Mr. Boney, the other man, taken off? Was that by another
7 officer there?

8 A: Yes, sir. He was eventually escorted to a patrol car for
9 transport.

10 Q: All right, but you were not involved with him?

11 A: No, sir.

12 Q: All right.

13 MR. WELLS: All right, Your Honor, we'd move to play this
14 up to a certain point at this time.

15 THE COURT: All right.

16 (Whereupon, the video is played in the courtroom on a
17 large screen monitor for the jury and on a monitor for
18 the Court from 11:12 a.m. until 11:21 a.m. NOT

19 TRANSCRIBED HEREIN.)

20 MR. WELLS: All right, Mr. Godboldt, you can stop it.

21 I'd ask if you could now just replay just the very beginning
22 of the tape up until the part where the incident ends when the
23 officers that are involved go off camera, which will take just
24 probably about a minute.

25 (Whereupon, a portion of the video is replayed in the

LT. WILSON POWELL - CROSS EXAMINATION BY MR. JORDAN

1 courtroom.)

2 MR. WELLS: All right, you can stop it. All right,
3 Lieutenant Powell, answer any questions defense counsel may
4 have.

5 THE COURT: Cross examination.

6 CROSS EXAMINATION

7 BY MR. JORDAN:

8 Q: Good morning, Lieutenant Powell.

9 A: Yes, sir.

10 Q: How are you today?

11 A: Good.

12 Q: Now, I think you testified earlier you've been with the
13 Florence County Sheriff's Office for twenty plus years?

14 A: Yes, sir.

15 Q: A long time. You've had hundreds if not thousands of
16 calls you've responded to?

17 A: Yes, sir, that's correct.

18 Q: You've sure been through many training exercises and
19 updating your information and those kind of things; is that
20 fair to say?

21 A: Yes, sir.

22 Q: Written hundreds if not thousands of reports?

23 A: Hundreds.

24 Q: Hundreds? And you would agree with me the value and
25 importance of a report; would you not?

LT. WILSON POWELL - CROSS EXAMINATION BY MR. JORDAN

- 1 A: Yes, sir.
- 2 Q: And they -- I think that's part of the training. I think
- 3 Deputy Phillips testified to that.
- 4 A: Yes, sir.
- 5 Q: That's how we review what -- what took place on a call?
- 6 A: Right.
- 7 Q: On an event that's taken place some time back?
- 8 A: Yes, sir.
- 9 Q: If something were to happen to you and you couldn't be
- 10 here today, your report would be how we go back and figure out
- 11 what -- what you saw that day?
- 12 A: Yes, sir.
- 13 Q: And also it might would help you recollect and refresh
- 14 your memory of the incident that took place?
- 15 A: Right.
- 16 Q: Since that time back in October, you probably have
- 17 responded to other calls?
- 18 A: Yes, sir, I have.
- 19 Q: Now, do you have your report with you today?
- 20 A: No, sir. What I did was reflected in Deputy Phillips'
- 21 report and on my video.
- 22 Q: Okay. So you -- you didn't prepare a report ---
- 23 A: No, sir.
- 24 Q: --- subsequent to the incident?
- 25 A: No, sir.

LT. WILSON POWELL - CROSS EXAMINATION BY MR. JORDAN

1 Q: Or related to the incident?

2 A: No, sir.

3 Q: So the things you testified to today are based on I guess
4 in part, number one, your recollection of it; is that fair?

5 A: Yes, sir.

6 Q: In part and secondly, of course, you've had the ability
7 to review the video in preparation for today as well; correct?

8 A: Yes, sir.

9 Q: Okay, but you haven't had the -- the benefit I guess
10 you'd say of a report to look back on that you documented
11 yourself?

12 A: Well, some -- sometimes there's things that you remember
13 more than others.

14 Q: Okay. So you get the -- Deputy Phillips has responded to
15 a call at Motel 6?

16 A: Yes, sir.

17 Q: And you decide you're going to go just kind of check
18 things out and he doesn't respond to I guess dispatch's calls
19 to him; is that correct?

20 A: Yes, sir.

21 Q: At that point in time, you make a decision to I guess
22 change into emergency mode; is that right?

23 A: Yes, sir.

24 Q: I noticed from the video your lights come on and it
25 sounds like your siren comes on and you proceed with increased

LT. WILSON POWELL - CROSS EXAMINATION BY MR. JORDAN

- 1 speed to the Motel 6?
- 2 A: Yes, sir.
- 3 Q: Now from what I saw on the tape, you drive up and you can
- 4 tell that it looks like Mr. Cash -- there's a struggle going
- 5 on between Mr. Cash and Deputy Phillips?
- 6 A: Yes, sir.
- 7 Q: That is the first time you've been to the incident?
- 8 A: That's correct.
- 9 Q: That's your arrival to the incident?
- 10 A: Right.
- 11 Q: You weren't present during the discussion that took
- 12 place in the motel lobby previously?
- 13 A: No, sir. When I drove up, that was my initial time of
- 14 being there.
- 15 Q: Okay. So you -- you had no knowledge of the argument
- 16 that had taken place between Mr. Boney and the two females
- 17 with the clerk and then with Deputy Phillips?
- 18 A: No, sir.
- 19 Q: Okay. So you drive up. It looks like from your view
- 20 there -- there's a tussle going on and Mr. Cash breaks away
- 21 from Deputy Phillips; is that correct?
- 22 A: Yes, sir.
- 23 Q: And throws his hands up in the air?
- 24 A: Yes, sir.
- 25 Q: And that looked pretty immediate from the moment you get

LT. WILSON POWELL - CROSS EXAMINATION BY MR. JORDAN

1 to the scene and jump out?

2 A: Pretty much, yes, sir.

3 Q: Okay. You then step up on the landscaped area I guess is
4 the way to put it and take hold of Mr. Cash?

5 A: Yes, sir.

6 Q: And Deputy Phillips then proceeds to go back to Mr.
7 Boney?

8 A: Correct.

9 Q: And then you take Mr. Cash over out of the view of the
10 video off to the side?

11 A: I had no way of knowing where I was at, but my intention
12 was to get him away from Deputy Phillips and the other
13 defendant and he was doing his job securing him and -- and I
14 was securing Mr. Cash.

15 Q: Deputy Phillips was over there dealing with -- with Mr.
16 Boney and you were dealing with Mr. Cash?

17 A: Until Deputy Phillips came and assisted me.

18 Q: Now, I understand your intentions, but I'm just trying to
19 get to the -- the meat of it here. You removed -- you're
20 separating the two; is that right?

21 A: Yes, sir.

22 Q: And you took Mr. Cash to one side and Deputy Phillips is
23 on the other side; is that right?

24 A: Yes, sir.

25 Q: And I didn't see you other than your initial taking hold

LT. WILSON POWELL - CROSS EXAMINATION BY MR. JORDAN

1 of Mr. Cash and taking him to the side. Is there any
2 additional video where you and Mr. Cash are interacting?

3 A: Not to my knowledge.

4 Q: Okay. So that is -- that is what we have?

5 A: Yes, sir.

6 Q: Okay. At least as far as your car goes and your
7 interaction with Mr. Cash?

8 A: That's correct.

9 Q: All right and then Mr. -- or Deputy Phillips comes back
10 over and y'all place the cuffs on Mr. Cash?

11 A: Yes, sir, after -- after a brief struggle.

12 Q: Okay. Did you have to -- you didn't have to tase him or
13 anything like that?

14 A: No, sir.

15 Q: Do you carry a taser?

16 A: I don't.

17 Q: All right. Do you know if Deputy Phillips carries a
18 taser?

19 A: I think he does.

20 Q: All right. At any point in time was -- was anybody
21 tased?

22 A: No, sir.

23 Q: Okay, but it was an option at some point?

24 A: Always is.

25 Q: Always an option. Okay and again, I apologize if I

LT. WILSON POWELL - CROSS EXAMINATION BY MR. JORDAN

1 covered this ground, but you have -- your firsthand knowledge
2 is solely based upon your arrival forward; is that correct?

3 A: Yes, other than hearing the initial call on the radio,
4 but ---

5 Q: That there was a disturbance ---

6 A: Yes, sir.

7 Q: --- and you responded, but you don't know the details of
8 what the nature of that disturbance was. You weren't privy to
9 that at the time of arrival?

10 A: No, sir.

11 Q: You just know there were individuals in disagreement at
12 Motel 6?

13 A: That's correct.

14 Q: You don't know the nature of how the scuffle started
15 between Mr. Cash and -- and Deputy Phillips?

16 A: No.

17 Q: It was already ongoing at your arrival?

18 A: Exactly.

19 MR. JORDAN: I believe that's all I have, Your Honor.

20 THE COURT: Any redirect?

21 MR. WELLS: No, Your Honor, that's all.

22 THE COURT: Sir, you may step down. Thank you.

23 THE WITNESS: Thank you.

24 (Whereupon, the witness leaves the stand at 11:29 a.m.)

25 THE COURT: Call your next witness, please.

SGT. JAY MCLAURIN - DIRECT EXAMINATION BY MR. WELLS

1 MR. WELLS: Sergeant Jay McLaurin.

2 THE CLERK: Do you swear to tell the truth, the whole
3 truth, and nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Please be seated and state your full name for
6 the record.

7 THE WITNESS: John Franklin McLaurin the Fourth.

8 SERGEANT JAY MCLAURIN, being first
9 duly sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. WELLS:

12 Q: And, Sergeant McLaurin, with whom are you employed?

13 A: Florence County Sheriff's Office.

14 Q: And how long have you been employed with them?

15 A: A little over six years.

16 Q: All right. Let me call your attention back to October
17 20th, 2012, and ask if you also had occasion to go to the Motel
18 6 on that particular day?

19 A: Yes, sir, I did.

20 Q: What did you find when you arrived? What was the
21 situation like when you got there?

22 A: Both the -- both the two black male subjects had been
23 placed in handcuffs. To the best of my knowledge, the two
24 females were off to the side and Deputy Phillips was -- he was
25 kind of moving around real slow and then he just kind of sat

SGT. JAY MCLAURIN - DIRECT EXAMINATION BY MR. WELLS

1 down and was just kind of slumped over and that was who I
2 initially went to whenever I got there. Everything was
3 already completed whenever I arrived on scene.

4 Q: All right. Now, did you have a car video also in your
5 car when you got there?

6 A: I did, yes, sir.

7 Q: All right and who is the person that's under the tree
8 that you can see just sitting down there for a ---

9 A: Deputy Phillips.

10 Q: All right and does this -- would this be the video from
11 your car?

12 A: Yes, sir.

13 Q: All right and does it accurately reflect what occurred
14 there as far as the condition of Deputy Phillips at the time?

15 A: Yes, sir.

16 Q: All right.

17 MR. WELLS: Your Honor, we would move to -- well, first
18 I'd move to introduce this into evidence.

19 THE COURT: Any objection?

20 MR. JORDAN: No, Your Honor.

21 THE COURT: Without objection, State's Exhibit Number 2
22 admitted into evidence.

23 MR. WELLS: All right. We'd move to play this if you'll
24 allow us to.

25 (Whereupon, the video is played in the courtroom on a

SGT. JAY MCLAURIN - DIRECT EXAMINATION BY MR. WELLS

1 large screen monitor for the jury and on a monitor for
2 the Court from 11:32 a.m. until 11:49 a.m. NOT
3 TRANSCRIBED HEREIN.)

4 MR. WELLS: All right, Mr. Godboldt, you can stop it now.

5 Q: Sergeant McLaurin, I should have asked you one other
6 thing just to clarify something, not to embarrass you, but did
7 you accidentally go to the wrong motel that day before you got
8 to the Motel 6?

9 A: I absolutely did.

10 Q: All right. Answer any questions defense counsel may
11 have.

12 THE COURT: Cross examination

13 MR. JORDAN: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. JORDAN:

16 Q: That was going to be my first question. So you get the
17 call to go assist and when you arrive at the Motel 6, pretty
18 much everything is over at that point ---

19 A: Yes, sir.

20 Q: --- would you say?

21 A: Yes, sir.

22 Q: By that time, Deputy Powell -- or Lieutenant Powell had
23 been there already; correct?

24 A: Yes, sir.

25 Q: And he's already -- at that point, Deputy Powell had

SGT. JAY MCLAURIN - CROSS EXAMINATION BY MR. JORDAN

1 taken Mr. Cash off to one side and Deputy Phillips had jumped
2 up and taken Mr. Boney off to the other side; is that right?

3 A: They were separated. I didn't see how they got there.

4 Q: Okay.

5 A: But yes, they were separated.

6 Q: All right and then I think the video shows I think you're
7 the -- you go up to Deputy Phillips?

8 A: Yes, sir.

9 Q: And talk to him. He's at that point either sitting or
10 kneeling on the ground?

11 A: Yes, sir.

12 Q: About how far would you estimate that from your cruiser
13 to the tree where he was?

14 A: I'm not sure. I didn't measure it.

15 Q: I mean twenty -- twenty feet?

16 A: I'm not sure.

17 Q: Okay. It was from some distance?

18 A: Yes, sir.

19 Q: Of at least ten feet or more?

20 A: Yeah.

21 Q: You'd agree with me on that?

22 A: Sure, yes.

23 Q: Okay. So he's under the shade tree there and he's
24 kneeling or sitting or stooping or something in that effect.
25 It looks like he moves around several times. Is that -- is

SGT. JAY MCLAURIN - CROSS EXAMINATION BY MR. JORDAN

1 that correct?

2 A: Yes, sir.

3 Q: And you talked to him and then you proceed over out of
4 the camera view back and look towards in the direction of
5 where I'm assuming Lieutenant Powell is?

6 A: I'm not sure if Lieutenant Powell was over there at that
7 time. I'm -- I'm not sure.

8 Q: Well, he's not in the ---

9 A: He isn't in my camera view, no, sir.

10 Q: All right and to the left side, the other side, would
11 have been not hotel property; correct? That would have been
12 another -- other businesses?

13 A: To the left side looking at my car to the left side?

14 Q: Your camera looking forward.

15 A: Yes, sir.

16 Q: The view of your camera.

17 A: Uh-huh.

18 Q: The view you have when you're driving.

19 A: Well, there's a little small parking lot where Deputy
20 Phillips had his vehicle and, yeah, there is the -- the
21 Hardee's parking lot backs up to that parking lot.

22 Q: Okay and then to the right would have been where the
23 hotel is and the lobby?

24 A: Yes, sir.

25 Q: Okay and that's the direction you go?

SGT. JAY MCLAURIN - CROSS EXAMINATION BY MR. JORDAN

1 A: Yes, sir.

2 Q: And that's the direction where I'm guessing that Mr.
3 Boney and Mr. Cash are as well?

4 A: Yes, sir.

5 Q: And other law enforcement?

6 A: Yes, sir.

7 Q: And I see in the video you go up to Deputy Phillips and
8 then you go over to the -- to the right side and then you come
9 back to Deputy Phillips?

10 A: Mm-hmm.

11 Q: You go away again. So you're sort of going back and
12 forth during the course of your -- the tape; is that fair to
13 say?

14 A: Yes, sir.

15 Q: Other deputies arrive. They tend to do the same thing.
16 From what it looks like on tape, they talk to Deputy Phillips
17 and then they go off to the side and it's kind of a back and
18 forth on your tape; is that fair to say?

19 A: Yes, sir.

20 Q: And at that point in time again, Deputy Phillips, he
21 hasn't left that area. He's either kneeling or stooping or
22 sitting kind of adjusting himself ---

23 A: Yes, sir.

24 Q: --- for several minutes?

25 A: Yes, sir.

SGT. JAY MCLAURIN - CROSS EXAMINATION BY MR. JORDAN

1 Q: All right, until I guess it is EMS arrives?

2 A: Yes, sir.

3 Q: And they then assist Deputy Phillips and take him away?

4 A: Yes, sir.

5 Q: Now, let me back up just a second. Your arrival again
6 was after everything was pretty much over?

7 A: Yes, sir.

8 Q: You don't have any direct knowledge of what took place, a
9 firsthand account of what took place prior to your arrival?

10 A: No, sir.

11 Q: You don't know the nature firsthand of these -- of the
12 disagreements that took place at the motel between the staff
13 and the other individuals, Mr. Boney and the females?

14 A: No, sir.

15 Q: And you don't know the nature of the discussions that
16 took place between Mr. Cash and Mr. Phillips?

17 A: No, sir.

18 Q: All that took place prior to your arrival outside of your
19 purview?

20 A: Yes, sir.

21 Q: Okay.

22 MR. JORDAN: One moment, Your Honor.

23 THE COURT: Yes, sir.

24 MR. JORDAN: Nothing further, Your Honor.

25 THE COURT: Any redirect?

CPL. ANDREW CLENDENIN - DIRECT EXAMINATION BY MR. WELLS

1 MR. WELLS: No, Your Honor.

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

3 (Whereupon, the witness leaves the stand at 11:54 a.m.)

4 THE COURT: Call your next witness.

5 MR. WELLS: Your Honor, the next witness will be Corporal
6 Andrew Clendenin.

7 THE CLERK: Do you swear to tell the truth, the whole
8 truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please be seated and state your full name for
11 the record.

12 THE WITNESS: Andrew Clendenin.

13 CORPORAL ANDREW CLENDENIN, being
14 first duly sworn, testifies as follows:

15 DIRECT EXAMINATION

16 BY MR. WELLS:

17 Q: And, Corporal Clendenin, with whom are you employed?

18 A: With the Florence County Sheriff's Office.

19 Q: And how long have you been with them?

20 A: For the last thirteen years.

21 Q: And what in particular are your main duties normally as
22 far as a crime scene?

23 A: I am a forensics investigator. I document, collect, and
24 then preserve evidence until the time it's needed further.

25 Q: All right and is one of your duties normally to take

CPL. ANDREW CLENDENIN - DIRECT EXAMINATION BY MR. WELLS

1 pictures of the scene and of the victims?

2 A: That is correct, to document the scene with photographs.

3 Q: All right. In that regard, on October 20th, 2012, did you
4 go to the Motel 6 or receive a call to go there after Officer
5 Phillips had been assaulted?

6 A: Yes, I did.

7 Q: All right. When you arrived, was he still there or he --
8 or was he gone?

9 A: He was already gone at the time I arrived.

10 Q: All right. All right. First, based on what you learned
11 from the other officers, did you attempt to take pictures of
12 the scene where the incident had occurred?

13 A: I did. I photographed the scene.

14 Q: All right. Let me ask you to look at these pictures and
15 ask if you can identify these are the pictures you took that
16 day of the scene?

17 A: That is correct. These are the photographs that I took.

18 Q: And do these accurately reflect what you observed that
19 day at the scene?

20 A: Yes, it does.

21 Q: All right.

22 MR. WELLS: I would move to introduce these into
23 evidence.

24 THE COURT: Any objection?

25 MR. JORDAN: No, sir.

CPL. ANDREW CLENDENIN - DIRECT EXAMINATION BY MR. WELLS

1 THE COURT: Why don't we do ---

2 MR. WELLS: We could ---

3 THE COURT: Let me finish.

4 MR. WELLS: I'm sorry.

5 THE COURT: Get a paper clip, paper clip them together.

6 MR. WELLS: They are.

7 THE COURT: Mark them as State's Exhibit Number 3 and
8 count for the record the number of pictures that are in that
9 exhibit so she doesn't have to mark every one of them, please.
10 Is that what you were going to suggest, Mr. Wells?

11 MR. WELLS: I was just going to tell you.

12 THE COURT: Any objection to that, Mr. Jordan?

13 MR. JORDAN: No, sir, not at all.

14 THE COURT: Okay.

15 MR. WELLS: Seventeen.

16 THE COURT: Seventeen? Seventeen photographs marked as
17 Exhibit -- State's Exhibit Number 3. Thank you. Now, if you
18 want to number on the back of them A,B,C,D all the way to
19 whatever goes to seventeen, you can refer to one Exhibit
20 1A,B,C if you're going to question him on that.

21 MR. WELLS: We'll -- I'll explain what we're doing in a
22 minute.

23 THE COURT: Okay.

24 MR. WELLS: All right.

25 Q: Let me -- after you photographed the scene, did you

CPL. ANDREW CLENDENIN - DIRECT EXAMINATION BY MR. WELLS

1 subsequently go to the hospital and see Deputy Phillips?

2 A: I did. I responded to the hospital where I met Deputy
3 Phillips there.

4 Q: And did you attempt to take pictures as far as his
5 injuries, as far as abrasions that could be seen about the
6 body?

7 A: I did photograph the injuries.

8 Q: All right. If you would, look at these pictures and see
9 if these are the ones you took?

10 A: Those are all my photographs that I took.

11 Q: All right.

12 MR. WELLS: Your Honor, I would move to admit these
13 pictures into evidence and I will count how many there are.

14 Q: Do these accurately reflect what you observed as far as
15 his injuries?

16 A: That is correct.

17 MR. WELLS: All right. These would be twenty-three
18 pictures.

19 THE COURT: Any objection, Mr. Jordan?

20 MR. JORDAN: No, Your Honor.

21 THE COURT: Without objection, State's Exhibit Number 4,
22 which is a combined twenty-three photographs.

23 MR. WELLS: And, Your Honor, these would be the pictures
24 that would go to the jury. However, for this trial as an
25 officer of the court, I would state all of these photographs

CPL. ANDREW CLENDENIN - DIRECT EXAMINATION BY MR. WELLS

1 have been put onto a photo disk, which I wish to -- which I
2 would mark this as a Court's Exhibit. This would not go to
3 the jury room, but I wish to show these to the jury at this
4 time through the video equipment.

5 THE COURT: Any objection to that, Mr. Jordan?

6 MR. JORDAN: No, sir.

7 THE COURT: All right. Go ahead, Mr. Wells.

8 MR. WELLS: Let's mark this as a Court's Exhibit.

9 THE COURT: Can the lawyers approach a minute while she's
10 marking that?

11 (Whereupon, a bench conference is held off the record.)

12 (Whereupon, the disk is marked and entered as Court's
13 Exhibit Number 1.)

14 Q: And what I'm going to ask you to do is to come around and
15 we're going to show these to the jury one by one. If you
16 could, come around and maybe stand kind of right here where
17 you can use this laser pointer to point out and before you
18 comment on each picture, I will identify which -- which
19 picture it is based on -- yeah, if you would, stand right here
20 at the corner. And we'll first start with the scene since you
21 did that first.

22 THE COURT: Officer Clendenin, I need you to speak up for
23 me, okay?

24 THE WITNESS: Yes, sir.

25 THE COURT: Speak up, please.

CPL. ANDREW CLENDENIN - DIRECT EXAMINATION BY MR. WELLS

1 (Whereupon, the pictures are shown on the large monitor
2 screen for the jury.)

3 Q: All right. The first picture would be under State's
4 Exhibit Number 3 marked on the back as 0001. If you would,
5 explain what that is?

6 A: This is the frontal shot of the Motel 6. You'll see here
7 this is the office -- the office area right here in front.
8 The small sidewalk leading this way with a small sidewalk
9 leading from around the side and both of them intersects to
10 the main office doors.

11 MR. WELLS: (To Mr. Godboldt) All right, the next one.

12 Q: And on this first group at the scene, all of these will
13 be under State's Exhibit Number 3. So I'll just give the
14 number on the back. The number on the back of this one is
15 0002. If you would, relate what that is again?

16 A: It's again the main office. This is just from a right to
17 left angle. You'll see here the landscaped area and the front
18 of the office doors.

19 MR. WELLS: All right, next.

20 Q: This would be picture 0006.

21 A: Landscaped area, front office of the motel. You can see
22 kind of the areas around where the mulch had been kind of
23 roughed up a little bit and moved.

24 MR. WELLS: All right, next one.

25 Q: This would be State's Exhibit 0007.

CPL. ANDREW CLENDENIN - DIRECT EXAMINATION BY MR. WELLS

1 A: This again was taken right in front of the motel office
2 area just from a left to right diagonal shot. Again,
3 capturing some of the mulch where it had been, you know,
4 moved.

5 Q: So this was the area where you understood the -- the ---

6 A: The assault took place.

7 Q: --- assault had taken place?

8 A: I was advised that everything had happened in this
9 general area.

10 MR. WELLS: All right, next.

11 Q: All right, this would be the picture marked on the back
12 0008.

13 A: This is just a little closer shot of the landscaped area.

14 MR. WELLS: All right, next.

15 Q: This would be the picture marked 0009 on the back.

16 A: Again, the landscaped area and some indentions into the
17 mulch where the -- the assault took place.

18 MR. WELLS: All right, next.

19 Q: This would be the picture marked State's 0011.

20 A: Again, this is the front end of the office, the
21 landscaped area. You'll see some small shrubbery, flowers,
22 and also the mulch where it had been changed where it's been
23 moved around.

24 MR. WELLS: All right, next.

25 Q: This would be the picture marked on the back as 0012.

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1 A: Again, we've got the front of the building, the
2 landscaped area where the mulch had been moved, small shrubs,
3 flowers, and then also Deputy Phillips' car kind of in the
4 background in the back back here.

5 MR. WELLS: All right, next.

6 A: Same area again ---

7 Q: Let me just say this is State's -- this picture is marked
8 on the back State's ----

9 A: --- a little bit over to the right.

10 Q: --- Exhibit 0013. Go ahead.

11 A: I was saying the same area again, landscaped area, just
12 moving a little bit forward to the front of the parking lot.

13 MR. WELLS: All right, next.

14 Q: This would be the picture marked on the back as State's
15 Exhibit 0014.

16 A: The landscaped mulch where impressions had been made into
17 the ground.

18 MR. WELLS: All right, next.

19 Q: This would be the picture marked on the back 0021.

20 A: Again, the mulched area kind of showing the small
21 shrubbery. They had some sprinkler systems up where the mulch
22 had been moved around.

23 MR. WELLS: All right, next.

24 Q: This would be the picture marked on the back as 0023.

25 A: The front of the building, the office area, small

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1 shrubbery, again where the mulch had been moved around.

2 MR. WELLS: All right, next.

3 Q: This would be the picture marked on the back as 0024.

4 A: That same picture again, just a different angle shot from
5 a left to right showing the mulch where it had been changed.

6 MR. WELLS: All right, next.

7 Q: This would be the picture marked on the back as 0028.

8 A: This is a more drawn back shot kind of showing
9 everything that was just photographed in a larger area.

10 MR. WELLS: All right, next.

11 Q: This would be the picture marked on the back as 0029.

12 A: Again, showing some of the indentions made in the mulch
13 around that frontage landscaped area.

14 MR. WELLS: All right, next.

15 Q: This would be the picture marked on the back as 0031.

16 A: This would be a shot taken almost as if you was standing
17 directly from the office back in to the landscaped area.

18 MR. WELLS: And next.

19 Q: This would be the picture marked on the back as 0035.

20 A: This was indentions made into the mulch area from around
21 the edges of the small shrubbery.

22 Q: All right.

23 MR. WELLS: And, Mr. Godboldt, if you'll now go to the
24 pictures of Deputy Phillips.

25 Q: All right. All of these next ones will be State's

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1 Exhibit 4 and I'll just give the number on the back, which is
2 40. If you would, just explain what you're taking each for?

3 A: Okay. I'm just taking an overall shot of Deputy Phillips
4 as he was in the hospital.

5 MR. WELLS: All right, next.

6 Q: This would be 4, picture 41.

7 A: This would be the back side of the right hand showing
8 some minor lacerations.

9 MR. JORDAN: Your Honor, I would object and ask that the
10 deputy convey or confine his statements to overall
11 descriptions and not get into any specifics. He's not a
12 medical expert.

13 MR. WELLS: Well, I think he can state what ---

14 THE COURT: Can you all approach a minute?

15 (Whereupon, a bench conference is held in the presence of
16 the jury, but out of the hearing of the jury.)

17 THE COURT: Do what, Mr. Wells?

18 MR. WELLS: I think he can ---

19 THE COURT: I mean I heard your objection.

20 MR. WELLS: I think he can describe what appears to be
21 lacerations. I mean I don't think you need an expert.

22 THE COURT: He's not giving any diagnosis.

23 MR. WELLS: No, sir. He's just ---

24 THE COURT: I mean you can ask him why he took the
25 photograph, whether it appeared to be a laceration ---

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1 MR. WELLS: Right.

2 THE COURT: --- and I thought it was important. That's
3 why I took the photograph.

4 MR. WELLS: Okay.

5 MR. JORDAN: All right. Then I would ask for an
6 instruction that he limit his responses to -- previously he's
7 indicated ---

8 THE COURT: He's not giving any treatment or diagnosis
9 whatsoever with regards to any injuries. So what's your
10 request?

11 MR. JORDAN: That he be limited to what he sees in the
12 camera and not speculation as to where it came from.

13 THE COURT: Well, if you believe he's speculating, object
14 and I'll make a ruling on that at that time.

15 MR. WELLS: But I think a laceration is what -- that's
16 not speculation.

17 THE COURT: The severity of the laceration is a whole
18 different ball of wax. If you believe he's speculating, you
19 object and I'll make a ruling on it.

20 MR. JORDAN: All right. Thank you.

21 (Whereupon, the bench conference ends.)

22 THE COURT: You may continue, Mr. Wells.

23 MR. WELLS: All right.

24 Q: Let me ask you this. So basically, were you -- were you
25 attempting to take pictures of what appeared to you to be

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1 lacerations on the -- around the body?

2 A: That is correct.

3 Q: All right. So go ahead and describe again what you were
4 taking here or what it appeared to you you were taking?

5 A: This would be the back portion of his right arm from
6 wrist to elbow.

7 Q: All right and you were attempting to take lacerations at
8 that point; is that correct?

9 A: Correct.

10 Q: All right.

11 MR. WELLS: All right, next.

12 Q: This would be picture number 47.

13 A: Back side of the right hand.

14 Q: I'm sorry. I've -- they've gotten misnumbered. This is
15 picture 43. I'm sorry. Go ahead.

16 A: The back side of Deputy Phillips' right hand.

17 Q: And what were you attempting to take there?

18 A: Attempting to photograph the lacerations.

19 MR. WELLS: All right, next.

20 Q: All right, this would be picture number 47.

21 A: This would be from elbow to tip of the finger, left arm.

22 Q: And again, were you attempting to take pictures of the
23 lacerations there?

24 A: That's correct.

25 Q: All right.

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1 A: Elbow area of the left arm.

2 Q: All right. This is -- this is picture number 45 and I
3 think the last one I said 47, but it should have been 44.
4 This one -- this one is -- go ahead. This one is 45. Go
5 ahead. That's where now?

6 A: The left elbow to the inside.

7 Q: All right. Again, were you attempting to take the
8 picture of what appears to be lacerations there?

9 A: That's correct.

10 MR. WELLS: All right, next.

11 A: This would be the inside of the left arm.

12 Q: All right. This would be picture number 46.

13 MR. WELLS: All right, next one.

14 A: Inside of the left ---

15 Q: This would be ---

16 A: --- of the left hand.

17 Q: This would be picture 47. All right. What in particular
18 were you attempting to take there?

19 A: I was attempting to photograph the lacerations or what
20 seemed to be lacerations on the wrist area.

21 MR. WELLS: All right, next.

22 Q: This is picture number 49.

23 A: It's going to be the back of the left arm.

24 MR. WELLS: All right, next.

25 Q: All right. This is picture ---

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1 A: Back of the ---

2 Q: --- number 50.

3 A: Back of the left elbow.

4 Q: All right and it looks like it's to the left middle. Is
5 that what you were attempting to take there?

6 A: Correct.

7 Q: Okay.

8 MR. WELLS: All right, next.

9 Q: This is picture number 52.

10 A: That would be the right side of Deputy Phillips' head.

11 Q: If you would, point that up near his hairline what it
12 appeared to you to be?

13 A: Yes. That's what appeared to be injuries here and here.

14 MR. WELLS: All right, next.

15 Q: This would be picture number 53 and, if you would, just
16 point out what you were attempting to take?

17 A: I'm attempting to take pictures of what I observed right
18 here that seemed to be an injury to the front of the forehead.

19 MR. WELLS: All right, next.

20 Q: This would be picture number 54.

21 A: This is the same injury just with a scaled ruler
22 underneath to show the exact size of the length of the
23 abrasion.

24 MR. WELLS: All right, next.

25 Q: This would be picture number 55. Just point out what you

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1 were attempting to take there?

2 A: Okay. This would be the back right side portion of
3 Deputy Phillips' head and I'm trying to capture what injuries
4 I'm observing here.

5 MR. WELLS: All right, next.

6 Q: This would be picture number 56.

7 A: It's a little closer up view of the right side just
8 behind Deputy Phillips' ear.

9 MR. WELLS: All right, next.

10 Q: This would be picture number 58.

11 A: Same picture again, just with a scaled ruler underneath
12 to show the size of the injury I'm observing.

13 MR. WELLS: All right, next.

14 Q: This would be picture number 60.

15 A: This would be the direct back of Deputy Phillips' head
16 and I'm trying to capture the image of the injury that I'm
17 observing here.

18 MR. WELLS: All right, next.

19 A: Same picture again, this time just using a scaled ruler
20 to show the size of the injury I'm observing.

21 Q: All right. This is picture number 61. So that's still
22 on the head then; is that right?

23 A: That's correct. This is the back of Deputy Phillips'
24 head.

25 MR. WELLS: All right, next.

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1 Q: This is picture number 63.

2 A: This is going to be right here on his leg.

3 Q: Okay.

4 A: Just to the inside top of his leg.

5 Q: All right.

6 A: There's some what appeared to be redness there I was
7 capturing.

8 MR. WELLS: All right, next.

9 Q: This is picture number 65.

10 A: This is going to be the left kneecap capturing what
11 appeared to be injury to the top here.

12 MR. WELLS: All right, next.

13 Q: This is picture number 66.

14 A: Again, the left kneecap just a little bit closer showing
15 more detail of the injury I'm observing.

16 MR. WELLS: All right, next.

17 Q: And this is picture number 67.

18 A: This is going to be the left kneecap, just observing some
19 redness I'm observing at the top there.

20 MR. WELLS: All right, next.

21 Q: This is picture number 68.

22 A: This is an overall of both knees with Deputy Phillips
23 holding up his pants so I can capture both.

24 Q: All right and, finally, this is picture number 69.

25 A: This is the picture of the left kneecap and what I'm

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1 seeing is redness and capturing a photograph of it.

2 Q: All right. All right, that's all. You can come have a
3 seat.

4 (Whereupon, the disk of photographs is returned to the
5 court reporter as a Court's Exhibit.)

6 MR. WELLS: All right, Corporal Clendenin, if you would,
7 answer any questions that defense counsel has.

8 THE COURT: Cross examination.

9 CROSS EXAMINATION

10 BY MR. JORDAN:

11 Q: Corporal Clendenin, it appeared from what we saw in the
12 pictures there you -- you responded to the scene and took
13 photos of first the motel?

14 A: That's correct.

15 Q: The outside of the motel, and I believe you prepared a
16 report in connection with these?

17 A: Yes, I did.

18 Q: And I think your report says you were -- you took those
19 pictures about at 3:20. You arrived on scene and took
20 pictures about 3:17. I think that's what your report says;
21 does that sound right?

22 A: Let me refer back to my report.

23 Q: I'm looking about a third from the bottom.

24 A: Yes, sir. I arrived at 3:17 at the hospital, right.

25 Q: Okay, that's the hospital?

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- 1 A: Yes, sir.
- 2 Q: Okay and that would have been just a little bit more than
3 hour from the incident took place?
- 4 A: Yes, sir. I -- I originally arrived at the scene first.
- 5 Q: What time would that have been?
- 6 A: That would have been approximately at 2:38 p.m.
- 7 Q: Okay. So you -- you got to visit with Deputy Phillips
8 pretty close in time. It wasn't the next day or anything like
9 that when you saw him?
- 10 A: That is correct.
- 11 Q: Okay. He was still -- I noticed he was still in his
12 uniform?
- 13 A: Yes.
- 14 Q: And he's sitting up and talking to you?
- 15 A: That is correct.
- 16 Q: And you're taking his pictures and asking him to move
17 around so you can get -- take different pictures of his body?
- 18 A: That's correct.
- 19 Q: And you take pictures, of course, of the scene all around
20 from all different views of the parking lot?
- 21 A: That's correct.
- 22 Q: And you do that based on the need and the desire to get
23 as close to an accurate perception of what -- what happened;
24 correct?
- 25 A: That is -- that is correct. Trying to get documentation

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1 of what the scene looked like at the time.

2 Q: And you continue on that endeavor by taking pictures of
3 Deputy Phillips; correct?

4 A: That is correct.

5 Q: Now, at no point in time did you take any pictures of Mr.
6 Cash?

7 A: No, I did not.

8 Q: Okay. Would you have had the opportunity if you wanted
9 to to go take pictures of Mr. Cash?

10 A: If needed to, I had the opportunity, yes.

11 Q: Okay, but you decided -- you chose it was not necessary?

12 A: No, it was not.

13 Q: Okay.

14 MR. JORDAN: Your Honor -- oh, one other thing.

15 Q: You arrived at the scene I think you documented here a
16 little after two. Everything had already occurred by that
17 point?

18 A: That is correct. Everything was -- had occurred.

19 Q: You have no firsthand knowledge of what -- of anything
20 that took place?

21 A: No, I do not.

22 Q: Okay.

23 A: I just arrived at 2:38 after being dispatched out in
24 reference to the initial assault.

25 Q: Okay.

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1 MR. JORDAN: Thank you, Your Honor.

2 THE COURT: Any redirect?

3 MR. WELLS: No, Your Honor.

4 THE COURT: Sir, you may step down.

5 (Whereupon, the witness leaves the stand at 12:19 p.m.)

6 MR. WELLS: And that would be the State's case, Your
7 Honor.

8 THE COURT: All right. Can the lawyers approach for just
9 a minute, please?

10 (Whereupon, a bench conference is held off the record.)

11 THE COURT: All right, ladies and gentlemen, the State
12 has rested its case. It's presented its case. What we're
13 going to do at this time, there are some matters of law that I
14 need to take up outside of your presence, so rather than keep
15 you here, I'm going to let you go to lunch right now. It's
16 approximately 12:20. I'm going to ask that you be back in
17 your jury room at two o'clock, at two o'clock, and we will
18 resume the trial of this case as promptly at that time as
19 possible.

20 As I've said throughout, do not discuss the case. Do not
21 discuss the case until you're instructed to do so. Please be
22 back at two o'clock and we will resume the trial of this case
23 at that time. Thank you. Everybody else remain seated while
24 the jury exits the courtroom.

25 (Whereupon, the jury exits the courtroom at 12:19 p.m.)

1 THE COURT: All right, Mr. Jordan.

2 MR. JORDAN: Thank you, Your Honor. Your Honor, of
3 course, at this time I would make a motion for a directed
4 verdict. It's the State's obligation. Their burden rests on
5 them to demonstrate that there is sufficient -- a sufficient
6 case to go to the jury as it pertains to assault and battery
7 on a police officer as to Mr. Cash. Based on many different
8 factors, I ask that -- I request Your Honor consider a
9 directed verdict that they have not met that burden that is
10 required of them at this time and issue a motion accordingly.

11 THE COURT: Anything in response, Mr. Wells?

12 MR. WELLS: No, Your Honor. I think the evidence is
13 overwhelming for it to go to the jury.

14 THE COURT: All right. Based upon what I've heard here
15 today, I'm going to respectfully deny your motion, Mr. Jordan.
16 Under the law, if there's any direct -- any direct or
17 substantial circumstantial evidence reasonably tending to
18 prove the guilt of the accused or from which guilt may
19 reasonably, fairly and logically be deduced, the case should
20 be submitted to the jury. The Court is concerned with the
21 existence, not the weight of evidence. Based upon what I've
22 heard here today and seen, the Court would -- would
23 respectfully deny your motion for a directed verdict. All
24 right, anything else from defense counsel at this time?

25 MR. JORDAN: I don't believe so, Your Honor.

1 THE COURT: All right. What I'm going to do now is I'm
2 going to advise the defendant ---

3 MR. WELLS: That's all.

4 THE COURT: --- of his rights. Mr. Cash, sir, if you
5 would, stand. Madam Clerk, would you place the defendant
6 under oath?

7 THE CLERK: If you will, sir, raise your right hand. Do
8 you swear to tell the truth, the whole truth, and nothing but
9 the truth, so help you God?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right, sir, you are Dominique Alexander
12 Cash?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. At this time, I'm going to
15 explain to you certain of your rights. If you do not
16 understand anything I say, please let me know. If you want me
17 to explain anything in more detail, please let me know as
18 well. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, we've now reached the stage of the trial
21 where you may present your defense. You have the right to
22 claim the protections given to you by the Fifth Amendment to
23 the Constitution. This amendment states in part that no
24 person -- no person shall be compelled in any criminal case to
25 be a witness against himself. This means that you cannot be

1 required to testify in this case. You have the right to
2 testify on your own behalf. However, no one and I repeat no
3 one can make you testify. This is a personal right and no one
4 can waive this right except you.

5 If you decide to testify, you will be subject to the same
6 rules that govern other witnesses and you may be examined and
7 cross-examined on any relevant issue in this case. In
8 addition, if you have any convictions involving dishonesty or
9 false statement or for crimes punishable by imprisonment for
10 more than one year and this Court determines that the
11 probative value of admitting this evidence outweighs its
12 prejudicial effect to you, the solicitor Mr. Wells will be
13 able to introduce your record to attack your credibility.

14 If you decide to testify, this decision on your part must
15 be freely, voluntarily, and intelligently made with the
16 knowledge of the protections given to you by the Fifth
17 Amendment and the consequences of your decision to testify.
18 If you decide not to testify, I will instruct this jury that
19 they cannot -- that they cannot give the fact that you did not
20 testify any consideration whatsoever and that there is to be
21 absolutely no prejudice to you because you did not testify.

22 It is left entirely up to you whether or not you testify.
23 You may talk with your attorney Mr. Jordan, your family,
24 friends, or anyone else, but the final decision will be left
25 entirely up to you. Do you understand what I have explained

1 to you, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Do you have any questions about
4 what I have explained to you?

5 THE DEFENDANT: You said that my credibility like with
6 past -- past record or something could be mentioned.

7 THE COURT: I would have to make a ruling before the
8 State would be allowed to question you about your record.

9 THE DEFENDANT: Mm-hmm.

10 THE COURT: I would have to make a ruling, if that's what
11 you're asking. I'd have to make a ruling about that as to
12 whether or not I would allow them to question you about your
13 prior record.

14 THE DEFENDANT: Okay.

15 THE COURT: Now, let me see. And you -- you mentioned
16 credibility. If I determined -- if you have a prior record,
17 okay, and the State attempts to question you about your prior
18 record, I have to make a ruling and -- and I have to make a
19 ruling to determine whether or not to admit that evidence,
20 whether or not the probative value of allowing them to do it
21 outweighs any prejudicial effect to you. But if he uses your
22 -- if you have a prior record and I allow him to cross examine
23 you on your prior record, it would be done to attack your
24 credibility.

25 THE DEFENDANT: Okay.

1 THE COURT: Okay? Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, have you talked with your lawyer about
4 whether or not you should testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you need any more time to talk with him?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Do you wish to testify in the
9 trial of your case?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. What we're going to do at this
12 time -- it is about 12:25. I have released this jury until
13 two o'clock. We are -- we will resume the trial of this case
14 at two o'clock. Mr. Wells, I had inquired of you and Mr.
15 Jordan -- well, before I go any further, I'm going to ask is
16 there anything else I need to address with your client, Mr.
17 Jordan, at this time?

18 MR. JORDAN: No, sir.

19 THE COURT: All right. Mr. Cash, you may sit down, sir.
20 Okay, thank you. I had previously inquired of Mr. Wells and
21 Mr. Jordan this defendant's record -- this defendant's record
22 to determine whether or not such would be admissible. Have
23 you all had an opportunity to do that, Mr. Wells? Have you
24 spoken about that, you and Mr. Jordan?

25 MR. WELLS: I -- yes, yes. I can say what I have told

1 him. In my opinion, on his record in 2009 for misdemeanor
2 larceny would be, since that involves dishonesty. That really
3 comes under subsection (2), evidence of any witness being
4 convicted of a crime should be admitted if it involved
5 dishonesty or false statement regardless of the punishment. I
6 mean that is clearly admissible.

7 I've told Mr. Jordan that several of the offenses he's
8 got for assault charges I would not get into unless the
9 defendant opens the door in some way because, again, they're
10 so similar to the type thing he's being tried for now and I
11 think they would not really -- they do not involve dishonesty.

12 Now, the other question I have and it might depend on
13 what the defendant testifies to, but I think the type thing
14 he's being charged with now to me it wouldn't come under
15 impeachment purposes, but for a motive is the fact that, you
16 know, it looked like he might be arrested or his friend
17 arrested and the fact he was wanted out of the state of North
18 Carolina. If the officer had gotten his, of course,
19 identification and run it in NCIC, it would have immediately
20 showed that he was wanted from the state of North Carolina as
21 he had absconded parole. I wouldn't get into the absconded
22 parole, but I do think it might be fair game in that regard
23 depending on what he testifies to that he was, in fact, wanted
24 out of the state of North Carolina.

25 THE COURT: Mr. Jordan, first of all, what do you say

1 about the larceny?

2 MR. JORDAN: Your Honor, I would object to it being used
3 unless in the event that my client somehow opens that door,
4 but I believe it would -- it would be prejudicial to my client
5 in the event the jury would hear -- hear that. So I would
6 object to that under Rule 43.

7 THE COURT: What was he on parole for?

8 MR. WELLS: He was on parole for habitual misdemeanor
9 assault.

10 THE COURT: All right. With regards -- we'll kind of go
11 backwards on my rulings here from the standpoint of the order
12 in which they were addressed. This prior -- or this issue
13 concerning defendant being on parole ---

14 MR. JORDAN: Your Honor, may I be heard on that issue
15 prior to you ---

16 THE COURT: No, sir. I've given you an opportunity.

17 MR. JORDAN: But I think you asked to hear from me on the
18 larceny and did not to ask to hear from me on the issue of ---

19 THE COURT: Well, if you want to argue after I make my
20 ruling, I'll let you do that.

21 MR. JORDAN: Yes, sir.

22 THE COURT: I'm not going to allow it.

23 MR. JORDAN: Okay.

24 THE COURT: Okay? I'm not going to allow it. Do you
25 want to argue now or maybe talk me into going the other way on

1 it?

2 MR. JORDAN: I prefer not to do that, Your Honor.

3 THE COURT: Okay. I am not going to allow you to do
4 that, Mr. Wells, under -- under the motive argument here. I
5 do -- I believe that there has been no testimony -- the
6 testimony that I have heard here is that he actually left,
7 that he left and he came back. He came back while -- and that
8 there was no concern about law enforcement finding out.

9 Now, that could change by his testimony. He could open
10 that. He could throw that door wide open. All right? By his
11 testimony, he could certainly open the door, but at this stage
12 I am not. I think the probative value is outweighed by the
13 prejudicial effect and I'm not going to allow you to go in.

14 MR. WELLS: But if something happened that I felt he had
15 opened the door, I would ask to speak to the Court before I
16 could ---

17 THE COURT: Right.

18 MR. WELLS: --- do anything about it.

19 THE COURT: You need to ask to be heard ---

20 MR. WELLS: Yes, sir.

21 THE COURT: --- before you go down that road because I'm
22 making a ruling on it right now.

23 MR. WELLS: Yes, sir.

24 THE COURT: But I'm not going to allow you to go on -- go
25 into that, okay, as far motive is concerned. Now, do you want

1 to be heard anymore with regards to anything on that issue,
2 Mr. Jordan?

3 MR. JORDAN: Your Honor, the only thing I was going to
4 say is the documentation I've been provided seems to indicate
5 to me that the warrant came about on November of 2012, which
6 would have been after ---

7 THE COURT: This incident took place.

8 MR. JORDAN: --- this incident occurred.

9 THE COURT: Okay.

10 MR. JORDAN: That was the only thing I wanted to say.

11 THE COURT: Well, and again, if he opens the door, then
12 we'll have to address that issue.

13 MR. JORDAN: That's a different -- yes, sir.

14 THE COURT: I think that's a different ball of wax, so to
15 speak, and if he opens that door, we'll -- as Mr. Wells
16 indicated, he'll bring it -- he'll bring it -- promptly bring
17 it to the Court's attention and we'll rehash it outside the
18 presence of the jury.

19 Now, with regards to this '09 larceny -- this '09
20 larceny, *State v. Cooper*, 386 S.C. 210, certainly stands for
21 the proposition that larceny -- it says housebreaking and
22 larceny were admissible for impeachment purposes. Convictions
23 were crimes of dishonesty that weighed on defendant's
24 credibility and probative value of conviction outweigh their
25 prejudicial effect. So I'm going to allow him to go into --

1 or if your client takes the stand, on the larceny issue, I'll
2 allow that.

3 With regards to these prior assault offenses, Mr. Wells
4 did not specifically address any of them or how many there may
5 have been, but certainly your client could open the door on
6 that as well and, again, Mr. Wells, if he does ---

7 MR. WELLS: I would approach the bench first before I ask
8 him ---

9 THE COURT: Right.

10 MR. WELLS: --- about that, Your Honor.

11 THE COURT: So we can address that issue outside the
12 presence of the jury. Okay? All right. Any other matters
13 that we need to take up before we break for lunch?

14 MR. WELLS: Nothing that I can think of, Your Honor.

15 THE COURT: Mr. Jordan?

16 MR. JORDAN: Your Honor, just for scheduling purposes, is
17 it the intent of the Court to go ahead and try and argue and
18 charge this afternoon?

19 THE COURT: Yes, sir, it is, so.

20 MR. JORDAN: I'll prepare accordingly. Thank you, Your
21 Honor.

22 THE COURT: Let me -- let's do this while we are here. I
23 spoke to both of you at sidebar earlier in preparing this
24 charge this morning. It does not appear to me based upon the
25 testimony that's been elicited from this stand from the

1 witnesses or law enforcement that this is a case that would
2 necessitate the charging of a lesser included offense of
3 resisting arrest. Any ---

4 MR. WELLS: I would certainly agree at this time.

5 THE COURT: Mr. Jordan?

6 MR. JORDAN: Yes, Your Honor, that's correct.

7 THE COURT: Okay. Now, therefore, I am not at this time
8 going to charge the lesser included -- lesser included offense
9 of resisting arrest. I think it's straight up or down on
10 assault on a law enforcement officer. All right? Again
11 though, if we need to rehash that later, we'll do so, but I've
12 heard no testimony to the effect at this point or seen
13 anything in videos, presented into evidence, admitted into
14 evidence without objection that would raise that issue or give
15 me any concern about the necessity of charging the lesser
16 included of resisting arrest.

17 Now, just briefly, you all -- I'm going to go through my
18 charge here. I'm not going to read the entire thing to you
19 all. It's not but thirteen pages as of right now.

20 It includes charge, arrest and indictment not evidence,
21 the presumption of innocence, reasonable doubt, direct and
22 circumstantial evidence, duties of judge and jury, the police
23 officer charge.

24 Right now within this charge, which will be taken out
25 pursuant to the defendant's -- the defendant stating that it

1 was his desire to testify, I will take out failure of the
2 defendant to testify. I will take that out once he takes the
3 stand. All right? In case -- that will give him the
4 opportunity. He certainly has the opportunity over lunch to
5 decide whether or not he wants to follow through with that.

6 Intent, and then the assault on a law enforcement
7 officer. I am going to read this portion of the charge and
8 would ask that you all listen very carefully.

9 The defendant is charged with assaulting a law
10 enforcement officer. The State must prove beyond a reasonable
11 doubt that the defendant knowingly and willfully assaulted,
12 beat or wounded a law enforcement officer who was serving,
13 executing or attempting to serve or execute a legal writ or
14 process; or that the defendant assaulted, beat or wounded an
15 officer when the defendant was resisting an arrest being made
16 by a person the defendant knew or reasonably should have known
17 was a law enforcement officer.

18 I mean that's taken straight from the statute. That's
19 statutory language.

20 Knowingly means with knowledge, consciously done.
21 Willfully means done intentionally and not by accident -- not
22 done by accident. An assault occurs when a person violently
23 or forcefully attempts to hurt or injure another person and
24 has the present ability to complete the attempted injury. An
25 assault is the intentional creation of fear of immediate

1 bodily harm. It is not necessary that the attempted injury or
2 harm actually take place.

3 A battery is the unlawful touching of another person by a
4 person who has committed the assault. An unlawful touching
5 can be caused by a part of the accused or by any object the
6 accused puts in motion. A battery is the completion of the
7 assault by using or applying force to another person, however
8 slight, in a rude, angry or resentful manner without legal
9 justification for doing so. A law enforcement officer means
10 any duly appointed or commissioned law enforcement officer of
11 the state, county or municipality.

12 Any objection to that, Mr. Wells?

13 MR. WELLS: No, Your Honor.

14 THE COURT: Mr. Jordan?

15 MR. JORDAN: No, sir.

16 THE COURT: The only other -- you all have heard my
17 conclusion before, which includes a portion instructing the
18 jury that I am going to send a copy of the charge back into
19 the jury room. Any objection to me doing that, Mr. Wells?

20 MR. WELLS: No, Your Honor.

21 THE COURT: Mr. Jordan?

22 MR. WELLS: No, Your Honor.

23 THE COURT: Okay.

24 MR. WELLS: The only other thing I can think of possibly
25 and the Court -- however the Court wants to charge this, but I

1 think since there were four people involved, three were
2 kicking him while he was, of course, the main one assaulting
3 him, is the hand of one is the hand of all. Just something to
4 contemplate if you think that's appropriate or not.

5 THE COURT: All right. Mr. Jordan?

6 MR. JORDAN: Your Honor, I would object to that
7 particular charge. I don't think there's been any
8 presentation of evidence that there was a conspiracy of any
9 kind or a plan of any kind to go and do anything to break the
10 law. There was a disagreement that turned into something more
11 than that on the spot. I don't think there was any
12 collaboration. It was an on-the-spot tussle that boiled over
13 from a dispute.

14 MR. WELLS: Well, I don't think there has to be a
15 conspiracy or collaboration there. I mean that way we'd have
16 murder when two people go to rob a place and one suddenly
17 kills the clerk, but here it's just that four people were
18 involved in assaulting an officer. Three were involved in
19 kicking him and one was on top of him, being the defendant.
20 They were all participating together. That's what I mean from
21 that.

22 THE COURT: All right.

23 MR. WELLS: There's certainly evidence that came out
24 from, you know, a number of witnesses that some of the others
25 were involved in kicking the officer while the defendant was

1 on top of him.

2 MR. JORDAN: And Mr. Wells' point there though there was
3 no illegal activity that took place like a robbery that turned
4 into a murder. This was nothing illegal turned into something
5 that we're here today to dispute.

6 MR. WELLS: What I'm saying is it doesn't have to be a
7 conspiracy. If multiple people participate in an illegal act,
8 which assaulting an officer is an illegal act, then they're
9 all participating. It's -- I mean obviously when others
10 start, he can stop, but he was continuing to participate.
11 That's -- that's my reasoning, Your Honor.

12 THE COURT: All right, bear with me a second.

13 (Whereupon, there is a brief pause in the proceedings)

14 THE COURT: I am -- I don't -- I may change my mind over
15 lunch, but I do not think I'm going to charge that. I think
16 it would be more confusing. I think that right now in my
17 cursory review of this charge of hand of one, hand of all, I
18 mean within the charge, Mr. Wells, it says therefore, a
19 finding of a prior arranged plan or common scheme is necessary
20 for a finding of guilt as a principle. I just think that
21 would be more confusing ---

22 MR. WELLS: I see what you're saying.

23 THE COURT: --- to the jury. You know, you all -- for
24 whatever reason obviously at this point Mr. Boney has pled
25 guilty. I don't know what happened with Ms. Wright. She ---

1 MR. WELLS: She pled guilty also.

2 THE COURT: You know, but I think the statute in and of
3 itself separate and apart from what responsibility they bear,
4 those that have already pled, I mean I think the evidence that
5 has been presented in here certainly absent any charge on hand
6 of one, hand of all, could satisfy a conviction of this young
7 man for assault on this officer. Okay? So I am not going to
8 charge that. All right, anything else at this time, Mr.
9 Wells?

10 MR. WELLS: No, Your Honor.

11 THE COURT: Mr. Jordan?

12 MR. JORDAN: No, sir.

13 THE COURT: All right. We'll stand at ease until two
14 o'clock. I ask that you be back in here at two o'clock. Mr.
15 Jordan -- well, let me ask this for a minute before -- and you
16 may not want to answer this. Is Mr. Boney going to testify?

17 MR. JORDAN: Your Honor, I have not had the opportunity
18 ---

19 THE COURT: Well, when I asked you that question -- and I
20 assume what you're going to say is you haven't had the
21 opportunity to talk with him. When I asked you that question
22 ---

23 MR. JORDAN: Well, to talk with my client about it.

24 THE COURT: Okay. Well, let's make a -- and again, you
25 try your case however you see -- you deem necessary to protect

1 your client, but if he is not going to be called, let's let
2 him -- these SCDC people have been sitting here all morning.
3 Let's let them get back on the road and if he is going to be
4 called, he needs to be called first so they can get back on
5 the road. Okay?

6 MR. JORDAN: I'll discuss it with my client and we'll
7 make a decision.

8 THE COURT: All right, thank you. I'm going to stand at
9 ease until two o'clock.

10 (Whereupon, there is a break in the proceedings from
11 12:44 p.m. until 2:01 p.m.)

12 THE COURT: Over the lunch break -- let me address this
13 before I bring the jury out. Juror Number 51, a Miss Jessica
14 Goodman, had a fall. She is five months pregnant. I was
15 called by Ms. Connie Shearin, our Clerk of Court, and notified
16 of such and then I -- Ms. Doris Poulis, the Deputy Clerk of
17 Court for General Sessions, also called me and advised me of
18 Ms. Goodman's fall, which from my understanding did not take
19 place on the premises here.

20 But anyway, after Ms. Poulis talked with Ms. Goodman, Ms.
21 Poulis has conveyed to me that she had apparent injury to her
22 left arm, I think her knees, her foot, toe, but what -- what
23 was of very grave concern to Ms. Poulis in talking to her and
24 to the Court was the fact that she's five months pregnant and
25 she fell on her stomach. So she was -- I have released her

1 and she was instructed to go to the hospital to get checked
2 out to make sure that everything is okay there, but wanted to
3 certainly advise you all of such at this time and put that on
4 the record. Any objection from the State on that?

5 MR. WELLS: None from the State, Your Honor.

6 THE COURT: Defense counsel?

7 MR. JORDAN: Absolutely not.

8 THE COURT: All right. Therefore, I am going to plug in
9 Mr. Stephen Page, who is our alternate. He will serve as an
10 active juror throughout the remainder of the trial of this
11 case. Okay? All right, if you'll-- anything before I bring
12 the jury in from the State?

13 MR. WELLS: No, Your Honor.

14 THE COURT: Defense counsel?

15 MR. JORDAN: No, sir.

16 THE COURT: All right. If you will, bring me a jury,
17 please.

18 (Whereupon, the jury enters the courtroom at 2:04 p.m.)

19 THE COURT: All right, Mr. Foreman, ladies and gentlemen
20 of the jury, I hope you all had a good lunch. If you will,
21 those of you who are still seated in the jury box, if you look
22 to your left or to your right or behind you, you'll notice
23 that one of the jurors is missing at this time. Ms. Goodman,
24 who was on this jury, has been excused due to an accident that
25 she had over lunch. That's over lunch and I have excused her

1 and released her from any further responsibilities today.

2 And that's why we pick alternates because of emergencies
3 that come up such as that and, therefore, Mr. Page, that is no
4 longer your assigned seat. You can move down one seat, if you
5 would, and you, like all other jurors except for my foreman,
6 you can sit wherever you so desire now once you come in and
7 out of the courtroom. Okay?

8 All right. Is the State ready to proceed?

9 MR. WELLS: Yes, Your Honor.

10 THE COURT: Is defense counsel ready to proceed?

11 MR. JORDAN: Yes, sir.

12 THE COURT: Ladies and gentlemen, I am now going to
13 recognize defense counsel at this time for their case. Mr.
14 Jordan, you're so recognized.

15 MR. JORDAN: Thank you, Your Honor. Your Honor, I would
16 call Mr. Adrian Boney to the stand.

17 THE COURT: All right. Mr. Neal, could y'all get Mr.
18 Boney?

19 DEPUTY NEAL: Is that SCDC?

20 THE COURT: Yes, sir.

21 (Whereupon, there is a pause in the proceedings until the
22 witness enters the courtroom.)

23 THE CLERK: If you will, sir, come to the witness stand.
24 If you'll stop right there, place your left hand on the Bible,
25 raise your right hand as much as you can. Do you swear to

ADRIAN BONEY - DIRECT EXAMINATION BY MR. JORDAN

1 tell the truth, the whole truth, and nothing but the truth, so
2 help you God?

3 THE WITNESS: Yeah.

4 THE CLERK: Please have a seat right there in the witness
5 chair and state your full name for the record.

6 THE WITNESS: Adrian Boney.

7 THE COURT: All right, Mr. Jordan.

8 MR. JORDAN: Thank you, Your Honor.

9 ADRIAN BONEY, being first duly sworn,
10 testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. JORDAN:

13 Q: Mr. Boney, I just have a few questions for you. First
14 off, let's get some of the family relations out the way. You
15 are related to Mr. Cash; is that correct?

16 A: Yes, sir.

17 Q: What's y'all's relationship?

18 A: Cousin.

19 Q: Okay. Now, you were present back on October 22nd, 2012,
20 at the Motel 6 here in Florence, South Carolina?

21 A: It happened on the 20th.

22 Q: Excuse me?

23 A: It happened on the 20th.

24 Q: The 20th, okay.

25 A: But yes, I was there.

ADRIAN BONEY - DIRECT EXAMINATION BY MR. JORDAN

1 Q: And that was an altercation between yourself and two
2 females and a clerk -- and a couple of clerks at Motel 6?

3 A: Right.

4 Q: Can you give the Court a little bit of understanding of
5 what took place in the -- in the hotel there?

6 A: Well, basically we -- we came from North Carolina and
7 everything with -- with a friend and everything. So like they
8 had left their -- their clothes in the hotel room in somebody
9 else name so they was arguing with the hotel clerk and
10 everything about their clothes. At that time, that's when the
11 hotel clerk, they called the officer and everything and like
12 at this time, Dominique wasn't nowhere present at all. He
13 didn't have nothing to do with it.

14 Like so when a officer came, he put me in handcuffs and
15 pushed me up against the wall and put the gun to my back,
16 everything, called me the N word and, you know, so as he was
17 taking me to the car and everything, Cash had asked -- had
18 came through. Dominique had came through to ask me if
19 everything was all right and I was like, yes. The officer
20 told him to back up. So as he was backing up, the officer
21 told him again move and then he pushed him. So Cash was like,
22 I was already moving. You didn't have to put your hands on
23 me.

24 At that time, that's when the officer started getting
25 aggressive with Dominique and he grabbed him and he wrapped

ADRIAN BONEY - DIRECT EXAMINATION BY MR. JORDAN

1 his leg around Dominique. As he was doing that, Dominique put
2 his hands in the air showing that he was not trying to fight
3 the officer and then everything. So as the officer was
4 wrestling with him, the officer fell and everything. That's
5 when I started yelling get off my brother, get off my brother.

6 So after I seen the officer hit Dominique, I, myself,
7 kicked the officer and everything. That's why everything had
8 happened. So at that time -- at that time, I was already
9 handcuffed also, but as far as Dominique having anything or
10 putting his hands on the officer, that's not true because the
11 whole time Dominique had his hands in the air showing that he
12 wasn't fighting the officer, resisting arrest or anything.

13 Q: And you -- you, of course, were charged with a crime and
14 took responsibility for your actions; is that correct?

15 A: Yes, sir.

16 Q: Now, during the -- the dispute I guess in the -- in the
17 motel, was Mr. Cash present during the -- that altercation
18 between yourself and the clerks?

19 A: No, sir. He was outside. He was at the Hardee's
20 restaurant.

21 Q: Okay and were there two females with you?

22 A: Yes.

23 Q: Okay. At any point in time did you see Mr. Cash -- did
24 he yell at anybody or curse at anybody or threaten anybody?

25 A: No, sir.

ADRIAN BONEY – CROSS EXAMINATION BY MR. WELLS

1 Q: Please answer any questions the solicitor may have for
2 you.

3 A: All right.

4 THE COURT: Cross examination.

5 CROSS EXAMINATION

6 BY MR. WELLS:

7 Q: Mr. Boney, why did y'all come to South Carolina in the
8 first place?

9 A: Well, we came with -- with my ex-girlfriend and
10 everything. Me and my ex-girlfriend was talking about getting
11 together and everything. So we basically just wanted to get
12 out of our state for a little quick vacation for like a couple
13 hours of vacation. That's all.

14 Q: Wasn't one of the girls just fifteen years old?

15 A: That we didn't know. I don't know.

16 MR. JORDAN: Objection, relevance.

17 THE COURT: Move on, Mr. Wells.

18 Q: Now, isn't ---

19 THE COURT: He answered the question.

20 Q: --- it correct that on March 11th, 2013, in this case you
21 were indicted along with this defendant, Mr. Cash; is that
22 right?

23 A: March 11th?

24 Q: No, I'm talking about -- let me go back. As far as this
25 incident, you were indicted with Mr. Cash; is that right?

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 A: What? For this case right here?

2 Q: Yes.

3 A: Yeah.

4 Q: All right.

5 A: I don't know the time though.

6 Q: And on March 11th, 2013, you pled guilty to assault on a
7 law enforcement officer; isn't that correct?

8 A: Yes.

9 Q: And you're now doing a two year sentence in the
10 Department of Corrections; is that correct?

11 A: Yep.

12 Q: All right. Now, weren't you -- now, at the time this
13 happened, you had -- you were wearing dreads. You've had your
14 hair cut since you've been in the Department of Corrections;
15 isn't that right?

16 A: Yes, sir.

17 Q: So the person in the red that was in dreads would be you
18 if it's on video; is that right?

19 A: Yes, sir.

20 Q: All right. Now, as far as the two clerks, were you --
21 had you been yelling at them?

22 A: Like I wasn't yelling, but like my voice did get loud.
23 So you could - like in y'all perspective, you would say I was
24 yelling.

25 Q: Okay. Did you tell the clerks you were going to blow --

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

- 1 blow them up?
- 2 A: No, sir.
- 3 Q: You never told them that?
- 4 A: No, sir.
- 5 Q: Okay. Did you throw a pen at them?
- 6 A: No, sir, but I did throw a pen though.
- 7 Q: You threw a what?
- 8 A: I said I didn't throw it directly at the clerk, but I did
- 9 throw a pen though.
- 10 Q: You threw a what?
- 11 A: I said I didn't throw the pen directly at the clerk ---
- 12 Q: Oh.
- 13 A: --- but I did throw a pen.
- 14 Q: And you broke it off from the ---
- 15 A: Yes, sir.
- 16 Q: All right and weren't you argumentative with the officer
- 17 when he came up there?
- 18 A: No.
- 19 Q: You weren't argumentative at all?
- 20 A: No, sir. He -- like the only thing I did I asked him
- 21 what I did wrong, what was my charge, and when the clerk was
- 22 telling him what was going on, when she was telling the truth
- 23 I shook my head up and down, and when she started lying, I
- 24 said that it wasn't true.
- 25 Q: You said the clerk started lying?

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 A: Yes, sir.

2 Q: How was she lying?

3 A: Because she came in like -- like you had asked me, she
4 was talking about that I said I was going to blow them up and
5 that I was doing this and doing that, like doing things that
6 and saying things that I never even said.

7 Q: So she was just making all that up on you?

8 A: Yes, sir.

9 Q: And you and the girls weren't out of control at all?

10 A: I wasn't out of control. I -- I can't speak for the
11 females, but like I said, my voice did get loud. So in y'all
12 perspective, you would say that I was yelling.

13 Q: All right and did you get loud with the officer?

14 A: No.

15 Q: So he just put you in handcuffs for no reason?

16 A: As soon as I was walking out the hotel room, he told me
17 to get up against the wall. I asked him what I did. He
18 pushed me up against the wall. He put ---

19 Q: What wall did he push you up against?

20 A: The hotel wall on the outside, the bricks.

21 Q: On the outside?

22 A: And he put the gun to my back and he told me didn't I
23 tell you to be -- to freeze and then he called me the N word
24 like I said.

25 Q: All right. Where were -- where were the other people at

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 that time?

2 A: The other people? Dominique, he was at the Hardee's
3 parking lot and the two females ---

4 Q: Why did he go to the Hardee's parking lot?

5 A: That's where he was from the get-go.

6 Q: He was at the Hardee's parking lot?

7 A: Yes, sir. He went to go get something to eat.

8 Q: All right. Now, wasn't it in the lobby when he placed
9 you under arrest and put the handcuffs on you?

10 A: Not to my knowledge. I ain't seen him in there.

11 Q: Where was it?

12 A: Like he put the hand -- the officer put the handcuffs on
13 me on the outside, not inside.

14 Q: All right. Were the two ladies there with you?

15 A: Yes.

16 Q: All right and didn't -- didn't the defendant Mr. Cash
17 come up at that point, too?

18 A: Well, when?

19 Q: When -- when he started to take you outside?

20 A: No. Dominique came up to the car after I was already
21 outside when the officer was about to put me into the back of
22 the car.

23 Q: So he didn't first come up there when you were at the --
24 at the lobby? He didn't say why the F have you got my brother
25 in handcuffs?

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 A: No, sir.

2 Q: Never -- that never happened?

3 A: No, sir.

4 Q: All right. Why did the officer pull a gun on you at that
5 point?

6 A: I don't know. I guess he had a bad day or something. He
7 was having a bad day. Like -- like I said, when I was coming
8 out, he had told me to freeze. I ain't never stopped. I kept
9 walking and everything. So like I say, he pushed me up
10 against the wall and I asked him what I did wrong and
11 everything, what was my charge, and he just pulled his gun on
12 me. He just put it to my back.

13 Q: Had you resisted at all at that point?

14 A: No, sir. I just stood, like besides me still walking and
15 everything. Like I don't see no reason to call that
16 resisting.

17 Q: All right. Well, would you have resisted if the
18 defendant hadn't ended up jumping on -- getting on top of the
19 officer?

20 A: For one, the -- my co-defendant did not jump on top of
21 the officer and, two, I wouldn't have resisted anyway.

22 Q: You would have or wouldn't?

23 A: I wouldn't.

24 Q: You wouldn't have? All right. Now, what did -- didn't
25 Mr. Cash -- when he came up to the car again, didn't he ask --

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 yell at the officer why are you -- why are you putting my
2 brother in the car?

3 A: No.

4 Q: Or why you got him -- why have you arrested him?

5 A: No. He asked the officer what was going on and what was
6 my charge and he asked me if I was okay and I had told him
7 yes, I was all right.

8 Q: Had the officer hurt you in any way?

9 A: No, he ain't hurt me.

10 Q: Well, was his gun still out?

11 A: No. He had put his gun back in his holster.

12 Q: When did he put his gun back in the holster?

13 A: Before he went inside to the hotel room to talk with the
14 clerks.

15 Q: Well, when did he -- when did he pull it out?

16 A: Like when he was coming up towards me when he pushed me
17 up against the wall.

18 Q: All right and where were the -- the ladies at that time?

19 A: The ladies? They was already in the hotel room. I mean
20 not in the hotel room, but in the lobby.

21 Q: All right and you -- so did the officer take you straight
22 from the outside to the car?

23 A: No, sir.

24 Q: Did he take you in the lobby?

25 A: Yes, sir.

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 Q: All right. Did he still have his gun out then?

2 A: No, sir.

3 Q: And what happened in the lobby?

4 A: In the lobby, he ---

5 Q: Was the officer trying to find out from the ladies what
6 had occurred?

7 A: Yes, sir.

8 Q: All right and it appeared the ladies had had a bad day
9 because of you people; hadn't they?

10 A: Well, I don't know if they had a bad day or not. I just
11 know that they was just telling the females that since the
12 room wasn't in their name they couldn't give them the clothes
13 that was in the room. That -- that's where everything started
14 from.

15 Q: And were you and the ladies yelling and arguing with
16 them?

17 A: The ladies was, but I wasn't.

18 Q: You weren't?

19 A: I was trying -- I was trying to keep the peace and then,
20 like I said, my voice got loud and everything so in y'all
21 perspective and like in y'all's mind, y'all could say that I
22 was yelling, but like I said, I wasn't arguing with them.

23 Q: All right, but the -- the ladies were telling the
24 officers that you had -- you had been threatening to blow them
25 up?

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 A: I never said I'd blow them up.

2 Q: So they just made that up?

3 A: They did something.

4 Q: All right. You said they lied on you?

5 A: Yep.

6 Q: Okay. Now, and you said the defendant never came up to
7 the -- to the motel lobby?

8 A: Nope. He ---

9 Q: The officer didn't tell him that -- him and the other
10 ladies to stay back while he put you in the patrol car?

11 A: He told the ladies to stay back.

12 Q: But he didn't tell the defendant that?

13 A: Nope.

14 Q: Okay. So tell me now, when you -- when you got to the
15 patrol car, didn't the defendant come up there?

16 A: He asked the officer what was going on. Like I said, he
17 asked me if I was all right and he asked the officer what was
18 going on, what was my charge.

19 Q: All right. Did the -- did the officer do anything then?

20 A: The officer told him to back up.

21 Q: All right. Didn't, in fact, the defendant come up behind
22 the officer and grab him by the right shoulder?

23 A: No, sir.

24 Q: He never grabbed him?

25 A: Never.

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 Q: All right. So he never grabbed him and the officer
2 didn't push him back?

3 A: No. The only -- the officer ---

4 Q: Was the defendant yelling at the officer?

5 A: The only -- now, see, like I said, my co-defendant never
6 put his hand on the officer, but after the officer told him
7 again to back up, he pushed him and that's when my co-
8 defendant was like, I was already moving. You didn't have to
9 put your hands on me. That's when the officer grabbed my co-
10 defendant.

11 Q: Where did he grab him?

12 A: He grabbed him like on the shoulder like -- like -- like
13 this and like when he did that, that's when my co-defendant
14 put his hands in the air showing that he wasn't trying to
15 fight the officer, that he wasn't resisting or nothing.

16 Q: The defendant never lunged at him?

17 A: Nope.

18 Q: So how did the -- isn't it a fact that the defendant
19 ended up on top of the officer?

20 A: The officer had tripped when -- like -- because like --
21 like I said, when he grabbed him, my co-defendant had his
22 hands in the air. So the officer was trying to get him on the
23 ground, like throw him on the ground.

24 Q: The officer was trying to throw the defendant on the
25 ground?

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 A: Yes, sir, and he wrapped his leg around my defendant like
2 the back -- like the back leg and when he was struggling with
3 him, because like you can see my -- my defendant kind of built
4 muscular way. You feel me? So like he fell. That's how my
5 co-defendant ended up on top of him.

6 Q: All right. So you're saying the officer was on the
7 ground and he tried to trip the defendant so the defendant
8 would fall on top of him; is that what your testimony is?

9 A: No. I never said he was on the ground and then he put
10 his leg behind him. He did all of that when he grabbed my
11 defendant.

12 Q: All right. You say he ---

13 A: I mean my co-defendant.

14 Q: --- grabbed him and tried to throw him on the ground?

15 A: Right.

16 Q: And did the defendant end up on top of the officer?

17 A: Yes.

18 Q: All right and wasn't the defendant hitting on the
19 officer?

20 A: No.

21 Q: What was he doing?

22 A: He had his hands in the air the whole time. Like when he
23 fell, his hands were like straight like he ain't put his hands
24 on the officer or nothing.

25 Q: So you're saying he -- he was on top of the officer and

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 he just had his hands up in the air?

2 A: Right.

3 Q: All right. Well, how was he keeping -- the officer
4 wasn't trying to get him off of him?

5 A: How can the officer try to get somebody on him if -- if
6 he ain't never on to him? Like -- like I said, he fell on top
7 of the officer because the officer was trying to throw him and
8 during that the officer fell.

9 Q: Well, how long did the defendant stay on top of the
10 officer?

11 A: I don't know because -- because in my mind I blacked out.
12 That's when I kicked the officer.

13 Q: You blacked out when you kicked the officer?

14 A: Yeah, before that.

15 Q: So do you know -- do you know what the defendant was
16 doing?

17 A: He had his hands in the air and everything and he said
18 y'all see that I'm not hitting on him, y'all see that I'm not
19 resisting or nothing. The whole time, the officer was holding
20 the defendant's hand and hitting -- and hitting the defendant.

21 Q: All right. The officer was holding the defendant's hand?

22 A: Right and with the other ---

23 Q: And then the ---

24 A: --- hand he was hitting him

25 Q: And the -- but the officer couldn't get the defendant off

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

- 1 of him?
- 2 A: How could he -- how could he get him off of him if he
- 3 holding him down and he hitting him?
- 4 Q: The officer is holding him down and he was on top of him?
- 5 A: Yeah, on top of him, on top of him.
- 6 Q: On top of him?
- 7 A: Yeah.
- 8 Q: What were the ladies doing during this time?
- 9 A: They was in the hotel room.
- 10 Q: They were in the hotel room?
- 11 A: I mean not in the hotel room, but like in the lobby like
- 12 in the doorway and everything as far as I remember.
- 13 Q: So the -- so the women weren't around. They weren't
- 14 kicking him at all?
- 15 A: Nope. The females ain't kicked him. Ain't nobody
- 16 touched that officer but me.
- 17 Q: But you? You're the only one?
- 18 A: I'm the only one that physically put their hands on the
- 19 officer.
- 20 Q: All right and so since you've already pled guilty, in
- 21 fact, you're trying to take the rap for him; is that right?
- 22 A: No. I'm not trying to take the rap for nobody. I'm
- 23 telling the truth. That's what I'm doing.
- 24 Q: Okay. So -- so the ladies never kicked the man at all?
- 25 A: No.

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 Q: They were -- in fact, they weren't even there -- there
2 around him?

3 A: Nope.

4 Q: Is that what you're saying?

5 A: Like one of the ladies was around me, but like I said,
6 ain't nobody touched the officer.

7 Q: Well, you just said I thought they were in the lobby?

8 A: I said in the doorway.

9 Q: All right, they were in the doorway? Okay. So that's
10 where they were, in the doorway. They weren't around kicking
11 him. You were the only one kicking him?

12 MR. JORDAN: Your Honor, objection, asked and answered.

13 A: I was the only one kicking him.

14 THE COURT: Hold on a minute. Sir, if somebody objects,
15 let me make a ruling on it before you answer the question.

16 Okay?

17 THE WITNESS: All right.

18 THE COURT: Objection overruled. Go ahead, Mr. Wells.

19 MR. WELLS: All right.

20 Q: So -- all right. So the ladies were never kicking him.
21 You were the only one that kicked him; is that right?

22 A: Yep. I kicked him once.

23 Q: All right and the officer -- and the defendant never hit
24 the officer at all?

25 A: Never.

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 Q: And your testimony is the defendant was on top of the
2 officer with his hands in the air?

3 A: Yep.

4 Q: And the officer wasn't -- how -- was the defendant lying
5 on him? Had his knees on him? How was he on him?

6 A: Like -- it was like -- like just -- he was like -- like
7 flat like.

8 Q: He was lying flat on him?

9 A: Yeah, like -- it ain't like -- like I said, it ain't like
10 he jumped on him. You feel me? That's how they fell.

11 Q: All right. So he was lying flat on him?

12 A: Mm-hmm.

13 Q: Okay.

14 THE COURT: Is that a yes or a no, sir?

15 THE WITNESS: That's a yes.

16 THE COURT: Okay. Thank you.

17 Q: All right. He was lying flat on him and the officer
18 wasn't trying to get him off of him?

19 A: The officer was trying to like -- like I said, the
20 officer was too busy hitting him in the head.

21 Q: The officer was just hitting him in the head?

22 A: Yeah.

23 Q: And the defendant never hit -- the defendant never hit
24 the officer at all?

25 A: Not at all.

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

- 1 Q: Could the officer get him off?
- 2 A: Yeah, the officer could have got him off.
- 3 Q: Why didn't he?
- 4 A: I don't know. You ask the officer.
- 5 Q: Let me ask you this. Wasn't it -- when did it end? What
- 6 ended it?
- 7 A: When did it end?
- 8 Q: Yeah.
- 9 A: I don't know.
- 10 Q: I mean did the defendant ever just get up off the
- 11 officer?
- 12 A: Yes. The defendant did get off the officer.
- 13 Q: When was that?
- 14 A: I don't know. I guess after I kicked the man.
- 15 Q: After you kicked the man?
- 16 A: Yep.
- 17 Q: All right. Had another officer come up at that point
- 18 when he got off?
- 19 A: I don't know. I didn't see the other officer until after
- 20 -- like after I did everything.
- 21 Q: All right. So you ---
- 22 A: I ain't never see another officer come up.
- 23 Q: Well, when the defendant got up, he just -- so he just
- 24 got up on his own; is that right?
- 25 A: After I kicked the man, that's when the man held his head

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 so he was able to get up because like I said, the whole time I
2 was screaming get off my brother, get off my brother.

3 Q: You were saying get off my brother?

4 A: Yeah, because the officer was hitting my brother in his
5 head.

6 Q: And the officer never did anything to him?

7 A: Nope -- huh?

8 Q: The officer never did anything to him?

9 A: The officer hit him.

10 Q: All right. The defendant never did anything to the
11 officer; is that what you're saying?

12 A: Not at all. The defendant, he ain't touched the officer
13 at all.

14 Q: And you didn't think y'all really did anything improper
15 that day except you kicked the officer?

16 A: Besides me?

17 Q: Yeah.

18 A: I know what I did was wrong. You feel me? I know
19 arguing, like yelling when my voice got loud and everything,
20 that was wrong and everything, but as far as the defendant go,
21 that man ain't do nothing. I -- I'm the one who did it.

22 Q: And he's -- he's been your -- he's been your relative and
23 friend all your life; right?

24 A: Nah, we ain't been friends all our -- all our lives.

25 Q: How long?

ADRIAN BONEY - CROSS EXAMINATION BY MR. WELLS

1 A: A couple of years.

2 Q: A couple of years?

3 A: Yeah, about one or two.

4 Q: Well, how did y'all -- how did y'all get together to come
5 to South Carolina that day?

6 A: Because like he had just got off work and I was like just
7 got off work and like I said, my ex-girlfriend, she was down
8 there and everything and she was showing us some support
9 because I had just lost my little cousin and everything. So
10 she came down for some support and like I just came down with
11 her.

12 Q: Have you ever talked to the defendant about what happened
13 that day?

14 A: Nope.

15 Q: Never have?

16 MR. WELLS: That's all, Your Honor.

17 THE COURT: Any redirect?

18 MR. JORDAN: No, sir.

19 THE COURT: All right, sir, you may step down. Thank
20 you.

21 (Whereupon, the witness leaves the stand at 2:29 p.m.)

22 THE COURT: All right. Mr. Jordan?

23 MR. JORDAN: Your Honor, I would call Mr. Dominique Cash.

24 THE CLERK: If you will, sir, place your left hand on the
25 Bible.

DOMINIQUE CASH – DIRECT EXAMINATION BY MR. JORDAN

1 THE DEFENDANT: Left hand?

2 THE CLERK: Left hand.

3 THE COURT: Yes, sir.

4 THE CLERK: Raise your right hand. Do you swear to tell
5 the truth, the whole truth, and nothing but the truth, so help
6 you God?

7 THE DEFENDANT: Yes, ma'am.

8 THE CLERK: Please be seated and state your full name for
9 the record.

10 THE DEFENDANT: Dominique Alexander Cash.

11 THE COURT: Go ahead.

12 MR. JORDAN: Thank you, Your Honor.

13 DOMINIQUE CASH, being first duly
14 sworn, testifies as follows:

15 DIRECT EXAMINATION

16 BY MR. JORDAN:

17 Q: Mr. Cash, you were, of course, in South Carolina with
18 your cousin and two females back in October of 2012?

19 A: Yes, sir.

20 Q: And that, of course, led you to the motel, I believe the
21 Motel 6 out by the interstate here in Florence?

22 A: Yes, sir.

23 Q: All right and, of course, you're obviously aware of an
24 altercation that occurred in the -- that started in the lobby
25 of that motel at that -- during that day and time?

DOMINIQUE CASH - DIRECT EXAMINATION BY MR. JORDAN

1 A: Yes, sir.

2 Q: All right. Tell the Court a little bit about your
3 knowledge of how that altercation got started and what you
4 know about it?

5 A: Well, we had came to South Carolina like I'd say about
6 three o'clock in the morning and the girls, they had a room,
7 but they lost the key. So they went up to the clerk and they
8 told the clerk that they lost the -- I mean they lost the key
9 and they locked their clothes in the room. That clerk that
10 night or that morning, he was like it's against our policy as
11 far as to give you the clothes. So they were getting mad that
12 night, but I was like nah, nah, don't -- don't need -- don't
13 need to get mad because you're not going to get anywhere with
14 that. So like they just bought another room and they were
15 going to talk to the manager in the morning.

16 The morning came; they went and talked to the manager.
17 She told them the same thing that it's against their policy.
18 Twelve o'clock came and they started taking the clothes out of
19 the room because it was their clothes for real, but the
20 manager kept saying it's against our policy and see ---

21 Q: You're talking about the hotel staff?

22 A: Yeah.

23 Q: Okay.

24 A: They kept saying it was against their policy. They
25 called the dude up that bought the room. They said he has to

DOMINIQUE CASH - DIRECT EXAMINATION BY MR. JORDAN

1 come up there hisself. So the girls, they were getting mad.
2 They was like those are our clothes. Those are our clothes.
3 You're going to give us our clothes, blah, blah, blah. They
4 were getting mad.

5 I had walked in there. As soon as I walked in, the lady
6 was talking about she was going to call the police for
7 trespassing. As soon as she said that, I walked right back
8 out because I was like I don't -- I don't mess with the
9 police. I walked over to the Hardee's. As soon as I walked
10 over to the Hardee's, I seen the Charger roaring up. It was
11 vroom. As soon as I seen that, I was like man, let me go up
12 here to check on things to make sure everything all right, so.

13 Q: So you know there's -- there's some dispute I guess over
14 these clothes and it's taking place in the lobby and is it at
15 that point in time you choose to leave the -- leave the lobby?
16 Is that right?

17 A: Yeah.

18 Q: Okay. At this point in time, had you confronted the
19 clerks yourself?

20 A: I hadn't even said anything to them because the girls,
21 they were acting so crazy and I mean I be on some tight stuff
22 like you get more flowers with sugar. I mean not sugar, but
23 honey than vinegar and like all that extra stuff. I ain't
24 wanted nothing to do with it. It's on camera in the lobby. I
25 don't know why they ain't using that camera, but ---

DOMINIQUE CASH - DIRECT EXAMINATION BY MR. JORDAN

1 Q: Okay. So the dispute is going on, you decide to exit,
2 and where did you say you went at that time?

3 A: I went over to the Hardee's parking lot.

4 Q: Approximately how long were you gone?

5 A: I'd say by the time I walked over there the Charger
6 started running up.

7 Q: Okay. At that point in time, did you return?

8 A: Yeah. I strolled back over to the -- the hotel lobby.

9 Q: What happened from there?

10 A: When I walked in there, like the -- the clerks, they were
11 talking -- well, the clerks, they were telling the officer
12 what had happened and stuff and like everything was calm then.
13 Like there wasn't nobody really saying -- there wasn't nobody
14 saying anything until like the clerks had said somebody had
15 did something and then they would go, no, that ain't happened,
16 that ain't happened, that ain't happened. I don't even know
17 if they knew I was in there.

18 Like I didn't say anything to anybody, but after that the
19 officer, he had took Adrian out the hotel lobby. The officer
20 knew I was behind him. He basically held the door open for
21 me. He didn't -- I didn't hear him say step outside or
22 anything, but I needed to know what was going to happen with
23 Boney because like me and him so close like.

24 I knew he just had a disorderly conduct charge. He just
25 threw a pen and was yelling and stuff. He was in handcuffs.

DOMINIQUE CASH - DIRECT EXAMINATION BY MR. JORDAN

1 I was like I need to let his mama know something or we could
2 bond him out or whatever because I got to go to work. So I
3 was like, man, I ain't got time for all this extra stuff.
4 Q: So you follow him out?
5 A: Mm-hmm.
6 Q: Did -- at any point in time, did you -- did you strike
7 the deputy?
8 A: No.
9 Q: Did you hit the deputy?
10 A: No.
11 Q: Did you jump on the deputy ---
12 A: No.
13 Q: --- from behind?
14 A: No.
15 Q: Did you, in fact, touch the deputy?
16 A: No.
17 Q: Okay. Go on from there?
18 A: All right. As we were walking outside, like I'd say the
19 deputy was like about two yards away from his car and I had
20 asked him, I was like, aw, what's his charge? As soon as I
21 asked him, he had pushed me. I was like, yo, what you doing,
22 brother? And as soon as I said what's going on, I was like
23 yo, what you doing with -- what's going on, he pushed me again
24 and started wrapping up on me and stuff like wrestling me and
25 stuff.

DOMINIQUE CASH - DIRECT EXAMINATION BY MR. JORDAN

1 All I seen was witnesses, like people walking to the gas
2 station, to the Hardee's, to their rooms. I knew -- I knew
3 there was cameras on the hotel lobby so I was like, yo, y'all
4 see this right? I ain't doing nothing. I ain't doing
5 anything. I ain't doing anything. He kept on doing all this
6 crazy stuff.

7 The next thing I know, he done tripped on the ground. He
8 pulls me on the ground with him. I try to get up off the
9 ground; he pulling me on my neck so I'm not able to get up off
10 the ground. You look on the video, you see his hand on my
11 neck, but I'm not able to get off the ground. I'm pushing off
12 the ground trying to get up off the ground. The next thing I
13 know, he punched me in my face. I just put my hands up.
14 That's when he get hit and I mean ---

15 Q: You mean he get hit?

16 A: Oh, he gets kicked. I didn't touch him.

17 Q: He got kicked by who?

18 A: I mean ---

19 Q: He got kicked by who?

20 A: He got kicked by my brother. I mean I don't -- I don't
21 like saying who did stuff, but I mean Boney, he kicked him and
22 I mean ---

23 Q: All right. Is it right after that that additional law
24 enforcement shows up or at a later time or what?

25 A: No. They popped right up like I'm surprised he didn't

DOMINIQUE CASH - DIRECT EXAMINATION BY MR. JORDAN

1 see the officer when he kicked him, but I mean, yeah, they was
2 right there as soon as -- as soon as he kicked him, I got up
3 off the ground like I ain't did anything. That's why I wasn't
4 trying to get in handcuffs. I wouldn't put my hands behind my
5 back and that's why I ain't pleading because I ain't did
6 anything to that man.

7 Q: Okay. Please answer any questions that Mr. Wells has for
8 you.

9 THE COURT: Mr. Wells, cross -- Mr. Wells, cross
10 examination.

11 MR. WELLS: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. WELLS:

14 Q: So y'all are from North Carolina; is that right?

15 A: Yes, sir.

16 Q: And let's see and you do have a record for misdemeanor
17 larceny in I believe 2009 from North Carolina; is that
18 correct?

19 A: Yes. I stole some chips.

20 Q: I'm sorry?

21 A: Yeah. I stole some chips. I was homeless.

22 Q: And what -- let me ask you what were you -- why were
23 y'all -- what were you doing down in Florence at the Motel 6
24 in the first place?

25 A: Lord, have mercy, I don't know. We just wanted to get

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 out the country where we was at and we thought we were going
2 to somebody's house. They took us to the hotel.

3 Q: Who took you to the hotel?

4 A: The girls.

5 Q: Wasn't one of them just fifteen years old?

6 A: Just like she told the officer, she told us she was
7 eighteen. On the police record, it say she eighteen. She
8 told us she eighteen.

9 Q: It turned out she was fifteen; didn't it?

10 A: I just found that out like a couple months ago.

11 Q: All right. Well, how did you meet up with her?

12 A: I knew her friend, which was my co-defendant's girlfriend
13 and she's twenty-one.

14 Q: Well, why did somebody else rent the room for y'all?

15 A: I don't know who rented the room. I didn't even know of
16 a room. That was between them girls.

17 Q: So you were just -- y'all were just going along with
18 them?

19 A: Yeah.

20 Q: All right. Well, why did you want to come down -- down
21 to Florence?

22 A: If you know where we from, we don't even have a movie
23 theater in our whole county.

24 Q: Well, where are you from?

25 A: I'm from Wallace, North Carolina.

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 Q: All right and so y'all decided to come -- where -- where
2 in North Carolina is that?
3 A: Yeah, that's right. It's the country.
4 Q: Well, where is it?
5 A: It's the country.
6 Q: There's a Wallace, South Carolina.
7 THE COURT: Now, hold on. Mr. Wells, when he's talking,
8 let him ---
9 MR. WELLS: I'm sorry.
10 THE COURT: --- finish.
11 Q: Go ahead.
12 THE COURT: Mr. Cash ---
13 A: Wallace, North Carolina ---
14 THE COURT: When he's talking, you let him talk.
15 THE DEFENDANT: Okay.
16 THE COURT: All right.
17 THE DEFENDANT: Who is it on?
18 Q: Go ahead.
19 A: Wallace, North Carolina, is in Duplin County. It's
20 between Fayetteville and Wilmington.
21 Q: All right. Well, obviously there are other places you
22 could have gone instead of coming to South Carolina?
23 A: Yeah.
24 Q: Wouldn't you say Dillon would be a lot closer than
25 Florence?

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 A: It is, but they ain't had a room there.

2 Q: I see. All right. So you couldn't have rented a room
3 there?

4 A: No. The girls already had a room. They had a room
5 before they came and picked us up.

6 Q: All right, but you don't know who the person was that
7 rented the room?

8 A: No.

9 Q: All right. Now, were you -- were you -- why did you walk
10 -- you said you walked to the Hardee's parking lot. Why did
11 you walk over to the Hardee's parking lot?

12 A: Because when she said she was calling the police for
13 trespassing, I -- like I ain't trying to be around the police,
14 let alone she couldn't call trespassing on us because we had
15 room keys that were still active, but I didn't want to deal
16 with the police and I felt like my co-defendant should follow
17 my lead and go about the situation different. I had to go to
18 work. I was running late for work. I ain't wanted to deal
19 with none of that stuff.

20 Q: So where -- where were you working?

21 A: At Highway 55 Restaurant.

22 Q: Where is that?

23 A: In Wallace, North Carolina.

24 Q: About how far away is Wallace, North Carolina, from
25 Florence?

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 A: Boy, if I could tell you. I know it was about two
2 o'clock when that stuff happened and they were talking about
3 going to Greenville, North Carolina, too, before we went to
4 Wallace and I had to be at work at five thirty and I know I
5 was either going to be cutting it close or something. So I
6 mean I feel like it was about I'd say about three hours, two
7 and a half hours, three hours.

8 Q: Okay. Well, did you see Mr. Boney and the two ladies
9 arguing with the -- with the clerks?

10 A: Yeah. I saw them arguing.

11 Q: Were they yelling at them?

12 A: It wasn't as much yelling. It was just like a commotion
13 because everybody was talking at the same time and the girls
14 were getting mad and stuff like that.

15 Q: Did Mr. Boney get mad?

16 A: Not at that time. I don't know what they was talking
17 about. Like I ain't see him get mad. If anything, he was
18 trying to calm them down because it wasn't our clothes so we
19 ain't cared.

20 Q: You never saw him threaten to -- to blow them up or blow
21 the place up?

22 A: No.

23 Q: All right. Did you hear the clerk say that to the
24 officer?

25 A: I heard her tell him that he did stuff -- I mean he said

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 stuff like that.

2 Q: All right, but you don't know where that came from?

3 A: Uh-uh.

4 Q: So you don't know if Mr. Boney did that or not?

5 A: No, sir.

6 Q: But he didn't appear to you to be upset?

7 A: He wasn't upset. I mean if anything, he was calm while
8 he was in them handcuffs.

9 Q: He hadn't been -- so had he been -- had he argued with
10 the officer at all?

11 A: No.

12 Q: He hadn't raised his voice at all? You didn't see him
13 raise his voice to the ladies either?

14 A: If anything, he just said that's not true when they said
15 something that wasn't true.

16 Q: And did you see -- did you see him get put in handcuffs?

17 A: No. I didn't see when he got put in handcuffs.

18 Q: You didn't see that?

19 A: Uh-uh.

20 Q: All right. Did you see them taking him to the car? Did
21 the officer take him to the car in handcuffs?

22 A: Yeah. They was in the lobby with me and they ---

23 Q: So you ---

24 A: I was ---

25 Q: So you were in the lobby that day?

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 A: Yeah. I was in the lobby.

2 Q: All right and didn't -- didn't in the lobby you ask him
3 why the F have you got my brother in handcuffs?

4 A: I ain't say anything because they was telling him about
5 what happened and I mean I didn't need to say anything. I
6 just wanted to know what his charge was so we could bond him
7 out.

8 Q: All right. So you never yelled at him anything?

9 A: No.

10 Q: You never yelled any of that?

11 A: No.

12 Q: Didn't the officer tell you and the ladies to stay there
13 in the lobby while he took the defendant Mr. -- excuse me --
14 while he took Mr. Boney to the car?

15 A: I didn't hear him say stay in the lobby. I didn't even
16 hear him say walk outside.

17 Q: Didn't you, in fact, walk up behind him?

18 A: Yeah. I was walking right behind him.

19 Q: All right and why were you doing that?

20 A: Because I needed to know what his charge was. I knew it
21 was something petty like a disorderly conduct to where he
22 could sign hisself out the next morning, but I needed
23 something to tell his mom because we were going to leave him
24 in South Carolina so I could go to work.

25 Q: All right. Were you getting mad at all?

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

- 1 A: No. I was mad at my co-defendant for acting crazy.
- 2 Q: I thought you said he was trying to calm things down?
- 3 A: He was in handcuffs for a reason and I knew that. He
- 4 said that he threw the pen and I mean I was like why would you
- 5 do that, that's not going to get these girls their clothes.
- 6 So all that crazy stuff, I was mad at him.
- 7 Q: You were mad at him?
- 8 A: But not really mad, just like we know better than doing
- 9 stuff like that.
- 10 Q: All right. Well, now when the officer got to the car,
- 11 did you ever -- ever yell at him again?
- 12 A: No.
- 13 Q: You never asked him, you know, why are you arresting him,
- 14 why are you putting him in the car?
- 15 A: The only questions I asked him was what is his charge
- 16 and, yo, what's going on? What? Yo.
- 17 Q: Why would you just be holding your hands up?
- 18 A: Because he was putting his hands on me and I wanted
- 19 everybody to see that I was not striking him. Believe me, if
- 20 I would have punched him, it wouldn't have been an arrest in
- 21 this situation. I would have just boxed him and jacked him
- 22 and I would have messed him up to the point I wouldn't have
- 23 gotten on the ground with him. I would have just stomped him
- 24 out, but I didn't touch that officer.
- 25 Q: Well, he ended up having to go to the hospital; didn't

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

- 1 he?
- 2 A: Oh, yeah.
- 3 Q: All right, but you didn't do anything to him?
- 4 A: No, sir.
- 5 Q: All right. You didn't grab him by the shoulder?
- 6 A: No, sir.
- 7 Q: In fact, wasn't that when he pushed you back when you
- 8 grabbed him?
- 9 A: I didn't grab him at all.
- 10 Q: So what were you doing? You were just standing there
- 11 near him?
- 12 A: I walked behind him and I asked him ---
- 13 Q: Didn't you get ---
- 14 A: --- what is the ---
- 15 Q: Go ahead.
- 16 A: I said what is my co-defendant's charge. That's when he
- 17 pushed me. I never touched that officer. There was no reason
- 18 to touch the officer. That's a charge by itself. Touching an
- 19 officer, that's assault. I wasn't trying to get any type of
- 20 charge like that.
- 21 Q: But weren't you right -- how close were you behind him?
- 22 Weren't you right behind him?
- 23 A: I'd say I was about as close as about -- I was about as
- 24 close as she is to the judge.
- 25 (Whereupon, the defendant indicates the court reporter.)

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 Q: Well, how was he -- if you were no closer than that, how
2 was he able to push you?

3 A: Oh, he stepped a couple.

4 Q: So he just -- he left your co-defendant and stepped back
5 to you to push you; is that what you're saying?

6 A: Yeah.

7 Q: And that's when you were holding your hands up?

8 A: Yes, sir.

9 Q: All right and you never -- never grabbed him or grabbed
10 -- grabbed a hold of his arm?

11 A: No, sir.

12 Q: And you never were yelling anything at him?

13 A: Was I yelled at?

14 Q: Were you yelling anything at him?

15 A: Oh, no. I just said, what's going on.

16 Q: What's going on?

17 A: That should be played from his car audio video.

18 Q: All right. Now, at that point, so you never -- he never
19 grabbed a hold of your arm and that's when he tried to -- he
20 was trying to get you off of him when he was pushing you back?

21 A: Give me -- no. This is what happened. I asked him what
22 my co-defendant's charge was and he pushed me. I put my hands
23 up. Then that's when he started trying to put my arms down
24 and wrestle me to the ground. He -- I didn't have a reason to
25 fight him because he was beating himself up and then when he

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 fell on the ground, he pulled me on the ground with him and
2 when I fell on the ground, I was trying to get up and he was
3 holding me by my neck and stuff so I wasn't able to do
4 anything. So I put my hands up; he pulled my hands down. All
5 this crazy stuff.

6 Q: So you never were striking him while you were on top of
7 him?

8 A: That's my word to God. God is my witness, my soul on the
9 line. I never struck that officer.

10 Q: Were you just lying on top of him?

11 A: I wasn't lying on top of him. I was over top of him.

12 Q: All right. How were you on top of him?

13 A: Like my knees on the ground in the dirt and my hands
14 trying to push up off the ground to get off of him.

15 Q: Wasn't he, in fact, kicking to try to get you off of him?

16 A: He wasn't kicking me. He was kicking in the air trying
17 to make it seem like I was beating him.

18 Q: He was trying to do that to make it seem like you were
19 beating him?

20 A: Mm-hmm.

21 Q: And it certainly wasn't to try to get you off of him?

22 A: How is kicking the way he was kicking trying to get me
23 off of him? If anything, if he was really trying to get me
24 off of him, he would have either pushed me, tasered me, shot
25 me, a lot of things, screamed for help, something.

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

- 1 Q: Were you ever trying to get his gun?
- 2 A: Hell, no. Excuse my language, but no.
- 3 Q: You weren't trying to get his gun?
- 4 A: No.
- 5 Q: But didn't he have to lie on that side to try to prevent
- 6 that?
- 7 A: You said what?
- 8 Q: Didn't he try to lie on the side more on the side where
- 9 his gun was?
- 10 A: I don't know where his gun was. I don't know anything
- 11 about a microphone or a gun or anything. All I was doing was
- 12 trying to get them people that were walking around to see I
- 13 wasn't striking him.
- 14 Q: So you say you were -- you were holding your hands up
- 15 when you were on top of him?
- 16 A: Yeah.
- 17 Q: All right and he wasn't able to get you off of him?
- 18 A: Shit, he wasn't trying ---
- 19 THE COURT: Hey ---
- 20 THE DEFENDANT: My fault. I apologize.
- 21 THE COURT: Mr. Cash ---
- 22 THE DEFENDANT: I get -- I get ---
- 23 THE COURT: Hold on a minute.
- 24 THE DEFENDANT: --- irritated about it.
- 25 THE COURT: Hold on a minute. Hold on a minute. I

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 understand there's been testimony previously today with the
2 use of profanity, okay, and that was testimony that I allowed
3 based upon what was -- went on out there that day. But I'm
4 not going to allow you -- in your responses to Mr. Wells'
5 cross examination, I'm not going to allow you to use
6 profanity. Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay.

9 THE DEFENDANT: I sincerely apologize.

10 THE COURT: That's okay. I've warned you. Just don't do
11 it again.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Thank you. Mr. Wells?

14 Q: All right. So I think what I was asking you, so he
15 wasn't -- you're saying he was -- he was -- you had your hands
16 up when he was on top of you and he wasn't trying to get you
17 off of him? You weren't on top of him?

18 A: He wasn't on top of me. He was on the ground.

19 Q: Mm-hmm.

20 A: And every time I kept trying to put my hands up. See, I
21 don't want y'all to think I was just over top of him and I was
22 putting my hands up like this. No. I was trying to get off
23 the ground and every time I was trying to push up, he'll push
24 my -- he'll like push my shoulders down. So I put my hands
25 up, but they were like this. I was never striking this

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 officer, never at all.

2 Q: Never at all? Where were the ladies when all this was
3 going on?

4 A: I thought the ladies were by the like hotel door, but I
5 mean they say they was around the -- the -- what's the name?
6 Like around the scene. I know for a fact they didn't kick the
7 officer. I know for a fact they didn't kick the officer.

8 Q: So you don't know why the ladies -- the clerks would have
9 thought that they did?

10 A: The ladies -- the clerks said that because everybody was
11 acting unruly. Everybody was acting disorderly and by the way
12 the video looked, the girls were around the area, but they
13 never kicked the officer and if anything, they say the girls
14 kicked the officer, but they never say my co-defendant, who is
15 Boney, who actually is the only person that assaulted the
16 officer, they never say he did anything.

17 Q: Isn't it correct that Natasha Wright has also pled
18 guilty?

19 A: Who?

20 Q: Natasha Wright.

21 A: Mm-hmm, just to go on.

22 Q: All right, but she's pled guilty; isn't that right?

23 A: Yeah.

24 Q: So you think that was improper for her to do so because
25 she didn't do anything?

DOMINIQUE CASH - CROSS EXAMINATION BY MR. WELLS

1 A: Very much so.

2 Q: All right and so you said you thought the ladies weren't
3 even right around y'all, they were at the door?

4 A: Mm-hmm.

5 Q: All right.

6 A: Yes, sir.

7 Q: Have you ever talked on the phone with Mr. Boney about
8 what happened?

9 A: No.

10 Q: You haven't talked with him? Okay. Or talked with him
11 today?

12 A: No. No, sir.

13 Q: All right. So your testimony is you really just never
14 did anything to him?

15 A: Except asked him what was going on.

16 Q: Just asked him what was going on?

17 A: Yes, sir.

18 Q: And from that the officer ended up in the hospital?

19 A: I guess that's where he -- I ended up in the hospital,
20 too.

21 MR. WELLS: That's it.

22 THE COURT: Any redirect?

23 MR. JORDAN: Just very briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. JORDAN:

DOMINIQUE CASH - REDIRECT EXAMINATION BY MR. JORDAN

1 Q: Mr. Cash, I think you testified that your co-defendant,
2 Mr. Boney, was taken to the car and then you were in that
3 vicinity when he was being put in the car; is that correct?

4 A: He wasn't -- he wasn't being put in the car yet. Like --
5 it's like the officer stopped before he got to the car and he
6 was about to speak to him or something. Like I didn't know if
7 he was going to let my co-defendant go or like just see what
8 was going on or something. I thought the officer was going to
9 help us to be honest.

10 Q: So were you under the impression he was going to arrest
11 Mr. Boney?

12 A: I didn't know what he was going to do. That's why I
13 asked him what's his charge so like I can get his mama on the
14 phone and see what she wanted me to do, if we need to leave
15 him, bond him out, whatever.

16 Q: Were you under the impression he was going to arrest the
17 girls?

18 A: No.

19 Q: Okay.

20 MR. JORDAN: No further questions, Your Honor.

21 MR. WELLS: Just one thing in that regard.

22 RECROSS EXAMINATION

23 BY MR. WELLS:

24 Q: So I'm assuming by that if you're asking him what charge,
25 you believed he was being arrested for something and you were

DOMINIQUE CASH - RECROSS EXAMINATION BY MR. WELLS

1 trying to find out what the charge was?

2 A: He was in handcuffs and I know that he said that he threw
3 the pen at the lady. So like I assumed it was a disorderly
4 conduct, but I needed to know for sure so like we could figure
5 out what we were going to do.

6 Q: But you assumed by that he was being arrested?

7 A: I don't know what he was going to do.

8 Q: But you ---

9 A: All I know is he was in handcuffs and there's a reason
10 for him to be in handcuffs.

11 Q: And you asked him what the charge was?

12 A: Yes, sir.

13 MR. WELLS: I don't have anything else.

14 THE COURT: All right, sir, you may step down. Thank
15 you.

16 (Whereupon, the witness leaves the stand at 2:52 p.m.)

17 THE COURT: All right, Mr. Jordan?

18 MR. JORDAN: Your Honor, I have a matter of law I'd like
19 to take up with the Court at this time.

20 THE COURT: Can you approach, Mr. Wells? Are you resting
21 at this time?

22 MR. JORDAN: I am, Your Honor.

23 THE COURT: All right, ladies and gentlemen of the jury,
24 defense counsel -- the defense has rested its case at this
25 time. What I'm going to do is I'm going to ask you to step to

1 the jury room for a minute. There's a matter of law that I
2 need to take up outside your presence. I'll get you back out
3 here as quickly as possible. Do not discuss the case.

4 (Whereupon, the jury exits the courtroom at 2:52 p.m.)

5 THE COURT: Yes, sir?

6 MR. JORDAN: Your Honor, not to belabor the point, but I
7 do feel I'm compelled to at this time renew my motion for
8 directed verdict that I put on the table directly following
9 the presentation of the State's case now that I have rested
10 the defense's case.

11 THE COURT: All right. Your motion is so noted for the
12 record.

13 MR. JORDAN: Thank you.

14 THE COURT: And as stated previously, I'm respectfully
15 denying your motion for a directed verdict. Anything in
16 reply, Mr. Wells?

17 MR. WELLS: No, nothing further.

18 THE COURT: All right. Is the State ready to proceed
19 with closing arguments?

20 MR. WELLS: Can you give us about five minutes? I want
21 to at least put somebody -- I want to get Mr. Godboldt -- get
22 Mr. Godboldt in here because I may want to play a little bit
23 of the video during my argument.

24 THE COURT: Okay. Since defense counsel has put up
25 evidence in this case, the State gets final argument here.

1 Let me run through this charge one more time.

2 I did -- I took out failure of the defendant to testify,
3 certainly based upon the fact that he did testify. I put in
4 here prior record of a witness doesn't prohibit them from
5 testifying and I also put prior record of defendant in here
6 because I think you got both situations here. Not much
7 different in the charge in and of itself, but certainly it is
8 different enough that I think both those charges are warranted
9 here. Any objection to that, Mr. Wells?

10 MR. WELLS: No, Your Honor.

11 THE COURT: Mr. Jordan?

12 MR. JORDAN: No, sir. I do have -- would like to be
13 heard on requesting an addition to the charge.

14 THE COURT: All right. I'd be happy to hear from you.

15 MR. JORDAN: Your Honor, I reviewed 16-9-320, which is
16 the resisting arrest that we briefly previously discussed.
17 Simply, the language that I'm looking at, Your Honor, is in
18 the first sentence there. Where an individual opposes or
19 resists a law enforcement officer while serving or executing
20 or attempting to serve or execute legal writ or process to
21 resist arrest being made.

22 Your Honor, it doesn't reference whether that arrest is
23 being done so on my client or Mr. Boney. I think there has at
24 least been testimony from the State that Mr. Cash, he was - at
25 least I believe there's been testimony that he interfered with

1 the arrest of Mr. Boney. So therefore, we would ask that a
2 resisting arrest charge be added to the jury instructions.

3 THE COURT: Mr. Wells?

4 MR. WELLS: I'm just -- I'm just thinking about his
5 testimony. I'll leave it up to the Court. I guess there -- I
6 guess looking in the light in his favor you could say based on
7 his testimony if you believe that he never struck the officer,
8 but he was helping the other defendant resist arrest, I guess
9 technically you could say that it could possibly be a lesser
10 included offense.

11 THE COURT: All right. I'll charge it as a lesser
12 included offense. All right.

13 MR. JORDAN: Your Honor, may I take a rest room break
14 briefly?

15 THE COURT: Anything else at this time from the State?

16 MR. WELLS: I just wanted to go make a quick call to get
17 Mr. Godboldt in here.

18 THE COURT: All right. We'll stand down for a few
19 minutes while you do that.

20 (Whereupon, there is a break in the proceedings from 2:57
21 p.m. until 3:11 p.m.)

22 THE COURT: Mr. Jordan?

23 MR. JORDAN: Ready to go, Your Honor.

24 THE COURT: Mr. Wells?

25 MR. WELLS: Yes, sir.

1 THE COURT: Bring me the jury, please.

2 THE BAILIFF: Yes, sir.

3 (Whereupon, the jury enters the courtroom at 3:12 p.m.)

4 THE COURT: All right, ladies and gentlemen, what we are
5 going to do now is move into closing arguments in this case
6 and then I'm going to give you a charge on the law, the
7 applicable law to this case. I will remind you that the
8 arguments of counsel is not evidence in this case. It is not
9 evidence in this case. Mr. Jordan, you're recognized.

10 CLOSING ARGUMENTS

11 MR. JORDAN: Thank you, Your Honor. We're almost done
12 and in record time, too. As the judge has told you, this is
13 not an opportunity to enter any more evidence. You've heard
14 all the evidence. You heard from witness after witness after
15 witness. I'm sure y'all thought they were never going to stop
16 coming. Now is the point where we go back and look at some of
17 the things that have been said during the course of the trial
18 from different individuals to figure out what we learned
19 during the course of the day.

20 First, we know there was an altercation. That's been
21 pretty obvious. There was an altercation that started in the
22 motel lobby. The ladies who were with Mr. Cash and his co-
23 defendant who testified earlier, Mr. Boney, and for whatever
24 reason could not get their -- some clothes they said belonged
25 to them that were in another room that was registered to

1 someone else and they were very adamant to say the least based
2 on what you were told by all of the witnesses that testified
3 that they wanted those clothes back.

4 That animation they demonstrated carried over to Mr.
5 Boney, as I think he eventually told you that he raised his
6 voice. You heard the clerks tell you that the girls and
7 Boney, they -- they screamed, they cursed. I think Mr. Boney
8 even threw a pen at one of the clerks. What they also told
9 you was that at no point during this altercation was Mr. Cash
10 in there yelling and screaming and cursing or throwing things
11 at them in any way.

12 He was -- I believe we learned that he was there very
13 briefly. I think at least a couple of them testified that he
14 was in the lobby at the -- at the onset of the disagreement
15 and wanting to avoid conflict, he left. That I believe is
16 undisputed.

17 Now, there are a few things where there's no other way to
18 say it, but there's some disagreement between the parties.
19 The clerks, there's no other way to say it, but they disagree
20 with Deputy Phillips. The clerks testified that from their
21 vantage point sitting inside the lobby that Mr. Cash proceeded
22 out and jumped -- jumped Mr. -- or Deputy Phillips. Now,
23 Deputy Phillips told you that wasn't the case. He described a
24 bit of a different -- a discussion and a different -- and a
25 different take on it.

1 We know that Deputy Phillips testifies that he arrived
2 and at that point in time he sees the Boney and the other
3 girls and they're coming out. They're around the door on the
4 outside of the lobby. He introduces himself. He didn't have
5 to give much of an introduction, but he talks to them and
6 determines that it's appropriate at that time to put Mr. Boney
7 in cuffs. Again, Mr. Cash is nowhere -- nowhere around at
8 this point in time. He places Mr. Cash -- or excuse me, Mr.
9 Boney in custody and then he decides to take him back inside
10 to the lobby in cuffs to try and figure out exactly what has
11 taken place so he can sort things out.

12 Of course, as we have discussed and as I've said multiple
13 times, it doesn't -- he ultimately determines that the thing
14 to do is to leave the lobby and he's taking Mr. Boney out and,
15 according to Deputy Phillips, he's taking Mr. Boney out and
16 getting him to the car and he feels a -- I think what he
17 describes on the test -- or in his testimony as well as in his
18 statement -- in his statement, excuse me, what he describes as
19 a tug or a tap on his shoulder. That was Deputy Phillips'
20 recollection at the time initially he wrote the report back in
21 October. That was his recollection today at the time he
22 testified in front of you earlier this morning.

23 I would submit had Mr. Cash intended to assault him, that
24 would have been a perfect time for him to do so. He had his
25 back turned to Mr. Cash. He was dealing with Mr. Boney. Had

1 Mr. Cash intended to do harm to Deputy Phillips, the easiest
2 thing to do would have been to come up from behind him and
3 pull him down. That is not what Deputy Phillips testified to.
4 That is not what Deputy Phillips indicates in his report. He
5 testifies to a tug or a tap.

6 It is at this point in time Deputy Phillips turns and Mr.
7 Cash is in close proximity to him and according to Deputy
8 Phillips -- there's a difference of opinion on this, Mr. Cash
9 testifies a little differently that Mr. Cash wants to know
10 what's going on, where are they taking my cousin. At this
11 point in time, again Deputy Phillips testifies that he pushes
12 Mr. Cash back. Mr. Cash doesn't initiate this. He does not
13 push first. He is the recipient of that push. It goes --
14 Deputy Phillips goes on to say he pushed and then he
15 ultimately trips into the bushes.

16 We saw photos of Deputy Phillips, multiple photos, color
17 photos that we had the benefit of a big screen television and
18 they were blown up. We saw some redness in certain places. I
19 think the only blood we saw was in the back of the head region
20 of Deputy Phillips, which I would also submit is indicative of
21 being kicked in the head as you've heard from Mr. Boney. He
22 admitted to that. He admitted his responsibility in doing
23 that, in kicking and assaulting Deputy Phillips and he is
24 taking -- he is doing his time as we speak in the South
25 Carolina Department of Corrections as obviously before you.

1 Photos were taken of the scene indicating where this took
2 place. I think there were -- I think we saw a total of eighty
3 photos, more than -- more than a few photos of this. What we
4 did not see was any photos of Mr. Cash.

5 We did see also video, most specifically probably from
6 Lieutenant Powell, who arrived on the scene as things were --
7 he arrived on the scene, but was not around for the dispute in
8 the hotel lobby and he told you he could not testify firsthand
9 as to the events that took place in that lobby. He could not
10 testify firsthand as to what took place between Mr. Boney and
11 the females and clerks. He could not testify as to how the
12 altercation started between Mr. Cash and Deputy Phillips.

13 His arrival was very near the end of that and I think
14 what you'll see -- and Mr. Wells may play the video again.
15 You'll certainly have access to it I believe in the -- if you
16 want to see it again. What you see is immediately upon
17 Lieutenant Powell's arrival, Mr. Cash separates himself. He
18 breaks away. I think that was the words I asked Lieutenant
19 Powell, that the video showed Mr. Cash breaking himself away
20 from Deputy Phillips immediately upon Lieutenant Powell's
21 arrival and immediately he throws his hands into the air.

22 I think everyone -- looking back on this, I would hope
23 everyone present would do things a little differently. Law
24 enforcement I think attempted to defuse the situation and
25 there's no way other way, but it did escalate upon law

1 enforcement's arrival. Mr. Cash, I think he'd tell you he'd
2 do things a little differently. I'm certain you heard from
3 his cousin, Mr. Boney who is locked up, I think he'd tell you
4 he's do things a little differently.

5 But ultimately -- and I'm closing up. Ultimately,
6 there's no way to get around the fact that y'all have heard at
7 a minimum as I see it three different versions of what took
8 place at the motel that day. The clerks had a little
9 different version of what took place. Deputy Phillips had a
10 little different version of what took place. Mr. Cash had a
11 little different version of what took place. Mr. Boney even
12 had a little bit -- a little bit different version of what
13 took place.

14 Ladies and gentlemen, I would submit for your
15 consideration that that is what reasonable doubt is all about.
16 Now, it's not an impossible standard, but reasonable doubt is
17 a very high standard. You have to determine that there is
18 essentially very little doubt in your minds when it comes time
19 for you to vote and I will only ask what I asked of you when I
20 stood before you earlier today, that you take a look at the
21 total testimony, not one particular individual, but all the
22 individuals. You take a look at all the evidence that's
23 presented to you and, ultimately, you do what -- do as you
24 feel like is appropriate. Thank you.

25 MR. WELLS: Now, before I start my argument, I'm going to

1 ask the jury to -- the jury can just sit. Can I just have Mr.
2 Godboldt to try to -- I was going to play something back
3 during my argument, but he was having problems with the
4 technical aspects. Can we just let him see if I'm going to be
5 able to do this or not? Go ahead.

6 THE COURT: Yes, sir.

7 (Whereupon, there is a pause in the proceedings.)

8 MR. WELLS: Now, ladies and gentlemen of the jury, I -- I
9 had planned to at least play back again the part of the video
10 where you see when Officer Powell arrives where you see the
11 defendant on top of the officer. Apparently, we're having
12 problems with technical difficulties and I'm not going to be
13 able to do that, but you have seen it twice and I just ask you
14 to recall what you saw as opposed -- and particularly compare
15 what you saw as to what the testimony has been from the
16 officer, the ladies, and the defendant and the co-defendant.

17 You know, this was a situation -- you know, the officer
18 certainly didn't ask to be brought into this situation. You
19 know, you never know when you respond to a call like this.
20 Something that -- that appears originally fairly simple or
21 nothing particularly aggravating and, you know, then what it
22 ends up, you know, something you didn't call for and you end
23 up getting beat up enough to go to the emergency room, enough
24 to be having considerable pain and back problems for two
25 months as a result of this.

1 You know, but I want you to just listen -- just recall
2 again some of the testimony as to what the defendant and his
3 co-defendant has said and I must say right off, you know, I
4 probably made a mistake in allowing Mr. Boney to plead guilty
5 separately from trying him together with this defendant.
6 Somehow, I suspect that if Mr. Boney had not already been pled
7 guilty and been sentenced, he probably would not have been
8 taking all the blame himself I suspect, but he's been
9 sentenced now so he figures he's got nothing to lose. And
10 just think about what they testified to. Some of the things
11 they said it's obvious to me they had communication, but you
12 -- you make a judgment what seems credible.

13 But I think in this case what you need to use is your
14 good old-fashioned common sense as to what seems credible,
15 ladies and gentlemen, and, quite frankly, what the -- you
16 know, what the ladies and the officer said compared to what
17 the defendant and the co-defendant said and what you saw. You
18 know, first, you know, the ladies again are --

19 Ms. El-Amin and Ms. Mickens are witnesses I like because
20 they have no bone to -- you know, to argue with in this case.
21 They are people that, you know, are neutral witnesses. They
22 just come in and tell you what happened that day and they said
23 frankly, you know, the defendants had been out of control.
24 They said, you know, as a result they called and, you know,
25 Mr. -- the defendant Mr. Cash said, oh, he thought that Mr. --

1 Mr. Boney had been a peacemaker and there was just the two
2 ladies.

3 Well, as I remember, one of the -- one of them, it was
4 either Ms. Mickens or Ms. El-Amin, I believe Ms. Mickens said
5 that to her the co-defendant Mr. Boney had been the worst one.
6 Mr. Cash was trying to say, oh, he was the peacemaker and
7 while Mr. Cash wasn't in there all of the time, Mr. Cash
8 admitted he did go back into the -- into the room when the
9 officer got there just as the officer said. In fact, he heard
10 the defendant admit -- the co-defendant admit to throwing the
11 pen at her.

12 But, you know, they had no choice because they said they
13 were trying to get the ladies -- the defendants to leave.
14 They wouldn't leave. They were raising Cain. So, of course,
15 they call law enforcement. Officer Powell gets there and, of
16 course, he doesn't know, you know, what -- what he's going to
17 find when he gets there. But anyway, and he does -- you know,
18 the ladies say that he is -- he's -- he's professional. He
19 doesn't do anything inappropriate. He treats them fine.

20 And, you know, as a result of what he's heard, he places
21 Mr. -- the one who's been worst towards the ladies, that being
22 the co-defendant, into custody and he's going to take him to
23 the car and he says while he's up there that Mr. Cash comes up
24 and says why the F have you got my brother in handcuffs. You
25 know, the defendant is just claiming, oh, he was just trying

1 to find out what they were charging him with. That's all he
2 was doing and he said he was basically trying to defuse the
3 situation by taking Mr. -- Mr. Boney to the car and then try
4 to get everything sorted out in that regard, but he said the
5 defendant followed him there to the car. He said he was right
6 behind him right literally where he turned around he was right
7 in his face and saying again, you know, something to the
8 effect of why the F you putting my brother in your patrol car,
9 why -- why are you arresting him or things of that type.

10 Now, you know, ladies and gentlemen, when you think about
11 it, you know, what sounds more believable? What he was saying
12 and that he pushed him to get him off of him or what the
13 defendant is saying that -- you know, he's saying that he was
14 back from the distance of sitting in this chair to where this
15 lady is sitting, which would be a couple of feet away, and
16 just that far away and the officer is just going to -- going
17 to lunge and try to push him. You know, that makes no sense.
18 The only reason the officer would try to push him is because
19 he was right in his face trying to push him off of him and
20 that's truly what happened here.

21 And, you know, the officer said that the defendant
22 grabbed him, that subsequently he tried to push him off. He
23 said the defendant then lunged at him again. He said he
24 grabbed his -- the defendant grabbed his arm. He said that's
25 when he -- he tried striking him just to get him off of him,

1 but the defendant literally would not let go of his arm.

2 And you can think about it. You think the defendant has
3 some anger problems? Was upset? I'll let you make that
4 judgment, but in any case, he said they subsequently then -- I
5 believe the officer tripped over the bush. They fell and went
6 on the ground and, you know, what the defendant says is just
7 -- just not realistic and I couldn't help but notice that it's
8 obvious there was communication because he and the co-
9 defendant said some of the same things like he was grabbed by
10 the neck by the officer, like the officer was trying to keep
11 him on top of him. You know, you ask the other co-defendant
12 something he wasn't prepared for like, well, how was he lying
13 on him, he said, oh, he was lying flat on him. He said the
14 ladies weren't even around. They were at the lobby door when
15 the video you saw shows them right there at the scene, right
16 there where they were kicking, too, according to the ladies.

17 You know, the -- the defendant here said that, you know,
18 he didn't remember the ladies being around either, but kind
19 off it's obvious he's seen the video and knows there they are
20 right there, but he said, of course, they never kicked him.
21 He doesn't know why Natasha Wright would have pled guilty to
22 the charge.

23 You make your own judgments in that regard, but do you
24 really think that what he says is true that the officer is on
25 the ground and that he is trying to keep the defendant on top

1 of him? I mean that's what the defendant is saying that the
2 officer is on the ground on his back, has a weapon that, you
3 know, somebody could get to, and that the defendant -- he's
4 trying to keep the defendant on top of him.

5 Well, ladies and gentlemen, you know, you looked at that
6 and you saw that video. It sure looked like the people were
7 all, including the defendant, beating on the officer. I mean
8 he was on top of him with his knees on him. His hands
9 certainly weren't up in the air. It looked to me like they
10 were striking the officer. Certainly, the others were there
11 right there.

12 You know, what the defendant said just it's not true.
13 The only thing that -- reason that ended it -- and, you know,
14 the ladies said, you know they really thought -- the clerks,
15 they were really afraid the officer was going to be killed.
16 They thought he was going after his gun and, you know, Mr. --
17 Mr. Jordan is a good defense attorney. He said, well, it was
18 kind of like, you know, a little different from what they said
19 and the officer because it appeared to them that -- that the
20 defendant jumped on his back. Well, you know, if you see the
21 defendant from a distance coming up -- up behind somebody and
22 you subsequently see them going down with the defendant on top
23 of the officer, you might exactly think exactly what they
24 thought, that the defendant literally jumped on the officer
25 and, certainly, that's what ended up happening with the

1 defendant right on top of the officer.

2 Now, ladies and gentlemen, you know, the only thing that
3 ended this thing was the fact that another officer, Officer
4 Powell, drove up, you know, and, of course, immediately got
5 out with a gun pointed and then that allowed the -- allowed
6 the other officer on the ground to get up where he could pull
7 his gun out and end the thing. But, you know, if you just use
8 your good old-fashioned common sense, you know, the defendant
9 is just, quite frankly, trying to get out of this charge now
10 that his co-defendant has already pled. So it's kind of like
11 the co-defendant can take the rap for him.

12 But really, I don't believe anything like this would have
13 happened except for the defendant's conduct. I mean the co-
14 defendant had not resisted in the least. He was going to his
15 car according to the officer until the defendant got involved
16 and got right behind the officer and ended up -- up assaulting
17 him.

18 And that's what we have, ladies and gentlemen. The State
19 has to prove the defendant's guilt beyond a reasonable doubt.
20 It's not some high-handed or fanciful thing. Obviously, you
21 can have doubt -- some doubt about anything, but in this case,
22 the evidence is absolutely overwhelming that this defendant
23 assaulted the officer. An assault would be an attempt to try
24 to do some kind of force to another, in this case the law
25 enforcement officer, while resisting an arrest, which in this

1 case it was the -- his co-defendant had been placed in
2 handcuffs under arrest, and the officer would have to be known
3 or realize to an ordinary person that, in fact, the person
4 attempting to make the arrest was an officer. Well, in this
5 case, the officer was in uniform. He had the patrol car right
6 there. Obviously, the defendant according to his own
7 testimony was asking him what he was arresting him for. So
8 obviously, he knew he was under arrest.

9 So just based on what the -- the State has to prove, you
10 know, any force by the defendant in that regard to the officer
11 where it says assault, beat or wound the officer while
12 resisting an arrest, makes him guilty of this particular
13 offense. You know, if you believe the defendant in his
14 entirety, then you can consider a lesser included offense of
15 simple resisting arrest, but the State would simply say this
16 is not just a resisting arrest case. This is clearly an
17 assault on a law enforcement officer case.

18 You know, as I say, it's a tough enough job, you know,
19 the officers have to do when they're called on these cases as
20 it is and they sure shouldn't expect to have to go to the
21 hospital as a result of their conduct when they're trying to
22 do what they can to defuse a difficult situation. I just ask
23 you to consider all the evidence. Go back to the jury room
24 and reach a verdict which speaks the truth, which should be in
25 this case the defendant is guilty of assaulting a law

1 enforcement officer. Thank you very much.

2 CHARGE ON THE LAW

3 THE COURT: All right, ladies and gentlemen, it is now my
4 duty as the trial judge under the Constitution of this state
5 to charge and instruct you on the law applicable to this case.
6 It is your duty as jurors to accept and apply the law as I
7 will now state it to you. Furthermore, it is your exclusive
8 duty to decide all the issues of fact in this case, and to
9 determine the effect, value, weight, and truth of the
10 evidence.

11 Both the State and the defendant have a right to expect
12 that you will carefully consider and evaluate the evidence and
13 apply the law of this case to it, so that in the end both the
14 State of South Carolina and the defendant will receive a fair
15 and impartial trial. I want you to understand that when I use
16 the word defendant, I refer to Mr. Dominique Alexander Cash.

17 Mr. Godboldt, could you move these two speakers right
18 here, please?

19 MR. GODBOLDT: Yes, sir.

20 THE COURT: Thank you. Furthermore, it is important to
21 understand that the State of South Carolina charges the
22 defendant with the offense known as assault on a law
23 enforcement officer. To this charge, the defendant has
24 entered a plea of not guilty. This plea of not guilty places
25 the burden of proof on the State to prove the guilt of the

1 defendant to you, the jury, beyond a reasonable doubt.

2 I remind you, ladies and gentlemen, that the fact that
3 the defendant was arrested, charged and indicted in this case,
4 is not evidence in this case and cannot be considered by you
5 as evidence of guilt in this case, nor does it create any
6 presumption or inference of guilt. The indictment is simply
7 the formal written instrument which contains the charge made
8 against the defendant. It is the formal document by which
9 this case is brought into this court.

10 It is vital to understand that the defendant is presumed
11 under the law to be innocent of this charge. The defendant
12 has no obligation to prove his innocence. It is a fundamental
13 rule of our law that a defendant, irrespective of the
14 seriousness of the charge against him, is always presumed
15 innocent of the crime for which he is charged, unless and
16 until his guilt has been proven by evidence that satisfies
17 you, the jury, beyond a reasonable doubt.

18 The presumption of innocence is not a mere legal theory
19 or a legal phrase. The presumption of innocence is very
20 important and you need to understand that this presumption
21 accompanies the defendant from the time of his arrest and
22 appearance in this court and continues with the defendant even
23 after you retire to the jury room to deliberate. In other
24 words, the defendant receives the benefit of the presumption
25 of innocence until the very end of this trial when you, the

1 jury, will deliberate upon the evidence and decide whether the
2 State has proven his guilt beyond a reasonable doubt.

3 Now, ladies and gentlemen, what is a reasonable doubt? A
4 reasonable doubt is the kind of doubt that would cause a
5 reasonable person to hesitate to act. Proof beyond a
6 reasonable doubt is proof that leaves you firmly convinced of
7 the defendant's guilt.

8 There are very few things in this world that we know with
9 absolute certainty, so even in criminal cases the law does not
10 require proof that overcomes every possible doubt. However,
11 if based on your consideration of the evidence, you are firmly
12 convinced that the defendant is guilty of the crime charged,
13 you must find him guilty. If, on the other hand, you think
14 there is a real possibility that he is not guilty, you must
15 give him the benefit of the doubt and find him not guilty.

16 Jurors, please understand that reasonable doubt may arise
17 from evidence which has been presented in the case or from the
18 lack of evidence in the case. It is your responsibility to
19 determine whether or not reasonable doubt exists as to the
20 guilt of this defendant.

21 I charge you that the defendant is entitled to every
22 reasonable doubt arising in the whole case. If, upon any
23 issues of fact essential to conviction and a verdict of
24 guilty, you have a reasonable doubt as to how that issue

1 should be resolved, it would be your duty to resolve that
2 reasonable doubt in favor of the defendant.

3 Thus, in summary, it is important to understand that a
4 defendant is not required to prove his innocence. Instead,
5 the State is required by law to prove every essential element
6 of the offense charged against the defendant by evidence which
7 satisfies you of his guilt beyond a reasonable doubt. Only
8 then can you convict the defendant and find him guilty.

9 Now, there are two types of evidence which are generally
10 presented during a trial: direct evidence and circumstantial
11 evidence.

12 Direct evidence is the testimony of a person who claims
13 to have actual knowledge of a fact, such as an eyewitness. It
14 is evidence which immediately establishes the main fact to be
15 proved.

16 Circumstantial evidence is proof of a chain of facts and
17 circumstances indicating the existence of a fact. It is
18 evidence which immediately establishes collateral facts from
19 which the main fact may be inferred. Circumstantial evidence
20 is based on inference and not on personal knowledge or
21 observation.

22 The law makes absolutely no distinction between the
23 weight or value to be given to either direct or circumstantial
24 evidence, nor is a greater degree of certainty required of
25 circumstantial evidence than of direct evidence. You should

1 weigh all of the evidence in the case. If, after weighing all
2 the evidence, you are not convinced of the guilt of the
3 defendant beyond a reasonable doubt, you must find the
4 defendant not guilty.

5 Now, during this trial, you and I have had separate
6 duties to perform. As the trial judge, it is my
7 responsibility to preside over this trial, and I also have the
8 duty to rule upon the admissibility of the evidence offered
9 during the process of this trial. In that regard, you are to
10 consider only the competent evidence before you, and you are
11 to disregard from your mind any testimony ordered stricken
12 from the record of this case during the progress of the trial,
13 if there was any, and you are to consider only the testimony
14 which has been presented from this witness stand, together
15 with any exhibits admitted into the record of this case and
16 any stipulations of counsel made into the record, if there
17 were any.

18 Furthermore, I have the additional duty to charge you on
19 the applicable law of this case and in that regard I am the
20 sole judge of the law of this case. It is your duty to accept
21 and apply the law as I state it to you. If you have any
22 preconceived ideas as to what the law is, or what the law
23 ought to be, and it does not agree with what I tell you the
24 law is, you are obligated under your oath to abandon these
25 preconceptions, because you are sworn to accept the law

1 precisely as I state it to you.

2 In this trial, you are the sole and exclusive judge of
3 the facts, and I am the judge of the law. Do not infer that I
4 have any opinion about the facts in this case from anything I
5 have said during the course of this trial in ruling upon the
6 admissibility of evidence or otherwise, or from anything that
7 I say during the course of this charge to you. In this
8 regard, the law simply does not allow me or does not permit me
9 to have an opinion about the facts. As jurors, it is your
10 duty alone to determine the effect, value, weight, and truth
11 of the evidence presented during the course of this trial.

12 In determining what the facts in this case are, you must
13 judge the credibility, which simply means the believability,
14 of the witnesses and the value of weight to be given to their
15 testimony. You alone must decide the force, effect and truth
16 of the testimony.

17 In making this decision there are many things you may,
18 and should, take into consideration, such as the appearance
19 and manner of the witness on the stand, a characteristic often
20 referred to as the demeanor of the witness. Was the witness
21 forthright or hesitant? Was the witness' testimony consistent
22 or did it contain discrepancies? What was the ability of the
23 witness to know the facts about which he or she testified?
24 Did the witness have a cause or reason to be biased and
25 prejudiced in favor of the testimony that he or she gave? Was

1 the testimony of the witness corroborated or made stronger by
2 other testimony and evidence or was it made weaker or
3 impeached by such other testimony and evidence.

4 As jurors, please understand that you have the right to
5 believe a small portion of a witness' testimony and discard
6 the larger portion or vice versa. You may believe all of a
7 witness' testimony or none. You may believe the testimony of
8 a single witness against that of many witnesses or the other
9 way around.

10 In exer -- in exercising your mental processes and
11 attempting to decide the truth, the law simply requires that
12 you exercise your good judgment, your common sense, and your
13 sense of logic and reason, and your experiences in life. You
14 then apply these attributes to the evidence and apply the law
15 as I state it to you, and thus arrive at a verdict.

16 Now, during the course of this trial, you heard testimony
17 of police officers. Please understand that the testimony of a
18 police officer is not entitled to more weight than that of any
19 other witness. You are the sole judges of the credibility of
20 a witness, and you are not to give more weight to a police
21 officer's testimony solely because he is a police officer.
22 Rather, you should judge an officer's testimony by the same
23 standards that you apply to all other witnesses.

24 Now, one witness that you heard from testify here in this
25 court was a witness who had a prior criminal record. A person

1 who has a past criminal record is competent to testify during
2 a trial. A past record does not affect the ability of that
3 witness to testify. The past record may only be considered by
4 you, if at all, in determining the witness' believability.
5 Remember, you are the sole judges of the facts in the case and
6 of the believability of any and all of the witnesses.

7 You also heard evidence that the defendant in this case
8 had a prior record other than the one for which he is
9 currently on trial. This evidence may be considered by you if
10 you conclude it is true only in deciding whether the
11 defendant's testimony is believable and for no other purpose.
12 You must not consider the defendant's prior record as any
13 evidence of the defendant's guilt of the charge that we're
14 trying here today.

15 Now, in order to establish criminal liability, criminal
16 intent is required. For example, the mental state required to
17 be proven by the State for a particular crime might be
18 purpose, intent, knowledge, recklessness, or criminal
19 negligence. Criminal intent must be proven by the State
20 beyond a reasonable doubt.

21 Criminal intent is always a matter that must be
22 determined by the jury from the circumstances surrounding the
23 situation. There is no way to prove intent to a mathematical
24 certainty. There is no way that medical science can dissect a
25 person's brain and determine what the person had in mind, so
26 the law says that criminal intent may be inferred from the

1 circumstances shown to have existed.

2 This is how you make a determination of whether or not
3 the element requiring intent was present. It is not necessary
4 to establish intent by direct and positive evidence, but
5 intent may be established by inference in the same way as any
6 other facts by taking into consideration the acts of the
7 parties and all the facts and circumstances of the case.

8 Criminal intent is a mental state, a conscious
9 wrongdoing. It is up to you to determine what the defendant
10 intended to do based on the circumstances shown to have
11 existed. Criminal intent can arise from action or a failure
12 to act. It may arise from negligence, recklessness, or an
13 indifference to duty or to consequences. That is considered
14 by the law to be the equivalent of criminal intent.

15 Now, the defendant is charged with assaulting a law
16 enforcement officer. The State must prove beyond a reasonable
17 doubt that the defendant knowingly and willfully assaulted,
18 beat, or wounded a law enforcement officer who was serving,
19 executing, or attempting to serve or execute a legal writ or
20 process; or that the defendant assaulted, beat, or wounded an
21 officer when the defendant was -- was resisting an arrest
22 being made by a person the defendant knew, or reasonably
23 should have known, was a law enforcement officer. Knowingly
24 means with knowledge; consciously done. Willfully means done
25 intentionally and not done by accident.

26 An assault occurs when a person violently or forcefully

1 attempts to hurt or injure another person and has the present
2 ability to complete the attempted injury. An assault is the
3 intentional creation of fear of immediate bodily harm. It is
4 not necessary that the attempted injury or harm actually take
5 place.

6 A battery is the unlawful touching of another person by a
7 person who has committed the assault. An unlawful touching
8 can be caused by a part of the accused or by any object the
9 accused puts in motion. A battery is the completion of the
10 assault by using or applying force to another person, however
11 slight, in a rude, angry, or resentful manner without legal
12 justification for doing so.

13 A law enforcement officer means any duly appointed or
14 commissioned law enforcement officer of the state, county, or
15 municipality.

16 Now, if you find that the State has failed to prove
17 beyond a reasonable doubt that the defendant assaulted an
18 officer, you may consider whether the State has proved beyond
19 a reasonable doubt that the defendant simply resisted arrest.
20 Resisting arrest does not include any assault on an officer.
21 The State must prove beyond a reasonable doubt that the
22 defendant knowingly and willfully opposed or resisted a law
23 enforcement officer in serving, executing or attempting to
24 serve or execute a legal writ or process.

25 Resist means to oppose, strive against, or obstruct.

1 Obstruct means to impede, hinder, or interfere with. Even
2 peaceful, non-violent, indirect obstruction of an arrest or
3 the service or execution of process is considered resisting
4 arrest. If the means used are sufficient to prevent the
5 officer from making an arrest, the defendant is guilty of
6 resisting arrest.

7 Now, ladies and gentlemen, I am now drawing near the end
8 of my charge and I want you to clearly understand that you are
9 not partisans or advocates for the State of South Carolina or
10 the defendant. It is your duty by your joint deliberations,
11 to determine the truth in this case, giving to the defendant
12 the benefit of every reasonable doubt on each and every issue.
13 Then, to the facts which you determine to be true, you should
14 take and apply the law which has been given to you by this
15 Court and thus arrive at a verdict which speaks the truth in
16 this case.

17 In fact, the word "verdict", which has a Latin derivative,
18 means "a true saying." Thus, when you have accomplished these
19 responsibilities you will have satisfied your oath as jurors
20 and you will have discharged your duty to this court.

21 Now, once you retire to the jury room, the bailiff will
22 give the verdict form to the foreman. When you, the jury,
23 arrive at a verdict as to the offense charged in this case,
24 the foreman will select the verdict as to the charge on the
25 verdict form. If the State has failed to prove the guilt of

1 the defendant beyond a reasonable doubt, your verdict will be
2 not guilty. Likewise, if the State has proven the guilt of
3 the defendant beyond a reasonable doubt, your verdict will be
4 guilty. Once a decision has been made, the foreman will check
5 whichever choice is the verdict of the jury as to the charge.

6 The verdict that you render in this case, ladies and
7 gentlemen, must be the verdict of each and every juror. It
8 must be your unanimous verdict. All twelve jurors must agree
9 on the verdict which you authorize the foreman to write for
10 the jury.

11 Now, ladies and gentlemen, I want you to further
12 understand that the order in which the choices of verdict
13 appear on the verdict form are not suggestive of any verdict
14 on the part of this Court. The verdict in this case is to be
15 determined by you, the jury, not the Court. Furthermore,
16 ladies and gentlemen, please understand that even though I
17 will give this verdict form to the foreman, it is not his
18 verdict alone; it is the verdict of all twelve of you and I
19 emphasize again it must be unanimous.

20 I am also going to give you all a copy of these
21 instructions in written form. During your deliberations, you
22 may refer to the instructions to guide your decision-making.
23 You must consider the instructions as a whole and not follow
24 some and ignore others. Please return the instructions to the
25 Court at the time that your verdict is rendered.

1 Now, Mr. Foreman and ladies and gentlemen of the jury,
2 this is the verdict form that's going to be sent back with
3 you. The first question on the verdict form asks: As to the
4 charge of assault on a law enforcement officer, we the jury
5 unanimously find the defendant Dominique Alexander Cash not
6 guilty or guilty. If you find Mr. Cash not guilty of assault
7 on a law enforcement officer, if you find him not guilty, then
8 you proceed and answer question number two. If you find Mr.
9 Cash guilty of assault on a law enforcement officer, you check
10 the appropriate box what -- check the appropriate box, sign
11 and date. You do not have to answer question two if you find
12 him guilty of assault on a law enforcement officer.

13 Again, if you find him not guilty of assault on a law
14 enforcement officer, which is question one, you check not
15 guilty and then you do answer question two. Those
16 instructions are in bold underneath question one for you if
17 you have any concerns about that.

18 Now, what I am going to do at this time is I am going to
19 ask you all to go to the jury room, but do not -- do not begin
20 your deliberations until you are instructed to do so. The law
21 requires -- the law requires that I consult with the attorneys
22 to make sure that I have not left anything out of these
23 instructions. After I have spoken with the attorneys, the
24 items of evidence along with a copy of these instructions and
25 the verdict form will be brought back to you all in the jury

1 room and you will be instructed at that time to begin your
2 deliberations.

3 Now, during your deliberations should you have any
4 questions, Mr. Foreman, it will be your responsibility -- a
5 pen and paper or pencil and paper will be provided back there.
6 It will be your responsibility to reduce such questions, if
7 you all have any, reduce those questions to writing, sign and
8 date, knock on the door, and let the bailiff know you have a
9 question and give him that piece of paper and he will get it
10 to me immediately and I will handle it accordingly.

11 The same instructions go with regards to your verdict.
12 Once you all have reached a verdict, check whichever box as
13 you, the jury, unanimously determine, sign and date, knock on
14 the door, let the bailiff know that you have reached a
15 verdict, and you retain the verdict form until you come back
16 into this courtroom at which time it will be retrieved by my
17 deputy clerk and we will proceed accordingly from there.

18 I'm going to ask that you step to the jury room right
19 now, but do not begin your deliberations until you are
20 instructed to do so.

21 (Whereupon, the jury exits the courtroom at 3:58 p.m.)

22 THE COURT: While the jury is exiting, if the lawyers can
23 approach and look at the evidence that's up here. Make sure
24 we have everything. All right. Mr. Wells, any exception or
25 objection to the jury charge by the State?

1 MR. WELLS: No, Your Honor.

2 THE COURT: Defense counsel?

3 MR. JORDAN: No, sir.

4 THE COURT: All right. If you all will, come up here and
5 make sure all items of evidence are together.

6 (Whereupon, the exhibits are examined by counsel.)

7 THE COURT: All right. Have y'all looked at the
8 evidence, Mr. Wells?

9 MR. WELLS: Yes.

10 THE COURT: Mr. Jordan?

11 MR. JORDAN: Yes, sir.

12 THE COURT: Does Ms. Olivia have everything that she
13 needs?

14 MR. WELLS: Yes, she does. There's one Court's Exhibit
15 and it's staying.

16 THE COURT: Okay. If you will, take that back, Ms.
17 Olivia.

18 THE BAILIFF: All right.

19 THE COURT: And tell them to begin their deliberations,
20 please.

21 THE BAILIFF: Yes, sir.

22 THE COURT: All right. We'll stand at ease.

23 (Whereupon, the jury deliberations begin at 4:00 p.m.)

24 (Whereupon, there is a break in the proceedings from 4:00
25 p.m. until 4:29 p.m.)

1 THE COURT: All right. The jury sent out a couple of
2 questions which has been marked as Court's Exhibit Number 2.
3 They want to see the video, State's Exhibit Number 1. Ms.
4 Olivia, I would ask that you or Mr. Propps get them to hand
5 you State's Exhibit Number 1 so Keith can go ahead and queue
6 that up before we bring them in here. Any objection to that,
7 Mr. Wells?

8 MR. WELLS: No, Your Honor.

9 THE COURT: Mr. Jordan?

10 MR. JORDAN: No, sir.

11 THE COURT: All right.

12 (Whereupon, the video exhibit is retrieved from the jury
13 room and prepared for playing.)

14 THE COURT: The next question on here: Does the Court
15 know the time elapsed between the time Officer Phillips was on
16 the ground with the defendant and Lieutenant Powell's arrival?

17 I discussed this back in -- I don't know if you want to
18 call it a chambers. I don't know what you would call it --
19 the office behind this bench with Mr. Jordan and Mr. Wells and
20 the response to that question is simply that's not something
21 that's in evidence. It's not something that was elicited
22 through the testimony and they can't consider it.

23 MR. JORDAN: Your Honor, would it be -- I'm trying to
24 remember. Was there any point in time that anybody testified
25 as to -- it's been a long day so I'm not sure, but that it was

1 a brief altercation or anything like that?

2 THE COURT: If you -- if you want us to play back all the
3 testimony for you, I'll be happy to do that.

4 MR. JORDAN: I don't think that ---

5 MR. WELLS: Of course, you could just say ---

6 THE COURT: I don't remember that.

7 MR. JORDAN: I don't ---

8 MR. WELLS: You could just, of course, say it's an
9 evidentiary matter. It's for them to consider or not consider
10 as they choose.

11 MR. JORDAN: And that's -- that's what I would probably
12 ask for.

13 MR. WELLS: Well, I know there's no specific testimony
14 about obviously the exact timeline.

15 THE COURT: There was no testimony as to how long. The
16 only testimony -- and it really doesn't relate to the time
17 frame -- is Officer Phillips testifying how winded he was and
18 out of breath and how they conclude time and what that would
19 have resulted in how long they would have had to go at it for
20 him to be out of breath or whatever, I don't know.

21 MR. JORDAN: Again, Your Honor, it's been a long day, but
22 I would ask for the instruction to be that it's an evidentiary
23 issue and they can -- they would have to consider what their
24 recollection of the testimony is.

25 THE COURT: Mr. Wells, anything on your end?

1 MR. WELLS: Whatever. I mean I don't think there was any
2 testimony to that effect, but however you want to handle it is
3 fine.

4 THE COURT: Let me just -- and I'm just talking out loud
5 here. What does -- what does that have to -- the time that's
6 elapsed, what does that have to do with anything as to the
7 guilt or innocence of this defendant as to assault on a police
8 officer or resisting arrest?

9 MR. WELLS: I have no idea.

10 THE COURT: I mean what does that have to ---

11 MR. JORDAN: I think it could. If the jury thinks it was
12 a very quick thing and -- and Officer Powell -- Lieutenant
13 Powell arrived right when they fell, then they would see it
14 more in the direction of the benefit of the defendant. If
15 they believed it had been going on for a long time, then it
16 would be probably to the detriment of the defendant. My only
17 concern is to say it's a fact that's not in evidence is a
18 blanket statement; whereas if you say simply it's an
19 evidentiary issue, you don't have to consider what every
20 single witness said.

21 THE COURT: Well, I'll say this. It's an evidentiary
22 issue for you to decide based upon your recollection of the
23 testimony. Any objection to that, Mr. Wells?

24 MR. WELLS: No, Your Honor.

25 THE COURT: Mr. Jordan?

1 MR. JORDAN: No, sir.

2 THE COURT: All right. Mr. Godboldt, are you ready?

3 MR. GODBOLDT: I'm ready.

4 THE COURT: Can you raise the roof so to speak?

5 MR. GODBOLDT: Yes, I can.

6 THE COURT: All right, anything else before I bring the
7 jury in?

8 MR. WELLS: No, Your Honor.

9 THE COURT: Anything else, Mr. Jordan?

10 MR. JORDAN: No, sir.

11 THE COURT: We're ready for the jury.

12 (Whereupon, the jury enters the courtroom at 4:34 p.m.)

13 THE COURT: All right, Mr. Foreman, ladies and gentlemen
14 of the jury, I have received your questions. Pursuant to your
15 questions, which have been marked as Court's Exhibit Number 2,
16 the State -- or the video State's Exhibit Number 1 is going to
17 be played again for you all to see. Okay, Mr. Godboldt.

18 (Whereupon, a portion of the video State's Exhibit Number
19 1 is played in the courtroom. The video is stopped after
20 approximately two minutes at the direction of the jury
21 foreman.)

22 THE COURT: Hold on. Mr. Foreman, do you all wish to see
23 any more of the video?

24 THE FOREMAN: No, Your Honor.

25 (Whereupon, several other jurors indicate that they would

1 like the video replayed.)

2 THE COURT: All right. If you'd rewind it a little bit,
3 Mr. Godboldt. Any objection from the State or defense
4 counsel?

5 MR. WELLS: No, Your Honor.

6 MR. JORDAN: No, sir.

7 (Whereupon, the video State's Exhibit Number 1 is
8 restarted and stopped again upon request of the jury.)

9 A JUROR: You can't control the ---

10 THE COURT: Speed?

11 A JUROR: You can't control pause and stop?

12 THE COURT: Can you do it frame by frame if they ---

13 MR. GODBOLDT: Let me see if I ---

14 (Whereupon, the video State's Exhibit Number 1 is played
15 for the jury at a frame by frame slower speed for
16 approximately two minutes.)

17 A JUROR: Can you go back to full speed?

18 A JUROR: Can you get there and pause?

19 (Whereupon, the video State's Exhibit Number 1 is
20 restarted and played for approximately two minutes until
21 the jury indicates to stop. Then the video is slowed to
22 frame by frame at the request of a juror for a few
23 seconds and then stopped at the request of the jury.)

24 A JUROR: Okay.

25 MR. GODBOLDT: Is that all you need to see?

1 A JUROR: Yeah.

2 MR. GODBOLDT: That's all you need to see?

3 A JUROR: Yes.

4 THE COURT: Is that all, Mr. Foreman?

5 THE FOREMAN: That's all we need to see.

6 THE COURT: Okay. Anything else from the State or
7 defense on that issue, Mr. Wells?

8 MR. WELLS: No, Your Honor.

9 THE COURT: Mr. Jordan?

10 MR. JORDAN: No, sir.

11 THE COURT: All right, ladies and gentlemen, the second
12 question you all asked that Mr. Foreman sent out, does the
13 Court know the time that elapsed between the time Officer
14 Phillips was on the ground with defendant and Lieutenant
15 Powell's arrival? All I can tell you here is that is an
16 evidentiary issue for you to decide based upon your
17 recollection of the testimony.

18 At this time, I'm going to ask you to return to the jury
19 room and continue your deliberations.

20 (Whereupon, the jury exits the courtroom at 4:41 p.m.)

21 THE COURT: All right. We'll stand at ease.

22 (Whereupon, there is a break in the proceedings from 4:41
23 p.m. until 5:49 p.m.)

24 THE COURT: All right. It's -- I need a pen. It's my
25 understanding the jury has got a verdict. I remind everybody

1 in the courtroom whatever the verdict is to keep your
2 composure. Failure to do so could result in you being held in
3 contempt of court and being sentenced to a period of
4 incarceration. All right, anything from the State before I
5 bring the jury in, Mr. Wells?

6 MR. WELLS: No, Your Honor.

7 THE COURT: Defense counsel?

8 MR. JORDAN: No, sir.

9 THE COURT: All right. Ms. Jo, I'm going to ask that
10 once the jury comes in ---

11 THE BAILIFF: Yes, sir.

12 THE COURT: --- that you get the verdict form and pass it
13 over here to me.

14 THE BAILIFF: Yes, sir.

15 THE COURT: Okay, bring me a jury, please.

16 (Whereupon, the jury enters the courtroom at 5:50 p.m.)

17 THE COURT: All right.

18 THE CLERK: Members of the jury, have you agreed upon a
19 verdict?

20 THE FOREMAN: Yes, we have.

21 THE CLERK: Will you please give it to the bailiff?

22 THE BAILIFF: Thank you.

23 (Whereupon, the verdict form is handed to the Court and
24 then to the Clerk.)

25 THE COURT: All right.

VERDICT OF THE JURY

THE CLERK: The State of South Carolina versus Dominique Alexander Cash, Indictment 2013-GS-21-207. As to the charge of assault of a law enforcement officer, we, the jury, unanimously find the defendant Dominique Alexander Cash guilty. Dated April the 10th, 2013. Signed, Foreperson, Wesley Johnson.

(Whereupon, the defendant is placed in handcuffs by a deputy.)

THE CLERK: Members of the jury, if this is your verdict, please raise your right hands.

(Whereupon, all members of the jury raise their right hands.)

THE CLERK: That is everyone, Judge.

THE COURT: All right. Anything from defense counsel at this time?

MR. JORDAN: Not at this time, Judge. I will have a matter of law after the -- if you want to -- if you would like to release the jury.

THE COURT: All right. All right, ladies and gentlemen of the jury, you all have performed your responsibilities here today in reaching a verdict in this case. Pursuant to a verdict being rendered, what will happen now is that we will move forward with sentencing -- with sentencing. That is a responsibility of me as a judge -- trial judge in this case.

1 You all are free to stay for sentencing if you so desire.
2 However, you're not required to stay. If you wish to leave,
3 you can do so at this time. I will tell you this. I
4 instructed you throughout the trial of this case not to talk
5 about the case until I sent you back there and told you to
6 deliberate. Now that you've heard this case and rendered a
7 verdict, you can talk about the case if you so desire -- if
8 you so desire.

9 However, if you do not wish to talk about the case, you
10 cannot be made to talk about the case. Okay? If somebody
11 approaches you to talk to you about this case and you advise
12 them that it is not your desire to talk about the case and
13 they do not leave you alone, you let the Clerk's Office know
14 here and I will handle it. We will handle it accordingly.

15 Having said that, if any of you wish to leave at this
16 time, please stand. If not, you can -- you can stay.

17 (Whereupon, nine members of the jury stand.)

18 THE COURT: All right. Those of you who have stood
19 indicating your desire to leave, I would ask that you be back
20 here tomorrow morning at nine thirty in the morning and we're
21 going to move forward at that time in selecting another jury.
22 Okay? You all are free to leave.

23 (Whereupon, nine members of the jury leave the courtroom
24 at 5:53 p.m.)

25 THE COURT: As the jury exits the courtroom, note for the

1 record that there are three jurors who did want to stay in the
2 courtroom for purposes of sentencing and I'm going to allow
3 them to stay in the jury box over there. After I sentence,
4 Mr. Jordan, I will release them and you can take up whatever
5 matters of law that you need to take up at that time if that's
6 okay.

7 MR. WELLS: Is it all right if I get Mr. Godboldt to move
8 this equipment out of the way? I hate for him to stay up here
9 a long time. I don't think we need it.

10 THE COURT: Go ahead.

11 MR. JORDAN: Your Honor, do you want us to come to the
12 podium?

13 THE COURT: Come to the podium, please.

14 MR. WELLS: Your Honor, before the defendant is
15 sentenced, I did want to go into a little bit more of his
16 record. Obviously, I could only go into the record as far as
17 dishonesty during when he testified, but he has considerably
18 more record than that and it's obvious he has a prob -- has a
19 problem with law enforcement based on his record out of North
20 Carolina.

21 It looks like the first thing was in August of 2009. His
22 original charge was assault on an officer, serious injury, and
23 also misdemeanor larceny, which we were, of course, asking
24 about the misdemeanor larceny. The judge found him guilty of
25 the misdemeanor larceny and he found him guilty of a lesser

1 offense of assault on a government official or employee where
2 he had sixty days confinement and twelve months' probation and
3 there was subsequently it looks like a probation violation
4 warrant issued in that charge.

5 Then subsequently on December 7th, 2009, he has a charge.
6 Well, the charge is attempted common law robbery and assault
7 to inflict serious injury. The judge found him guilty of
8 assault to inflict serious injury. I don't have what the
9 sentence was.

10 Then in January 14th, 2012, he has a charge. The original
11 charge was assault on campus police officer and resisting
12 public officer and the Court convicted him and incarcerated
13 him on April 10th, 2012, for habitual misdemeanor assault. I'm
14 assuming in North Carolina perhaps, you know, that was his
15 third assault. That may be what arose of that.

16 In any case, I'm not sure exactly how long he did, but I
17 do know that he was placed on parole for one year, two months,
18 and absconded. On his record now, he is wanted from the State
19 of North Carolina for absconding on that parole violation and
20 he is listed as a wanted person from North Carolina and North
21 Carolina states that they would do extradition.

22 THE COURT: Do you have a sentence sheet?

23 MR. WELLS: Oh, I do and I don't know if you need anybody
24 else to sign it or not. I don't know if Deputy Phillips wants
25 to say anything else or not before the sentencing or not.

1 THE COURT: Deputy Phillips, if you wish to tell me
2 anything else, I'll be happy to hear from you, sir.

3 DEPUTY PHILLIPS: No, sir.

4 THE COURT: All right, anybody else on behalf of the
5 State wish to say anything?

6 (Whereupon, there is no response.)

7 THE COURT: All right. Mr. Godboldt, if you want to
8 exit, go ahead.

9 MR. GODBOLDT: No, I was going to put it over here.

10 THE COURT: Oh, okay.

11 (Whereupon, there is a pause in the proceedings as the
12 audio visual equipment is moved across the courtroom.)

13 THE COURT: All right, Mr. Jordan, I'll be happy to hear
14 from you, sir.

15 MR. JORDAN: Thank you, Your Honor, may it please the
16 Court. Your Honor, I will be very brief. We've been here a
17 long time and I think Your Honor has a good handle on the
18 case. I mean we've spent all day dealing with the matter.

19 The only thing I really will take a small exception to is
20 based on the documentation I have provided to me in discovery,
21 I don't think Mr. Cash had absconded. The documentation I'm
22 looking at says that a warrant was issued November 6th, 2012,
23 the date of the warrant, and that would have been post the
24 event that brings us here today. It's a minor detail, but I
25 did want to note that.

1 Your Honor, I've had the opportunity to -- and Your Honor
2 has been present, of course, for all that to -- to say a lot
3 today. I know Mr. Cash wishes to address Your Honor. I would
4 just ask that you employ the most leniency and mercy as you
5 can muster. I know Mr. Cash and his family would certainly
6 appreciate it.

7 THE COURT: All right. Thank you, Mr. Jordan. Mr. Cash,
8 I will give you at this time an opportunity to say anything
9 that you wish to tell me. Certainly, I don't want you to say
10 anything that could affect any appellate rights that you may
11 have, but I will be happy to hear from you if you wish to tell
12 me anything at this time. If you have any comments, please
13 direct them to me. Okay? I'll be happy to hear from you.

14 THE DEFENDANT: I can say with one thousand percent
15 surety by my word to the creator of the heavens and the earth
16 that I can swear by my soul, promise by my soul, matter of
17 fact, I'm not even mad because any day could be judgment day.
18 So this right here is nothing, but I put my soul on the line
19 this is my word. I never struck that officer and if he's real
20 enough to say that he puts his soul on the line that I struck
21 him, then so be it. But I know for a fact I never assaulted
22 this officer. I never even attempted to. I had no reason to.
23 I had a job. I wanted to go back to college. I was student
24 of the year in college.

25 This -- all that stuff in my past, me being on parole is

1 the reason why I didn't assault him. You can bring up all of
2 my charges. I'll go through all of my charges. The larceny,
3 I stole some chips. The assault on the officer, he shot me in
4 my mouth with a taser and turned it on. He said I spit on
5 him, which I did not, but that was my first charge. I took a
6 plea.

7 The second thing, I stole a phone. They said common law
8 robbery. The dude grabbed me. I beat him up. They said
9 common law robbery and assault. All the other stuff like the
10 other assault, the officer pushed me and I said since day one
11 I punched him. Yes, I did. I never denied that.

12 But with this situation, I didn't do it and, if anything,
13 if I did do it, I would have took my plea. My co-defendant
14 comes home in September. This right here was a trial for ten
15 years. I wouldn't have took this to trial if I was guilty or
16 if I had an inch of inclination of guilt, but I took my
17 chances. God's will, this was His choice. Everything happens
18 for a reason. I'll be strong.

19 But I will want to know, the officer if he -- if he
20 really -- if he believes in God since we have that on the
21 wall, I think I should take it like could he really promise by
22 God that I struck him and put his soul on the line. That
23 ain't like what his job was or anything like that. Could he
24 really promise by God, not putting your hand on the Bible and
25 crossing your fingers or whatever, I'm talking about the

1 hereafter. I don't think he could do that, but if he could, I
2 would love to see that judgment day when that happens.

3 But I wouldn't lie in God's name and that's about it
4 though. I really don't have anything else to say.

5 THE COURT: How long has he been in jail?

6 MR. WELLS: He has been in jail since October 21st, 2012.
7 Do you know how many?

8 MR. JORDAN: I have not calculated the days, but I agree
9 with the date.

10 MR. WELLS: Can you -- do you want me to calculate it?

11 THE COURT: My law clerk can do that.

12 MR. WELLS: Okay.

13 THE COURT: Mr. Wells, let me ask you something again.

14 MR. WELLS: Yes, sir.

15 THE COURT: The August 2009 assault on an officer, you
16 indicated that that -- that went to trial and was tried before
17 a judge?

18 MR. WELLS: These were all tried before a judge.

19 THE COURT: Okay.

20 MR. WELLS: I think North Carolina has a -- they have
21 several different court systems, a district court and they
22 have a superior court, and a lot of times in district court I
23 think they're tried before judges.

24 THE COURT: All right, anything else from the State?

25 MR. WELLS: No, Your Honor.

1 THE COURT: Anything else from defense counsel?

2 MR. JORDAN: No, sir.

3 SENTENCE OF THE COURT

4 THE COURT: All right. On Indictment 2013-GS-21-207, the
5 defendant is committed to the State Department of Corrections
6 for a period of ten years. I'll give him credit for 172 days
7 that he has done.

8 Mr. Cash, you're not going to serve anywhere near this
9 ten year sentence. It's considered to be a non-violent
10 offense. The amount of time that you serve of this -- of this
11 sentence in large part will be determined by the Department of
12 Corrections and how you conduct yourself while you're in the
13 Department of Corrections.

14 It is evident that you do -- based upon your prior record
15 which I certainly can take into consideration in sentencing,
16 and based upon the facts that were elicited during the course
17 of this trial, that there is some problem with anger or
18 whatever. I hope that you learn from this. This jury has
19 spoken today after hearing all of the evidence in this case
20 and that is the sentence of the Court. Good luck to you.

21 MR. JORDAN: Your Honor?

22 THE COURT: He can remain in here while we hear these
23 post-trial motions. At this time, I'm going to excuse these
24 three jurors. They are free to go. Be back in the morning at
25 nine thirty a.m. please.

1 (Whereupon, the remaining three jurors exit the courtroom
2 at 6:05 p.m.)

3 THE COURT: Yes, sir?

4 MR. JORDAN: Thank you, Your Honor. I simply wish to
5 renew my motion previously requesting a directed verdict and I
6 also enter a motion for a new trial.

7 THE COURT: Mr. Wells?

8 MR. WELLS: Your Honor, I think the evidence speaks for
9 itself.

10 THE COURT: With regards to your motions, Mr. Jordan, I'm
11 going to respectfully deny those motions. I believe that this
12 was a case that was properly -- that there was direct evidence
13 in this case for this matter to go to the jury as I previously
14 noted on the record in denying your directed verdict motion.

15 What, if anything, is the basis of your motion for a new
16 trial?

17 MR. JORDAN: Your Honor ---

18 THE COURT: Because if it's sufficiency of the evidence
19 ---

20 MR. JORDAN: Your Honor, I would question the reasonable
21 -- reasonableness of the jury to reach a verdict such as the
22 nature they did based on the evidence as well as other
23 factors.

24 THE COURT: Well, there was certainly conflicting
25 evidence in this case, but those are factual issues for a jury

1 to make a determination on. Those are factual issues for a
2 jury to make a determination on and this jury has spoken in
3 rendering a verdict in this case. So I'm going to
4 respectfully deny your motion.

5 MR. JORDAN: Thank you, Your Honor.

6 THE COURT: Anything else at this time?

7 MR. WELLS: I believe that's all for today, Your Honor.

8 THE COURT: Defense counsel?

9 MR. JORDAN: No, sir.

10 THE COURT: All right. Let's -- we will resume court in
11 the morning at nine thirty. Thank you.

12 (Whereupon, the proceedings end at 6:08 p.m.)

13

14 --- END REQUESTED TRANSCRIPT ---

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Florence County Courthouse
RANDOM STRIKE SHEET

4/9/13

JUDGE NAME : Craig Brown
TRIAL TYPE : Criminal
PANEL ID : 2013GS2100207
COURTROOM 11TH

DESCRIPTION : St vs Dominique Cash

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Avent, Fred C Jr.	5	W	M	()	(✓)	()	
2 Consiglio, Jacqueline B	28	B	F	()	()	()	1
3 Morning, Jamie R	100	W	M	()	()	()	2
4 Goodman, Jessica L	51	W	F	()	()	()	3
5 Byrd, Angela S	19	W	F	()	(✓)	()	
6 Poston, William J	111	W	M	()	(✓)	()	
7 Hardee, Katherine J	55	W	F	()	()	()	4
8 Sexton, Andrew W	121	W	M	()	()	()	5
9 Leavitt, Gregg D II	76	W	M	(✓)	()	()	
10 Bullard, Christina M	15	W	F	()	()	()	6
11 Cockfield, Sheila	24	B	F	(✓)	()	()	
12 Watford, Marsha M	137	W	F	()	(✓)	()	
13 Lewis, Ray F	77	W	M	()	()	()	7
14 Crouch, Lance C	32	W	M	()	()	()	8
15 Bailey, Rachel L	6	W	F	()	()	()	9
16 Benenhaley, Donna G	10	W	F	()	()	()	10
17 Bossinger, Louis J	12	W	M	()	()	()	11
18 Johnson, Wesley C	66	W	M	()	()	()	12
19 Page, Stephen C	105	W	M	()	()	()	alternate
20 Johnson, Martha R	65	W	F	()	()	()	
21 Bunton, Tony E	16	W	M	()	()	()	
22 Williams, David N	142	W	M	()	()	()	
23 Parrish, Vivian	107	B	F	()	()	()	
24 Williams, Clarissa	141	B	F	()	()	()	

**Florence County Courthouse
RANDOM STRIKE SHEET**

241

JUDGE NAME : Craig Brown
TRIAL TYPE : Criminal
PANEL ID : 2013GS2100207
COURTROOM 11TH

DESCRIPTION : St vs Dominique Cash

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Clark, Richard F	23	W	M	()	()	()	
26 Germond, Scott D	50	W	M	()	()	()	
27 Burkett, Maxie W	17	W	M	()	()	()	
28 Sasser, Benjamin T	118	W	M	()	()	()	
29 Turner, Russ R	132	W	M	()	()	()	
30 Tunstall, Samuel D Jr.	131	W	M	()	()	()	
31 McGill, Tina L	88	B	F	()	()	()	
32 Milo, Janie M	95	B	F	()	()	()	
33 Belin, Sierra L	9	B	F	()	()	()	
34 Chaplin, Robert A III	22	W	M	()	()	()	
35 Mckeever, Sylvester III	90	B	M	()	()	()	

Total Number of Jurors: 35

**** END OF REPORT ****

1	STATE OF SOUTH CAROLINA	)	
2		)	CERTIFICATE
3	COUNTY OF FLORENCE	)	

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 9th and 10th days of April, 2013.

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

Krystal J. Smith

Court Reporter

19	Florence, South Carolina
20	July 2, 2013

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY

THE HONORABLE DAVID CRAIG BROWN., PRESIDING JUDGE

NO. 2013-GS-21-00207

The State of South Carolina,

Respondent.

against

Dominique Alexander Cash,

Appellant.

NOTICE OF INTENT TO APPEAL

Dominique Alexander Cash appeals from his conviction of Assault and Battery on a Police Officer and the sentence imposed on April 10, 2013 in the Court of General Sessions for Florence County, South Carolina.



Wallace H. Jordan, Jr.
Assistant Public Defender
Box N, City-County Complex
Florence, South Carolina 29501
(843) 665-3055

Attorney for Appellant

May 8, 2013

Other Counsel of Record

Robert N. Wells, Jr.
Assistant Solicitor
Twelfth Judicial Circuit
Box Q, City-County Complex
Florence, South Carolina 29501
(843) 665-3091

RECEIVED

MAY 15 2013

SC Court of Appeals

TATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF FLORENCE) INDICTMENT NO.: 2013-GS-21-00207

The State of South Carolina,)
)
 Versus)
)
 Dominique Alexander Cash,)
)
 Appellant.)

CERTIFICATE OF SERVICE

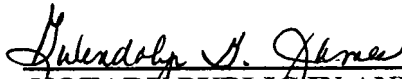
The undersigned hereby certifies that on the 8th of May, 2013, he caused to serve a copy of the Notice of Intent to Appeal by hand delivering a copy of same, addressed as follows:

Robert N. Wells, Jr., Esquire
 Office of Solicitor
 Box Q, City-County Complex
 180 N. Irby Street
 Florence, South Carolina 29501



Wallace H. Jordan, Jr.
 Assistant Public Defender
 Twelfth Judicial Circuit

SWORN TO and subscribed before me
 This 8th day of May, 2013.


 NOTARY PUBLIC IN AND FOR SC
 My Commission Expires: 4/15/2018

RECEIVED

MAY 15 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO.: 2013-GS-21-00207

The State of South Carolina,)
Versus)
Dominique A. Cash,)
Appellant.)

PROOF OF SERVICE

Due and legal service of the attached Notice of Intent to Appeal is hereby
acknowledged and a copy retained for our file this 8th day of May, 2013.

Robert N. Wells, Jr.

Robert N. Wells, Jr.

Assistant Solicitor

Twelfth Judicial Circuit

Tuesday April 16, 2013

To Whom it may concern,

My name is Dominique Alexander Cash. I am an inmate at Kirkland Reception and Evaluation Center. I recently went to trial in Florence County, April 10, 2013, and was found guilty on charges of "Resisting/assault, beat, or wound police officer serving process or while resisting arrest". I am requesting for an appeal on my case because no video evidence was used from the motel lobby where half of the incident occurred, pictures were not taken of the wounds that I received and went to the hospital for, my public defender did not request for a "change in venue" as I asked him to, and my jury was unbalanced towards being bias. I was not rightly judged and was not proven guilty by facts but by opinions, when I am actually still innocent. I also think my dreadlocks and facial hair I grew, waiting in the County Jail to go to trial, played an enormous factor because I had a low hair cut and no beard during the crime I was accused of. I plan to make copies of this letter, so that there is record I requested for an appeal Tuesday April 16, 2013. Please notify me of your disposition as soon as possible. I need a response before April 20, 2013 which is the upcoming Saturday. Thank you all for your help, and may you all be blessed.

Respectfully and Truly,

Dominique A. Cash

Dominique A. Cash

Indictment/Case #: 2013-GS-21-00207

/W#: 2012A2110200504

Date of offense: 10/20/2012

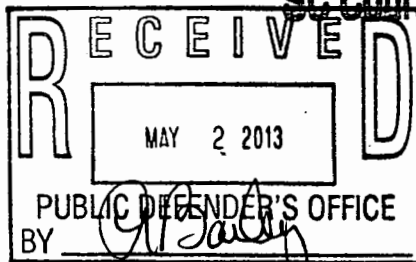
C. Code §: 16-09-0320(B)

DR Code #: 0256

RECEIVED

MAY 15 2013

SC Court of Appeals



CERTIFIED: A TRUE COPY
Marie R. Bell, Clerk
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
MAY 19 PM 12:45
C.C.P. & G.S.
FLORENCE COUNTY, SC

to whom it may concern, Tuesday April 16, 2013 247
My name is Dominique Alex or Cash. I am an inmate at Kirkland Reception
and Evaluation Center. I recently went to trial in Florence County, April 10, 2013,
and was found guilty on charges of "Resisting/assault, beat, or wound police
officer serving process or while resisting arrest". I am requesting for an
appeal on my case because no video evidence was used from the motel lobby
where half of the incident occurred, pictures were not taken of the wounds
that I received and went to the hospital for, my public defender did not request
for a "change of venue" as I asked him to, and my jury was unbalanced
towards being bias. I was not rightly judged and was not proven guilty
by facts but by opinions, when I am actually still innocent. I also think
my dreadlocks and facial hair I grew, waiting in the county jail to go to
trial, played an enormous factor because I had a low hair cut and no beard
during the crime I was accused of. I plan to make copies of this
letter, so that there is record I requested for an appeal Tuesday April 16, 2013
please notify me of your disposition as soon as possible. I need a response
before April 20, 2013 which is the upcoming Saturday. Thank you all for
your help, and may you all be blessed.

Respectfully and Truly,

Dominique A. Cash

Dominique A. Cash

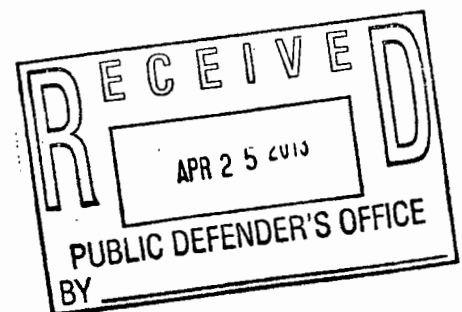
Indictment/Case #: 2013-GS-21-00207

/W #: 2012A2110200504

Date of offense: 10/20/2012

C. Code §: 16-09-0320 (B)

DR Code #: 0256



**OFFICE OF
TWELFTH CIRCUIT PUBLIC DEFENDER**

SCOTT P. FLOYD
12th CIRCUIT PUBLIC DEFENDER
MICHAEL S. BELL
CHIEF PUBLIC DEFENDER
FOR FLORENCE COUNTY
PHONE: (843) 665-3055
FAX: (843) 665-4041

CITY-COUNTY COMPLEX, ROOM 703
180 NORTH IRBY STREET, MSC-N
FLORENCE, SOUTH CAROLINA 29501



May 8, 2013

V. Claire Allen, Deputy Clerk
South Carolina Court Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The State v. Dominique Alexander Cash
Indictment No.: 2013-GS-21-00207

Ms. Allen:

Enclosed please find a copy of a letter my office received from a client I represented on the above-listed case.

Following his trial, which concluded on April 10, 2013, Mr. Cash was sentenced to ten (10) years and given credit for the time he has served thus far. Mr. Cash did not, at that time, notify me of an interest in appealing his case. My office received a letter from him on April 25, 2013 regarding an interest in pursuing an appeal. A copy of the letter is enclosed, and has been dated April 16, 2013 by Mr. Cash.

My office received a separate copy of the same letter which was forwarded from the Florence County Clerk of Court's office. A copy of this letter is also enclosed, and appears to have been received by the Clerk's office on April 19, 2013. It was then received by my office on May 2, 2013.

I was not aware of Mr. Cash's intent to file an appeal until well after the ten (10) day period for filing lapsed, but it appears he notified the Clerk of Court's office of his intent to appeal in a timely matter. If you find this to be adequate notice, enclosed is a more formal draft of a Notice of Intent to Appeal which my office filed and served on the Twelfth Judicial Circuit's Solicitor's Office today.

If you require any additional information from me, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Wallace H. Jordan, Jr.", written over a horizontal line.

Wallace H. Jordan, Jr.
Assistant Public Defender
Twelfth Judicial Circuit

WHJjr/gj

Enclosures

RECEIVED

MAY 15 2013

SC Court of Appeals

NOTICE TO APPELLATE DEFENSE

To: Division of Appellate Defense/ Office of Attorney General

From: L. Bellamy

Date: May 24, 2013

Re: Notice of Filing of Notice of Appeal

Case Name: The State v. Dominique Cash

Case Number: 2013-GS-21-00207

County: Florence

Date of Filing: May 15, 2013

Filed by: Wallace H. Jordan, Jr.

Judge: The Honorable David Craig Brown

Hearing Date: April 10, 2013

Guilty plea: No

The South Carolina Court of Appeals

The State, Respondent,

v.

Dominique Alexander Cash, Appellant.

Appellate Case No. 2013-001112

ORDER

Appellant has failed to timely serve the notice of appeal, as required by Rule 203 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Wallace H. Jordan, Jr.

Robert Michael Dudek

Salley W. Elliott

FILED
6/6/13



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 27, 2013

The Honorable Connie Reel-Shearin
180 N Irby St MSC-E Rm B11
Florence SC 29501

REMITTITUR

Re: The State v. Dominique Alexander Cash
Lower Court Case No. 2013GS2100207
Appellate Case No. 2013-001112

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Wallace H. Jordan, Jr.
Robert Michael Dudek
Salley W. Elliott

Dominique Cash - 354926

Evans Correctional Institute - F2-B-121

610 Highway 9 West

Bennettsville, South Carolina 29512

Date: June 26, 2013

Re: State of South Carolina vs. Dominique A. Cash

Indictment / Case #: 2013-GS-21-00207

Date of Conviction: April 10, 2013

Defense Attorney: Wallace H. Jordan Jr.

South Carolina Court of Appeals

P.O. Box 11629

Columbia, South Carolina 29211

RECEIVED

JUN 28 2013

SC Court of Appeals

Dear Clerk,

I am writing concerning this conviction, on which I was convicted by a jury in Florence County. After I was convicted I indicated to my lawyer I wanted him to file a notice of appeal. After I got to Kirkland R and E Center, I wrote the Florence County Clerk of Court (4-16-13) concerning the status of my appeal. I am now writing, and have also sent a copy of this letter to the South Carolina attorney General's Office concerning the pendency of my appeal.

I want to thank you for your thoughtful consideration
in this matter.

With Kind regards,..... I am

Sincerely yours,
Barbara L. L. L.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 10, 2013

Mr. Dominique Alexander Cash #354926
Evans Corr. Inst.
610 Hwy. 9 West
Bennettsville SC 29512

Re: The State v. Dominique Alexander Cash
Appellate Case No. 2013-001112

Dear Mr. Cash:

In response to your letter dated June 26, 2013, enclosed please find copies of the order of dismissal and remittitur. Your appeal has been dismissed and this Court no longer has jurisdiction over the case.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Wallace H. Jordan, Jr.
Robert Michael Dudek
Salley W. Elliott

Attention: S.C. Court of Appeals August 10, 2013
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Dominique Alexander Cast
Appellate Case No. 2013-00112

RECEIVED

AUG 22 2013

To Whom it may concern.

SC Court of Appeals

Enclosed please find a copy of my Motion of Appeal that is stamped by the clerk of court nine days after my conviction date. I was convicted on April 10, 2013 and was sent to Kirkland Reception and Evaluation center, where I sent copies of my original Motion of Appeal to my court appointed attorney and the clerk of court. Since being at Evans Correctional Institute I have able to visit the law library and I discovered I needed to write the Court of Appeals and the State Attorney General a Motion of Appeal. July 10, 2013 I recieved a letter stating my appeal was dismissed. Due to my lawyer not fulfilling his duty of notifying me the proper way to file an appeal and his failure to honor my actual appeal motion, I ask that my appeal be reinstated. Also enclosed find copies of my staff request forms from Kirkland, asking for an appeal on my case. If you are not

able to reinstate my appeal, I am asking that my transcript for my case be sent to me.

Thank You For All of Your Help In Advance.

With Kind Regards, Zarn

Yours Truly
Dominique A. Cash
Dominique A. Cash

I can be addressed at:

Dominique Cash #354926
Evans Correctional Institute
1610 Highway 9 West
Bennettsville, S.C. 29512

RECEIVED

AUG 22 2013

SC Court of Appeals

Tuesday April 16, 2013

To Whom it may concern,

My name is Dominique Alexander Cash. I am an inmate at Kirkland Reception and Evaluation Center. I recently went to trial in Florence County, April 10, 2013, and was found guilty on charges of "Resisting/assault, beat, or wound police officer serving process or while resisting arrest". I am requesting for an appeal on my case because no video evidence was used from the motel lobby where half of the incident occurred, pictures were not taken of the wounds that I received and went to the hospital for, my public defender did not request for a "change in venue" as I asked him to, and my jury was unbalanced towards being bias. I was not rightly judged and was not proven guilty by facts but by opinions, when I am actually still innocent. I also think my dreadlocks and facial hair I grew, waiting in the County Jail to go to trial, played an enormous factor because I had a low hair cut and no beard during the crime I was accused of. I plan to make copies of this letter, so that there is record I requested for an appeal Tuesday April 16, 2013. Please notify me of your disposition as soon as possible. I need a response before April 20, 2013 which is the upcoming Saturday. Thank you all for your help and may you all be blessed.

Respectfully and Truly,

Dominique A. Cash
Dominique A. Cash

Indictment/Case #: 2013-GS-21-00207

I/W#: 2012A2110200504

Date of Offense: 10/20/2012

A.C. Code §: 16-09-0320(B)

DR Code #: 0256

RECEIVED

AUG 22 2013

SC Court of Appeals

CERTIFIED: A TRUE COPY
Clerk of Court, SC
FLORENCE COUNTY, SC
CUCP & GS
PR 12:45

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: <u>~~The Law Library~~</u> TITLE:	DATE: <u>April 13, 2013</u>
INMATE'S NAME: <u>Dominique Pash</u>	SCDC #: <u>00354926</u>
INSTITUTION: <u>Kirkland</u>	LIVING QUARTERS: <u>A2-49</u>

I am requesting for an appeal on my charge.
 All of the video evidence was not used in my trial.
 Pictures were not taken of my wounds that I went to the hospital for.
 My lawyer did not request for a change in venue as I asked him to.
 And my jury was unbalanced and bias.

Please notify me of your disposition.

Thank you all for your help

I need an immediate response before April 20, 2013

DISPOSITION BY STAFF MEMBER:

I Can not give you legal advice

DATE:

April 13, 2013

SIGNATURE:

Dominique Pash

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
 REQUEST TO STAFF MEMBER

TO: NAME: <i>The Law Library</i>	TITLE:	DATE: <i>April 16, 2013</i>
INMATE'S NAME: <i>Dominique Cash</i>	SCDC #: <i>00354926</i>	
INSTITUTION: <i>Kirkland</i>	LIVING QUARTERS: <i>A2-49</i>	

I am requesting for an appeal on my charge.
 All of the video evidence was not used in my trial.
 Pictures were not taken of my wounds that I went to the hospital for.
 My lawyer did not request for a change in venue as I asked him to.
 And my Jury was unbalanced and bias.
 Please notify me of your disposition.
 Thank you all for your help.

I need an immediate response before April 20, 2013

DISPOSITION BY STAFF MEMBER:

In order to have access to the Law Library while in
 the status you must have a Court order or to 30 days or
 less -

DATE: <i>April 16, 2013</i>	SIGNATURE: <i>[Signature]</i>

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
~~The Law Library~~		4-20-2013
INMATE'S NAME:		SCDC #:
Dominique Cash		354926
INSTITUTION:		LIVING QUARTERS:
Kirkland		A2-49

I am requesting to go to the law library.

- Thank You

DISPOSITION BY STAFF MEMBER:

In order to have access to the law library while in RE Status you must have a court order date (30 days or less) - Forward with proof of paper work - otherwise you must wait until you are assigned to a permanent yard

DATE:	SIGNATURE:
4-20-2013	<i>Dominique Cash</i>

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
My Case Worker	PCR Pack	04-28-2013
INMATE'S NAME:		SCDC #:
Dominique Cash		00354926
INSTITUTION:		LIVING QUARTERS:
Kirkland Reception and Evaluation		A2-49B

I am requesting for a PCR pack. My trial was not rightfully done. All of the video evidence was not used, pictures were not taken of my wounds, my lawyer did not get a charge against me. Since my trial was not done towards being a class, and I think my hair was a major factor in the opinions and judgement. May you respond back to me as soon as possible. Thank You

Dominique Cash

RECEIVED

APR 28 2013

DISPOSITION BY STAFF MEMBER:

Less than 60 days. You arrived at Kirkland on 4/11/13

KIRKLAND
RECE CENTER
CLASSIFICATION

DATE:

4/29/13

SIGNATURE:

Latha Marsh

Dominique Cash #354926
 Evans Correctional Institute - F2-B.121
 610 Highway 9 West
 Bennettsville, South Carolina 29512

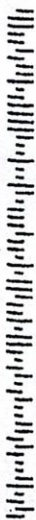


UNITED STATES POSTAGE
 02 1M \$00.460
 0008002055 AUG 20 2013
 MAILED FROM ZIP CODE 29512
 FINLEY BOWES

South Carolina Court of Appeal **RECEIVED**
 P.O. Box 11629
 Columbia, South Carolina 29211 **SC Court of Appeals**
 AUG 22 2013

LEGAL MAIL USE ONLY

29211162929



THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

EVANS CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 23, 2013

Dominique Alexander Cash #354926
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512

Re: The State v. Dominique Alexander Cash
Appellate Case No. 2013-001112

Dear Mr. Cash:

Upon reviewing your motion to reinstate, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Wallace H. Jordan, Jr.
Robert Michael Dudek
Salley W. Elliott

STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS

Appeal From Florence County

Appellant case no. 2013-001112

Dominique A. Cash,

appellant

v.

State of South Carolina,

respondant

notice of appeal

I hereby appeal the decision in Florence County on April 10, 2013 (4/10/2013), in which I was convicted by a trial jury and sentenced by Judge Brown.

Dominique A. Cash

RECEIVED

SEP 03 2013

SC Court of Appeals

RECEIVED

SEP 02 2013

SC Court of Appeals

FORM 7. PROOF OF SERVICE OF A MOTION OF APPEAL
 THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
 Court of General Sessions

Brown, Circuit Court Judge

RECEIVED

SEP 03 2013

Case No. 2013-GS-21-00207 SC Court of Appeals

State of South Carolina, ... Respondent

V.

Dominique A. Cash, ... Appellant

PROOF OF SERVICE

SEP 02 2013

SC Court of Appeals

I certify that I have served the Motion of Appeal on Respondent Counsel of Record by depositing a copy of it in the United States Mail, postage prepaid, on August 31, 2013, addressed to his attorney of record, South Carolina attorney General, Alan Wilson, P.O. Box 11549, Columbia, South Carolina 29211.

August 31, 2013

Dominique A. Cash - 354926

Evans Correctional Institute - F2-B-121

610 Highway 9 West

Bennettsville, South Carolina 29512

Appellant

Dominique A. Cash



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 02, 2013

Dominique Cash, 354926
Evans Correctional Institution
610 Highway #9, West
Bennettsville SC 29512

Re: The State v. Dominique Alexander Cash
Appellate Case No. 2013-001112

Dear Mr. Cash

We have received your correspondence titled "Notice of Appeal," served August 31, 2013, referencing Court of Appeals tracking number 2013-001112. This appeal has been dismissed and the remittitur was sent on June 27, 2013. Accordingly, this Court no longer has jurisdiction over this matter and will not take any action on the correspondence we have received from you.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Wallace H. Jordan, Jr.
Robert Michael Dudek
Salley W. Elliott

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)Dominique Cash, # 354926)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 13 CP 21 2304

APPLICATION FOR

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 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 C.I.
2. Name and location of Court which imposed sentence Florence County Court
3. Name(s) of co-defendant(s) (if any) Adrian L. Boney, Natasha Wright
Briana Harrison
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-21-00207
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4-10-13- 10 years Nonviolent
 - (b) _____

Revised 3/2003

FILED
JUL 13 2013
CLERK OF COURT
FLORENCE COUNTY, S.C.

CERTIFIED TRUE COPY
Clerk of Court
FLORENCE COUNTY, S.C.

- (c) _____
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?
No, Counsel was instructed to file notice and he failed to
do so.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) **I asked my lawyer to appeal and he failed to file the**
appeal. After entering SCDC I wrote the Florence County
clerk of Court who clocked stamped my notice "9" days
after my conviction. While at Kirkland I wrote several
Request to Staff's inquiring about my either filing or
Inquiring about my appeal status.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- Counsel was ineffective for not investigating to discover the Motel Video tape that would have directly proved that the states assertions were not true.
- (a) Trial Counsel failed to timely file Applicant's Notice
- (c) of Appeal White v. State
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) There existed a video in the Motel in question that
- (b) would have refuted the states assertions.
- (c) Counsel failed to file the Applicants Notice after
12. being instructed to do so. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO.
- (d) any other petitions, motions or applications in this or any other Court? NO.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. When I was found guilty, I told my lawyer I wanted to
- ii. Appeal and upon my arrival at Kirkland I wrote the
- iii. Clerk of Court Noticing for an appeal and they Stamped
- iv. "9" days after my conviction.
- (b) the name and location of the Court in which each was filed:
- i. Florence County Clerk of Court
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. Dismissed my appeal as untimely in the Court of
- ii. Appeals.
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- 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, I was unable to raise any issues on appeal due to my
Counsel's failure to timely file a notice of appeal.
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) after the jury found me guilty my counsel failed to file
- (b) the notice of appeal.
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO.
- (b) your trial, if any? YES, Wallace H. Jordan
- (c) your sentencing? YES, Wallace H. Jordan
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO, My lawyer failed to file Notice of Appeal.
- (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. Florence County South Carolina
 - ii. Wallace H. Jordan
 - iii. Office of Twelfth Circuit Public Defender
City County Complex, Room 703, 180 N. Irby St., MSC-N
Florence, SC 29501
- (b) the proceedings at which each such attorney represented you:
 - i. Trial And Sentencing
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

Reverse and remand the Conviction and Sentence.

20. Are you now under sentence from any other court that you have not challenged?

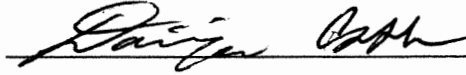
NO.

STATE OF SOUTH CAROLINA)

VERIFICATION

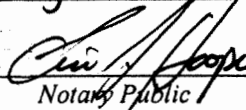
County of FLORENCE)

I, , 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.



Dominique Cash

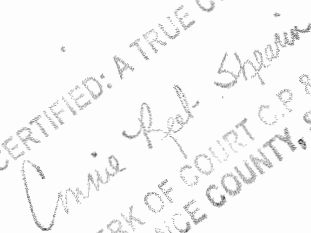
SWORN to and subscribed before me this 27th
day of August, 2013.

 (L.S.)
Notary Public

My Commission Expires: Feb. 9th, 2020

2013 AUG 30 PM 3:39
CONNIE REEL-SHEARIN
COPP & GS
FLORENCE COUNTY, SC

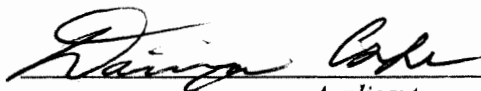
FILED

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

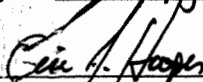
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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

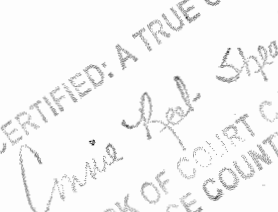
SWORN or affirmed to and subscribed before me this

27th day of August, 2013.


Notary Public

My Commission Expires: Feb. 9th, 2020

FILED
2013 AUG 30 PM 3:39
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT

Dominique Cash, #354926,

) Case No. 2013-CP-21-2304
)

Applicant,

)

v.

)

RETURN

State of South Carolina,

)

Respondent.

)

FILED
2014 APR 23 PM 2:30
CORRECTIONAL INSTITUTE
COURT & GS
FLORENCE COUNTY, S.C.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed August 30, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2013, the Florence County Grand Jury indicted Applicant for assault on law enforcement officer (2013-GS-21-207). Wallace H. Jordan, Jr., Esquire, represented Applicant. On April 9, 2013, Applicant proceeded to trial before the Honorable D. Craig Brown and a jury. On April 10, 2013, the jury found Applicant guilty as indicted. Judge Brown sentenced Applicant to ten (10) years imprisonment.

Applicant filed a notice of appeal, but the South Carolina Court of Appeals dismissed the appeal as untimely on June 6, 2013. The remittitur was returned to the circuit court on June 27, 2013.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Counsel was ineffective for not investigating to discover the Motel Video tape that would have directly proved that the states assertions were not true."
 - a. "There existed a video in the Motel in question that would have refuted the states assertions."
2. "Trial Counsel failed to timely file Applicant's Notice of Appeal White v. State"
 - a. "Counsel failed to file the Applicant's Notice after being instructed to do so."

Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCF.

Attached to this Return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent 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 also alleges he did not knowingly and voluntarily waive his right to a direct appeal. Respondent submits this allegation is without merit. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35,

39 (1974). However, a defendant may waive a direct appeal by making a “knowing and intelligent decision not to pursue the appeal.” Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010) (quoting Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004)). Furthermore, “[a]cts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). In the absence of a waiver by the defendant, counsel must either initiate an appeal or comply with the Anders¹ procedure. White, 263 S.C. at 118, 208 S.E.2d at 39. Even if the PCR court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 291, n.1, 342 S.E.2d 60, 60, n.1 (1986) (“Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review.”).

Respondent submits Applicant knowingly and voluntarily waived his right to a direct appeal. However, this allegation probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

¹ Anders v. California, 386 U.S. 738 (1967).

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

4 / 22, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2013-CP-21-2304

DOMINIQUE CASH, #354926)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

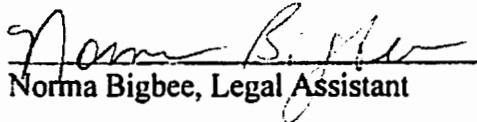
2014 APR 23 PM 2:30
 CONNIE REEL-SHEPARD
 CCLP & GS
 FLORENCE COUNTY, SC

FILED

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan Waller, Esquire
1720 Main St., Suite 104
Columbia, SC 29201

DATED this 22nd day of April, 2014.


 Norma Bigbee, Legal Assistant

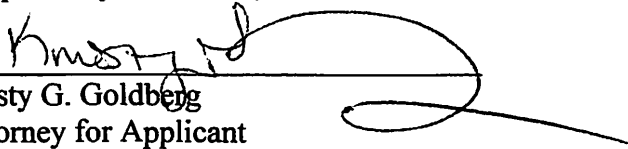
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	DOCKET NO.: 2013-CP-21-2304
	)	
DOMINIQUE CASH,	)	
SCDC # 354926	)	
Applicant,	)	
v.	)	AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
Respondent,	)	
	)	

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby amended as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of counsel for failure to investigate witnesses and call necessary witnesses at trial.
- (b) Ineffective assistance of counsel for failure to sufficiently question and cross examine police officers.
- (c) Ineffective assistance of counsel for failure sufficiently explain the Applicant's charges and indictment to him prior to trial in advising him whether to plea or go to trial.
- (d) Ineffective assistance of counsel for failure to effectively argue a legal and factual basis for the Defense's directed verdict motion.
- (e) Ineffective assistance of counsel for failure to effectively present mitigating information during sentencing.
- (f) Ineffective assistance of counsel for failure to file timely notice of appeal pursuant to White v. State.

Respectfully Submitted,

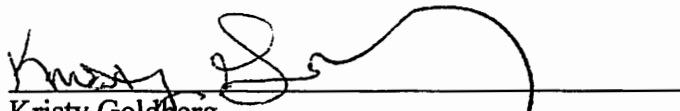

 Kristy G. Goldberg
 Attorney for Applicant

Columbia, South Carolina

This 12 Day of July, 2016.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	DOCKET NO.: 2013-CP-21-2304
	)	
DOMINIQUE CASH,	)	
SCDC # 354926	)	
Applicant,	)	
v.	)	CERTIFICATE OF SERVICE
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent,	)	
	)	

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 303
 Columbia, SC 29201
 803-667-6633
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 12TH day of July, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	DOCKET NO.: 2013-CP-21-2304
	)	
DOMINIQUE CASH,	)	
SCDC # 354926	)	
Applicant,	)	
v.	)	SECOND AMENDED APPLICATION
	)	FOR POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
Respondent,	)	
	)	

FILED
2017 MAR 10 PM 4:09
CLERK OF COURT
FLORENCE COUNTY, SC

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby amended as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of counsel for failure to investigate witnesses and call necessary witnesses at trial.
- (b) *Brady* violation by the State for failure to fully disclose all material evidence regarding co-defendants' statements and ineffective assistance of counsel for not seeking to obtain these statements.
- (c) Ineffective assistance of counsel for failure to sufficiently question and cross examine police officers.
- (d) Ineffective assistance of counsel for failure sufficiently explain the Applicant's charges and indictment to him prior to trial in advising him whether to plea or go to trial.
- (e) Ineffective assistance of counsel for failure to effectively argue a legal and factual basis for the Defense's directed verdict motion.
- (f) Ineffective assistance of counsel for failure to effectively present mitigating information during sentencing.
- (g) Ineffective assistance of counsel for failure to file a motion to reconsider sentence.

- (h) Ineffective assistance of counsel for failure to file timely notice of appeal pursuant to White v. State.

Respectfully Submitted,



Kristy G. Goldberg
Attorney for Applicant

Columbia, South Carolina

This 9th Day of March, 2017.

State of South Carolina)
County of Florence)

In Circuit Court of the
Twelfth Judicial Circuit
2013-CP-21-2304

DOMINIQUE CASH,
Plaintiff,

VS.

Transcript of Record

THE STATE,
Defendant.

Florence, South Carolina
March 17, 2017

B E F O R E:

The Honorable Paul M. Burch

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

Ms. Kirsty G. Goldberg, Esquire
Attorney for Plaintiff

Ms. Lindsey A. McCallister, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

I N D E X

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Jay Jordan:

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I N D E X

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
P-1	Inmate Request Letter- 1/15/2013	8
P-2	Mr. Dominique Cash's Packet For An Appeal	21

1 THE COURT: All right. Madam, Attorney
2 General?

3 MS. McCALLISTER: Your Honor, this is Dominique Cash
4 versus the State of South Carolina, 2013-CP-21-2304. We're
5 here today on Mr. Cash's application for post-conviction
6 relief which was filed on August 30, 2013. He is confined
7 in the South Carolina Department of Corrections. He was
8 indicted in March of 2013 by the Florence County for an
9 assault on a law enforcement officer. He was represented
10 on those charges by Jay Jordan. On April 9, 2013, he
11 proceeded to trial before Judge Brown and a jury and he was
12 found guilty as indicted and Judge Brown sentence him to
13 ten (10) years imprisonment. He filed a notice of an
14 appeal but it was untimely and the appeal was dismissed in
15 June of 2013.

16 He is present in the courtroom today and he is
17 represented by Kristy Goldberg.

18 MS. GOLDBERG: Thank you, Your Honor. May it
19 please, the Court? There has recently been a second
20 amended application filed in this matter. That was filed
21 March 10th. There should be a copy in your packet and it's
22 been updated.

23 THE COURT: I've got it.

24 MS. GOLDBERG: Okay. Very good. These are the
25 allegation that at this time we're going forward on today.

D. Cash- Direct Examination by Ms. Goldberg

5

1 If, Your Honor doesn't need any further explanation I can
2 call Mr. Cash to the stand at this time.

3 THE COURT: All right. Come around and be sworn
4 please.

5 THE CLERK: If you raise your right hand as best as
6 you can. Do you swear to tell the truth, the whole truth,
7 and nothing but the truth so help you God?

8 MR. CASH: Yes, ma'am.

9 THE CLERK: Thank you. Step up and have a seat.
10 State your name for the record.

11 MR. CASH: my name is Dominique Cash.

12 DOMINIQUE CASH, first being
13 duly sworn, testified as follows:

14 **Direct Examination by Mr. Goldberg:**

15 Q. Sir, we'll you spell your last name please for the
16 record?

17 A. C-a-s-h.

18 Q. All right. What sentence are you currently serving?

19 A. Assault on a law enforcement officer.

20 Q. For how - what is the amount of the sentence are you
21 serving?

22 A. Ten (10) years.

23 Q. Was that a result of a plea or a trial?

24 A. Trial.

25 Q. In front of a jury?

1 A. Yes, ma'am.

2 Q. Who was your attorney?

3 A. Jay Jordan. Wallace A. Jordan.

4 Q. Was he retained or appointed?

5 A. Appointed.

6 Q. Where are you originally from?

7 A. North Carolina. A lot of different places in North
8 Carolina.

9 Q. Your charges stem out of Florence County, is that
10 correct?

11 A. Yes, ma'am.

12 Q. Have you ever, at any time, lived in Florence County?

13 A. No, ma'am.

14 Q. How come you -- why did you come to be charged with
15 something in Florence County?

16 A. A couple of -- well, my cousin and a couple of friends
17 we came down here for one night and incident happened and
18 ended up getting arrested.

19 Q. Do you remember approximately when that was that you
20 were arrested?

21 A. October 20, 2012.

22 Q. And do you remember when your trial was?

23 A. April 10, 2013. I think it started the 10th and last
24 until the 11th.

25 Q. Now, between October of 2012 and April of 2013 and

D. Cash- Direct Examination by Ms. Goldberg

7

1 looks like that was approximately six months that your
2 charge was pending, is that accurate?

3 A. Yes, ma'am.

4 Q. Where were you during that time?

5 A. In the Florence County Detention Center.

6 Q. You were in jail the whole time this charge was
7 pending?

8 A. Yes, ma'am.

9 Q. You were never able to bond out?

10 A. No, ma'am.

11 Q. When did your -- well, let me back up, you were -- you
12 said you were arrested October 20, 2012?

13 A. Yes, ma'am.

14 Q. Do you remember at what point you were notified that
15 you had a lawyer, approximately?

16 A. It was probably, December.

17 Q. And do you remember when your lawyer first came to
18 meet with you?

19 A. Maybe, like, January or February, one of the two.

20 Q. All right.

21 MS. GOLDBERG: Your Honor, May I approach?

22 THE COURT: Yes.

23 Q. Mr. Cash, I'm handing you what's been pre-marked as
24 plaintiff's exhibit number one, can you please tell me, do
25 you recognize that document?

1 A. Yes, ma'am.

2 Q. Is that a document that you drafted?

3 A. Yes, ma'am.

4 Q. What -- generally, what is it?

5 A. Me saying that I have not met with my public defender
6 due to discuss my case and me requesting for an
7 appointment. It's written January 15, 2013.

8 Q. It's an inmate request letter?

9 A. Yes, ma'am.

10 Q. That you drafted?

11 A. Yes, ma'am.

12 Q. In January of 2013?

13 A. Yes, ma'am.

14 MS. GOLDBERG: Your Honor, I'd as that Exhibit 1 be
15 entered into evidence.

16 MS. McCALLISTER: No objection, Your Honor.

17 THE COURT: Okay.

18 MS. GOLDBERG: Thank you.

19 (Whereupon, the Inmate Request Letter- 01/15/2013 has been
20 marked and entered into evidence as Exhibit No. 1)

21 Q. Go ahead again and tell the court exactly what you're
22 saying in that letter.

23 A. I say in the request, "I have been in the Florence
24 County Detention Center since October 20, 2012 and have not
25 met with my public defender to discuss my case. I'm

D. Cash- Direct Examination by Ms. Goldberg

9

1 requesting for an appointment as soon as possible. Thank
2 you for your cooperation. I will also like to know if I am
3 eligible for a bond reduction and please respond."

4 Q. And what was the date of that letter again?

5 A. January 15, 2013.

6 Q. Three months after you first got to jail?

7 A. Yes, ma'am.

8 Q. All right.

9 A. Well, almost four.

10 Q. Now, you said you first met with your lawyer some time
11 in January or February you believe?

12 A. Something like that.

13 Q. And then once that happened, how often did you meet
14 with your lawyer?

15 A. I probably seen him, probably, two times before the
16 trial happened.

17 Q. Did he come to the jail to meet with you, is that how
18 you saw him?

19 A. No. I had to go to the courthouse.

20 Q. You'd be transported to the courthouse?

21 A. Mmm, hmm.

22 Q. Did he -- when you met with him, did he go over your
23 discovery with you and tell you about the evidence against
24 you?

25 A. Yeah.

1 Q. There was a video related to this case, correct?

2 A. Yes, ma'am.

3 Q. Did he show you the video?

4 A. Yes, ma'am.

5 Q. Do you remember when?

6 A. Sometime like in March.

7 Q. Advanced of trial?

8 A. Yes, ma'am.

9 Q. All right. What kind of conversations did you and
10 your lawyer have about whether you should plea or go to
11 trial?

12 A. He just kept saying take the plea, just take the plea.
13 He had never let me know why to take the plea. He would
14 just saying, like, just take the plea.

15 Q. And what does take the plea mean?

16 A. Admit guilt that's what I was hearing.

17 Q. Was there a plea offer?

18 A. Zero (0) to ten (10), it was a straight a plea, zero
19 (0) to ten (10) years.

20 Q. Did he tell you why he thought you should plea?

21 A. Not really, I mean, it looked bad. The case looked
22 bad anyway but the whole time I was thinking I was fighting
23 battery.

24 Q. What -- when you had this discussion with him and he
25 told you repeatedly that he thought you should plea, what

D. Cash- Direct Examination by Ms. Goldberg

11

1 did you want to do?

2 A. I wanted to go to trial because I was trying to prove
3 I never struck the officer nor did I fight the officer.

4 Q. Okay.

5 MS. GOLDBERG: I beg the Court's indulgence.

6 Q. Mr. Cash, you were first notified about what your
7 charges were by your warrant, is that fair to say, or no?

8 A. Yes, ma'am.

9 Q. That's how you found out what you were charged with?

10 A. Yes, ma'am.

11 MS. GOLDBERG: Your Honor, I believe the warrant is a
12 copy, it's in the court record for this case but I'm just
13 going to show him a copy, if that's okay.

14 Q. Mr. Cash, is that a copy of the warrants that you
15 received?

16 A. Yes, ma'am.

17 MS. GOLDBERG: And I guess for the record just so the
18 record is clear that's want 2012A2110200504.

19 Q. All right. Mr. Cash, given the fact that you were
20 served with this warrant, what did you think you were
21 charged with?

22 A. Assault by kicking the officer.

23 Q. And why did you think that that's what you were
24 charged with?

25 A. Because the description of the offense it says, "one

1 Dominique Alexander Cash along with co-defendants did
2 commit the offense of assaulting an officer by kicking a
3 law enforcement officer in the head causing bruises," and
4 so on and so forth.

5 Q. So in order for a jury to find you guilty, what did
6 you think the State was going to have to prove?

7 A. That I actually make contact with the officer.

8 Q. Did you discuss your belief about the charges or what
9 your understanding of the charges were with your lawyer?

10 A. Yes, ma'am.

11 Q. Okay. How did he advise you regarding what the jury
12 would have to be shown?

13 A. To take the plea. That's all he kept just saying,
14 just take the plea, like, not really advising me why to
15 take the plea, though. Had I known what I know now I would
16 have taken the plea but I didn't know what assault meant
17 back then. I thought assault meant battery by the
18 description in the affidavit, the warrant, and also like,
19 by how our conversations were going.

20 Q. Okay. And just to be a little bit more specific, tell
21 me what is the difference between what you knew then versus
22 what you know now?

23 A. Back then, like I said, I thought assault and battery
24 were the same thing. Now, I know the assault is the
25 attempt to cause harm like actually touching is not

D. Cash- Direct Examination by Ms. Goldberg

13

1 required to be charged with assault. And battery is the
2 actual completion of touching, the unwanted touching. And
3 so like, I had of known that I would've just taken the plea
4 because it looked bad, like they could've proved assault
5 even though I didn't really assault the officer. It just
6 looks so bad I would've just taken the plea.

7 Q. Did your lawyer ever explained to you that
8 misunderstanding of the law that you had when you were
9 preparing for trial?

10 A. Repeat that.

11 Q. When you were preparing for trial, did your lawyer
12 ever explain to you the difference between what an assault
13 and a battery is?

14 A. No, ma'am.

15 Q. Did he explain to you that you could possibly be
16 convicted even if the jury just believed you threaten force
17 rather than actually engaging in force?

18 A. No, ma'am.

19 Q. Do you think your lawyer should've advised you
20 differently in that regard?

21 A. Yes, ma'am.

22 Q. And that would've changed your decision on how to
23 proceed?

24 A. Yes, ma'am.

25 Q. And what would you have done differently?

1 A. Probably pled.

2 Q. Did you co-defendants plead guilty?

3 A. Yes, ma'am.

4 Q. Do you know what sentences they received?

5 A. Adrian, Adrian Boney, he received two (2) years, non-
6 violent. Natasha, Natasha, I forgot her last name ---

7 Q. Wright.

8 A. Natasha Wright, she received time served. I think she
9 only had six (6) or five (5) months, like a 172 days,
10 something like that. I think Breanna Harrison receive like
11 the same sentence as Natasha.

12 Q. Once you got to the point where you were going to
13 trial, did your trial start on a Monday or a Tuesday, do
14 you remember?

15 A. It was like a Monday or Tuesday, one of those two.

16 Q. Prior to walking into the courtroom that morning when
17 the trial began, did you know your trial was going to be
18 that day?

19 A. No, ma'am.

20 Q. You did not know why you were coming to court?

21 A. I knew I was dressing out and I knew I was going to
22 court but before, like, they came that early morning, I did
23 not know I was going to trial or going to court picking my
24 jury that day.

25 Q. Did you believe that your attorney was prepared for

D. Cash- Direct Examination by Ms. Goldberg

15

1 trial?

2 A. No. No.

3 Q. Why not?

4 A. We didn't have the statements of my co-defendants. He
5 went to trial fighting the wrong charge, like he said on
6 the record, it's the court's duty to find me guilty of
7 assault and battery when the judge kept saying to the jury
8 the defendant is charged with assault. There's a
9 difference between assault and battery. The defendant is
10 charged with assault. And he says on record, my trial
11 counsel actually says on record, it's the court's duty to
12 find me guilty of assault and battery. Not only that but
13 while he's cross-examining the police officer he accuses
14 the police officer of not saying something that's in his
15 police report, like, he actually gives the man the
16 documentation and the police officer was like, yes, I did,
17 is right here. I'm like

18 Q. Okay. And just for the record you're referring to
19 something that occurred on page 82 and 83 of the
20 transcript. Your attorney try to impeach the officer with
21 his own documents?

22 A. Yes, ma'am. Yes, ma'am.

23 Q. And your attorney was incorrect in doing that?

24 A. Yes, ma'am.

25 Q. You thought -- and what did that make you believe

1 about your lawyer?

2 A. That he did not study my case at all or didn't care.

3 Q. Do you know what a directed verdict motion is?

4 A. Somewhat.

5 Q. You have any issues about the way that was handled in
6 your case?

7 A. Yeah. Yeah.

8 Q. Are you able to add, to tell the court anything about
9 that?

10 A. I mean, the directed verdict motion is, basically, the
11 same as -- the issue with the directed verdict motion is,
12 basically, the same as him not explaining to me what the
13 difference between assault and battery is because while he
14 was trying to get a directed verdict he said on the record,
15 this is where he said on the record that is the court's
16 duty to find me guilty of assault and battery when all they
17 had to find me guilty of was assault. So it was, like,
18 they're not going to give a directed verdict for that
19 because we're not here for that. Like, they kind of -- by
20 the time he filed for the first directed verdict by the
21 officers statements and the witnesses statements they had a
22 case for assault. Now, as far as battery, they didn't have
23 a case for that because the officer never says I struck
24 him. He never even says I even grabbed him, touched him,
25 or anything. That's all I was trying to prove that I never

D. Cash- Direct Examination by Ms. Goldberg

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1 touch the officer and in his testimony he never says I
2 grabbed him or touched him or hit him, nothing.

3 Q. Did you testify during your jury trial?

4 A. Yes, ma'am.

5 Q. And you told the court and the jury everything you
6 needed to say about what happened that day?

7 A. Yes, ma'am.

8 Q. Did you testify honestly?

9 A. Yes, ma'am.

10 Q. Your trial ended, it looks from the transcript, it
11 says your trial ended on April 10th, were you sentence that
12 day immediately after the trial ended?

13 A. Yes, ma'am.

14 Q. During your trial on April 10th, April 9th and April
15 10th, was your family present?

16 A. No, ma'am.

17 Q. Were any friends, any community leaders, anybody
18 present to support you during trial?

19 A. No, ma'am.

20 Q. Why not?

21 A. I don't know. I told my lawyer to get in contact with
22 my family. See, me being in North -- me being from North
23 Carolina it used to cost \$5 on the payphone for me to talk
24 to my family for sixty seconds. And it would take three
25 days for my mail to get there so, like, I'd write and I'd

1 call when I can. Like, I'd run out of money sometimes so I
2 can't call. I have to write letters and that takes too
3 long sometimes. So by the time I went to court, I didn't
4 even know I was going and I had told my lawyer beforehand
5 let my family know when I go to trial and they didn't know
6 so they didn't come.

7 Q. No one was present?

8 A. No one.

9 Q. Did -- would you have wanted your family members to
10 speak to the court during sentencing?

11 A. Yes, ma'am.

12 Q. You received the maximum sentence for this charge?

13 A. Yes, ma'am.

14 Q. After your verdict and during sentencing, did your
15 lawyer tell the judge anything about you as a person, like,
16 your education, work, family, anything at all?

17 A. Not as far as that. I think he said something, like,
18 he tried to get leniency but he didn't say anything as far
19 as like my education or my family or my work history or
20 anything positive as far as that. But he tried somewhat
21 after the fact.

22 Q. Are there some positive things about you, you would've
23 wanted the court to know?

24 A. Yes, ma'am.

25 Q. And can you tell this court some of those things?

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1 A. At that time when I got arrested I had, like, numerous
2 jobs. Like, I was probably working two jobs at the time
3 when I got arrested. I was in school. I was in college
4 for business administration. Right before I got into
5 school for business administration, I was student of the
6 year for, like, in the adult high school program. My
7 family there here right now like, I mean, it's a lot of
8 things, like, they could've said for me, like, rather than
9 me say for myself. But I wished they would have been
10 present, you know I'm saying.

11 Q. After your sentencing, after you were sentenced, where
12 did you go? Immediately -- you're standing in front of the
13 judge, the judge gives you your sentence, where do you go
14 after that? Do you immediately go to the jail?

15 A. I went back to the jail house and, like, the next day
16 I went to Kirkland R&E for processing.

17 Q. Before you went to the jail, did you spend additional
18 time in the courthouse either in the holding cell?

19 A. Yes, ma'am.

20 Q. Okay. Did you talk with your lawyer some more after
21 sentencing?

22 A. I want to say, yes, but I really don't remember. I
23 doubt it. I want to say, yes, just for -- you know what
24 I'm saying but I really doubt it.

25 Q. Do you remember, specifically, if the two of you ever

1 discussed the possibility of an appeal?

2 A. No.

3 Q. It never was mentioned ---

4 A. No.

5 Q. --- by either one?

6 A. No.

7 Q. All right. Did you know you had a right to an appeal?

8 A. No.

9 Q. When did you find out that you had a right to an
10 appeal?

11 A. When I was in the processing center, Kirkland.

12 Q. Once you found out about your right to appeal, what
13 did you do?

14 A. I filed for an appeal. I sent a letter to my lawyer
15 and I sent a copy of the letter to the clerk of court.

16 MS. GOLDBERG: Your Honor, May I approach the witness?

17 THE COURT: Sure.

18 MS. GOLDBERG: I'm going to hand you what's been
19 marked as Plaintiff's Exhibit Number 2, if you would look
20 through those documents. I think some of those may be part
21 of the record anyway. And because I think most of them are
22 part of the record, I don't think the State has any
23 objection that Exhibit 2 being entered into evidence?

24 MS. McCALLISTER: No. I believe those are part of
25 the packet, Your Honor.

D. Cash- Direct Examination by Ms. Goldberg

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1 MS. GOLDBERG: And I can give you an extra copy, Your
2 Honor, so you know -- it's more than one page that we're
3 looking at.

4 (Whereupon, the Mr. Dominique Cash's Packet For An Appeal
5 has been marked and entered into evidence as Exhibit No. 2)

6 Q. Mr. Cash, what is that first page?

7 A. This is my request for an appeal.

8 Q. Who did you write that too?

9 A. I don't know if this is the copy that -- I think this
10 is a copy that the clerk of court got.

11 Q. Who is it addressed to, though?

12 A. To whom it may concern.

13 Q. Who, all, did you mail that to?

14 A. Jay Jordan and also the clerk of court, two separate
15 envelopes.

16 Q. Did you mail them on the same day?

17 A. Yes, ma'am.

18 Q. At the same time?

19 A. Yes, ma'am.

20 Q. What day -- does it say what day you mailed that on?

21 A. On this one right here it's cut off but I know that I
22 wrote it on -- well, I wrote it on Tuesday, April 16, 2013
23 and they said they received it on the 19th of April.

24 Q. And what does that letter asked for again or say?

25 A. Basically, it's saying I'm requesting for an appeal on

1 my case because of certain things, like, the video evidence
2 from the motel lobby wasn't used. Really a lot of these
3 things that I was asking for an appeal for, they, I really
4 don't know what substantiates for an appeal nowadays, like
5 because I was more focused on the PCR, you know what I'm
6 saying, but I was trying to get an appeal because I felt
7 like things weren't done the way they should've been done,
8 you know I'm saying so....

9 Q. Regardless of why you attempt to ask for an appeal ---

10 A. Yes, ma'am.

11 Q. --- I mean, this was six days after you were
12 sentenced?

13 A. Yes, ma'am.

14 Q. And were you able at that time to contact Mr. Jordan
15 by any other means other than that letter?

16 A. No, ma'am.

17 Q. Were you able to call him?

18 A. I don't even know if I had his number.

19 Q. Okay. Did you ever hear anything back from Mr.
20 Jordan?

21 A. About a year later, maybe.

22 Q. Mr. Jordan did file a notice of intent to appeal on
23 May 8, 2013 and that was, ultimately, dismissed because it
24 was untimely, were you aware that?

25 A. Mmm, hmm. Yes, ma'am.

D. Cash- Direct Examination by Ms. Goldberg

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1 Q. Did you, at any time prior to or during trial, ask
2 your lawyer to call your co-defendants as witnesses in your
3 trial?

4 A. Yes, ma'am.

5 Q. And how many co-defendants did you have?

6 A. Three.

7 Q. He did, in fact, called Adrian Boney as a witness in
8 trial, correct?

9 A. Yes, ma'am.

10 Q. What about the other two witnesses, um, co-defendants,
11 why weren't they called as witnesses?

12 A. I don't know why exactly they weren't called. I think
13 he had told me they had went back to North Carolina and
14 they were out in the jurisdiction or something like that.
15 Something, I don't know.

16 Q. Do you know if your lawyer ever or did he tell you he
17 ever talked with him or interviewed them or got statements
18 from them?

19 A. Never told me if he did.

20 Q. Did he ---

21 A. As a matter of fact except, Adrian. He said he had
22 talked to Adrian like the day of the trial.

23 Q. Did you know that police had taken statements from the
24 girl, co-defendants, Natasha and Breanna?

25 A. I didn't know until after I got sentenced.

1 Q. You didn't -- you never knew that until after you got
2 sentenced?

3 A. No.

4 Q. How did you find out?

5 A. By reading over my documents.

6 Q. When did you get those documents?

7 A. I had been had those documents. That fell on me right
8 there.

9 MS. GOLDBERG: I beg the court's indulgence.

10 Q. One final question, one final issue. Mr. Cash, you
11 said that Mr. Jordan never discussed the possibility of
12 filing an appeal, did the two of you ever discuss the
13 possibility of filing for a motion to reconsider your
14 sentence?

15 A. No.

16 Q. Did you know that was something that you could do?

17 A. No.

18 Q. You didn't even know that you could ask him to do
19 that?

20 A. No.

21 Q. And he never suggested that?

22 A. No.

23 MS. GOLDBERG: No further questions.

24 **Cross Examination by Ms. McCallister:**

25 Q. Okay. Mr. Cash, you were arrested in October of 2012,

D. Cash- Cross Examination by Ms. McCallister

25

1 correct?

2 A. Yes, ma'am.

3 Q. And you stay in Florence County the entire time
4 between your arrest and trial, correct?

5 A. Yes, ma'am.

6 Q. And I believe you said you were notified that an
7 attorney was appointed to you in December?

8 A. I think so.

9 Q. Approximately?

10 A. Around that time, yes, ma'am.

11 Q. And you first met with him then in January or
12 February?

13 A. Yes, ma'am.

14 Q. Okay. Did you ever meet with an investigator of his,
15 someone from the public defender's office?

16 A. Yeah. I think.

17 Q. Do you know who that was?

18 A. I think his name was Thomas McKinley.

19 Q. Okay.

20 A. Something like that.

21 Q. Do you remember when you met with him?

22 A. That might've been in December or January.

23 Q. Okay. So you maybe met with the investigator before
24 you met with your attorney?

25 A. Yes, ma'am.

1 Q. Okay. And what did you talk about with Mr. McKenzie?

2 A. About what had, had happened at the incident, I mean,
3 at the scene of the alleged incident or whatever.

4 Q. Okay. So -- did you tell him your version of the
5 facts and what happened?

6 A. I told him what happened.

7 Q. Okay. Did you give him some names of witnesses or
8 your co-defendants, did you talk about that?

9 A. Basically, what I had said was the girls did nothing.
10 The girls they did nothing. They got locked up just for, I
11 guess, regulation purposes or something. That was the main
12 thing that I was trying to let the officer know, I mean,
13 not the officer, the investigator know because I'm innocent
14 but the video looks bad for me. So my main thing was I
15 state my innocence but I was trying to help those girls
16 too. That was the main thing I was telling the
17 investigator though, like I didn't do anything, the girls
18 didn't do anything, I mean, I---

19 Q. Okay.

20 A. --- You know what I'm saying.

21 Q. Did you only meet with him that one time?

22 A. Yes, ma'am.

23 Q. So you met with Mr. McKenzie maybe about December and
24 then you met with your attorney in January for the first
25 time?

D. Cash- Cross Examination by Ms. McCallister

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1 A. It might've been January. It probably was February.

2 Q. January or February?

3 A. Yes, ma'am.

4 Q. Okay. And you said you met with him when you were
5 transported to the courthouse?

6 A. Yes, ma'am.

7 Q. Your attorney?

8 A. Yes, ma'am.

9 Q. You met with Mr. McKenzie, where?

10 A. At the jail house.

11 Q. At the jail. Okay. And how many times total did you
12 meet with her attorney before you went to trial?

13 A. Probably two times. Maybe three, I doubt three. But
14 I know two times.

15 Q. Did you ever call him from jail?

16 A. No, ma'am.

17 Q. Did you ever write him letters from the jail?

18 A. Yes, ma'am.

19 Q. Okay. Did he write you letters to the jail ---

20 A. No, ma'am.

21 Q. --- I mean, respond to your letters, back and forth?

22 A. He sent -- he sent my Rule 5.

23 Q. He did, okay. And it was your testimony I think that,
24 that the only plea that was ever discuss was just a
25 straight up, you could just go in and plead guilty?

1 A. It was a straight up zero (0) to ten (10).

2 Q. Okay.

3 A. You know what I'm saying. That was the only plea on
4 the table.

5 Q. And you did not want to do that ---

6 A. No, ma'am.

7 Q. --- because you wanted the chance to prove your
8 innocence, correct?

9 A. Yes, ma'am.

10 Q. Okay. Did you talk with your attorney about your Rule
11 5 that he sent you?

12 A. Yes, ma'am.

13 Q. Okay. He kind of went over what was in there?

14 A. Somewhat. Yes, ma'am.

15 Q. Okay. Did -- and I believe you said you did see the
16 video before you went to trial, is that correct?

17 A. Yes, ma'am.

18 Q. Okay. Did he explain to you how much time you could
19 potentially be facing if you lost at trial?

20 A. Yes, ma'am.

21 Q. Okay. So you knew what you were risking?

22 A. Yes, ma'am.

23 Q. Okay. Did he -- did he explain kind of the pros and
24 cons of a plea versus a trial, did you have that, any kind
25 of discussion like that?

D. Cash- Cross Examination by Ms. McCallister

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1 A. Somewhat, as far as like the time difference. That
2 was it, really.

3 Q. Did he talk to you about what the State was going to
4 have to prove?

5 A. No.

6 Q. Okay. He didn't explain the elements of the offense
7 to you and he didn't talk to you about what the State would
8 have to prove?

9 A. No, ma'am.

10 Q. And you said you did not know that you were coming to
11 trial that day?

12 A. No. No, ma'am.

13 Q. Did you know you were going to court that day?

14 A. No, ma'am.

15 Q. Okay. So they just wake you up and said, get dressed?

16 A. Yes, ma'am.

17 Q. Okay. And I think you talked a little bit about --
18 you did testify at trial, correct?

19 A. Yes, ma'am.

20 Q. And he had one of your co-defendants there, correct,
21 to testify?

22 A. Yes, ma'am.

23 Q. To support -- in support of you, correct?

24 A. Yes, ma'am.

25 Q. Okay. And I believe you said, he did try to mitigate

1 your sentence after the guilt, after the guilty verdict?

2 A. Somewhat, yes, ma'am. Yes, ma'am.

3 Q. And you were given a chance to speak ---

4 A. Yes, ma'am.

5 Q. --- were you not? Okay. So all those positive things
6 that you told your attorney you wished the court have known
7 about, having a job, and being in school, did you say those
8 things?

9 A. My main thing that I was saying was I didn't do the
10 crime. I wouldn't waste the court's time and waste my time
11 risking getting ten (10) years when I could take a plea and
12 go home that same year or the next year, you know what I'm
13 saying, that was my main thing explaining to the judge, I
14 didn't do this.

15 Q. So you didn't take responsibility for it when you got
16 a chance to speak?

17 A. Take responsibility?

18 Q. Yes, for your actions.

19 A. Believe me if I went to trial I didn't do it, I
20 would've took a guilty plea had I done this. So I took
21 responsibility for my actions.

22 Q. Okay. And it's your testimony that Mr. Jordan never
23 told you, you would have a right to an appeal?

24 A. No, he never -- we never went over an appeal, never
25 went over a reconsideration, nothing like that.

D. Cash- Cross Examination by Ms. McCallister

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1 Q. When you got to -- once you were sentenced and you, I
2 think you said, were you taken immediately to Kirkland?

3 A. The next day.

4 Q. The next day.

5 A. Yes, ma'am.

6 Q. So you went back to Florence County for one day?

7 A. Yes, ma'am.

8 Q. And then you were taken to Kirkland?

9 A. Yes, ma'am.

10 Q. And you didn't find out that you could appeal into you
11 got to Kirkland?

12 A. Yes, ma'am.

13 Q. Did you - - did you tell anyone that you wanted to
14 call your attorney once you found that out?

15 A. Mmmmm ---

16 Q. You asked if that was allowed?

17 A. No, I did not ask it if that was allowed. I didn't
18 have his number anyway so....

19 Q. Okay. I realize you're saying you didn't have his
20 number but you didn't ask if they could put you in touch
21 with your attorney. You didn't -- did you tell anyone,
22 hey, I need to make sure he's filing an appeal and I need
23 to get in touch with my attorney?

24 A. I mean, I wrote a letter. That's how we been getting
25 in contact with each other when I was in the county jail so

1 I sent the letter just like how I'd been doing.

2 Q. Okay. And you said your attorney did explain to you
3 that the girls, your co-defendant's, the girls, were out of
4 his jurisdiction, I believe, is what you said, how he
5 explained it?

6 A. He said that.

7 Q. He did say that.

8 A. He said that.

9 Q. Okay.

10 MS. MCCALLISTER: That's all the questions I have.

11 MS. GOLDBERG: No further questions of this witness.

12 THE COURT: Thank you, sir. You may step down.

13 MR. CASH: Do I take these with me?

14 COURT REPORTER: No.

15 THE COURT: She needs to keep that.

16 COURT REPORTER: Thank you.

17 MS. GOLDBERG: Your Honor, at this time the applicant
18 would call Investigator Worsley to the stand.

19 THE CLERK: Place left hand on the Bible and raise
20 right hand. Do you swear or affirm that the testimony you
21 give will be the truth, the whole truth, and nothing but
22 the truth so help you God?

23 MR. WORSLEY: I do.

24 THE CLERK: Thank you. State your name for the
25 record.

A. Worlsey- Direct Examination by Ms. Goldberg

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1 MR. WORSLEY: Investigator Alvin Worsley, Florence
2 County Sheriff's office.

3 COURT REPORTER: Spell that last name for me.

4 MR. WORSLEY: W-o-r-s-l-e-y.

5 COURT REPORTER: Thank you.

6 MR. WORSLEY: Mmm, hmm.

7 Alvin Worsley, first being
8 duly sworn, testified as follows:

9 **Direct Examination by Ms. Goldberg:**

10 Q. Good morning, sir.

11 A. Good morning.

12 Q. You work at the Florence County Sheriff's Department?

13 A. Yes, ma'am.

14 Q. All right. How long have you worked there?

15 A. Since 2008.

16 Q. What's your position now or your title?

17 A. I'm assigned to the investigation division.

18 Q. In 2012, did you have the same assignment?

19 A. Yes. I was on call at that time.

20 Q. You were an investigator?

21 A. Yes, ma'am.

22 Q. Were you involved in the investigation of the case
23 where Mr. Cash was, ultimately, prosecuted?

24 A. Yes, I was.

25 Q. Tell me what your involvement was?

1 A. I was on call, the supervisor on shift, the
2 lieutenant, he called me and advised me they had an assault
3 on an officer that took place on Lucas Street so I
4 responded and made contact with them. I think they had Mr.
5 Boney and Mr. Cash and the girls already in custody. And
6 later, I talked to the deputy at the hospital that got
7 assaulted.

8 Q. Okay. What else did you do?

9 A. I interviewed, one, Breanna Harrison and Latasha
10 Wright that was on 10/20/2012. I interviewed Breanna
11 Harrison at 4:33 p.m. and I interviewed Latasha Wright at
12 44:48 p.m. at the Florence County Sheriff's office.

13 Q. What was the date again?

14 A. 10/20/2012.

15 Q. 10/20.

16 A. Mmm, hmm.

17 Q. That was the same day everything happened?

18 A. Yeah.

19 Q. Later in the day?

20 A. Right.

21 Q. And you interviewed them at the sheriff's department?

22 A. Yes, ma'am.

23 Q. Was it just you or did you have any other investigator
24 sitting in with you?

25 A. I think it was just me.

A. Worlsey- Direct Examination by Ms. Goldberg

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1 Q. And they were both charge, correct?

2 A. Yes.

3 Q. They both were mirandized?

4 A. Yes.

5 Q. How were those statements by defendants memorialized?

6 A. It was on video and audio.

7 Q. Did either girl write a, write out a statement?

8 A. No. I just had the paperwork where they sign the
9 Miranda warnings, that's all.

10 Q. Okay.

11 A. They didn't do a written statement.

12 Q. And there wasn't a written statement, like, prepared
13 by law enforcement that, that they signed either?

14 A. No.

15 Q. There is no written statement at all?

16 A. No.

17 Q. The only documentation from those interviews was the
18 audio and video documentation?

19 A. Right.

20 Q. Where is that audio/video documentation now?

21 A. The video system that we have it can't go back to 2012
22 and record that video, so as far as that video that -- the
23 only thing I have is the Miranda warnings that they signed
24 right before I did the video.

25 Q. Can you tell me if the videos were ever turned over to

1 the solicitor's office while this was pending?

2 A. Yeah. We recorded the videos and ---

3 MS. McCALLISTER: Objection ---

4 A. I'm sorry.

5 MS. McCALLISTER: --- Your Honor, I think she needs
6 to lay a little bit more foundation for that. If he knows
7 whether they were ---

8 MS. GOLDBERG: And that's what I'm asking for if he
9 knows for a factor.

10 A. For I fact, I don't know ---

11 Q. Okay.

12 A. --- for a fact.

13 Q. You don't know for sure if they were ever turned over
14 or not?

15 A. No.

16 Q. Do you know for sure if they were ever turned over to
17 trial counsel?

18 A. I'm not sure.

19 Q. Can you tell, we'll take them one at a time, as far as
20 Breanna Harrison, do you recall the substance of that
21 conversation or that statement?

22 A. I don't. I don't. I don't recall.

23 Q. Okay. And as far as Natasha Wright, can you tell me
24 the substance of that statement?

25 A. The only thing about ---

1 MS. McCALLISTER: Objection, Your Honor, that's
2 hearsay. Natasha Wright would have to, I believe, would
3 actually have to be here to say what her statement was and
4 she's not here.

5 MS. McCALLISTER: Well, Your Honor, I'm actually not
6 introducing it for the truth of it. The allegation -- the
7 issue at this particular point in time was that there was
8 information as part of discovery so I want to know what
9 that information was. I'm not challenging whether it is
10 truthful or innocent, I mean, truthful or not truthful.

11 THE COURT: Okay. Go ahead.

12 A. Both of them gave a statement and as far as their
13 version of what happened, but as far as me telling what
14 each one of them said, I don't recall.

15 Q. Generally, your memory, were their statements things
16 where they were stating that they were innocent, were they
17 stating that they were guilty, were they -- do you recall --
18 --

19 A. I don't recall.

20 Q. Anything at all about the substance of those
21 conversations?

22 A. One of the girls, I'm not sure which one, but one of
23 them told me she went to Hardee's and we found out she was
24 lying. Then they brought her back to the scene because she
25 said she wasn't involved. Then we found out, they found

1 out on the scene that she was involved. But as far as the
2 substance of both of them interview, I don't recall what
3 neither one of them said.

4 Q. Did you take notes at the time that they gave you
5 statements?

6 A. I did, but as far as my notes, I don't know where
7 they're at, where to locate ---

8 Q. You don't know where they are?

9 A. No.

10 Q. You don't have possession of those notes anymore?

11 A. No, I don't.

12 MS. GOLDBERG: No further questions.

13 MS. McCALLISTER: No questions, Your Honor.

14 THE COURT: Thank you, sir. You may step down.

15 MS. GOLDBERG: Your Honor, Investigator Worsley was at
16 my subpoena request. At this time I'd be comfortable
17 dismissing him to that subpoena if it's okay with everyone.

18 THE COURT: You're are welcome to leave or you can
19 stay if you'd like.

20 MR. WORSLEY: Nah. Thank you.

21 MS. GOLDBERG: Your Honor, at this time the applicant
22 would call, Terrell Williams

23 THE CLERK: Place your left hand on the Bible and
24 raise your right hand. Do you swear or affirm the
25 testimony you give this court will be the truth, the whole

T. Williams- Direct Examination by Ms. Goldberg

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1 truth, and nothing but the truth so help you God?

2 MR. WILLIAMS: Yes.

3 THE CLERK: Have a seat. State your name for the
4 record.

5 MR. WILLIAMS: Terrell Williams.

6 MS. GOLDBERG: Can you spell your last name for the
7 court?

8 MR. WILLIAMS: W-i-l-l-i-a-m-s.

9 TERRELL WILLIAMS, first being
10 duly sworn, testified as follows:

11 **Direct Examination by Mr. Goldberg:**

12 Q. Mr. Williams, how are you related to Dominique Cash?

13 A. I'm his father.

14 Q. Back in 2012-2013, you were aware he was in the
15 Florence County Detention Center, weren't you?

16 A. No.

17 Q. Okay. At any point during that time did you know he
18 was in South Carolina in jail?

19 A. I found out it was late in that year through my,
20 through my parents.

21 Q. When did you find out?

22 A. It was a while. I can't remember exactly when.

23 Q. Was he already in prison at that time or did you find
24 out ---

25 A. I think he was already in the prison that Kirkland

1 place.

2 Q. Did Mr. Cash's attorney ever contact you while these
3 charges were pending?

4 A. No.

5 Q. Did you know prior to trial that he had a jury trial
6 coming up?

7 A. No.

8 Q. If you had known that there was a jury trial, would
9 you have been present?

10 A. I would try my best to be like I am now.

11 Q. If there had been a opportunity after the jury trial
12 for you to speak to the court before the judge issued
13 sentence, would you have wanted to take that opportunity?

14 A. Yes.

15 Q. Can you tell this court anything that you may, may
16 have said -- what do you believe you would have told the
17 court on that day?

18 A. That, like he say, he was in school. He was trying to
19 better himself. He was trying to grow up. He was trying
20 to be a big brother to his little brother, younger brother
21 and baby sister. And he was trying to get through these
22 little growing pains that he has been through and he was
23 showing the tool -- he was showing that he had the tool to
24 do it. And he was down at my parents. He was down there
25 going to school. Had a job. Had a vehicle. I was proud

1 of him. You know, cuz when he was younger he had his ups
2 and downs and whatnot. It seemed like he was getting
3 himself, like I said, getting himself back together. He's
4 not a -- he wasn't a bad kid. And when I found out how
5 much time he had, I thought I was like that's crazy. I
6 mean, no parent want to see they kid locked up and for long
7 period of time. That period of time it wrecks habit on a
8 mental state of anybody, Especially the young and they
9 mind is forming that's a lot. I mean, it's been what four
10 or five years now. They haven't even seen it. And that
11 put a picture in they minds. You know, they miss, they
12 miss big brother. And it's just a lot because he's not
13 serving it by his self. I'm serving it. They serving it.
14 His mom is serving it. That's all.

15 Q. All right.

16 MS. GOLDBERG: Thank you, sir. No further questions.

17 MS. McCALLISTER: No questions, Your Honor.

18 THE COURT: Thank you, sir.

19 (Whereupon, the court took a short break)

20 Bailiff: All rise.

21 THE COURT: You may be seated. Thank you.

22 MS. GOLDBERG: Your Honor, that the extent of the
23 applicant's evidence.

24 MS. McCALLISTER: Your Honor, I'd call Jay Jordan to
25 the stand.

1 THE COURT: Place your left hand on the Bible,
2 raise your right. You solemnly swear the testimony you're
3 about to give the court is the truth, the whole truth, and
4 nothing but the truth so help you God?

5 MR. JORDAN: I do.

6 THE COURT: Thank you, sir. Counsel?

7 JAY JORDAN, first being
8 duly sworn, testified as follows:

9 **Direct Examination by Ms. McCallister:**

10 Q. Mr. Jordan, how long have you been practicing law?

11 A. I'm coming up on my tenth anniversary. I believe I
12 was sworn in October of 2007.

13 Q. So at the time of Mr. Cash's case that would be about
14 six years that you had been practicing, is that correct?

15 A. That sounds about right.

16 Q. Okay. And at the time how much criminal work were you
17 doing or how much criminal experience did you have?

18 A. Verily extensive. My first job out of law school was
19 in a private practice but I also did part-time public
20 defender work through that office in Marion County as the
21 juvenile, as well as general sessions work over there.
22 Also about two years into my practice, I became a CJ lawyer
23 for the federal system and had done federal cases and trail
24 work over there and had been a part-time public defender in
25 the Florence office for about three or four years I believe

1 by that point when this case came to trial.

2 Q. And so were you appointed through the Florence County
3 PD or was this a private case?

4 A. I would've been assigned this case to the Florence
5 County Public Defender's Office, through the Twelfth
6 Circuit, Florence Division Public Defender's Office.

7 Q. Okay. Can you just describe a little bit about the
8 state's evidence in this case and how these charges came
9 about?

10 A. This case stem from an incident that took place out on
11 I believe it was Highway 52 near interstate I 95. I
12 believe it was -- I believe it was the Baymount Motel out
13 near Cracker Barrel where law enforcement was called to
14 respond based on an incident that was taking place within
15 the lobby that had then spilled over into the front yard of
16 the motel. As I remember the incident there were two
17 females, two males. I, of course, represented Mr. Cash
18 who, ultimately, went to trial. The two females that were
19 upset with the hotel staff because, if I remember
20 correctly, they were not being allowed back into the room
21 for some reason. Mr. Cash then came in, to the best of
22 memory, tried to calm the situation down and calm the
23 ladies down. Ultimately, it's spilled out into the front
24 yard and a fight ensued between the four individuals and
25 law enforcement.

1 Q. Okay. Did you meet with Mr. Cash to discuss these
2 charges?

3 A. Yes.

4 Q. Do you recall how many times you met with him?

5 A. It would've been numerous times. The standard
6 protocol when a case comes in its sort of dependent, for
7 our office I'm speaking of, it sort of dependent on whether
8 your in detention or whether you're out on bond. Of
9 course, you have initial appearance and docket appearance
10 and, of course, Mr. Cash would not of been present at those
11 because he was in Effingham at the detention center. So
12 the procedure for someone who is locked up, the first
13 contact from our office would be an investigator. In this
14 case it would've been Mr. Thomas McKenzie. He would've
15 gone out to the detention center. He would've met with Mr.
16 Cash. Discuss the case with him. And, then at that point,
17 it would've been sent over to me as the assigned attorney
18 and I would've met with Mr. Cash after that. It either
19 would've taken place, sometimes it takes place at the
20 detention center, sometimes more often than not, takes
21 place here at the courthouse. Just from a practical stand
22 point, a lot of times it's easier to meet with folks
23 especially when we're having terms of court going on, to
24 have someone brought over, transported to the courthouse
25 where we have facilities to talk to them. A little bit

1 easier than going down into the pod and sometimes in
2 meeting with someone. So, in this particular case, Mr.
3 McKenzie would've met with Mr. Cash. Would've been sent to
4 me. Then I would've met with him sometime after that.

5 Q. Okay. So it would not be unusual that his first
6 contact with someone would not be, you, as his attorney
7 contact?

8 A. It would be very normal. It would be standard course.

9 Q. Okay. And you don't have a -- you can't give me a
10 number of how many times you met with Mr. Cash, do you
11 know?

12 A. The first time would, of course, would've been to meet
13 with Mr. Cash and sort of explained to him what the charges
14 were, the elements of the offense, what his possible
15 penalties are, and then to go over the discovery if I have
16 it at that point. Sometimes I have it and sometimes I
17 don't. Sometimes the meeting is to say, hey, I don't have
18 anything for you yet, but when I get it, you know, we filed
19 a Rule 5 and Brady to request it from the solicitor's
20 office and their required to turn over what they have. And
21 then we would have met numerous times going over this.
22 Typically, the number of times you meet is sort of
23 depending on the track that your client takes. If the
24 client, you know, shows up and says I have a plea offer and
25 I'm willing to take that, you might only meet with him once

1 or twice, depending on, you know, the case and what they
2 wish to do with the case. If on the other hand, as Mr.
3 Cash did, request a jury trial, I would've met with him
4 many more times than not because we would've met with him
5 to discuss, again, the facts of the case, going over the
6 video in this case, and things like that so it would've
7 been, it would've been numerous times.

8 Q. Okay. And do you recall going over the evidence with
9 Mr. Cash?

10 A. Multiple times, yes.

11 Q. Okay. And did you -- did you play the videos for him?

12 A. I believe so, yes.

13 Q. Okay. And can you describe what those videos were?

14 A. The video, I remember very clearly, would've been the
15 video that would've been the dash cam of, I believe, Deputy
16 Powell. It was the only real video that showed anything to
17 do with the, what I would say, the charge itself, Deputy
18 Powell's responding to the location. And so as his car is
19 driving up, because he had already activated his blue
20 light, the video camera was rolling and so he's sort of the
21 first or the only video to my knowledge and recollection
22 that shows the actual scuffle taking place between I
23 believe it was Deputy Phillips and Mr. Cash. If I
24 remember, I was looking back through the file last night,
25 and if I remember correctly I want to say that there was

1 another video of the lobby, if I remember correctly, but
2 that doesn't really show much. It just shows kinda
3 cooperates what Mr. Cash's statement to me was that the
4 lobby is taken, if I remember correctly, the lobby camera
5 shows out from the counter, so to speak, and it shows the
6 female, the ladies in there and dealing with and,
7 eventually, comes out. It doesn't show anything of a
8 scuffle or anything like that.

9 Q. Okay.

10 A. And I believe those are the only videos that I ever
11 saw.

12 Q. Okay. Did you talk to Mr. Cash about potentially
13 having his co-defendants come to trial and testify?

14 A. Yes. We discussed that. He requested that. I do
15 remember he requested also three of them to be brought to
16 trial to testify. We, of course, were able to get Mr.
17 Boney. I believe he was in custody at the time so we had
18 sort of an ability to get him to come to court and had also
19 had the ability to talk to him briefly prior to court to
20 sort of get a feel of what he was going to say. As to the
21 female, the other two individuals, they had left and gone
22 back to North Carolina where I believe they were from. Mr.
23 McKenzie had attempted to locate them and I believe did
24 locate them and what I was told for Mr. McKenzie, the
25 investigator, was they were not willing to come back to

1 court. Of course, they had gone to North Carolina and at
2 that point my ability to bring them back were sort of
3 hampered by them being out state.

4 Q. So legally there was nothing you could do to force
5 them to show up for Mr. Cash?

6 A. That and also, strategy wise, I'm not real big at
7 trial of forcing, you know, even if I can, forcing someone
8 to come, when my experience has been, when you're making
9 them be there as a defense witness you don't always like,
10 from a strategy standpoint, they're not always your best
11 friend that you demand that they come to court. Again, in
12 this process Mr. McKenzie who is very good at locating
13 people and this is one of the task he's given as
14 investigator, he would've located and talked to them and my
15 understanding was they didn't want to get involved. That
16 was what my understanding was from him.

17 Q. And you filed a Rule 5, correct?

18 A. That's correct.

19 Q. And you receive discovery -- you receive some items
20 and discovery, correct?

21 A. That's correct. We received incident reports, video,
22 the two videos that I've described if I remember correctly,
23 also my clients prior history, you know, so the standard
24 Rule 5 and Brady as best I can remember.

25 Q. Did you have a chance to review the transcript to

1 review your cross examination of the police officers?

2 A. I did just a moment ago.

3 Q. Okay. Do you recall that the questioning that Mr.
4 Cash brought out about showing the officer his report and
5 trying to impeach him?

6 A. I don't specifically recall that. I've read the
7 transcript. I, you know, it appears to just had been an
8 error on my part. You know, my typical, I don't see any
9 solicitors in here so I can give you my typical strategy on
10 impeaching law enforcement is to try and walk them through
11 their training and background in their report taking
12 process so it's not unusual for me to try and dissect the
13 report, itself, as part of cross examination.

14 Q. Okay. Do you feel like you were prepare for trial?

15 A. Yes.

16 Q. Did you feel like you had enough time to get prepared?

17 A. Yes.

18 Q. Okay. And you did a cross examine the State's
19 witnesses, correct?

20 A. Yes.

21 Q. And you had your own witnesses there as part of your
22 defense, correct?

23 A. Yes. I believe -- I know we had Mr. Boney and then,
24 of course, Mr. Cash elected to testify.

25 Q. Okay. You heard Mr. Cash testify about this issue of

1 assault and battery versus just assault, do you recall any
2 specific discussions about that?

3 A. I don't recall any specific discussions at trial. I
4 mean, at that point we had made or Mr. Cash made the
5 decision to go forward. You know, I definitely would have
6 gone over, back during the initial meetings, the elements
7 of the offense and what it took to be found guilty and
8 responsible for something like that. I absolutely would've
9 done that.

10 Q. Okay. And you made a motion for directed verdict, do
11 you recall doing that?

12 A. I don't recall off the top of my head but it's
13 standard practice to do that so I would've done that, yes.

14 Q. You do that every time you have a trial?

15 A. Yes.

16 Q. And what is the standard for directed, a directed
17 verdict?

18 A. Pretty high.

19 Q. Is it basically any evidence?

20 A. It's, in this case, you know, there were factual
21 disputes I believe the court acknowledged that and said,
22 you know, those factual disputes are for the jury and for
23 them to weigh out and, therefore, the case is going
24 forward.

25 Q. And the court found that there was some evidence to

1 prove the State's case?

2 A. If I remember correctly I believe the court found that
3 there was, again, factual disputes on both size and,
4 therefore, it was appropriate for the jury to consider and
5 weigh those facts.

6 Q. Okay.

7 A. Because again Mr. Cash did testify and give, give his
8 side of the story.

9 Q. Okay. Did you -- did you know that this case was
10 being called for trial that day?

11 A. Yes. I mean, I would've known leading up to, you
12 know, I think we had converted at that point I'm not a
13 hundred percent positive, but where we were having a list
14 at that point. But, certainly, I would've met with, again,
15 Mr. Cash. I would've met with Mr. Wells, who was the
16 prosecutor, multiple times leading up to, really to,
17 determine if there was any, you know, potential plea
18 options, you know, certainly my philosophy is to give my
19 client all the options possible so I would've continued to
20 try to negotiate with Mr. Wells, again, for Mr. Cash to be
21 able to have as many options as possible for him to make a
22 decision as to what he felt was best for him.

23 Q. Okay. Did you -- would you have informed Mr. Cash of
24 the trial date?

25 A. I would've told him -- I would've told him probably

1 that there was a term of court coming and that he would've
2 been on the roster and eligible for trial, yes.

3 Q. But it might not have been a specific day but you
4 would've given him a time frame?

5 A. I would've told him the terms of court. It's
6 impossible to give him a specific day necessarily because a
7 lot of times, you know, you might be third or fourth on the
8 solicitor's list but if cases in front of you fallout then
9 you're up. So what I would've told Mr. Cash would've been
10 that, you know, we've told the State that you want a trial
11 and, therefore, you're eligible for the case to be called
12 and these are the terms of court coming up and it could be,
13 we need to be ready for these dates.

14 Q. Okay. So you would've told him, here's a list it
15 could be any time?

16 A. I would've told him of the upcoming terms of court and
17 it could be any time, yes.

18 Q. Other than-- other than his co-defendants, did he ask
19 you to notify anyone of the trial?

20 A. I don't believe so.

21 Q. Okay. Would you have necessarily have had time to
22 notify someone of a trial?

23 A. Obviously, if it would have been someone who could
24 testify to the facts of the case, you know, I would've
25 either asked for more time if I couldn't get -- if I had

1 someone that, for instance, they said they could testify to
2 the facts of the case but they couldn't get here quick
3 enough then I would, of course, taken that to the court but
4 I don't remember having such issues with that.

5 Q. What about, I mean, I was thinking more of like his
6 family coming from out of state, would you have ---

7 A. You know, certainly I would've tried to honor that
8 request. I don't remember that request but, I mean, as I
9 remember it he and I both were focused on the trial,
10 itself. His family wasn't present for the trial. We were
11 focused on trying to win the trial not, you know,
12 mitigation for winning if we lost the trial.

13 Q. Okay. So you don't remember him specifically asking
14 you to notify his family?

15 A. I don't remember that.

16 Q. And what about a discussion about an appeal, do you
17 recall a specific discussion about that?

18 A. I know we would've discussed his options. I believe I
19 remember telling him at the end of the trial that he did
20 have a right to appeal and there was a finite period of
21 time to exercise that right. In all honesty, I think it
22 was brought up earlier. I do not believe, I remember -- I
23 do not remember advising him of the right to have a motion
24 for reconsider. I do not remember that.

25 Q. Okay. Is that something you usually do?

1 A. Typically, I always, you know, go the usual do. I
2 always advise of appeal, typically, if I feel like there is
3 a reason to, you know, sort of might jump out to file a
4 motion to reconsider but that's not as standard in our
5 world or my world.

6 Q. Okay. So the appeal -- the advising of the right to
7 appeal is standard but advising of a right to motion for
8 reconsider is not necessarily?

9 A. Not ---

10 Q. Okay.

11 A. I mean, typically, I would advise if there was, you
12 know, something about the sentence that I felt like there
13 was a legal issue or, you know, something like that, then,
14 typically, I would say, you know, we could exercise the
15 motion to reconsider.

16 Q. Okay. Do you recall when you first received any
17 communication from Mr. Cash saying that he wanted to
18 appeal?

19 A. I believe my -- the first communication I got was a
20 letter that was received by the public defender's office
21 that informed me he wished to -- he wished to appeal which
22 is not uncommon to receive such a letter.

23 Q. Okay. Do you recall the date of that letter or the
24 date you received it?

25 A. I knew it was late because -- I don't recall the exact

1 date. I know it was late because the motion that I saw
2 that where we filed to request, you know, we acknowledge
3 that it was late and that we had just received and,
4 therefore, we acknowledged in writing that the request was
5 out of time but having just received it, we felt like we
6 should just go ahead and request it.

7 Q. Okay. Do you recall what day you filed that motion?

8 A. I don't. I was looking back in the file. I don't
9 recall. I just remember it was a letter and, typically,
10 the PD's office, and like I said that's not to unusual
11 either, sometimes you get a phone call from SCDC from the
12 client saying hey, you know, I want y'all to appeal and we,
13 of course, would act on a phone call or letter. In this
14 case it was a letter.

15 Q. Was it a year later? Do you have an approximate time
16 frame?

17 A. I'm looking -- it looks like we received -- the letter
18 that I sent the Court of Appeals -- it looks like we
19 received the letter on April 25, 2013.

20 Q. And what do you have -- where are you getting that
21 date from?

22 A. I'm getting that date from the letter from the Twelfth
23 Circuit Public Defender's Office to Ms. Allen, the deputy
24 clerk, at the Court of Appeals and, wherein, I enclose the
25 letter from Mr. Cash and advise her that his trial

1 concluded on April 10, 2013 where he was sentenced to ten
2 (10) years that he did not notify me at the time of his
3 interest in appealing the case that later on, on April 25,
4 2013 we received a letter from him regarding an interest in
5 pursuing an appeal. A copy of that letter is enclosed and
6 it's dated it appears to be dated April 16th.

7 Q. Okay.

8 A. And then I believe we also included the separate
9 letter which I think we've got a copy of received by the
10 clerk's office on April 19th which was received by my
11 office on May 2nd.

12 Q. Okay. Could you pull that out?

13 A. Sure.

14 Q. Those are the letters you wrote, correct?

15 THE COURT: For some reason already have this ---

16 MS. GOLDBERG: That is part of ---

17 MS. McCALLISTER: It is part ---

18 MS. GOLDBERG: --- I believe the exhibit.

19 MS. McCALLISTER: It is part of it.

20 MS. GOLDBERG: Yeah, okay.

21 Q. Never mind. Thank you. Okay. So you received the
22 letter directly from Mr. Cash on April 25th and you
23 received a copy of it from the clerk on May 2nd, is that
24 right?

25 A. I believe that's correct. It looks like the clerk got

1 their copy on April 19th.

2 Q. And then when you got those -- when you got the letter
3 from Cash what you're reading from is the notice of appeal
4 that you then sent to the Court of Appeals, is that
5 correct?

6 A. I'm ---

7 Q. Or the letter accompanying the notice?

8 A. I believe that's right.

9 Q. Okay. Whose choice was it to take this case to trial
10 yours or your clients?

11 A. Mr. Cash.

12 Q. Mr. Cash's?

13 A. Mr. Cash.

14 Q. Did you explain to him a plea versus trial, did you
15 have that discussion?

16 A. Certainly, I would have gone over it with him. I
17 mean, in this case there was not a, you know, a lucrative,
18 I would say, plea offer. It was a straight a plea to what
19 he was charged with so there were no guarantees. I mean,
20 he could have gotten what he received at trial. I would've
21 advise Mr. Cash and my experiences is you do get, if you're
22 going to get a lesser sentence, just statistically my
23 experience, being, you're going to get a lesser sentence at
24 plea versus trial but again all those options were his.

25 Q. Okay. Do you recall why he wanted to go to trial?

1 A. He -- his position was he was not guilty.

2 Q. Okay. What do you recall as kind of your, your
3 strategy at trial?

4 A. My strategy at trial would've been to, you know,
5 bluntly to try to poke holes in the prosecutions case. I
6 do recall that Mr. Cash, from the onset, expressed his
7 desire to testify. He did testify. I also recall that he
8 did a very good job testifying at trial. I felt like, and
9 if I remember correctly, the jury went out, came back in
10 and asked to see, ask to review the video again. I think
11 that was based on his testimony that gave them the desire
12 to look at the case. They were out several hours. This
13 was not a twenty minute return of verdict and, again, they
14 ask to see the video again. But I recall he did a good job
15 and to the extent that when it came time for the
16 sentencing, we discussed strategies for that and he wished
17 to speak more for himself feeling like he conveyed to the
18 court better than I could his position and sort of talk for
19 himself I guess, you'd say.

20 Q. Okay. An you gave him that -- and you gave him that
21 opportunity, correct?

22 A. Certainly. He's allowed to do that for sure.

23 Q. And he was -- and he did speak and convey whatever
24 that he wanted to convey?

25 A. He did convey to the court his wishes.

J. Jordan- Cross Examination by Ms. Goldberg

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1 Q. Okay.

2 A. Or his opinions.

3 MS. McCALLISTER: That's all the questions I have.

4 Thank you.

5 THE COURT: Your witness.

6 MS. GOLDBERG: I beg the Court's ---

7 **Cross Examination by Ms. Goldberg:**

8 Q. Good morning.

9 A. Good morning.

10 Q. Do you have your file with you today?

11 A. I do.

12 Q. All right. Can you tell me when you were appointed to
13 represent Mr. Cash?

14 A. I can tell you his initial appearance would've been on
15 December 19, 2012. So it would've been some time in that
16 vicinity, probably, a little bit before that.

17 Q. Slightly before that?

18 A. Correct. Generally -- I say that because generally
19 speaking and again going back to whether you're intention
20 or whether you are not, the first time I usually meet with
21 someone who's not a detention would've at the initial
22 appearance. So it would've been, I would've gotten the
23 information sometime prior to that.

24 Q. Okay. You said -- you testified that you met with Mr.
25 Cash several times, do you recall were some at the jail,

1 some of the courthouse, all in one particular place?

2 A. To the best of my memory I believe all of our meetings
3 were here at the courthouse. Either, you know, not
4 necessarily in the courtroom but in office space around the
5 courtroom or in a jury room that wasn't being used, those
6 kind of things.

7 Q. You did received discovery in this case?

8 A. Yes.

9 Q. You've already testified that you went over that with
10 him?

11 A. Yes.

12 Q. And I believe you even, I think, even Mr. Cash
13 testified that you had sent him a copy of the discovery?

14 A. It's standard that anytime a client request their own
15 copy of the discovery, you know, we make copies and send
16 them to them.

17 Q. You testified regarding the video, the incident, that
18 you received. Did you ever receive videos that documented
19 statements made by the co-defendants?

20 A. I heard the investigator testified to that, I don't
21 believe so. I don't have any recollection of seeing such
22 said videos. Again, the two videos that I remember, I
23 distinctly remember the dash cam video because that was
24 sort of the centerpiece of the prosecutions case other than
25 the testimony of Deputy Phillips. And I'm pretty sure I

1 remember a video, wherein, that was taking place from the
2 hotel lobby but it was minimum in value.

3 Q. The discovery references that the statements of the
4 co-defendants were taken, is there any reason why you can
5 go back to the State or law enforcement and ask for copies
6 of the statements?

7 A. At that point, I don't remember. I know we, again,
8 were trying to reach the actual individuals themselves but
9 I don't remember whether or not we did that.

10 Q. I'm going to hand you just a copy of the indictment
11 and warrants in this case. These are in the court's file.

12 MS. GOLDBERG: Your Honor, if I may approach the
13 witness?

14 THE COURT: Yes.

15 Q. Mr. Jordan, would you agree that these appear to be
16 the indictment and warrant related to Mr. Cash's case?

17 A. I believe it does.

18 Q. All right. What does the warrant initially accused
19 him of being charged with?

20 A. The warrant has resisting, assault, beat or wound
21 police officer, server processor while resisting arrest.

22 Q. And you agree the indictment just refers to the
23 charges of assault on an officer, is that how it's phrased?

24 A. The indictment I have list Mr. Boney and Mr. Cash and
25 Ms. Wright. It references the date of the incident

1 knowingly, willfully, assault, beat or wound one deputy,
2 Josh Phillips, Florence County Sheriff's office.

3 Q. On the warrant what statute does it say he's charged
4 under?

5 A. On the warrant, 69-320 (b).

6 Q. And the same is true on the indictment, correct?

7 A. Yes.

8 Q. Did you pull that statute and review it in preparation
9 for trial?

10 A. Probably would have but I can't tell you one hundred
11 percent.

12 Q. And today, sitting here on the witness stand, can you
13 tell me exactly what the statute says?

14 A. No.

15 Q. If I show you a copy of the statute, would that refresh
16 your memory as to what that is?

17 A. Sure.

18 MS. GOLDBERG: Your Honor, I'm just handing the
19 witness a copy of 16-9-320 in full without any addition or
20 any other commentary on it.

21 Q. Okay. Now, does that refresh your recollection as to
22 what 16-9-320 (b) requires?

23 A. It does.

24 Q. Okay. And so you're aware ---

25 MS. GOLDBERG: Your Honor, I have a copy for you.

1 THE COURT: Thank you.

2 Q. All right. Mr. Jordan, so you're aware there's two
3 ways that you can be found guilty or convicted of this
4 particular subsection. The first would be for a person to
5 knowingly, and willfully assault, beat, and wound a law
6 enforcement officer, engaged in serving, executing, or
7 attempting to serve or execute a legal writ of process,
8 correct?

9 A. Correct.

10 Q. That's the one way you can be convicted?

11 A. Correct.

12 Q. The second would be the same type of situation
13 assault, beat, or wound when the person is resisting an
14 arrest made by one whom the person knows or reasonably
15 should know to be law enforcement officer whether in
16 they're in the process or not. So that doesn't mean you
17 need any documentation, nothing like that, just while
18 resisting an arrest, correct?

19 A. Correct.

20 Q. Those are the only two ways you can be convicted of
21 this offense, correct?

22 A. Correct.

23 Q. All right. So prior to trial, you met with Mr. Cash
24 several times and tell me about your discussions on -- why
25 did he want to go to trial?

1 A. If I remember correctly he, basically, said that the
2 officer, he was defending himself, essentially. That he
3 was trying to calm the scene down and that he was yelled at
4 by the officer. And, then, ultimately, he defended himself
5 from the officer, if I remember correctly.

6 Q. Did he tell you that he never physically beat or
7 wounded the officer?

8 A. I mean, I ---

9 Q. How would you describe that?

10 A. I remember, you know, his statement being along the
11 lines of, you know, I defended myself and that we ended up
12 in a scuffle rolling around in the flower bed, the yard, so
13 to speak.

14 Q. Okay. Did you -- are you familiar with how the legal
15 definition of assault differs from the street, commonly
16 known definition of assault?

17 A. I would -- I would guess -- I mean, I'm familiar with
18 the legal definition. I would think that the assault,
19 definition of assault could mean many different things to
20 many different people.

21 Q. Okay. Fair enough. You understand that legally it
22 doesn't require any actual touching, any actual contact,
23 correct?

24 A. I'm familiar with assault, yes.

25 Q. Did you ever explain that to Mr. Cash?

1 A. I would've gone over the elements of the offense in
2 detail with Mr. Cash. I can't specifically tell you on
3 this date at this time.

4 Q. Okay. All right. Now, you recall the testimony of
5 the police officer who was involved in this incident,
6 correct?

7 A. Correct.

8 Q. Generally speaking, at least?

9 A. You say officer, do you mean, deputy Phillips? I know
10 that they were several.

11 Q. I believe -- yeah, deputy Phillips?

12 A. Yes, I do remember his testimony.

13 MS. GOLDBERG: I beg the court's indulgence.

14 THE COURT: Sure.

15 MS. GOLDBERG: Your Honor, if you don't mind I'm going
16 to read a portion of the testimony from the trial
17 transcript into the record. This is on page 69. This is
18 the testimony of Deputy Phillips his answer which begins on
19 line 8. Deputy Phillips testified, "I just kept requesting
20 for them to calm down, calm down. That's when the clerk
21 had told me that Boney had ripped a pen off the, I guess,
22 off the counter, off the chain or however it was on the
23 counter and threw it at her. While I was speaking with
24 that they started, the female started arguing again, Boney
25 started arguing again the subject that I had in cuffs.

1 That's when the defendant, Mr. Cash, came into the lobby
2 door, came into the front lobby and said, you know, why do
3 you have my brother in handcuffs. You know, just yelling
4 at me, you know. You know, why are you doing this. At
5 that time I asked for all four subjects, all right, let's
6 walk outside. I didn't like being in that lobby. I've got
7 four people and I'm by myself right now. We walked
8 outside. I told the defendant, Mr. Cash, and the two
9 females to stand at the lobby door. I was going to carry
10 Boney to my -- walked Boney to my patrol vehicle which was
11 right in front of the lobby door and just place him in my
12 vehicle until, just so I can investigate a little further
13 to find out what's going on until I got somebody else
14 closer to me. As I walked Boney to my patrol vehicle, we
15 were standing at the backside of my patrol vehicle at the
16 back corner, I looked back, the defendant and two females
17 were still standing in the front lobby door. I did a pat
18 down of Mr. Boney to make sure he didn't have any weapons
19 or anything like that on him. It's a procedure we normally
20 do before we put any one in our vehicle. As I did that I
21 was getting ready to open my rear door to place Mr. Boney
22 inside my patrol vehicle, I felt a tug on my right
23 shoulder." You're familiar with all of that? Do you
24 recall that?

25 A. Yes.

1 Q. All right. And then after that, point in time the
2 officer goes on to testify that Mr. Cash is questioning why
3 Mr. Boney is being placed in the patrol vehicle, correct?

4 A. I believe that's correct.

5 Q. And Mr. Cash had tugged on his sleeve, is that
6 accurate from what you remember?

7 A. I remember that he -- I don't remember the exact
8 manner of how that took place. I know he was trying to
9 talk to the deputy is what Mr. Cash explained to me. As
10 to, again, he was trying to, from what he told me, defuse
11 the situation and everybody else was from out of town and
12 he was trying to, sort of, get everybody back on the road.

13 Q. All right. And then on page 71, beginning on line 7,
14 the officer testifies, "And I said to the defendant, I
15 pushed him back, I said back up, you know, get away from
16 me, back up off of me." And then from there that's when
17 the struggled again. Is that pretty much your memory of
18 how everyone testified the situation happened?

19 A. That sounds very familiar.

20 Q. And there actually, kind of, wasn't a lot of a dispute
21 about how the situation happened in that regard, would you
22 agree with that?

23 A. That sounds familiar. Yes, I would agree.

24 Q. Now, the officer in testifying that way, he stated
25 that he was putting Boney in patrol car so that he could

1 separate them from the scene to investigate further,
2 correct?

3 A. I believe that's right, yes.

4 Q. He never testified that Boney was under arrest?

5 A. I don't believe he did.

6 Q. In there's -- do you recall at any point him saying
7 anything, him saying Mr. Boney was placed under arrest at
8 that particular time or had been placed under arrest?

9 A. I don't recall him saying that.

10 Q. Cash, in fact, wasn't under arrest either, correct?

11 A. That is correct.

12 Q. Now, after the State's case you make a motion for a
13 directed verdict, that's on page 127. Where you state
14 that, "the State has the burden to prove an assault and
15 battery and the State didn't meet the burden based on many
16 different factors." Is there any particular reason why you
17 didn't argue anything further in that directed verdict
18 motion?

19 A. I don't recall.

20 Q. From the transcript it appears you did not argue that
21 the officer wasn't serving process on anyone, you agree
22 with that?

23 A. I agree with that.

24 Q. You didn't argue that the evidence showed Cash was not
25 resisting arrest, his own or anyone else's, is that

1 correct?

2 A. That is correct.

3 Q. You didn't -- as a result, you didn't argue that the
4 facts actually don't meet the statue he was charged with,
5 is that right?

6 A. No, I think -- I think I was, if I remember correctly
7 and I don't have in front of me and I haven't reviewed it
8 in a long time, but I believe I was relying on Deputy,
9 Deputy Phillips. During the course of the struggle I
10 believe he gave verbal commands to cease. But I don't
11 recall it's been a little while now.

12 Q. Did you ever address or bring up the fact that the
13 individuals do have a First Amendment Right to question
14 police authority as long as no fighting words are used?

15 A. I don't believe -- I don't remember.

16 Q. To the best of your memory, did Mr. Cash testify
17 consistently with what he had told you and your
18 investigator prior to trial?

19 A. Yes.

20 Q. In his testimony, he testified that he was not
21 involved in any the original confrontation between the
22 hotel staff, law enforcement, anyone, is that right?

23 A. That's correct.

24 Q. He testified that when he tried to question, approach
25 the officer and question why his friend was being put in

1 the patrol car that the law enforcement officer responded
2 by pushing Cash, is that how Cash testified?

3 A. I believe that's correct.

4 Q. At that point, they were locked in and tussled and
5 fell to the ground?

6 A. That is correct.

7 Q. If the court records show that Natasha Wright pled
8 guilty to time served on April 1st which would've been a
9 week before trial, do you have any reason to disagree with
10 me on that, isn't that a fact, is that consisted with your
11 memory?

12 A. That sounds familiar and also that would make sense
13 that she wasn't currently or wasn't at that time with the
14 trial being held, at the detention center, that she would
15 return to North Carolina.

16 Q. Did you ever make any attempt to speak with her while
17 she was at the county jail or to issue her a subpoena for
18 the trial while she was at the county jail?

19 A. No.

20 Q. Any particular reason why?

21 A. Any particular why I didn't speak to her or any
22 particular reason why ---

23 Q. Both.

24 A. As to speak with her, you know, again I would relied
25 on Investigator McKenzie who does an excellent job of

1 speaking to, tracking down, I'd guess you could say,
2 individuals for me to talk to. And as to the subpoena
3 issue I don't recall.

4 Q. You -- other than Mr. Cash, Adrian Boney was the only
5 other witness that you called to trial, correct?

6 A. That's correct.

7 Q. And he was already -- he had already pled guilty,
8 right?

9 A. I believe he had pled guilty and had been sentenced,
10 if I remember correctly.

11 Q. Okay. Was he wearing SCDC or jail clothes?

12 A. I believe that's correct. For some reason I remember
13 him wearing red but that's not SCDC or Florence County
14 colors so I'm not, again, that's hazy. I do know we were
15 able to get him and that he was being held and he was
16 brought by security to the courthouse.

17 Q. Now, during the trial and deliberations I think you
18 testified earlier that you had spoken with Mr. Cash about
19 his appellate rights. Are you -- do you have any specific
20 recollection of that conversation with Mr. Cash or were you
21 just telling the court what your normal practice is?

22 A. If I remember correctly -- if I remember correctly, I
23 would have discussed with him sort of how the process
24 worked in the event because the jury had been out a while.
25 So, you know, we had time I guess you'd say to talk, I

1 would've talked to him, okay, here's what we do with the
2 good news, you know, you're not guilty and here's what
3 happens. Here's what we do with the bad news. You have
4 these rights and options at that point and advising him
5 further that we'll probably roll right into sentencing in
6 the event or pretty close to it, in the event you are found
7 guilty. So it was sort of -- I do remember sitting, you
8 know, at the table with him while the jury is deliberating
9 advising him, you know, that this is what's coming next,
10 one way or another.

11 Q. Okay. You do specifically remember that ---

12 A. Yes.

13 Q. --- with Mr. Cash?

14 A. Yes.

15 Q. And that was before any verdict was reached?

16 A. That's correct.

17 Q. Do remember speaking with him at all after the verdict
18 and sentencing to say, do you want me to file that notice
19 of appeal that we discussed?

20 A. I don't remember that. I mean, everything happens
21 pretty quick, you know, right after sentencing. You go
22 from, you know, being told your guilty, to standing up at
23 the podium in front of the judge for sentencing, to, you
24 know, the sheriff is trying to get you out the door to the
25 detention center to, you know, keep this train moving so to

1 speak. So I can't tell you specifically. I don't
2 recollect the conversations we had immediately after
3 sentencing.

4 Q. Do you recall if you had any conversations immediately
5 after or was this one of those situations where they just
6 immediately brought him out and you didn't get a chance to
7 talk to them?

8 A. Well, he would've been, if I remember correctly, he
9 would've been out for a significant portion of the time
10 leading up to the verdict.

11 Q. Of course.

12 A. And then would've stayed out in the courtroom pending
13 sentencing in front of the circuit court judge. And then
14 the common practice, if I remember correctly, pretty
15 quickly after sentence, he's being taken to the holding
16 cell at that point to be transported to Effingham.

17 Q. So you may not have spoken to him again about it
18 immediately after sentencing?

19 A. It would've been -- if it occurred -- I mean, it's
20 standard practice for me to, to sort of run through that
21 very quickly but it would've been a, you know, a thirty
22 second to one minute ---

23 Q. Right.

24 A. --- conversation as he's being walked out the
25 courtroom, so to speak.

1 Q. I'm going to hand you applicant's Exhibit or
2 Plaintiff's Exhibit Number 2. All right. If you will turn
3 to the second page of that document. I think you are
4 testifying about this letter previously, is that right?

5 A. Yes. This was the letter that I referenced on direct
6 examination.

7 Q. All right. In this letter, you state that your office
8 received notice of Mr. Cash's desire to appeal on August,
9 on April 25, 2013, is that what that letter says?

10 A. My office received a letter from him on April 25,
11 2013, yes.

12 Q. Okay. Why did you wait until May 8th to draft this
13 letter and file his notice of appeal?

14 A. If I remember correctly, there was some kind of
15 confusion about this again because we got a letter, the
16 clerk got a letter so, I mean, it would've been probably
17 time for me -- and then -- and I don't recall if this was
18 on a, you know, a Friday and it didn't get processed or the
19 letter didn't get drafted until next Tuesday. I don't
20 remember.

21 Q. Okay. But you can't remember any specific reason you
22 waited ten days to file his notice of appeal?

23 A. No, I don't. We would -- the standard process is if
24 we received communication from a client we, you know, start
25 putting it together and, you know, as you can see from the

1 file it's marked appeal and so it kinda goes -- that's not
2 something that -- that is something that occurs on a
3 regular basis sometimes through trials, sometimes through a
4 plea, that a client request an appeal and we -- it goes
5 through the normal ordinary process.

6 Q. And Mr. Cash never ask you to contact his family to
7 let them know about the trial?

8 A. Not that I recall. Again we were focused on trial
9 and, you know, the individuals. I did -- he did asked me
10 to contact and try and retrieve the eyewitnesses but we
11 were focusing on trial and the individuals who testify to
12 the specifics of the case. I don't recall any, you know,
13 directive as to family. I don't recall that.

14 Q. Do you typically own your own attempt to have
15 defendant's family present for sentencing for mitigation
16 purposes?

17 A. You know that's certainly something I like to have
18 when a family can be present to talk to the judge. I
19 always think that's a good thing, yes. You know,
20 typically, I would tell the client in a normal situation,
21 you know, if it's a plea, for instance, you know, I would
22 tell the client in advance, hey, it's good if you could get
23 your family to be there, that kind of thing, you know, but
24 in this case, again, we were focused on trial. You know,
25 Mr. Cash felt very strong about the case. I remember all

1 of our efforts being focused on winning the trial not
2 necessarily mitigation, you know, pending loss.

3 Q. And he received the maximum sentence for this charge,
4 right?

5 A. He did.

6 Q. Would this have been a situation where a motion to
7 reconsider sentence would've been reasonable to have done?

8 A. You know, typically, I would do a motion to reconsider
9 when there was something unusual. You know, my experience
10 has been that the sentence is, sort of, in line with, you
11 know, someone convicted of assault and battery on law
12 enforcement so there was not anything unusual. If I was
13 going to file a motion to reconsider it would've been, my
14 client doesn't feel like the amount of sentence is
15 appropriate and that by, itself, is not, not necessarily --
16 reached the level of necessary to be successful on a motion
17 to reconsider.

18 MS. GOLDBERG: No further questions.

19 MS. McCALLISTER: Just ---

20 **Redirect Examination by Ms. McCallister:**

21 Q. On the issue of the appeal, the letter that you sent
22 to the clerk of court was dated May 8, 2013, is that
23 correct?

24 A. I handed that back. Yes. The letter from me to Ms.
25 Allen, the deputy clerk, is dated May 8, 2013.

1 Q. And it says that you received the letter from Mr. Cash
2 on April 25th?

3 A. That's correct. I, you know, layout the specifics of
4 all the documents that I'd received related to the appeal
5 both from Mr. Cash directly as well as to the copies that
6 were sent to me from the clerk's office.

7 Q. Okay. And what date was Mr. Cash's trial and
8 sentencing?

9 A. The trial and sentencing -- the trial concluded and
10 sentencing was on April 10, 2013.

11 Q. So by the time you received that letter on April 25th,
12 had the time for an appeal, a timely appeal already run?

13 A. Yes.

14 Q. Okay.

15 MS. McCALLISTER: Thank you.

16 THE COURT: Anything else?

17 MS. GOLDBERG: No, Your Honor.

18 THE COURT: Thank you, sir. You may step down.

19 MS. McCALLISTER: Nothing further from the State,
20 Your Honor.

21 THE COURT: Anything else?

22 MS. GOLDBERG: No, Your Honor. Your Honor, I can
23 briefly argue some of the issues here but no further
24 evidence from my client.

25 THE COURT: All right. Glad to hear from either

1 side.

2 MS. GOLDBERG: Thank you, Your Honor. May it please,
3 the Court? I think that most of the issues have been
4 testified to fully so I won't recap all the testimony today
5 as it's clear, Your Honor, was paying attention. I do have
6 a concern about the fact that co-defendants did give
7 statements in this case that were never turned over to
8 trial counsel. I don't believe they were turned over to
9 the solicitor's office as well. The point I'm trying to
10 make is just that Mr. Cash never had the privy of being
11 aware of what was in those statements and, unfortunately,
12 we don't today either because they no longer exist. I just
13 want to address that as my concern. But the bigger issues,
14 Your Honor, here, I do have a major concern with the
15 directed verdict. As, Your Honor, has seen Mr. Cash was
16 charged with section 16-9-3250 (b). It is clear from the
17 facts in the trial as testified by the State's witnesses
18 that he was not resisting arrest. He was not interfering
19 with an officer serving process or anything like that. I
20 do not believe the facts as described and testified to in
21 the trial meet the statute. There were no argument in the
22 trial during directed verdict regarding that. There was
23 not even argument made in that regard to the jury, arguing
24 the law to the jury in closing arguments. I do think
25 that's a specific legal issue so I think the best place for

1 it would've been directed verdict but Mr. Jordan could've
2 argued it to the jury as well. It was missed. It was just
3 a miss issue. I think if it have been addressed there is a
4 likelihood the judge could have found that, that was
5 accurate but even more so because of Mr. Jordan, elegantly
6 said, the jury did consider this case heavenly. If the
7 jury had been real -- if this point had been emphasized to
8 the jury there's a chance they could have change their
9 decisions and their verdict in this case. In the lines
10 with that I'm also concerned about the appeal situation
11 here. That would've been an excellent appellate issue had
12 it been raised and had an appeal been properly filed. Mr.
13 Cash, in this case, he was convicted on the 10th. With six
14 days after that on April 16th, he did the only thing he
15 could do to request an appeal be filed, was to write that
16 letter while it was received by the public defender's
17 office shortly thereafter. I know the court does
18 occasionally allow for a little bit of lead way there when
19 the lawyer does not get information quickly enough. But
20 Mr. Jordan waited ten days after receiving the fact that
21 Mr. Cash wanted to file an appeal before he even did it. I
22 think that is ineffective. I think that effected the
23 court's decision on allowing the appeal to go forward and
24 he did receive the maximum sentence. I think this is a
25 case where a motion to reconsider may have been

1 appropriate. Beyond that, I'll rest on the testimony, Your
2 Honor.

3 THE COURT: Thank you.

4 MS. McCALLISTER: Thank you, Your Honor. Taken the
5 issue of the appeal first, Your Honor, Mr. Jordan's
6 testimony is that he did talk to his client regarding an
7 appeal. He has a specific memory of doing so while the
8 jury was deliberating. He also testified that, that is
9 standard practice for him to do so. He did not receive any
10 notice of appeal from his client until after the time for
11 an appeal had run. He did file something with the court
12 letting the court, you know, in conveying his client's
13 wishes. Further, Your Honor, I think Mr. Cash himself
14 testified that when he found out about his right to an
15 appeal he claims in Effingham, he didn't try to call. He
16 didn't ask to call his attorney. He didn't tell anybody,
17 hey, I just found out about an appeal and I need to let my
18 attorney know. He didn't take those steps. Your Honor, I
19 think in terms of the motion for directed verdict, you
20 know, as Mr. Jordan testified that is quite a high
21 standard. I think the court explains the reasoning why it
22 denied that verdict or that motion. I think -- I would
23 recall the court's attention to page 84 of the transcript,
24 the officer's testimony. There is some testimony that Mr.
25 Boney was in detention. He was in handcuffs. And he --

1 and there is some other discussion from Officer Phillips
2 about why the others weren't in cuffs at that point and he
3 says, "it's because I only had one set of handcuffs. I was
4 trying to put one guy in my car and I was coming back for
5 the rest of them." So I think there is some testimony that
6 at that point the officer was at least attempting to make
7 an arrest of Mr. Cash. And then in terms of the statements
8 not being turned over, Your Honor, there was the
9 investigators testimony that there would've been an audio
10 or video statement at some point. He does not recall the
11 substance of that. You know, there's no way to know what
12 was said, if it was even helpful to Mr. Cash or hurt him,
13 if that was a material item that should've, you know, been
14 turned over, I don't believe there's any suggestion that
15 the solicitor's office got that and did not turn it over to
16 trial counsel. I don't believe that, that was ever
17 something that was conveyed to anybody so the State did not
18 have the benefit of that statement in preparing its case
19 either. Obviously, Your Honor, the State believes that Mr.
20 Jordan did a good job and did render effective assistance
21 to Mr. Cash.

22 MS. GOLDBERG: Your Honor, if I just may address one
23 thing? Mrs. McCallister stated that in the transcript
24 there's conversation or talk in testimony about how Mr.
25 Boney was in handcuffs and he was in detention. Law

1 enforcement, typically, makes it very, very specific
2 difference between placing people in detention, including
3 investigative detention versus people being under arrest
4 and they do that because there are rights and things that
5 go along with being placed under arrest. Law enforcement
6 is who testified, essentially, making it very clear that
7 this individual was in detention for investigation
8 purposes. At no point in time did he state that was he
9 under arrest at this point. Mr. Cash does have the right
10 to question that. But my bigger issue is that the statute
11 that he's charged with very specifically says, "while
12 resisting an arrest"and there was not an arrest been made
13 at that point. So I think as a legal issue it should have
14 been at least addressed for the judge's consideration.

15 THE COURT: All right. Well, I'm certainly not
16 going to reach a final decision on this because I haven't
17 been through the transcript. But the issues about these
18 statutes especially (b) has come up many times in the past
19 and there have been legal opinions, pro and con about the
20 first section of that where it says, "legal writ of
21 process", process has a liberal meaning put to that by many
22 of the appellate courts. But the under second "or" that's
23 included in that, quite often in a situation like this an
24 officer, you have to study the intentions and the action
25 they were taking to interpret whether an arrest was being

1 attempted or not. It's not necessarily keyed on actual
2 verbal statement by an officer because quite often that's
3 impossible when something like this, unfortunately,
4 happens. So what I'm trying to say there an officer's
5 intentions could indicate that an individual was under
6 arrest if he was trying to get them under control and get
7 them contained or detained. So that's certainly a jury
8 issue there and I hadn't had a chance to read the
9 transcript to see what all the judge charged. I'm not
10 gonna do anything now until I can go through this
11 transcript. Okay. With that said, thank y'all for your
12 able presentations and I will put it under advisement until
13 I can go through that, okay?

14 MS. GOLDBERG: Thank you, Your Honor.

15 MS. McCALLISTER: Thank you, Your Honor.

16 (CONCLUSION OF THE HEARING ON MARCH 17, 2017)

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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 Twelfth Circuit Court for Florence County, South Carolina, on the 17th day of March, 2017.

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

s/ Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

January 9, 2017

OFFICE OF
TWELFTH CIRCUIT PUBLIC DEFENDER

CITY-COUNTY COMPLEX, ROOM 703
180 NORTH RBY STREET, MSC-N
FLORENCE, SOUTH CAROLINA 29501
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LEGAL MAIL

PUBLIC DEFENDER INMATE REQUEST FORM

Date: 1-15-2013

Attorney Name: J. Jordan

Name: Dermintique Cash

Subject: Schedule meeting

I have been in the Florence County Detention Center since
October 20, 2012 and have not met with my public defender to discuss
my case. I am requesting for an appointment as soon as possible. Thank
you for your consideration. I would also like to know if I am eligible for
a bond reduction. Please respond.

[Handwritten signature]

Please fold this sheet in half and send to:

Twelfth Circuit Public Defender's Office



To Whom it may concern,

My name is Dominique Alexander Cash. I am an inmate at Kirkland Reception and Evaluation Center. I recently went to trial in Florence County, April 10, 2013 and was found guilty on charges of "Resisting/assault, beat, or wound police officer serving process or while resisting arrest". I am requesting for an appeal on my case because no video evidence was used from the motel lobby where half of the incident occurred, pictures were not taken of the wound that I received and went to the hospital for, my public defender did not request for a "change in venue" as I asked him to, and my jury was unbalanced towards being bias. I was not rightly judged and was not proven guilty by facts but by opinions, when I am actually still innocent. I also think my dreadlocks and facial hair I grew, waiting in the County Jail to go to trial, played an enormous factor because I had a low hair cut and no beard during the crime I was accused of. I plan to make copies of this letter, so that there is record I requested for an appeal Tuesday April 16, 2013 please notify me of your disposition as soon as possible. I need a response before April 20, 2013 which is the upcoming Saturday. Thank you all for your help, and may you all be blessed.

Respectfully and Truly,

Dominique A. Cash

Dominique A. Cash

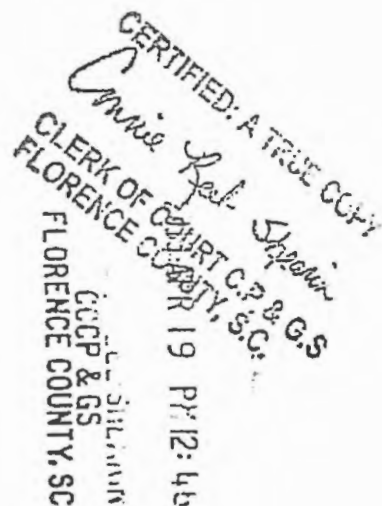
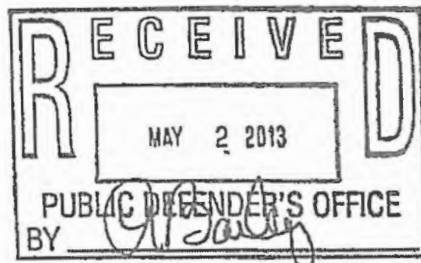
Indictment/Case #: 2013-GS-21-00207

I/W #: 2012A2110200504

Date of offense: 10/20/2012

J.C. Code §: 16-09-0320(B)

DR Code #: 0256



STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Dominique Cash, #354926,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2013-CP-21-2304

ORDER OF DISMISSAL

2017 AUG 24 PM 1:04
DORIS POULOS HARRIS
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 30, 2013 and subsequent amendments filed July 12, 2016 and March 9, 2017. Respondent made its Return on April 22, 2014. An evidentiary hearing into the matter was convened on March 17, 2017, at the Florence County Courthouse. Kristy Goldberg, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Terrell Williams, Applicant's father, also testified on his behalf. Investigator Alvin Worsley and Jay Jordan, Esquire, also testified. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, the trial transcript, and Applicant's appellate records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2013, the Florence County Grand Jury indicted Applicant for assault on law enforcement officer (2013-GS-21-207). Jay Jordan, Esquire, represented Applicant. On April 9, 2013, Applicant proceeded to trial

CERTIFIED: A TRUE COPY
Doris Poulos Harris
CLERK OF COURT CP & G.S.
FLORENCE COUNTY, S.C.

before the Honorable D. Craig Brown and a jury. On April 10, 2013, the jury found Applicant guilty as indicted. Judge Brown sentenced Applicant to ten years' imprisonment.

Applicant filed a notice of appeal, but the South Carolina Court of Appeals dismissed the appeal as untimely on June 6, 2013. The remittitur was returned to the circuit court on June 27, 2013.

ALLEGATIONS

In his current application and the subsequent amendments thereto, Applicant alleges that he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that:
 - a. Counsel failed to investigate and obtain video from the scene which would have refuted the State's allegations;
 - b. Counsel failed to timely file a notice of appeal after being asked to do so;
 - c. Counsel failed to investigate and call necessary witnesses at trial;
 - d. Counsel failed to sufficiently question and cross examine police officers at trial;
 - e. Counsel failed to sufficiently explain Applicant's charges and indictment prior to advising him whether to proceed to trial or accept a plea offer;
 - f. Counsel failed to effectively argue a legal and factual basis for the defense's directed verdict motion;
 - g. Counsel failed to effectively present mitigation evidence during sentencing;
 - h. Counsel failed to file a motion to reconsider the sentence.
2. Brady violation by the State for failing to disclose all material evidence relating to codefendants' statements and ineffective assistance of counsel for not seeking to obtain those statements.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant

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findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Counsel testified he had six years of experience as an attorney at the time he represented Applicant, having done extensive criminal work in both federal and state courts. Counsel

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testified he was a part-time public defender in Florence for three or four years, and he was appointed to represent Applicant through the Public Defender's Office. Counsel testified this incident occurred at a motel when law enforcement was called to respond to the lobby by employees there. Counsel stated two of Applicant's female codefendants were upset at not being allowed back into a room, and Applicant initially tried to calm the situation, but ultimately a fight ensued between Applicant, his male codefendant, and law enforcement. Counsel testified the fight was partially captured on dash cam video from responding officers.

Applicant testified he is from North Carolina and only came to Florence for one night with his cousin and some friends. Applicant testified he was arrested on October 20, 2012, and tried on April 10-11, 2013, and he remained in the Florence County Detention Center in the interim. Applicant testified he was notified he had been appointed an attorney in December 2012, and the first time Counsel met with him was in January or February 2013. Applicant also testified he met with Investigator McKenzie, from the Public Defenders' Office, prior to his first meeting with Counsel and told McKenzie his version of events. Applicant testified Counsel sent discovery to Applicant prior to their first meeting as well. Applicant testified he saw Counsel twice before trial, both times at the courthouse when Applicant was transported for court appearances. Applicant also testified Counsel reviewed discovery and the State's evidence with him, including the dash cam video.

Counsel testified he had a protocol for communicating with clients who were in detention, which was followed in Applicant's case. Counsel testified it was not unusual for the first contact to be made by Investigator McKenzie at the detention center or the courthouse, and sometimes Counsel might not have received discovery at the time of that first meeting, though he did make a request pursuant to Rule 5 and eventually received videos, incident reports, and prior

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criminal histories. Counsel testified he met with Applicant multiple times prior to trial to review the dash cam video, discuss the elements of the offense, and Applicant's version of events. Counsel testified he also obtained video from the hotel lobby at Applicant's request, but it does not show the fight, which occurred outside. Counsel testified he would have gone over the elements of the charge in detail with Applicant though he could not recall the specific date or time the conversation took place.

Applicant testified Counsel advised him to plead guilty, but Counsel did not explain his reasoning for that advice, though Counsel did go over a pro and con list for proceeding to trial rather than accepting a plea agreement. Applicant testified the only offer was to plead "straight up" to a range of 0 to ten years' imprisonment. Applicant acknowledged the case "looked bad," but he testified he wanted a trial because he wanted to prove he did not strike the officer and was merely trying to fight him off after the officer initiated contact. Applicant further testified because the warrant stated he kicked the officer, he thought the State would have to prove physical contact occurred, and Applicant did not know that assault was legally different than battery. Applicant testified he did not know actual touching or physical contact was not required to prove the charge, and he would have agreed to plead guilty if he had known. Applicant testified his co-defendants all pleaded guilty, and one received two years, nonviolent, and the others both received time served.

Counsel testified Applicant always maintained he wanted a trial because Applicant felt he was merely defending himself and trying to calm the scene, and the only plea offer they ever received was to plead "straight up." Counsel testified he went over the elements of the charge with Applicant and what the State would need to prove. Counsel testified Applicant's statements to him about what happened were consistent with what Applicant testified to at trial, and Counsel

felt Applicant did well on the stand. Counsel further testified his trial strategy was to try to poke holes in the case and maintain Applicant's position that he was defending himself. Counsel testified the jury deliberated for several hours and requested to see the dash cam video again.

Applicant testified he did not know his trial was taking place the day it was called. Counsel testified he was aware Applicant's case was being called for trial and met with Applicant and the solicitor in the days immediately leading up to the trial. Counsel testified the trial would not be scheduled for a specific day, just a term of court. Counsel further testified he informed Applicant his case was on the list and could be called at any time. Applicant also testified he did not believe Counsel was prepared because he had not obtained the statements of two of his co-defendants, Natasha Wright and Briana Harrison; Counsel referred to "assault and battery" on the record; and Counsel attempted to impeach one of the police officers with the police report, but he was wrong about what the report said. Applicant testified in Counsel's argument for a direct verdict, Counsel referred to the charge as "assault and battery on a police officer," rather than merely "assault on an officer," though Applicant acknowledged the State had presented evidence for assault. Applicant testified he asked Counsel to call all three of his co-defendants, but Counsel only called Adrian Boney.

Counsel testified Applicant requested his codefendants be present to testify, and Counsel was able to have the male codefendant there. However, Counsel stated the female codefendants had returned to North Carolina a few weeks prior to trial, and although Investigator McKenzie was able to locate them and interview them, they were unwilling to return to South Carolina. Counsel further testified he did not have any legal options to force them to testify, and as a matter of strategy, he does not force defense witnesses to be present because it often results in unfavorable testimony. Counsel admitted he was in error as to the wording of the report when he

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attempted to impeach one of the officers. However, Counsel testified he conducted a thorough cross examination and attempted to dissect the officers' statements to expose holes in the State's case. Finally, Counsel testified that although he could not recall the specific wording of the statute in this case, he was aware of the legal definition of "assault," and he would have pulled the relevant statute sections to prepare for trial. Counsel testified that although he did not argue in his direct verdict motion that the officer was not attempting to serve process or make an arrest, there was testimony the officer gave commands to cease during the struggle which were not followed. Counsel further testified he makes direct verdict motions as a matter of course, and it is an extremely high bar to reach if any fact is in dispute because the court only needs "any evidence" to support the State's case to deny the motion.

Applicant further testified he took the stand in his own defense at trial, but he wanted to speak during sentencing as well. Applicant testified he did not realize he would be sentenced immediately, and none of his friends or family were present, despite having asked Counsel to contact them. Applicant acknowledged Counsel did make mitigation arguments on his behalf, but Applicant testified he would have wanted Counsel to tell the court more about him as a person, including that he was in school and working two jobs. Terrell Williams, Applicant's father, also testified on Applicant's behalf. Mr. Williams testified he was not aware Applicant was in jail in Florence County, and he did not find out until after Applicant's trial and sentencing. Mr. Williams testified Counsel never contacted him, but he would have tried to be present to speak on Applicant's behalf to tell the court Applicant was in school, had a job, and was not a bad person. Applicant acknowledged during cross examination that the trial court did in fact offer him a chance to speak, but he did not tell the court any of these things or take responsibility for his actions. Counsel testified he was focused on preparing for trial, not

mitigation. Counsel further testified he did not recall ever being asked to contact Applicant's family, and his usual practice is to have his clients contact the people they want to be present.

Applicant testified he was not sure whether he spoke with Counsel after sentencing. Applicant further testified Counsel did not discuss an appeal with him, and he was not aware he had that right until he arrived at Kirkland. Applicant testified he attempted to file a notice of appeal as soon as he became aware he could, and he mailed letters to the Florence County clerk and Counsel on the same day, April 16. Applicant further testified he never asked anyone at the jail if he could call Counsel by phone and did not know if he had Counsel's phone number. Applicant testified Counsel did not file an appeal on his behalf until May 8, and it was dismissed as untimely. Counsel testified he specifically recalled discussing an appeal with Applicant before the verdict while the jury was deliberating, and Counsel explained to Applicant what would happen in both scenarios, guilty or not guilty. Counsel further testified he most likely did not speak with Applicant after sentencing as Applicant was moved to the holding cell very quickly. Counsel testified he received Applicant's letter requesting an appeal on April 25, 2013, and then received a second copy from the county clerk on May 2, 2013. Counsel testified he sent the notice of appeal and a letter explaining the situation to the clerk at the Court of Appeals on May 8, 2013. Counsel stated he did not know why there was a delay except that there was some confusion as to what was happening. Counsel further testified the time for filing an appeal had already lapsed when he first received Applicant's letter on April 25. Applicant also testified Counsel never discussed the possibility of a motion to reconsider the sentence, and he was not aware that was an option. Counsel testified his practice regarding motions to reconsider at sentence is to use them only when something unusual happens at sentencing. Counsel testified the sentence Applicant received was within the sentencing range set forth by statute and in line

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with the typical sentence imposed for the charge, so he did not feel he had any grounds to support such a motion.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions. Additionally, Counsel conveyed all plea offers to Applicant, who rejected them in favor of maintaining his innocence. The Court finds Counsel's performance at trial was within the within the range of competence required in criminal cases, and Counsel rendered effective assistance. The Court finds Applicant has failed to meet his burden of proof on his claims Counsel was ineffective in his cross-examination of the police officer or in his argument for a directed verdict. Additionally, this Court finds Applicant has failed to show Counsel was ineffective in his presentation of mitigation arguments at sentencing. Counsel corrected the State's recitation of Applicant's criminal record and asked the judge for leniency. Furthermore, Applicant had a chance to speak to the trial court and did not apologize or take responsibility for his actions, but in fact, continued to deny culpability. Finally, the Court finds Counsel fully explained Applicant's right to an appeal, but Applicant failed to make a timely request, and Counsel took appropriate action to file a notice once he realized Applicant wanted him to do so. This Court finds credible Counsel's testimony as to why he felt he had no grounds to support a

motion for reconsideration, and this Court finds Counsel was not deficient for failing to file said motion.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

Brady¹ violation

Applicant also alleges the State committed a Brady violation by failing to turn over statements made by two of Applicant’s codefendants and that Counsel was ineffective for failing to request copies of the statements from law enforcement. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). “Determining whether evidence withheld by the state is ‘material’ under Brady turns on whether the cumulative effect of the withheld evidence results in a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” State v. Hill, 368 S.C. 649, 661, 630 S.E.2d 274, 280–81 (2006). Further, in order to support a claim that trial

¹ 373 U.S. 83 (1963).

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counsel was ineffective for failing to interview or call potential . . . witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Investigator Alvin Worsley of the Florence County Sheriff's Office testified he was on call the day of the incident and responded to the scene. Investigator Worsley testified Applicant and his codefendants had already been taken into custody when he arrived, but he interviewed the injured deputy at the hospital, and then spoke with Natasha Wright and Briana Harrison at his office. Investigator Worsley testified he was the only officer present for the interviews, and both Ms. Wright and Ms. Harrison were given Miranda² warnings before he spoke with them. Investigator Worsley testified there were no written statements made by either the girls or law enforcement, but he believed the statements were recorded. However, Investigator Worsley testified their video software system does not have records for that long ago, and he could not say whether the video had ever been turned over to the Solicitors' Office. Applicant's PCR counsel stipulated that no videos or written statements were contained in the solicitor's file, and it appears the State never received any statements of the two female codefendants from law enforcement. Investigator Worsley testified he did not recall the substance of either statement or whether it related to Applicant's guilty or innocence, except that it was their version of what happened. Investigator Worsley further testified one of the codefendants told him she was across the street at Hardee's when the incident happened, but video later showed her statement was not true. Applicant's codefendants were not present to testify regarding whether they gave a statement to law enforcement or the substance of such statement.

² 384 U.S. 436 (1966).

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Applicant testified Counsel told him the others were out of the jurisdiction of the court since they had returned to North Carolina. Applicant further testified he was not aware the police had ever taken statements from either Natasha Wright or Briana Harrison until after his trial, though Applicant testified he did have documents in his possession before trial indicating statements may have been taken from Ms. Wright and Ms. Harrison at some point after their arrest; Applicant did not read through all of the documentation he was given until after the trial. Counsel testified he did not attempt to obtain copies of the female codefendants' statements because he wanted to interview them in person instead. Counsel asked them to return to South Carolina for trial, but they declined.

Therefore, this Court finds Applicant has failed to present sufficient evidence that any statements given by the codefendants were material or related to his guilt or punishment and would have changed the result at trial, especially in light of the testimony that one statement was proven false by other evidence. Additionally, this Court finds the additional codefendants' statements are cumulative at best as the incident was captured on video, and the defense called Applicant and one codefendant to testify at trial. This Court finds Counsel was not deficient for not requesting the statements from law enforcement since Counsel's investigator was able to locate and speak with the codefendants.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice. This Court also finds, as to Applicant's Brady allegation, Applicant failed to present evidence the

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State committed such a violation, as Applicant has not shown any statements made by his codefendants were favorable to him or material to his guilt or punishment. The Court further finds Counsel was not deficient for failing to request such statements, as Counsel's investigator was able to locate and speak with the codefendants directly.

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt 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), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

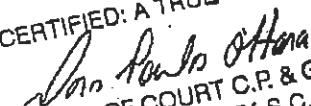
AND IT IS SO ORDERED this 14th day of August, 2017.



THE HONORABLE PAUL M. BURCH
Presiding Judge
Twelfth Judicial Circuit

, South Carolina.

FILED
 2017 AUG 24 PM 1:04
 DORIS POULOS O'HARA
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

WITNESSES

Alvin Worsley Florence County Sheriff

DOCKET NO. 2013-GS-21-00207

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH TERM 2013

THE STATE

vs.

ADRIAN LAMONT BONEY

DOMINIQUE ALEXANDER CASH

NATASHA RENA WRIGHT

FILED

2013 FEB 28 AM 11:07

CONNIE REEL-SHEARIN
CCOP & GS
FLORENCE COUNTY, SC

RECEIVED: A TRUE COPY
CLERK OF COURT
FLORENCE COUNTY, S.C.
\$5.00 per page
\$8.00 per page
\$10.00 per page

Robert N Wells, Jr.

ARREST WARRANT NUMBER

2012A2110200505 2012A2110200504
2012A2110200502

ACTION OF GRAND JURY TRUE BILL

Alvin Worsley
Foreperson of Grand Jury
Date: 2/22/13

VERDICT

Indictment for

ASSAULT ON

LAW ENFORCEMENT OFFICER

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
ASSAULT ON LAW ENFORCEMENT OFFICER

At a Court of General Sessions, convened on FEBRUARY 28, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ASSAULT ON LAW ENFORCEMENT OFFICER

CDR: 0256

16-09-0320(B)

That ADRIAN LAMONT BONEY, DOMINIQUE ALEXANDER CASH, and NATASHA RENA WRIGHT did in Florence County on or about October 20, 2012, knowingly and willfully assault, beat or wound one Deputy Josh Phillips of the Florence County Sheriff's Office, a law enforcement officer of this State, while resisting the efforts of said officer to make a lawful arrest of one or more of them; in violation of Section 16-09-0320(B), 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

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STATE OF SOUTH CAROLINA

COUNTY OF Florence
STATE VS.
Dominique Alexander Cash
AKA:
Race: B Sex: M Age: 21
DOB: SS#:
Address:
City, State, Zip: Wallace, NC 28466
DL#: SID#: SC02076013

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-GS-21-00207
A/W#: 2012A2110200504
Date of Offense: 10/20/2012
S.C. Code § : 16-09-0320(B)
CDR Code #: 0256

SENTENCE SHEET

*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: Resisting / Assault, beat, or wound police officer serving process or while resisting arrest [0 to 10 yrs]

in violation of § 16-09-0320(B) of the S.C. Code of Laws, bearing CDR Code # 0256
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST Robert N Wells, Jr. 6021
Wells, Jr., Robert N SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 172 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$ 105.00

PTUP
days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ☐
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

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

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 260
Sentence Date: 7-10-13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF FLORENCE	)	INDICTMENT NO: 2013-GS-207
	)	
State of South Carolina,	)	
	)	
-vs-	)	VERDICT FORM
	)	
Dominique Alexander Cash,	)	
	)	
Defendant.	)	
_____	)	

1. As to the charge of Assault on a Law Enforcement Officer, we the Jury unanimously find the Defendant, Dominique Alexander Cash:

_____ Not Guilty

☒ Guilty

(If you find the Defendant *Guilty* of Assault on a Law Enforcement Officer, you do not need to answer Item # 2 regarding the lesser included offense of Resisting Arrest. Please proceed to the next page and sign and date this form. However, if you find the Defendant *Not Guilty* of Assault on a Law Enforcement Officer, please proceed to Item # 2 below and deliberate as to the lesser included offense of Resisting Arrest.).

2. As to the charge of Resisting, we the Jury unanimously find the Defendant, Dominique Alexander Cash:

_____ Not Guilty

_____ Guilty

Dated: 10 APRIL 2013

Andy C. Johnson
FOREPERSON

(Please let the Bailiff know when you have completed this form.)